

Cite as Det No. 08-0003E, 28 WTD 40, (2009)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>F I N A L E X E C U T I V E</u>
Assessment and Refund of:)	<u>L E V E L D E T E R M I N A T I O N</u>
)	
)	No. 08-0003E
...)	
)	Registration No. . . .
)	Petition for Refund and
)	Doc. No. . . . /Audit No. . . .
)	Docket No. . . .

RULE 155, RULE 245; RCW 82.04.065, RCW 82.04.290: B&O TAX – NETWORK TELEPHONE SERVICE – INFORMATION SERVICE – TRUE OBJECT. Taxpayer, who provided intelligent database services over the SS7 network, provided “information services” rather than “network telephone services.” While the delivery of information over the SS7 network was a vital part of the service, the true object of the purchaser was to obtain access to the information contained in the databases, not the transmission of the customer’s data from one location to another.

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: Jacqueline M. Danyo, Policy and Operations Manager

Chartoff, A.L.J. – A provider of intelligent database services to communications companies petitions for refund of Business and Occupation (B&O) tax it paid under the services and other business activities classification from 1997 through November 30, 2003, and protests an Audit¹ assessment of service and other B&O tax for the period December 1, 2003 through December 31, 2004, contending its services are network telephone services, taxable under the lower wholesaling rate. We conclude the taxpayer’s income from its intelligent database services was properly reported under the services classification and deny the petition.²

¹ “Audit” refers to the Audit Division of the Department of Revenue (Department).

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

ISSUE

Do the taxpayer's intelligent database services fall within the definition of network telephone services (RCW 82.04.065)?

FINDINGS OF FACT

[Taxpayer] is a . . . provider of . . . signaling and intelligent database services to the communications industry.

On December 30, 2003, the taxpayer filed a refund request in the amount of \$. . . plus interest, for the period January 1, 1997, through November 30, 2003 (the refund period).³ The refund results from the reclassification of its activities under the B&O tax from services to wholesaling. During the refund period, the taxpayer reported its income from intelligent database services under the services classification of the B&O tax. The taxpayer now contends in the refund petition that its intelligent database services are wholesale "network telephone services," taxable under wholesaling, and sourced under RCW 82.04.530.⁴ The taxpayer argues that its intelligent database services are "network telephone services" because they are "an integrated part of the signal transmission and switching process." Therefore, they "involve switching or provision of data over the SS7 network."

The refund request was referred to the Audit Division (Audit) of the Department of Revenue (Department). Audit examined the refund request and concluded that the intelligent database services were correctly classified under service. Audit further concluded that the taxpayer was eligible to apportion its income under WAC 458-20-194 (Rule 194), but the taxpayer did not provide the documentation necessary for Audit to perform the calculation. Accordingly, Audit denied the refund request on July 18, 2006. The taxpayer timely appealed on August 8, 2006.

Audit also performed a limited scope audit for the period December 1, 2003, through December 31, 2004. Audit reviewed the taxpayer's refund request paperwork and state excise tax returns. Audit found that on December 1, 2003, the taxpayer began reporting its income from intelligent database services under the wholesaling classification. Audit reclassified the taxpayer's income from wholesaling to service and other, and apportioned income to Washington State per WAC 458-20-194. Audit issued an assessment of \$. . . on August 10, 2006, which the taxpayer timely appealed on September 8, 2006.

³ The taxpayer was audited for the period January 1, 1997 through December 31, 2000. This resulted in an assessment of \$. . . which the taxpayer paid in 2001. The taxpayer contends that pursuant to RCW 82.32.060(1), the nonclaim period is open with respect to amounts paid in 2001 that relate back to the 1997-2000 audit period.

⁴ The taxpayer argues that the gross proceeds should be sourced under the version of RCW 82.04.530 in effect during the refund period. The taxpayer contends that the Department's position in a communication dated December 16, 2004 is to source the receipts under RCW 82.32.520 (effective July 1, 2004) for periods prior to the effective date of the legislation.

In dispute is whether the taxpayer's intelligent database services are "network telephone services." Because the intelligent database services are provided over the SS7 network, we start with a discussion of the SS7 network, followed by discussion of the intelligent database services at issue.⁵

The SS7 Network

[Taxpayer] provides Signaling System 7 (SS7) services to communications providers including local telephone companies, interexchange carriers, CMRS (commercial mobile radio services) providers, and internet services providers. SS7 is a telecommunications protocol that separates the information required to set up and manage telephone calls in the public switched telephone network (PSTN) into a separate packet switched network.⁶ "SS7 networks are physically distinct networks that shadow the voice component of the PSTN."⁷ The SS7 network and protocol are used for basic call set up, management, and tear down on the PSTN, as well as to provide the intelligent database services at issue in this case: toll-free number services, calling card and third party calls, and Caller ID.

