

Cite as Det. No. 05-0217E, 26 WTD 91 (2007)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of Tax)	<u>F I N A L</u> <u>E X E C U T I V E</u>
of)	<u>L E V E L</u> <u>D E T E R M I N A T I O N</u>
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)	No. 05-0217E
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...)	Registration No. . . .
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RCW 82.04.280: B&O TAX – PRINTING AND PUBLISHING – ADVERTISING MATERIALS AND COUPONS. An assortment of separately printed advertisements and coupons printed on separate pieces of paper and inserted into an envelope cannot properly be described as a work or issue, and is therefore not a “publication.” Because the collection of separate pieces of paper is not a “publication,” it does not qualify as a “periodical or a magazine” for purposes of the printing and publishing B&O tax classification.

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.

DIRECTOR'S DESIGNEE: Janis P. Bianchi, Policy & Operations Manager and Ron Rosenbloom, Policy and Operations Manager¹

Lewis, A.L.J. -- Taxpayers appeal the Department’s rescission of a Taxpayer Services . . . 2002 letter ruling, which held that advertising packaged in envelopes satisfies the statutory definition of “periodical or magazine” under RCW 82.04.280. We conclude that such mailings do not

¹ . . . Mr. Rosenbloom was appointed the Director’s Designee, following Ms. Bianchi’s departure from the Appeals Division. . . .

satisfy the definition of “periodical or magazine” and that the income derived from the advertising does not qualify for the printing and publishing B&O tax classification.²

ISSUE:

Whether a variety of discount coupons and advertising materials stuffed into envelopes and distributed monthly by mail to households within a geographic area meet the statutory definition of “periodical or magazine” in RCW 82.04.280?

FINDINGS OF FACT:

[Company] prints, collates, stuffs, and mails advertising materials in . . . envelopes. The assortment of advertising materials includes fliers, order forms, coupons, business reply cards, and other similar printed materials. [Company] distributes the advertising materials in monthly mailings. Taxpayers, as franchisees of [Company], are direct marketers of the . . . envelopes and advertising materials. Taxpayers obtain orders for the advertising materials from local businesses. . . .

Each mailing is distributed to . . . households within a specific geographic area. . . .

[In] 2002, Taxpayers submitted a request for a letter ruling to the Department’s Taxpayer Information and Education Division (“TI&E”). Taxpayers had been reporting their income from advertising under the service & other activities B&O tax classification. The request sought confirmation that the correct B&O tax classification for Taxpayers’ activities was the printing and publishing B&O tax classification (RCW 82.04.280).

On . . . , 2002, TI&E sent Taxpayers a letter stating:

If [Company] has a stated regular interval in the publication, the publication will meet the definition of a periodical and the advertising income will be taxable under the printing and publishing classification of the B&O tax.

The letter agreed with Taxpayer that the [Company] envelopes were printed publications, that they were not a newspaper, and that they were issued at least every three months. Thus, the only question left was:

[W]hether or not the [Company] publication is **issued regularly at stated intervals**. The [Company] publication is issued once each month, which meets the requirement of at least every three months, but the interval must also be stated.

² Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

Magazines and publications typically have a masthead that lists items about the operation of the publication. For a publication to be considered a periodical, it would need to have a place in the publication where the issue interval is stated. If [Company] has a stated regular interval in the publication, the publication will meet the definition of a periodical and the advertising income will be taxable under the printing and publishing classification of the B&O tax.

In a . . . 2002 letter to TI&E, Taxpayers requested clarification of the letter ruling. Specifically, Taxpayers sought confirmation that the [Company] advertising materials met the statutory definition of a “periodical or magazine.” Taxpayers submitted copies of its 2002 and 2003 publication schedules to show that the advertising packets were printed and sent to households at regular intervals. The distribution schedules were submitted for TI&E’s review since the frequency of publication is not stated on each coupon or . . . on the [Company] envelope.

In a . . . letter, TI&E clarified its [earlier] letter stating:

This is a clarification of the letter dated In that letter we stated that for a publication to be considered a magazine or periodical, it would need to have a place in the publication where the issue interval is stated. Since our original letter, you have supplied [Company’s] distribution schedule for its publications confirming that they are issued at regularly stated intervals.

Based on the distribution schedule that shows that the publication is issued monthly, the publication meets the definition of a periodical under RCW 82.04.280. It is not required by statute that the intervals be stated on the publication for it to meet the definition of a magazine or periodical.

Following receipt of the letter, Taxpayers began filing their tax returns under the printing and publishing B&O tax classification. Taxpayers also filed refund claims for taxes previously reported under the service & other activities B&O tax classification. The Department issued two refund checks to [one of the Taxpayers] prior to March 12, 2003 when TI&E issued a letter rescinding its . . . 2002 letter, which concluded that the [Company] advertisements are periodicals under RCW 82.04.280.³

. . . Taxpayers filed a request with the Appeals Division for executive level review of TI&E’s rescission of its . . . 2002 letter . . . The Appeals Division issued a proposed decision, which concluded that the [Company] envelopes did not qualify for the printing and publishing B&O tax classification. . . . Taxpayer filed objections to the proposed determination. Taxpayer’s primary disagreement was with the Appeals Division’s “reading” of RCW 82.04.280. . . .

ANALYSIS:

³ The other affected Taxpayers’ refund requests were immediately put on hold.

