

Cite as Det. No. 17-0060, 37 WTD 064 (2018)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of )	<u>D E T E R M I N A T I O N</u>
Assessment of )	
)	No. 17-0060
)	
... )	Registration No. . . .
)	

[1] RULE 19402; RCW 82.04.462: B&O TAX – ATTRIBUTION – BENEFIT OF THE SERVICE FOR SERVICES RELATED TO TANGIBLE PERSONAL PROPERTY. Where a taxpayer provides a service related to tangible personal property, the benefit of such service is attributed to the location of the tangible personal property based on the information available in the record, and if such service will related to other tangible personal property in the future, there must be adequate evidence of such in the record for the service to also be attributed according to that future activity.

[2] RULE 19402; RCW 82.04.462: B&O TAX – ATTRIBUTION – BENEFIT OF THE SERVICE NOT RELATED TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY. Where a taxpayer provides the service of staff augmentation, as opposed to some specific product or other deliverable, the benefit of such service may be attributed to the location of the staff based on the information available in the record.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

Yonker, T.R.O. – A provider of information technology services (Taxpayer) protests a tax assessment of additional service and other activities business and occupation (B&O) tax from attributing additional gross income from two service contracts to Washington. Taxpayer argues that the gross income should be attributed to multiple states where the parties to the contracts allegedly contemplated the benefits from such contracts would be received. Taxpayer also argues that the Department should attribute the gross income from a third contract differently than Taxpayer originally attributed the gross income from that contract. We remand for application of a reasonable method of proportionally attributing gross income from the first two contracts, but deny the petition as it pertains to the third contract.<sup>1</sup>

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<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

## ISSUE

Did the Department properly attribute Taxpayer's gross income from three service contracts under RCW 82.04.462 and WAC 458-20-19402?

## FINDINGS OF FACT

. . . (Taxpayer) provides information technology related services to various customers. During the relevant time period, Taxpayer received income from three contracts with two separate customers to provide information technology services.

1. Customer A

In the late 1990s, Taxpayer contracted with the . . . (Customer A) to develop a software package called the Generic Data Acquisition and Control System (GDACS), for use in controlling various mechanical elements of hydroelectric plants by interfacing with the plant's Supervisor Control and Data Acquisition (SCADA) system.<sup>2</sup> In simple terms, SCADA is the "firmware," or permanent software built in to the computerized mechanical elements of the hydroelectric plants, and the GDACS is the software that, in turn, interfaces with and controls the SCADA firmware functions. Over the next few years, Taxpayer assisted in the implementation of the GDACS at twelve plants [in Washington].

On March 3, 2010, Taxpayer entered into two contracts with Customer A to provide additional services related to the GDACS. Both contracts state that the purpose of the contract was to "implement GDACS for the . . . SCADA replacement" and that the new GDACS software package "will be specialized for SCADA functions that are unique to . . . ." Essentially, Taxpayer was engaged by Customer A in 2010 to produce an enhanced GDACS custom software package to accommodate the new SCADA firmware system being implemented at the . . . , located in Washington, and the . . . , located [out-of-state].

Taxpayer represented that, while not explicit in the contracts, the parties understood that the new, enhanced GDACS system would eventually be implemented at dams throughout the United States. Taxpayer provided a letter dated April 26, 2016, from Customer A's "Contracting Officer," which states the following:

Once revised, the software was to be implemented at two test sites for the . . . , namely . . . . The reprogramming work was all performed in the [out-of-state] office. The only work done in the state of Washington was the installation and training of the local personnel at the . . . . The expectation of the reprogrammed software is that it will be deployed at any . . . hydropower site, of which there are . . . locations.

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<sup>2</sup> SCADA "is a control system architecture that uses computers, networked data communications and graphical user interfaces for high-level process supervisory management." See <https://en.wikipedia.org/wiki/SCADA>, last visited on December 5, 2016.

Please accept this communication as confirmation that the tangible personal property developed as a result of these delivery order[s] was intended as a tool to be deployed in all similar systems managed by the . . . not limited to the . . . .

Taxpayer provided an accompanying list of . . . dams for which the custom software “could be intended.”<sup>3</sup> The two contracts with Customer A at issue here mention no other location for which the new, enhanced GDACS system was intended beyond . . . , but does state that “[t]hese additions will be added in such a way as to become part of the available functionality of the GDACS application software for future projects.” Taxpayer did not provide any documentation confirming that the new GDACS system developed for . . . had actually been implemented at any other location.

