



Seattle Tax Advisory Group

Date: Tuesday, June 3, 2025
10:00 am

Location: Microsoft Teams

Attendees:

Joseph Cunha, Tax Administrator, City of Seattle

Mark Watterson, Tax Audit Manager, City of Seattle

Kevin Guichon, Tax Policy Analyst, City of Seattle

Marsha McLean, State & Local Tax Compliance Manager, Weyerhaeuser

Stephanie Gilfeather, Director U.S. Indirect Tax, Inc., Expedia Group

Shannon Kingston, Director, Indirect Tax, Starbucks

Elvina Tong, Director Int'l Indirect Tax, Starbucks

Eric Ng, Senior Manager, Global Indirect Tax, Starbucks

Arcadia Corbett, Senior Manager, Global Indirect Tax, Expedia Group

Tara McGlaughlin, Director, State & Local Tax, Amazon

Minutes:

1. Welcome / Introductions

Mark Watterson—

2. Legislative Updates

Mark Watterson—In 2025, the Washington State Legislature passed and Governor Ferguson signed ESSB 5814. ESSB 5814 amends state law to redefine activities that are currently classified as services to retail. Cities generally follow state definition of “sale at retail” or “retail sale.” The state law becomes effective 10.1.2025. However, Washington cities who impose B&O taxes have not yet decided if and how cities will amend the Model Ordinance in light of the changes to state law made by ESSB 5814. WA cities will be holding meetings in the near future to address issues raised by ESSB 5814.

Stephanie Gilfeather—The legislature did not contemplate all of the consequences of its conversion of traditionally classified services into retail sales. The traditional tool kit for sourcing a retail sale does not apply to digital advertising receipts. For a subset of companies in this group, in absence of clear guidance from DOR this sourcing issue will result in a “catastrophic change.”

Tara McGlaughlin—After the 2025 legislative session ended the business community has been providing legislators with input regarding ESSB 5814 in an effort to persuade lawmakers to make improvements to the legislation. First and foremost, the business community raised concerns about the lack of a sourcing methodology. Second, the business community has raised constitutional concerns regarding the digital advertising component of the law. ESSB 5814 has an effective date of 10.1.2025 so the business community must think about it and act quickly.

Eric Ng—Does the City of Seattle have any guidance about sourcing income derived from digital advertising? We are now sitting in unknown place.

Mark Watterson—The timing and certainty of moving the identified service activities to the retail classification is unclear. With respect to sourcing income derived from digital advertising, the city will wait and see what the state does in its rulemaking process.

Stephanie Gilfeather—The business community's concerns with ESSB 5814 include the potential imposition of imputed use tax where the city is likely more concerned with the definition of retail sale for B&O tax purposes and the sourcing issue. If live presentations are now a retail sale is income derived from preschool or college tuition now a retail sale? Are all professional services that include a digital component now a retail sale? The legislature's elimination of the primary human effort exception may be subject to a legal challenge.¹

Joseph Cunha—Washington cities who impose B&O taxes are considering the potential implications of ESSB 5814. The definitions in state law like RCW 82.04.050's definition of retail sale may or may not be mandatory for cities. These definitions may only be advisory. Washington cities are waiting to see what Washington State may do with respect to rulemaking. However, the cities have not yet decided whether we will follow the state's amended definition of retail sale in ESSB 5814.

With respect to sourcing income derived from digital services, cities have continued to implement a two-factor sourcing methodology required by RCW 35.102.130. The only sourcing criterion cities have under RCW 35.102 for digital services defined as a retail sale is where the activity takes place. Determining where the activity takes place for purposes of a digital service defined as a retail sale presents challenges. ESSB 5814 raises a lot of unknowns. Hopefully, these unknowns will be clarified in the future. Joseph noted that over the years the legislature has made several attempts to broaden the retail sales tax base, but these efforts did not achieve the intended result.

Marsha McLean—Could it be possible that some WA B&O cities will adopt the state's amended definition of retail sale in ESSB 5814 and some cities would decline to do so?

¹ ESSB 5814, Sec. 101, amending RCW 82.04.050(8)(c) clarifies that "a retail sale of digital goods, digital codes, or digital automated services does not include the following services if the sale occurs between members of an affiliated group....Any service that primarily involves the application of human effort by the seller, and the human effort originated after the customer requested the service." However, ESSB 5814, Sec. 201 amending RCW 82.04.192(3)(b), did eliminate the broader primary human effort exemption from the definition of DAS.

