

THE BOARD OF TAX APPEALS
STATE OF WASHINGTON

GUILD MORTGAGE COMPANY,

Appellant,

v.

STATE OF WASHINGTON
DEPARTMENT OF REVENUE,

Respondent.

Docket No. 20-122

RE: Excise Tax Appeal

FINAL DECISION

This matter came before the Board of Tax Appeals (the Board), on September 3, 2024, Rosann Fitzpatrick, Member, presiding, with Board Chair Claire Hesselholt and Member Matthew Randazzo participating on the panel.¹ Scott M. Edwards and Brett Durbin, of Ballard Spahr, LLP, represented the Appellant, Guild Mortgage Company (Guild). David M. Hankins, Senior Counsel, and Jesse Yoder, Assistant Attorney General, represented the Respondent, State of Washington Department of Revenue (Department). Amber Kramer, Chief Financial Officer of Guild Mortgage, and Kristen Fraser, Tax Referee, observed. The hearing record was kept open until October 4, 2025, for the parties to file proposed findings of fact and conclusions of law, pursuant to WAC 456-09-915.²

Guild pre-filed 10 hearing exhibits (A1 to A10). The Department pre-filed 25 hearing exhibits (R1 to R25). During the hearing, the Board admitted Exhibits A1 through A10, R1 through R4, and R7 through R25 into evidence.³

At the hearing, Guild called David Battany, Executive Vice President of Capital Markets at Guild Mortgage Company, as a witness.

The Department called Randi Ledbetter, Revenue Auditor 4 of the Department's Audit Division, as a witness.

¹ Ms. Fitzpatrick left the Board in June 2025. Ms. Fraser was appointed to the Board June 9, 2025. Ms. Fraser has reviewed the record before participating in this decision.

² Both parties timely submitted proposed findings of fact and conclusions of law.

³ At the beginning of the hearing the Board admitted the Department's exhibits, except for Exhibit R4, R5, R6, R11, R12, R13, R23 and R24. During the hearing the Board admitted exhibits R4, R11, R12, R13, R, 23 and R24. Exhibits R5 and R6 were not admitted.

The Board considered the oral arguments of counsel, the sworn testimony of the witnesses, and the written materials submitted by the parties, including all admitted exhibits. This Board now makes its decision as follows:

FINDINGS OF FACT

1. Guild is a California-based company that originates home mortgage loans to borrowers in several states, including Washington.⁴
2. The bulk of Guild's purchase money mortgage loans are "Fannie Mae" (the Federal National Mortgage Association) or "Freddie Mac" (the Federal Home Loan Mortgage Corporation) loans that are 30-year, fixed interest rate residential mortgage loans for which Fannie Mae and Freddie Mac provide a secondary market.⁵
3. Guild sells most of the mortgages it originates to government-sponsored enterprises (GSEs) such as Freddie Mac, Fannie Mae, and Ginnie Mae.⁶
4. Fannie Mae and Freddie Mac purchase mortgage loans from mortgage lenders such as Guild.⁷ Fannie Mae and Freddie Mac then transfer these loans to various trusts that are established under a Master Trust Agreement.⁸
5. The Master Trust Agreement, cited by Guild, is an instrument executed by Fannie Mae "in its corporate capacities as Issuer, Master Servicer, and Guarantor, and in its capacity as Trustee."⁹ It governs the terms related to the issuance of an MBS.¹⁰
6. The trusts issue mortgaged backed securities (MBSs) to investors.¹¹ They also guarantee to the investors in MBSs that the investors will receive the MBS interest payments regardless of whether all of the borrowers whose mortgage loans secure the MBS make the payments due on their mortgage loans.¹²
7. After Guild sells loans to Fannie Mae and Freddie Mac, Guild acts as the loan servicer.¹³

⁴ Ex. R18-3.

⁵ Testimony of Mr. Battany, HR 1 at 27 and 32.

⁶ See Ex. R1-4; Battany testimony, HR 1 at 10:7-9) ("We do mostly mortgages that go to either Fannie Mae, Freddie Mac, or Ginnie Mae. That's probably 95 percent of our business.").

⁷ Exhibit A8-10.

⁸ Exhibit A8.

⁹ Exhibit A8-10.

¹⁰ Exhibit A8.

¹¹ Exhibit A8.

¹² Battany testimony, HR 1 at 58.