## 2. Customer B

Taxpayer stated that “[t]hrough a subcontract agreement” with . . . (Customer B), Taxpayer provided “IT services” to the . . . .<sup>4</sup> Taxpayer regularly received income from such services from January 1, 2011, through December 31, 2014. Taxpayer did not provide a copy of the contract between it and Customer B, but provided a copy of the original solicitation for bids issued by . . . .<sup>5</sup> The solicitation issued by . . . states that “this is a contract for labor services,” (Section C.3.), and contains the following relevant other details:

- The purpose of this contract is to provide service support for the Business Technology Support (BTS) group. BTS is the central Information Technology (IT) support group for the . . . service . . . . (Section C.1). The “contractor will provide administrative, technical, and engineering staff support to develop, implement, and maintain all elements of the . . . Information Technology Infrastructure.” (Section C.2.).
- . . . Business Technology Support (BTS) group needed “qualified full time and part-time Information Technology (IT) staff for developing, implementing, and supporting Information Technology resources used by . . . .” (Section C.2.1).<sup>6</sup>
- . . . “serves over 425 federal agencies through over 3,000 [interagency agreements].”

<sup>3</sup> The record is unclear as to why the Contracting Officer of Customer A referred to . . . locations, as opposed to the . . . on the list offered by Taxpayer. We presume the letter intended to reference all . . . locations identified in Taxpayer’s list.

<sup>4</sup> Customer B is a limited liability company that provides “information technology and logistic services . . . .” See [. . .](#), last visited on December 15, 2016.

<sup>5</sup> On May 2, 2011, Customer B announced on its website that it was awarded a contract with . . . “to provide business technology support services throughout the nation.” See [. . .](#), last visited on December 5, 2016.

<sup>6</sup> Section C.1.3 of the solicitation states the following:

The BTS Group provides all IT support services for . . . . BTS is responsible for managing multiple data centers that provide connectivity and networks services to the remote healthcare sites. The data centers host public web sites, eMail, and collaboration extranets that allow . . . staff & customers to complete their work and stay informed on the status of work that is in process. In addition, . . . IT staff support and maintain a number of secure applications that are used to manage and perform work within . . . . These systems support business and program activities. Host and Internet service capabilities are primarily operated out of the BTS location in Seattle, Washington. This site also serves as the . . . center for systems planning, development, implementation and operational activities. . . .

- An estimate of “billable hours” needed by BTS. The estimate includes a list of various job classes, the number of individuals needed for each job class, and the location of each of those individuals needed. The locations listed include the following U.S. cities: . . . . (Section B.3).
- When . . . has a new staffing requirement, “the contractor will be provided with written requirements for the position, including the labor category, a description of the responsibilities, and the level of effort and duration that the position is to be staffed.” The contractor is “expected to fill the request within a maximum of 4 weeks.” (Section C.2.3).
- The “Tasks to be Performed” under the solicitation included (1) “Operations” such as data center and network support, satellite office support, IT security support, and help desk support; (2) “Systems Development,” such as “STM,” web support, “Medical Surveillance & Clearance Systems,” and “Auxiliary Systems”; and (3) “Special Projects,” such as IT management “efforts,” program management office support, and corporate marketing support. (Section C.2.4).

Taxpayer stated on review that “[a]ll of [Taxpayer’s] employees under this contract work out of an office in . . . , WA.”

In 2015, the Department’s Audit Division commenced a review of Taxpayer’s books and records for the period of January 1, 2011, through December 31, 2014 (audit period). During the course of that review, the Audit Division made a number of findings, including the following:

- Regarding the two contracts with Customer A, the Audit Division found that such contracts indicated that Customer A was to receive the benefit of Taxpayer’s service in Washington and [out-of-state]. However, because Taxpayer did not produce documentation demonstrating what proportion of the benefit was received [out-of-state], the Audit Division attributed one hundred percent of the benefit received from those contracts to Washington.
- Regarding the contract with Customer B, the Audit Division found that such contract was for staffing, which was correctly attributed by Taxpayer to Washington, where the staff were located.

On December 21, 2015, as a result of that review, the Department issued a tax assessment for \$ . . . , which included \$ . . . in additional service and other activities B&O tax, a \$ . . . five-percent assessment penalty, and \$ . . . in interest. Taxpayer subsequently appealed the tax assessment as it related to the three contracts with Customer A and Customer B.

