Anchin Alert

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Will the Increasing Focus on Raising Tax Revenue with Gross Receipts and Excise Taxes Impact You?

Now privy to information from outside third parties, some states and localities are taking increasingly aggressive approaches in raising revenue with such taxes.

Below, we profile the treatment of gross receipts taxes in the states of Ohio and Washington.

Ohio

The Commercial Activity Tax (CAT) is an annual tax imposed on the privilege of doing business in Ohio, measured by gross receipts from business activities in Ohio. The CAT applies to most businesses including but not limited to retail, wholesale, service, manufacturing and other general businesses regardless of the type of business organization.

An out-of-state taxpayer is required to register and pay the CAT if any one of the following applies at any time during the calendar year:

- Property in this state with a value of at least $50,000; or
- Payroll in this state is at least $50,000; or
- Taxable gross receipts from sales delivered in Ohio, regardless of where they are ultimately shipped to, are at least $500,000; or
- 25% of total property, total payroll or total gross receipts is within this state; or
- The person is domiciled in this state.

Businesses with Ohio taxable gross receipts of $150,000 or more per calendar year must register for the CAT, file all the applicable returns, and make all corresponding payments.

Taxpayers with taxable gross receipts in excess of $1 million are required to file and pay on a quarterly basis and to make the annual minimum tax payment. Other taxpayers file annually and pay the annual minimum tax.

Washington

Washington's Business and Occupational (B&O) Tax is an excise tax measured by the value of products, gross proceeds of sales, or gross income of a business. There are over 30 different classifications of businesses and associated tax rates ranging from 1.38 percent to 1.5 percent. For each of the 30 categories of businesses, there are different definitions of nexus. The tax is calculated on the gross income from activities, so there are no deductions from the B&O tax for labor, materials, taxes, or other costs of doing business.

For taxpayers involved with retailing, they will be subject to the Washington B&O Tax if they, either directly or through an agent or other representative, engage in activities in Washington that are significantly associated with the taxpayer's ability to establish or maintain a market for its products in Washington.

A few examples of physical presence nexus-creating activities include, but are not limited to:

- Soliciting sales in this state through employees or other representatives;
- Installing or assembling goods in Washington, either by employees or other representatives;
- Maintaining a stock of goods in Washington, including at an Amazon Warehouse
- Renting or leasing tangible personal property;
- Providing services;
- Constructing, installing, repairing, maintaining real property or tangible personal property in Washington; and
- Making regular deliveries of goods into Washington using the taxpayer's own vehicles.

Out-of-state taxpayers that do not have a physical presence in Washington but exceed $267,000 of receipts in wholesale transactions attributed to Washington within a calendar year are subject to the B&O tax on their Washington sourced wholesale sales. Taxpayers with several lines of businesses can fall under and be subject to multiple categories of this tax.

For more information or to discuss the possible impacts in greater detail, contact Clarence Kehoe, Leader of Anchin's Tax Department, or Sharon Ackerman, Tax Director in Anchin's Tax Controversy Services Group, at 212.840.3456 or info@anchin.com.

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