

LIC-6.12 - Business Activity and Apportionment of Sales of Tangible Personal Property - [Printable Version](#)

BUSINESS ACTIVITY AND APPORTIONMENT OF SALES OF TANGIBLE PERSONAL PROPERTY

Administrative Rules Adopted by Bureau of Licenses Pursuant to Rule-Making Authority

ARB-LIC-6.12

For business license and business income tax purposes, a person must have business activity outside the City/County in order to apportion sales of tangible personal property. If a person does not have business activity outside a jurisdiction, no apportionment of income is allowed. Certain business activities create nexus where that activity is being performed. Nexus is the connection between a person and a taxing jurisdiction created by the person's physical presence (through employees and/or property) to allow the jurisdiction to impose a tax on or measured by net income. An administrative and/or sales office, warehouse, and any personal or real property automatically creates nexus in a jurisdiction. Sales into a jurisdiction in and of themselves are not sufficient business activity to create nexus unless they extend beyond the protections afforded by PL 86-272.

Example 1: XYZ Laboratory manufactures over-the-counter medicine in its Portland plant. Sales are almost entirely within the City except for a long standing order from a large retail drugstore outside of the City. XYZ Laboratory routinely delivers the order to the retail drugstore in its company truck driven by an XYZ employee. The business activity or physical presence of the company truck and the company's employee in a jurisdiction (location) outside the City creates "nexus" for XYZ Laboratory in the jurisdiction of the drugstore. Due to the physical presence of XYZ Laboratory in the jurisdiction outside the City, XYZ Laboratory may apportion its income between the City and the outside jurisdiction.

If XYZ Laboratory were to contract with a freight carrier to deliver its product to the retail store outside the City and delivery by the freight carrier is the only activity outside the City, XYZ would have no business activity outside the City. No nexus would be established outside Portland and no sales would be apportioned outside the City.

If XYZ Laboratory were to hire an employee salesperson to only solicit sales outside the City and the salesperson was XYZ's only activity outside the City, XYZ Laboratory would have no business activity outside the City. No nexus would be created outside the City to allow apportionment of sales outside of the City.

Example 2: ABC Suppliers is a distributor located outside the County. ABC takes mail and phone orders from its customers and delivers those orders to its County customers on a regular, routine, and continuous basis using its own trucks. The location of ABC's property (trucks) within the County creates nexus sufficient to require ABC to file a business income tax return with the County and apportion all sales delivered or shipped into the County to the County.

If ABC Suppliers were to ship all sales into the County using a freight carrier, ABC would not have business activity within the County. No nexus would be created within the County. No business income tax return would be filed.

If ABC Suppliers were to hire an employee salesperson to only solicit sales in the County and the salesperson was the only activity within the County, ABC would not have business activity within the County. No nexus would be created within the County. No business income tax return would be filed.

Example 3: Superior Clothing began as a mail order specialty clothing store in the County. Until January 1994, its only business activity was processing and filling mail and phone orders from its County location. The orders were shipped by a freight carrier or the US mail from its County location to its customers nationwide. For license and tax years through 12/31/93, Superior had no business activity outside the County and did not apportion its net income.

In January 1994, Superior opened a retail outlet outside the County. Superior creates nexus outside the County with its retail outlet. Superior may now apportion its net income. With nexus established outside the County, the only sales of tangible personal property included in the numerator of the apportionment factor for County are the sales delivered or shipped to the customers in the County. Once nexus is created outside the County, all sales of tangible personal property may be apportioned.

REFERENCES

Portland City Code Section [7.02.610](#)

Multnomah County Code Section [5.60.610](#)

HISTORY

Submitted for inclusion in PPD September 17, 2002.

Originally adopted as Bureau of Licenses Administrative Rule 610.93-2 November 23, 1993.