



# This Week in State Tax (TWIST)

19th February 2024



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## Washington: Taxpayer Owes B&O on Reimbursements

A Washington court of appeals recently addressed whether amounts paid to one party under a purported joint venture were subject to B&O tax. The parties at issue were beer and wine distributors that entered into an agreement under which the beer distributor agreed to provide services to the wine distributor. Per their agreement, the beer distributor providing the services (including the sale and marketing of wine, warehousing and delivery and administrative services) was entitled to receive reimbursements for the costs incurred. The payments ranged from \$36 to \$85 million, depending on the tax year. Following an audit, the Department of Revenue determined that B&O tax was owed by the beer distributor on the reimbursed amounts under the B&O's service and other classification. The two tax assessments totaled almost \$9 million. The beer distributor taxpayer argued that the payments it received were reimbursements for the wine distributor's share of the expenses of a joint venture that were not subject to B&O tax.

Under B&O law, a taxpayer owes tax on all income received from the rendition of services, unless an exemption or deduction applies. There was no relevant exemption or deduction in this instance, and the court concluded that the reimbursed amounts were "gross income" of the taxpayer's business received as compensation for services rendered. The court rejected the taxpayer's classification of the payments as expense reimbursements, noting that the agreements expressly and repeatedly referred to the services provided by the taxpayer for the benefit of both businesses. "No amount of legal or financial gymnastics can remove those reimbursement payments from the expansive reach of Washington's B&O tax statutes." The court determined that, even if a joint venture existed, the payments at issue were subject to the B&O tax. As such, it did not address whether the agreement between the parties was a contract for services or formed a joint venture. Please contact Michele Baisler with questions on *Coho Distributing LLC v. Washington State Department of Revenue*.

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