¹³ *Id.* at 29.

8. As the loan servicer, Guild collects monthly principal and interest (“P&I”) payments from the borrower on behalf of the owner of the loan, which are deposited into a custodial account.¹⁴ Guild’s compensation for its activities in servicing loans is a service fee of 0.25% of the loan interest, which Guild is authorized to distribute to itself pursuant to the Master Trust Agreement. Guild reported and paid B&O tax on the service fees it received, and those amounts are not in dispute in this matter.¹⁵
9. Amounts deposited into the custodial accounts are distributed in accordance with a Master Trust Agreement for MBS issued by the GSEs.¹⁶
10. A *guaranty fee* (or *guarantee fee*) is defined as “compensation that a lender pays Fannie Mae for the right to participate in the MBS program. The amount of the fee will differ depending on whether the lender selects the regular or special servicing option.”¹⁷ The guaranty fee compensates the GSEs for the cost of guaranteeing that the investors will receive their interest payments.¹⁸ The GSEs charge a guaranty fee of 0.5% of the loan interest as compensation for their guarantee.¹⁹
11. Loan level price adjustments (LLPAs), as they are called by Fannie Mae (or “delivery fees” by Freddie Mac) are an upfront fee to compensate “for the expected future default risk on the loan.”²⁰ LLPAs are calculated based on the borrower’s credit score, loan-to-value ratio, purpose, occupancy, etc.²¹
12. Like other fixed income securities, the market value of the 30-year fixed rate residential mortgage loans purchased by Fannie Mae and Freddie Mac are impacted both by market interest rates and by factors that impact the likelihood that the borrower may default on the loan and fail to make required principal and interest payments.²²

¹⁴ *Id.* at 29 and 59; Exhibit A8.

¹⁵ Exhibit A2.

¹⁶ Battany testimony, HR 1 at 30, 58, Exhibit A8.

¹⁷ *Fannie Mae Selling Guide*, at 1304 (2015). The Board takes official notice of the *Selling Guide* pursuant to WAC 456-09-765. The Department included excerpts as Exhibits R7 and R10; the *Guide* is referenced in Exhibit A3, the Fannie Mae Master Agreement. The Board is referencing the 2015 version of the *Guide*, available at <https://singlefamily.fanniemae.com/media/19921/display>

¹⁸ Exhibit R2-9.

¹⁹ Battany testimony, HR 1 at 59.

²⁰ Exhibits R11-9, R1-9, R7-2 (“LLPAs are assessed based on certain eligibility or other loan features, such as credit score, loan purpose, occupancy, number of units, product types, etc.”).

²¹ Exhibits R7-2, 5; R9; A4.

²² Battany testimony, HR 34, 41.

13. *Lender-paid credits* are amounts paid by the lender for the borrower's closing costs in exchange for a higher interest rate.²³ For example, a buyer might agree to a slightly higher interest rate (5.125 percent instead of 4.875 percent) in exchange for \$675 towards the closing costs.²⁴
14. A "lender credit" reflects that the loan has a premium price because of its above current market interest rate.²⁵
15. Under the Master Trust Agreement, guarantee fees are transferred from the initial custodial account to a second custodial account into which only guarantee fees are deposited.²⁶
16. Mr. Battany testified that if a borrower fails to make a payment, Guild is not required to pay the guarantee fee to the GSE; guarantee fees are only paid out of borrower P&I payments that were actually collected from borrowers.²⁷
17. Once the loan has been sold, Guild has no ownership interest in any portion of the borrower's P&I payment other than the service fee that it is authorized to pay to itself from the custodial account.²⁸
18. Guild recorded lender-paid credits in a general ledger account and included them in line 26 ("Other deductions") on its federal income tax return.²⁹
19. The Department audited Guild for the period January 1, 2013, to June 30, 2017, and issued a \$1,599,869 assessment, which consisted of \$1,191,262 in service and other activities B&O tax, \$65,036 in interest, and \$343,571 in penalties.³⁰
20. The Department assessed penalties to Guild for the failure "to true-up your apportionable income for the calendar year[s] of 2013, 2014 and 2016."³¹
21. Guild appealed the assessment to the Department's Administrative Hearings and Appeals Division, which sustained the assessment.³²

²³ Exhibit A6-11, R4-2.

²⁴ See Exhibit R4-2.