In order to understand how the intelligent database services work, it is helpful to understand how the SS7 network sets up phone calls.⁸ The SS7 "network engages when a caller picks up the phone and dials a number."⁹ This information is transmitted along the phone line to the Signal Switching Point (SSP), an SS7 capable voice switch operated by the phone company serving that home. From there, the information is routed to a Signal Transfer Point (STP) operated by the taxpayer. STPs are packet switches that provide access to the SS7 network and route SS7 messages among SSPs and Service Control Points (SCPs) [databases].¹⁰ "The STP takes the information and determines which SSP services the called party's destination and routes the information accordingly. The receiving SSP checks the line for availability and sends that information back along the same path. If the line is busy, that information is passed to the originating SSP, which gives the caller a busy signal."¹¹ The entire transaction occurs without engaging the voice trunk.¹² "If the line is available, the originating SSP designates a voice trunk to carry the conversation and gives the caller a ring while the receiving SSP does the same for

⁵ The taxpayer's income from SS7 connectivity services was not reported to the Department during the refund and assessment periods, and therefore, is not at issue in this appeal.

⁶ Shannon M. Heim, *Signaling System Seven: A Case Study in Local Telephone Competition*, 13 CommLaw Conspectus 51, 56 (2004).

⁷ *Id.* at 61.

⁸ The following explanation of the SS7 network is from Shannon M. Heim, *Signaling System Seven: A Case Study in Local Telephone Competition*, 13 CommLaw Conspectus 51, 57 (2004)

⁹ *Id.*

¹⁰ A "Service Control Point" (SCP) is the node in the common channel signaling network to which informational requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a service switching point (SSP) and via a signaling transfer point (STP), performs subscriber or application-specific service logic; then sends instructions back to the service switching point on how to continue call processing.

¹¹ Heim, *supra*, at 57.

¹² A "voice trunk" is a telecommunications channel between originating and terminating switches.

the receiving telephone. Only when the receiving phone is answered does a voice trunk engage.”¹³

Because the voice trunk is not engaged unless a call is successfully completed, use of the SS7 network avoids wasted use of a voice trunk and increases capacity of the existing network. The SS7 network also allows for rapid communication between networks and databases, which is required to provide the intelligent database services at issue in this appeal.

Intelligent Database Services

At issue in this case is the tax classification of intelligent database services. These services are available on an a la carte basis to the taxpayer’s SS7 connectivity customers. The [taxpayer] describes these services generally as [providing reliable, secure and accessible database and storage services for wireline, wireless and broadband operators].

The toll free database service enables local phone carriers to connect toll free calls ... by providing access to call routing instructions. The taxpayer owns and maintains the database of toll free numbers. . . .

[The taxpayer states that the toll free database service works as follows:]

When a consumer calls a toll-free number from a carrier’s area . . . the carrier’s switch receives the call and launches a query over [the taxpayer’s] SS7 network. [The] network routes the query to [the taxpayer’s toll-free number] database and identifies the appropriate carrier for the call, and other routing information as needed. [The] network returns the response to the originating carrier’s Service Switching Point (SSP) for correct call routing.

The calling name database service allows carriers to offer such services as Caller ID. . . .

[Taxpayer] explains how the calling name database service works. When a caller dials a number, the call is routed from the originating carrier’s switch to the terminating carrier’s switch as previously described. However:

When the terminating switch (SSP) receives the call, the switch determines if these criteria are satisfied: the terminating subscriber has activated Caller ID, the call is not marked as restricted, and the calling party is available. If all three are satisfied, the switch launches a query to a . . . STP which performs global title translation (GTT) and determines the appropriate calling name database (SCP). The query routes to the appropriate SCP, which accesses name information in its corresponding calling name database. The SCP provides a response that includes the calling party’s name, city and state information, and privacy indicator.

¹³ Heim, *supra*, at 57.

The response is provided to the carrier's terminating switch which provides the Caller ID information to the customer receiving the call.