RCW 82.04.280 provides for a special B&O tax rate upon the receipts of persons “engaging within this state in the business of: (1) Printing, and of publishing newspapers, periodicals, or magazines” Because Taxpayers do not print the envelopes, but merely publish them, the envelopes must qualify as a “periodical or magazine” in order for the printing and publishing B&O tax classification to apply.⁴

RCW 82.04.280 provides in part:

As used in this section, “periodical or magazine” means a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication.

In the proposed determination, we said that the term “periodical and magazine” was modified and restricted by (as opposed to being defined by) the subsequent language. In other words, we said that the item in question must first meet the dictionary definition of “periodical” or “magazine” and, in addition, must be “a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication.”

Taxpayers assert that we erred in referring to the dictionary definitions of “periodical” and “magazine” in our proposed decision.⁵ Taxpayers rely on the court’s pronouncement in *State v. Leek*, 26 Wn. App. 651, 656, 614 P.2d 211 (1980), which stated “Washington case law expressly provides that a term whose statutory definition declares what it means . . . excludes any meaning that is not stated.”

We nevertheless decline to adopt the broad interpretation proposed by Taxpayers. Article II, § 19 of the Washington Constitution provides: “No bill shall embrace more than one subject, and that shall be expressed in the title.” With regard to the second requirement, *i.e.*, that the subject of the bill must be expressed in the title, the Washington Supreme Court has held that “[w]ords in a title must be taken in their common and ordinary meanings, and the legislature cannot in the

⁴ The envelopes clearly do not qualify as a “newspaper.” See RCW 82.04.214.

⁵ In our proposed determination, we noted that WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1357 (1993) defines the word “magazine” as:

a periodical that usu. contains a miscellaneous collection of articles, stories, poems, and pictures and is directed at the general reading public (2) a periodical containing special material directed at a group having a particular hobby, interest, or profession (as education, photography, or medicine) or at a particular age group (as children, teen-agers) (alumi).

[We further noted] that WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, *supra*, at 1680 defines the word “periodical” as:

a magazine or other publication of which the issues appear at stated or regular intervals – usu. used of a publication appearing more frequently than annually but infrequently used of a newspaper.

body of an act impose another or unusual meaning upon a term used in the title without disclosing such special meaning” in the title.⁶

The definition of the term “periodical or magazine” was adopted by the legislature in Laws of 1994, ch. 112, § 1. The complete title of the act reads: “AN ACT Relating to business and occupation taxes for periodicals and magazines; amending RCW 84.04.280; adding a new section to chapter 82.04 RCW; adding a new section to chapter 35.21 RCW; and creating new sections.”⁷ Nothing in the title suggests that “periodical” or “magazine” was intended to include advertising coupons stuffed into an envelope.

Moreover, even if we disregard the dictionary definitions of “periodical” and “magazine,” it is clearly appropriate to consult the dictionary for the meaning of the word “publication,” which is not defined in the statute. As stated in *John H. Sellen Constr. Co. v. Department of Rev.*, 87 Wn.2d 878, 882, 558 P.2d 1342 (1976), “Words in a statute are given their ordinary and common meaning absent a contrary statutory definition.” [Further,] “Washington courts use WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY in the absence of other authority.” *State v. Glas*, 106 Wn. App. 895, 27 P.3d 216 (2001), citing, *In re Personal Restraint of Well*, 133 Wn.2d 433, 438, 946 P.2d 750 (1997). Respect for the legislature’s intent in using a specific word is not compromised by using the dictionary to define the common meanings of words.

To qualify for the printing and publishing B&O tax classification a “periodical or magazine” must be a printed **publication**. The word “publication” is commonly defined as: a “published work.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, 1836 (1993). “To publish” means “to release (a product of creative work) for public distribution or sale usu. with the consent of the copyright holder.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, 1837 (1993).

In addition, the definition of “periodical or magazine” contained in RCW 82.04.280 requires that the printed publication must “be **issued** regularly at stated intervals at least once every three months.” (Bolding added.) WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, 1201, defines the term “to issue” in definition number 9(a)(2) as:

[T]he act of bringing out (as a new book or a revised edition of a book or a new number of a magazine or a fresh printing of a newspaper) for the distribution to or sale or circulation among the public: PUBLICATION

. . . [W]e conclude that [Company’s] assortment of separately printed advertisements and coupons on separate pieces of paper inserted in an envelope cannot properly be described as a work or issue, and is therefore not a “publication.” Because it is not a “publication,” it does not qualify as a

⁶ *De Cano v. State*, 7 Wn.2d 613, 626, 110 P.2d 627 (1941); see also *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 207, 226, 11 P.3d 762 (2000).

⁷ Laws of 1994, ch. 112 (Substitute House Bill 2235).

“periodical or a magazine.”⁸ We conclude that Taxpayers are properly subject to the service & other activities B&O tax classification.

DECISION AND DISPOSITION:

Taxpayers’ petition is denied.

Dated this 27th day of December, 2005.

⁸ TI&E initially advised that a publication is not issued at “stated intervals” unless the publication schedule is set forth in the publication. TI&E later advised that the publication schedule need not appear in the publication. We question the correctness of the latter advice. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, 2229 (1993) defines “stated” as “2:b set down explicitly: DECLARED.” This implies that a publication is issued regularly “at stated intervals” only if the publication schedule is shown on the publication itself. However, we do not reach this issue because we conclude that [Company] envelopes are not a “publication” and therefore not a “periodical or magazine.”