## ANALYSIS

In Washington, “there is levied and collected from every person that has a substantial nexus with this state a tax for the act or privilege of engaging in business activities.” RCW 82.04.220. The B&O tax measure is “the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.” *Id.* The rate used is determined by the type of activity in which a taxpayer engages. *See generally* Chapter 82.04 RCW. Income from any business activity that is not expressly classified in Chapter 82.04 RCW is taxed under the service and other activities B&O tax classification. RCW 82.04.290(2). There is no dispute that

Taxpayer's gross income, if taxable in Washington, is subject to service and other activities B&O tax.

As of June 1, 2010, the method of apportioning gross income for taxpayers that earn income under the service & other activities B&O tax classification changed. Beginning on that date, RCW 82.04.460(1) provides as follows:

Except as otherwise provided in this section, any person earning apportionable income taxable under this chapter and also taxable in another state must, for the purpose of computing tax liability under this chapter, apportion to this state, in accordance with RCW 82.04.462, that portion of the person's apportionable income derived from business activities performed within this state.

To determine taxable income in such cases, a taxpayer's total apportionable income is multiplied by a fraction referred to as the "receipts factor." RCW 82.04.462(3)(a). The numerator of the receipts factor is Washington apportionable receipts and the denominator is the worldwide apportionable receipts minus "throw-out income." *See id.*; WAC 458-20-19402(402). During most of the relevant time period, RCW 82.04.462(3)(b) provided the following series of cascading criteria for determining to which state gross income should be attributed in determining the numerator of the receipts factor:

[F]or purposes of computing the receipts factor, gross income of the business generated from each apportionable activity is attributable to the state:

(i) Where the customer received the benefit of the taxpayer's service or, in the case of gross income from royalties, where the customer used the taxpayer's intangible property.

(ii) If the customer received the benefit of the service or used the intangible property in more than one state, gross income of the business must be attributed to the state in which the benefit of the service was primarily received or in which the intangible property was primarily used.

(iii) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i) or (ii) of this subsection (3), gross income of the business must be attributed to the state from which the customer ordered the service or, in the case of royalties, the office of the customer from which the royalty agreement with the taxpayer was negotiated.

(iv) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), or (iii) of this subsection (3), gross income of the business must be attributed to the state to which the billing statements or invoices are sent to the customer by the taxpayer.

...

(viii) For purposes of this subsection (3)(b), "customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives

gross income of the business. "Customer" includes anyone who pays royalties or charges in the nature of royalties for the use of the taxpayer's intangible property.

Effective June 12, 2014, RCW 82.04.462(3)(b) was amended, in pertinent part, as follows:

[F]or purposes of computing the receipts factor, gross income of the business generated from each apportionable activity is attributable to the state:

(i) Where the customer received the benefit of the taxpayer's service or, in the case of gross income from royalties, where the customer used the taxpayer's intangible property. When a customer receives the benefit of the taxpayer's services or uses the taxpayer's intangible property in this and one or more other states and the amount of gross income of the business that was received by the taxpayer in return for the services received or intangible property used by the customer in this state can be reasonably determined by the taxpayer, such amount of gross income must be attributed to this state.

(ii) If the customer received the benefit of the service or used the intangible property in more than one state and if the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i) of this subsection (3), gross income of the business must be attributed to the state in which the benefit of the service was primarily received or in which the intangible property was primarily used.

The result of this amendment was to clarify that a taxpayer may not "drop down" to a lower cascading criterion unless the amount of gross income attributed to Washington cannot "reasonably" be determined.

WAC 458-20-19402 (Rule 19402) is the Department's administrative rule implementing RCW 82.04.462. Rule 19402(301) provides the following additional information regarding the attribution of apportionable income:

Receipts are attributed to states based on a cascading method or series of steps. The department expects that most taxpayers will attribute apportionable receipts based on (a)(i) of this subsection because the department believes that either the taxpayer will know where the benefit is actually received or a "reasonable method of proportionally attributing receipts" will generally be available. These steps are:

(a) Where the customer received the benefit of the taxpayer's service . . . ;

(i) If a taxpayer can reasonably determine the amount of a specific apportionable receipt that relates to a specific benefit of the services received in a state, that apportionable receipt is attributable to the state in which the benefit is received. When a customer receives the benefit of the taxpayer's services in this and one or more other states and the amount of gross income of the business that was received by the taxpayer in return for the services received by the customer in this state can be reasonably determined by the taxpayer, such amount of gross income must be attributed to this state. This may be shown by application of a

**reasonable method of proportionally attributing the benefit among states.**

The result determines the receipts attributed to each state. Under certain situations, the use of data based on an attribution method specified in (b) through (f) of this subsection may also be a reasonable method of proportionally attributing receipts among states (see Examples 4 and 5 below).