Joseph Cunha—No. Washington cities who impose B&O taxes will either all adopt the state's amended definition of retail sale in ESSB 5814 or we will all decline to do so. The cities may decline to adopt the state's amended definition, but this will be a decision common to all WA cities who impose B&O taxes.

Stephanie Gilfeather—We are hearing that legislators did not understand the implications of the amendments to the definition of retail sale in ESSB 5814. We understand that the legislators may convene a working group or even convene a special session not for the sole purpose of but including consideration of the fact that sales and use tax sourcing does not apply to many kinds of digital services. It is not clear to us how DOR will promulgate a rule to address the sourcing issues raised by ESSB 5814.

Tara McGlaughlin—If and when Congress passes its tax and budget legislation, the changes in federal law may affect the level of federal funds received by Washington State. This decrease in federal funds may require legislators to convene a special session to address the issue. We understand that Representative Berg may convene a working group to draft a statute that implements a sourcing methodology applicable to this new class of retail sales.

Joseph Cunha—In order to address the sourcing issue raised by ESSB 5814, cities will have to request that the state legislature amend RCW 35.102.130. The legislature will not likely convene a special session for that purpose.

Stephanie Gilfeather—The business community will highlight the difficulties with sourcing income from digital advertising and other services that are now classified as retail sales. Would the cities be willing to weigh in and inform the legislature that the sourcing issues raised by ESSB 5814 affect cities as well as the business community?

Joseph Cunha—The City of Seattle's Office of Intergovernmental Relations (OIR) is aware of the sourcing issue raised by ESSB 5814. For cities, the revenue impacts of ESSB 5814 are unknown. The cities will receive additional sales tax revenue from the state. However, cities will also lose revenue as a result of decreased B&O tax collections. If a work group or a task force is convened to address the issues raised by ESSB 5814 either the cities or the AWC would like the opportunity to provide input.

Tara McGlaughlin—We are all in the same boat. We are looking for clarity. There is a lot of uncertainty. We are attempting to ascertain what is our business use best case?

Joseph Cunha—The state clarification of the issues raised by ESSB 5814 may not arrive as quickly as we would like to see.

Stephanie Gilfeather—Only two states, Hawaii and New Mexico, subject include advertising services in their retail sales tax base. In 1987, Florida enacted a statute that also broadened the retail sales tax base to include advertising services. Florida repealed that statute in ten months.

3. Social Housing Tax Draft Rule Update

Mark Watterson—On May 20, 2025, the city completed its Social Housing draft rule (Dir. Rule 5-981). In June of 2025, the city intends to promulgate the final Social Housing rule.

4. Social Housing Tax Q4 Return Reconciliation Process

Arcadia Corbett—Will the city be implementing a reconciliation procedure with the Social Housing Tax that is similar to the Payroll Expense Tax? Will the two returns be combined or is there a similar reconciliation process for both taxes?

Mark Watterson—The city will be administering two separate tax returns, one for the Payroll Expense Tax and one for the Social Housing Tax. The city will also implement separate reconciliation work papers for each tax.

The Social Housing Tax only applies when a business has excess compensation, annual compensation paid to an employee in Seattle that exceeds \$1 million. Further, the Social Housing Tax includes no prior year Seattle payroll expense exemption. Taxpayers will be able to file both Social Housing Tax and Payroll Expense Tax returns online through FileLocal.

Joseph Cunha—We are still experiencing some confusion with the Payroll Expense Tax. Further, with respect to the Social Housing Tax, we administer the Social Housing Tax on behalf of the public development authority (PDA). The tax revenue goes to the PDA not to the City of Seattle. Therefore, we must segregate all revenue that we collect from the Payroll Expense Tax and the Social Housing Tax.

Stephanie Gilfeather—Either in Philadelphia or Pennsylvania, the tax jurisdiction often owes a taxpayer money from overpayments resulting from taxpayers tendering estimated quarterly tax payments. For the City of Seattle, could the city implement a procedure so that the city would apply overpayments applicable to one tax to underpayments to another or could the city apply overpayments automatically to a subsequent tax period?

Mark Watterson—For both the Payroll Expense Tax and the Social Housing Tax the city requires a taxpayer to file an amended return to receive an overpayment of tax revenue. The city does have certain system limitations in regard to how refunds are processed but certainly will consider the input received today in regard to overpayments of Payroll Expense Tax and Social Housing Tax.

3. Open items/questions