²⁵ Battany testimony, HR 1 at 51.

²⁶ Battany testimony HR 1 at 31.

²⁷ Battany testimony, HR 1 at 60, at 1:27. This appears to be inconsistent with the *Selling Guide*; see Finding of Fact 25.

²⁸ Battany testimony, HR 30, Exhibit A8.

²⁹ Exhibit R25-7.

³⁰ Exhibit R20-2, Exhibits R18 and R19.

³¹ Exhibit R18-5.

³² Exhibit R21.

22. Guild petitioned for reconsideration of the Determination, which the Department denied.³³
23. After the reconsideration denial, Guild timely filed the current appeal to the Board of Tax Appeals.³⁴
24. The Fannie Mae Master agreement between it and Guild provides that, “[i]n addition to any additional LLPA(s) specified in this Master Agreement, Lender must pay all LLPA(s) required by the Selling [G]uide, unless otherwise specified.”³⁵
25. The *Selling Guide* explains that the
- Lender must pay Fannie Mae a guaranty fee remittance each month as compensation for the lender’s right to participate in the MBS program. The guaranty fee is ultimately a corporate responsibility of the servicer and is not a function of the pool cash flows; therefore, it must be paid even if there is no pool collection activity.³⁶
26. The Master Agreement provides that “the guaranty fee due to Fannie Mae for any Mortgage sold under MBS Contract shall be at the annual rate specified in the applicable MBS Contract, payable monthly, after giving effect to any reduction of the guaranty fee through use of the MBS Express remittance cycle, if applicable.”³⁷
27. Guild argues that the guaranty fee is not part of its gross income because such fees are amounts that the “MBS trusts pay to the GSE for the GSE’s activity of guaranteeing payment of the principal and interest amounts on the MBSs.”³⁸
28. The *Selling Guide* provides:
- Lenders that participate in Fannie Mae’s MBS program pay Fannie Mae a guaranty fee remittance each month as compensation for the right to do so. Factors used to calculate the guaranty fee remittance rate include the credit risk of mortgages included in the pool, the servicing option that applies to each mortgage in the pool, and the remittance cycle that applies to the pool. The specific guaranty fee applicable to an MBS mortgage loan is set forth in the related MBS pool purchase contract between Fannie Mae and the lender.³⁹

³³ Exhibit R22.

³⁴ See Notice of Appeal.

³⁵ Exhibit A3-6, Part I, 3.

³⁶ 2015 *Fannie Mae Selling Guide*, at 1093.

³⁷ Exhibit R3-36, Fannie Mae Master Agreement.

³⁸ Appellant’s Response Brief, at 6, citing Exhibit A8-29, a section of the Master Trust Agreement.

³⁹ Exhibit R7-5; *Fannie Mae Selling Guide*, at 1026.

29. The contract between Guild and Fannie Mae specifies the guaranty fee for fixed rate mortgages.⁴⁰
30. In order to sell its mortgages to the GSEs to be turned into MBSs, Guild must comply with the GSE requirements, which require it to remit both LLPA and guaranty fees to the GSEs. The lender (Guild) is contractually responsible for these charges.
31. Guild made no arguments before the Board regarding the penalties imposed under RCW 82.04.462(4), and the Board deems the issue abandoned.
32. Any Finding of Fact that should be deemed a Conclusion of Law is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this appeal.⁴¹
2. The B&O tax is imposed on every person for the privilege of engaging in business activities in Washington.⁴² The tax is measured by the rates multiplied by the gross income of the business.⁴³
3. *Gross income of the business* is, as relevant here, “the value proceeding or accruing by reason of the transaction of the business engaged in and includes . . . gains realized from trading in . . . evidences of indebtedness . . . all without any deduction on account of the cost of . . . discount, taxes, . . . or any other expense whatsoever paid or accrued and without any deduction on account of losses.”⁴⁴
4. The Department has previously noted that:

when a person engages in “trading in stocks, bonds, or other evidences of indebtedness” only the “gains realized” are included in the person’s taxable base for purposes of the B&O tax. This exception from the general presumption in the Revenue Act to tax all of a person’s gross receipts appears to represent the legislature’s recognition that in some instances the mere return of capital outlays should not be included in a person’s gross receipts tax base. However, this recognition does not stand for the proposition that one may deduct losses on a capital outlay.”⁴⁵

⁴⁰ Exhibit A3-37.

