

## **Business Tax Administrative Rule 610.93-2A**

### **610.93-2A – Business Activity and Apportionment of Sales of Tangible Personal Property (LIC-6.12)**

For business license tax and business income tax purposes, a person must have taxable nexus outside the City of Portland/Multnomah County in order to apportion sales of tangible personal property. If a person does not have taxable nexus outside the City/County, no apportionment of income is allowed.

Taxable nexus is the connection between a person and a taxing jurisdiction sufficient to allow the jurisdiction to impose a tax based on or measured by net income. For sales of tangible personal property, taxable nexus is generally created by physical presence (through employees and/or property). Owning or renting real or personal property, or having employees outside the City/County generally creates taxable nexus outside the City/County. Solicitation of sales and delivery/shipment of sales to locations outside of the City/County are generally not sufficient business activity to create taxable nexus outside the City/County unless they extend beyond the protections afforded by PL 86-272. Once taxable nexus is created both inside and outside the City and/or County, only sales delivered or shipped to customers in the City/County are apportioned to the City/County.

“Delivered or shipped to” may not be defined as activities of the purchaser of tangible personal property. If the purchaser takes physical title by picking up the tangible personal property or directing the pick up of tangible personal property (i.e., will-call or other such pick up by the purchaser or purchaser’s agent), the property is considered “delivered” at the point of pick up. Any further sale or delivery on the part of the purchaser to any secondary purchaser shall not be considered as delivery from the original seller to such secondary purchaser.

Example 1: XYZ Laboratory manufactures over-the-counter medicine at its only facility, located in the City. Sales are almost entirely within the City except for a long standing order from a large retail drugstore located outside of the City. XYZ has one salesperson who routinely visits this customer and solicits sales. XYZ delivers its product to this customer by common carrier and in its company truck driven by a company employee.

The solicitation of sales and the delivery of sales outside the City do NOT create taxable nexus for XYZ Laboratory outside of the City. All of XYZ’s income is taxable to the City.

If the company’s delivery employee (i.e. truck driver) or salesperson collects payments, takes orders, stocks shelves, or does any other type of routine and ongoing service in addition to delivery and solicitation of sales at the site of the customer, the employee creates taxable nexus for XYZ Laboratory in the jurisdiction of the drugstore. XYZ Laboratory may apportion its income between the City and the outside jurisdiction.

If XYZ Laboratory opens a sales office or manufacturing facility outside of the City, it creates taxable nexus outside of the City, and XYZ Laboratory may apportion its income between the City and the outside jurisdiction.

Example 2: ABC Suppliers is a distributor located outside the County. ABC takes mail and phone orders from its customers and delivers those orders to its County customers using common carrier and ABC's own company trucks driven by company employees. Two ABC salespersons regularly visit County locations to maintain and establish a County customer base.

The solicitation of sales and the delivery of sales do NOT create taxable nexus in the County for ABC Suppliers. ABC Suppliers is not required to pay Multnomah County Business Income Tax.

If ABC delivery employees (i.e. truck drivers) or salespersons collect payments, take orders, stock shelves, or do any other type of routine and ongoing service in addition to delivery and sales calls at the County locations, the employees create taxable nexus for ABC Suppliers. ABC must apportion part of its income to the County.

If ABC Suppliers opens a warehouse in the County, ABC creates taxable nexus in the County. ABC must apportion part of its income to the County.

Example 3: Superior Clothing began as a mail order specialty clothing business whose only operations were a warehouse and office located in the County. Superior shipped all orders by a freight carrier or the US mail from the County location to its customers nationwide. Superior had no business activity outside the County and did not apportion its net income. It reported 100% of its income as taxable to the County.

In January of a following year, Superior opens a retail outlet outside the County. This outlet creates taxable nexus outside the County for Superior. With taxable nexus established outside the County, Superior may begin apportioning its income. Only sales of tangible personal property shipped to or delivered within the County will be included in the numerator of the apportionment factor for County. Once taxable nexus is created outside the County, all sales of tangible personal property may be apportioned to the point of delivery regardless of method of delivery.

Example 4: Premium Pipelines, Inc. is located within the City of Portland where it sells and stores bulk gasoline. Premium Pipelines, Inc. does not deliver gasoline nor does it contract with others to deliver gasoline, instead it relies on purchasers to pick up the gasoline. Paramount Petroleum, Inc. purchases bulk gasoline from Premium Pipelines, Inc. Paramount Petroleum, Inc. then contracts with M&M Gasoline Delivery Services to pick up the gasoline and deliver the gasoline to several locations as directed by Paramount Petroleum, Inc.

The gross income of such gasoline sales by Premium Pipelines, Inc. is gross income within the City of Portland because the purchaser has taken title within the City of Portland and all delivery activity is directed and controlled by the purchaser. In such case, Premium Pipelines, Inc. has transferred title and control beyond mere FOB or other conditions of sale.

Note: This rule sunsets 12/31/2022 and does not apply to tax years beginning on or after 1/1/2023.

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Thomas Lannom

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Date

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Director, Revenue Division

Amended XX-XX-2023

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