- (ii) If a taxpayer is unable to separately determine or use a reasonable method of proportionally attributing the benefit of the services in specific states under (a)(i) of this subsection, and the customer received the benefit of the service in multiple states, the apportionable receipt is attributed to the state in which the benefit of the service was primarily received. Primarily means, in this case, more than fifty percent.

(Emphasis added). Rule 19402(301) goes on to describe additional cascading steps in the series that a taxpayer is to follow if either (a)(i) or (a)(ii) are not feasible. These additional steps mirror the steps described in RCW 82.04.462(3)(b)(iii) – (vii), listed, in part, above.

Here, Taxpayer and the Audit Division both agree that the receipts from the three contracts at issue should be attributed consistent with RCW 82.04.462(3)(b)(i) and Rule 19402(301)(a) to where Taxpayer's customers received the benefit of Taxpayer's services. The parties, however, disagree about where that benefit was received by Customer A and Customer B under their respective contracts.

### 1. Customer A Contracts

As stated earlier, under the terms of the contracts with Customer A, Taxpayer developed custom software for use at the . . . , in Washington, and the . . . , [out-of-state]. Rule 19402(303) provides specific guidance on where "benefit of the taxpayer's service" occurs in various factual situations . . . . Rule 19402(303)(b) states that "[i]f the taxpayer's service relates to tangible personal property, then the benefit is received where the tangible personal property is located or intended/expected to be located."

Here, the parties agree that the custom software produced by Taxpayer under the contracts with Customer A constituted a service related to tangible personal property. . . . Thus, the location of the benefit of Taxpayer's service under the contracts with Customer A is determined under Rule 19402(303)(b), which provides the following additional guidance:

- (i) Tangible personal property is generally treated as located where the place of principal use occurs. . . . ; or
- (ii) If the tangible personal property will be created or delivered in the future, the principal place of use is where it is expected to be used or delivered.

Here, the parties agree that the custom software at issue was intended to be used, and was ultimately used, [to control tangible personal property that was, in turn, located and used] principally at both the . . . , in Washington, and the . . . , [out-of-state]. Therefore, under Rule

19402(303)(b)(i), Customer A received the benefit of Taxpayer's services under those contracts in both Washington and [out-of-state].

Taxpayer, however, argues that beyond being principally used at only the . . . and the . . . , it was contemplated by the parties to the contracts that the custom software would eventually be used [to control tangible personal property located and used] at 337 dams across the country. We interpret Taxpayer's argument here as being that, under Rule 19402(303)(b)(ii), quoted above, the benefit of Taxpayer's service under these contracts is also received at the locations "where it is expected to be used or delivered." In support of its argument, Taxpayer offered the following evidence:

- A list of . . . dams for which the custom software "could be intended."
- Language in one of the contracts which states that "[t]hese additions will be added in such a way as to become part of the available functionality of the GDACS application software for future projects."
- A letter from Customer A stating that it was intended that the custom software would be deployed to other similar systems beyond just the . . . and the . . . .

We disagree that the benefit of Taxpayer's services should be expanded to locations beyond the two locations specifically identified in the contracts. Rule 19402(303)(b)(ii) is applicable only if the tangible personal property at issue "will be created or delivered in the future." That is not the case here, where there is no dispute that the customer software was created and delivered to [be used with tangible personal property located and used at] the . . . and the . . . . While one of the contracts includes a brief statement regarding the application of the custom software "for future projects," we conclude that such language does not demonstrate that the custom software was deployed [for use with tangible personal property located and used] at other locations. Indeed, Taxpayer was unable to provide any documentation that the custom software was deployed anywhere beyond the . . . and the . . . . Thus, we find no support for the notion that the benefit of Taxpayer's service was received by Customer A in any states beyond Washington and [out-of-state].

