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ETA 3194.2015

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Impact of *Getty Images* Decision

Purpose

The Washington State Court of Appeals, Division 1, issued a decision in *Getty Images (Seattle), Inc. v. City of Seattle*, 163 Wn. App. 590, 260 P.3d 926 (2011), addressing the taxability of amounts received by a parent company from affiliates to pay costs for providing administrative and management services to those affiliates. This advisory is issued to explain that *Getty Images* does not represent a major departure from established law in the context of affiliate transactions.

Compensation for Services

[RCW 82.04.080](#) defines “gross income of the business” to mean the “value proceeding or accruing by reason of the transaction of the business engaged in ...”

Compensation for services is subject to B&O tax regardless of whether the services are provided by an affiliate or by an unrelated person. Therefore, gross income includes all remuneration received for providing services to an affiliate.

However, not all income received from an affiliate is in the nature of remuneration for services. For example, bona fide dividends or similar distributions from a capital account may not be subject to B&O tax. Specifically, businesses may deduct certain fund transfers from affiliate entities under [RCW 82.04.4281](#):

- Amounts derived as dividends or distributions from the capital account by a parent from its subsidiary entities; and
- Amounts derived from interest on loans between subsidiary entities and a parent entity or between subsidiaries of a common parent entity, but only if the total investment and loan income is less than five percent of gross receipts of the business annually.

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**Application of
the
Getty Images
Decision**

The *Getty Images* decision does not require that all sales of services be at fair market value.

The decision does not authorize the Department to re-characterize a bona fide nontaxable transfer of funds as compensation for services. Such bona fide nontaxable transfers may include dividends, distributions, or fund transfers accomplished through a shared cash management account, that do not represent compensation for services.

The Department does not presume that a transfer of funds between affiliates is compensation for services. Rather, the facts must establish that the funds are compensation for services provided to an affiliate.

Getty Images is best understood as a case where the facts established that the funds transferred to Getty Seattle were paid as compensation for services provided to its affiliates.

Current Status

The *Getty Images* decision does not represent a change in law for purposes of evaluating the continuing validity of any letter ruling issued by the Department.

- Taxpayers that have binding written instructions from the Department that direct or approve the tax treatment of an affiliate transaction may continue to rely upon such written instructions unless and until the Department advises the taxpayer otherwise.
 - However, this policy does not prevent the Department from assessing tax in circumstances where the actual facts are found to materially differ from the assumed facts that were the basis for the binding written instructions.
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