⁴¹ RCW 82.03.130.

⁴² RCW 82.04.220(1).

⁴³ Id.

⁴⁴ RCW 82.04.080*1).

⁴⁵ *Sterling Savings Bank v. Dep’t of Revenue*, BTA Docket No. 06-110, at 4, (2007). *See also* Determination No. 90-63, 9 WTD 107, (1990).

5. Stated more simply, return of capital outlays may be excluded from gross receipts for activities such as trading in evidence of indebtedness.
6. *Gain*, as relevant here, is defined as “an increase in amount, magnitude, or degree” or “an increase in value, capital, or amount.”⁴⁶
7. Guild argues the LLPAs and the guaranty fees are not part of its gain on sale because they are adjustments to the selling price of the loan. Guild further argues that the fees are not received for any “service” that Guild provides and therefore they cannot be part of its gain.
8. Guild provides mortgages to home buyers and sells those mortgages to GSEs, which in turn securitizes them. The GSEs require payment of the LLPAs and guaranty fees for any lender, including Guild, to participate in this market. Guild builds into the loan pricing the cost of the LLPA and the guaranty fee. The LLPAs and guaranty fees are charges that are incurred so that Guild can sell its loans to the GSEs. These charges are expenses incurred by Guild in the course of its business, and there is no deduction allowed for Guild’s “expenses” incurred in doing business under the B&O tax.
9. Although Guild frames these costs as “adjustments” to the sales price of the loans, these fees are part of Guild’s cost of doing business, because Guild must pay the fees to participate in the GSE’s MBS program.
10. The lender credits, or amount that Guild pays for the borrower’s costs, in exchange for a higher interest rate, is part of Guild’s investment in that loan. It is an amount paid by Guild for the buyer so that Guild can obtain a higher interest rate. As such, the Board finds that it is part of Guild’s capital investment in the loan, and it is therefore not included in the calculation of its gain on the sale of the loan, and it therefore is not part of Guild’s gross income.
11. Any Conclusion of Law that should be deemed a Finding of Fact is hereby adopted as such.

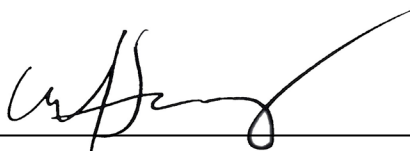
⁴⁶ *Mirriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/gain>, last accessed August 5, 2025.

DECISION

For the forgoing reasons, and pursuant to WAC 456-09-545, the Board sustains Determination Nos. 19-0306 and 19-0306R regarding the guaranty fees and the loan level pricing adjustments and reverses the determinations with respect to the lender credits. The matter is remanded to the Department to recalculate the amounts due in light of this decision.

ISSUED August 29, 2025.

BOARD OF TAX APPEALS



CLAIRE HESSELHOLT, Chair



MATTHEW RANDAZZO, Vice Chair



KRISTEN FRASER, Member

Right of Reconsideration of a Final Decision

You may file a petition for reconsideration of this Final Decision.⁴⁷ The petition must be filed within 14 days of the date the Final Decision is issued.⁴⁸ You also must serve a copy of your petition on all other parties.⁴⁹ The petition for reconsideration must be filed and served by 5:00 p.m. Pacific Time on the due date.⁵⁰

The petition must clearly state the specific grounds for relief.⁵¹ It may not exceed 3,000 words (approximately 6 pages) and must be typed and double-spaced.⁵² No

⁴⁷ WAC 456-09-955.

⁴⁸ WAC 456-09-955(2).

⁴⁹ WAC 456-09-345.

⁵⁰ WAV 456-09-345(1)(c) and (3)(b).

⁵¹ WAC 456-09-955(2).

⁵² WAC 456-09-557(1)(a-b) and (2)(d).

new evidence or arguments may be raised unless the written decision is based on a fact or facts that the parties did not already have an opportunity to address.

Any party may submit a response to the petition within 10 days of the petition being served.⁵³ The Board will either accept or deny the petition within 30 days.⁵⁴

Note that, when an appeal is made to superior court, the appealing party is responsible for ordering and paying for a transcript of the Board's hearing.⁵⁵

⁵³ WAC 456-09-955(3).

⁵⁴ WAC 456-09-955(4).

⁵⁵ WAC 456-09-960.