Once it is determined that the benefit of a service is received by a taxpayer's customer in more than one state, Rule 19402(301)(a)(i) provides the next step for attributing that taxpayer's gross income of the business between states:

When a customer receives the benefit of the taxpayer's services in this and one or more other states and the amount of gross income of the business that was received by the taxpayer in return for the services received by the customer in this state can be reasonably determined by the taxpayer, such amount of gross income must be attributed to this state. This may be shown by application of a reasonable method of proportionally attributing the benefit amount states.

In other words, if the benefit is received in Washington and in other states, gross income must be attributed between such states either (1) based on the available records, or (2) based on some "reasonable method of proportionally attributing" that gross income. If a taxpayer cannot attribute based on either of these methods, only then may a taxpayer must "drop down" to the next cascading steps for attributing apportionable income. See Rule 19402(301)(a)(ii) (providing that the next

cascading step is available only “[i]f a taxpayer is unable to separately determine or use a reasonable method of proportionally attributing the benefit of the services in specific states.”)

Here, the Audit Division attributed one hundred percent of the gross income from the contracts with Customer A to Washington despite the contract language identifying both Washington and [out-of-state] as the two states in which the benefit of Taxpayer’s services was received by Customer A. The Audit Division did this because Taxpayer did not produce documentation demonstrating any differentials or other information that could be used to proportion the benefit of the contracts between Washington and [out-of-state]. However, in the absence of documentation that indicates what the true proportion of benefit was between Washington and [out-of-state], some “reasonable method of proportionally attributing **among** states” must, if possible, be employed under Rule 19402(301)(a)(i). (Emphasis added). Thus, the Audit Division must either employ some reasonable method, or conclude that no reasonable method is possible, before it can “drop down” and attribute one hundred percent of the gross income from the contracts to Washington pursuant to a lower cascading step.

Rule 19402(106)(f) defines a “reasonable method of proportionally attributing” as “a method of determining where the benefit of an activity is received and where the receipts are attributed that is uniform, consistent, and accurately reflects the market, and does not distort the taxpayer’s market.” Rule 19402 provides the following examples that are useful here:

**Example 11.** Big Manufacturing hires an engineer to design a tool that will only be used in a factory located in Brewster, Washington. Big Manufacturing receives the benefit of the engineer's services at a single location in Washington where the tool is intended to be used. Therefore, 100% of engineer's receipts from this service must be attributed to Washington.

**Example 12.** The same facts as in Example 11, except Big Manufacturing will use the tool equally in factories located in Brewster and in Kapa'a, Hawai'i. Therefore, Big Manufacturer receives the benefit of the service equally in two states. Because the benefit of the service is received equally in both states, a reasonable method of proportionally attributing receipts would be to attribute 1/2 of the receipts to each state.<sup>7</sup>

Because we have concluded that Customer A received the benefit of Taxpayer’s services in both Washington and [out-of-state], we conclude that Example 12 is similar to the facts here. While the record before us does not contain evidence of how that benefit should be attributed between those two states, we cannot conclude that a reasonable method is not possible under the facts of this case. We, therefore, conclude that a reasonable method under Rule 19402(301)(a)(i) has yet to be applied here. The Audit Division has agreed that a remand for application of a reasonable method is appropriate here.<sup>8</sup>

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<sup>7</sup> We note that Rule 19402(302) states that “[w]hen an example states that a particular attribution method is a reasonable method of proportionally attributing the benefit of a service, this does not preclude the existence of other reasonable methods of proportionally attributing the benefit depending on the specific facts and circumstances of a taxpayer’s situation.”

<sup>8</sup> Because we have already held that the benefit of Taxpayer’s services under the contracts was received in only Washington and . . . , we necessarily conclude that Taxpayer’s proposed method of attributing based on the location of . . . dams throughout the country is unreasonable.

We remand this case back to the Audit Division for application of some reasonable method of proportionally attributing the gross income from the contracts with Customer A between Washington and [out-of-state] consistent with Rule 19402(106)(f).

## 2. Subcontract with Customer B

As we discussed earlier, Customer B entered into an agreement with . . . to provide “qualified full time and part-time IT staff for developing, implementing and supporting Information Technology resources used by . . . .” Customer B later subcontracted with Taxpayer for Taxpayer to provide the IT staff at . . . , Washington, location.

The subcontract between Taxpayer and Customer B is not part of the record. However, Taxpayer did produce the original solicitation for bids issued by . . . . In the absence of the actual subcontract between Taxpayer and Customer B, we are left to rely on the . . . solicitation to interpret the nature of the contractual relationship between Taxpayer and Customer B. The solicitation makes clear that . . . sought “qualified full time and part time Information Technology (IT) staff.” The solicitation further describes the “Tasks to be Performed” by the IT staff provided to . . . , which includes various IT “operations,” certain “system development,” and other “special projects.” The solicitation does not identify specific project accomplishments or goals that the IT staff are required to achieve.

Based on the solicitation, and Taxpayer’s representations, we conclude that Taxpayer entered into a subcontract to provide staff augmentation in . . . , Washington, to Customer B. We also note that there is no evidence Taxpayer contracted directly with . . . to provide services directly to . . . . Given these facts, we must consider where Customer B, who is Taxpayer’s customer, received the benefit of Taxpayer’s service under Rule 19402(303).

As we previously discussed, Rule 19402(303) defines the “benefit of the taxpayer’s service” for various factual situations. Rule 19402(303)(c) states that “[i]f the taxpayer's service does not relate to real or tangible personal property, the service is provided to a customer engaged in business, and the service relates to the customer's business activities, then the benefit of the taxpayer’s service is **received where the customer's related business activities occur.**” (Emphasis added). Here, it is unclear whether the services actually performed by the IT staff provided by Taxpayer to Customer B related to either real property or tangible personal property. As the solicitation states, the IT staff could have potentially worked on a number of different tasks. Taxpayer represented that “the vast majority of work performed by [Taxpayer] staff was in the system development and application support for three web based products.” Yet, the record contains no other information regarding the amount of work that Taxpayer’s staff did related to these three products. We, therefore, conclude that Taxpayer’s service of providing IT staff in . . . , Washington, for Customer B is not a service related to real or tangible personal property. We further conclude that Customer B is “engaged in business,” and Taxpayer’s service of providing IT staff to Customer B relates to Customer B’s business activity of providing IT staff to . . . pursuant to the original solicitation. Thus, under Rule 19402(303)(c), Customer B received the benefit of Taxpayer’s service where Customer B’s related business activities occur.

To determine where Customer B's related business occurs, we must (1) determine Customer B's "related business activity," and (2), where that activity occurred. First, while Customer B apparently provided IT staff to . . . at a variety of locations around the country, only the provision of IT staff in . . . , Washington, is "related" to the subcontract between Taxpayer and Customer B. Since Taxpayer concedes that it only provided information technology staff in . . . , Washington, any additional IT staff that Customer B may have provided to . . . elsewhere is not a "related" business activity, and is irrelevant here.

Second, as to where Customer B's related business activity occurred, we conclude that such activity necessarily occurred in . . . , Washington, where the IT staff at issue were provided. Therefore, Customer B received the benefit of Taxpayer's service only in Washington, and one hundred percent of the gross income from the contract with Customer B is taxable in Washington pursuant to the first sentence of Rule 19402(301)(a)(i).

Taxpayer, however, argues as follows:

[T]he services provided under this contract were in support of the Center for Technology & Innovation, a division of . . . . As part of this team, the vast majority of work performed by [Taxpayer] staff was in the system development and application support for three web based products. These products were developed and maintained for the customers of . . . and . . . employees across the United States. While [Taxpayer] resources worked and continue to work in the state of Washington, it is clear that the intended/expected users of the tangible personal property is the network of administrative and clinical sites that is . . . . For each application, there is a distinct set of users for which the benefit can be attributed.

We interpret Taxpayer's argument here as being that Taxpayer's service related to . . . activity of providing services to its customers through web-based products, and that such activity by . . . occurs at the various locations of . . . customers "across the United States." Taxpayer goes on to propose a related method of proportionally attributing the gross income from its contract with Customer B based on the "distinct set of users" for each of the web-based products, which, according to Taxpayer, made up the "vast majority" of the work performed by the information technology staff provided by Taxpayer. Yet, as we discussed earlier, Taxpayer's service related only to Customer B's activity of providing staff to . . . at its . . . , Washington, location. As a result, we need not consider Taxpayer's proposed method of proportionally attributing Taxpayer's gross income from this subcontract since the benefit was received only in Washington, and no proportional attribution to any other state is required. Accordingly, we affirm the Department's attribution of one hundred percent of the gross income from Taxpayer's contract with Customer B to Washington.

DECISION AND DISPOSITION

We are remanding the case to Audit Division (Operating Division) only for application of a reasonable method of proportionally attributing the gross income from the contracts between Taxpayer and Customer A.

Dated this 10th day of March 2017.