Finally, the taxpayer's Line Information Database (LIDB) service enables carriers to store and manage subscriber line information in a secure database, which other providers can access to determine how to handle collect, international, and other calls from the carrier's subscribers. . . . [The taxpayer explains how the LIDB service works when a customer receives a call to be billed to a calling card number]:

A query is launched to a Signaling Transfer Point (STP) using SS7. The [taxpayer's] STP performs a global title translation (GTT) and determines the database to validate the card number. The STP routes the query to the appropriate database. The database returns a response that contains validation information. The response is analyzed and it is determined how to treat the call.

The intelligent database services share common elements. In all three services, the taxpayer is maintaining a database of information that the customer seeks to access. With the Caller ID and LIBD services, part of the service is managing and maintaining customer data for the benefit of the customer, and to make that data available to other customers. In all three services, the database is accessed when a carrier switch sends a query on the SS7 network, which routes the query to the appropriate database which returns a response to the switch.

ANALYSIS

RCW 82.04.050(5) defines a retail sale as including "the providing of telephone service, as defined in RCW 82.04.065, to consumers." RCW 82.04.065¹⁴ defines "telephone service" as "competitive telephone service or network telephone service, or both." It further states:

"Network telephone service" means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system.

Any service that falls within the broad definition of "network telephone service" is subject to B&O tax under the retailing classification and retail sales tax, or wholesaling, where the service is not provided to consumers. WAC 458-20-245 (Rule 245); Det. No. 00-159E, 20 WTD 372 (2001). If the service does not fall within the definition of "network telephone service," WAC 458-20-155

¹⁴ Version in effect August 1, 2002. While the statute was amended during the refund period, the amendments were not material to the outcome here.

(Rule 155) and RCW 82.04.290 provide that information services are taxable under the service classification.

The taxpayer argues its intelligent database services fall within the definition of “network telephone service” in two ways. First the taxpayer argues its services provide “access to a . . . telephone network switching service . . .” because “the database query is an integrated part of the signal transmission and switching process.” We do not agree that the taxpayer provides access to a telephone network switching service. The taxpayer provides information to the switches, but it is the telephone companies that operate their own switches that establish voice trunks. While the taxpayer’s services are delivered in a manner that results in seamless telephone services to the user, there is no evidence that the taxpayer performs or provides access to a switching service.

Next the taxpayer argues that it provides “data, or similar communication or transmission for hire, via a telephone network . . . or similar communication or transmission system. . .” when it provides data over the SS7 network. We agree that the intelligent database services involve transmission of data over a packet switched network. When a switch launches a query, that query is converted into digital packets of data that are transmitted over the taxpayer’s network to the appropriate database. The database response is transmitted back over a network to the switch. But, while the service involves the transmission of data over a network, the true object of the purchaser of intelligent database services is to obtain access to the taxpayer’s valuable databases. Det. No. 00-159E. The transmission of data over the network is secondary, that is, the means by which the data is provided.

Det. No. 00-159E, *supra*, held that the operator of a wide area network (WAN) provided “network telephone services” reasoning the true object of the purchaser was the transmission of data. In that case, we examined the taxpayer’s contracts with customers and marketing materials to determine the true object of purchaser, and found, in relevant part:

First, Taxpayer clearly transmits data or information for hire. Taxpayer’s customer supplies the data or information, and Taxpayer’s shared WAN transmits that data from a computer in one location to a different computer in another location

Taxpayer’s marketing flyer . . . described the services offered by Taxpayer to be primarily data transmission services. . . .

[Similarly], the options and customer support features [listed in the flyer] primarily emphasize the quality or quantity of the data transmission services that Taxpayer provides to customers

In the present case, the taxpayer’s marketing materials describe the intelligent database services primarily as database and storage services. . . . While seamless delivery of the information is a vital part of the service, the true object of the purchaser is to obtain access to the complete and reliable

information contained in the databases, not the transmission of the customer's data from one location to another.¹⁵

Finally, the taxpayer argues that the Department's interpretation and application of RCW 82.04.065 is at odds with *Western Telepage, Inc. v. Tacoma*, 140 Wn. 2d 599, 998 P2d 884 (2000). In *Western Telepage*, the Washington Supreme Court held paging services were network telephone services, reasoning, in part:

Paging involves the transmission of a telephone number or an alpha-numeric (text) message. When a telephone number is transmitted, the implied message is "call me." Both types of messages are "items of information" (data) and are similar to communication commonly made by telephone.

The court rejected the taxpayer's arguments that "data" in the statute refers only to "large scale transmissions of computer generated information" and that the statute applies only to two way communication.

The taxpayer argues that "the paging services at issue in *Western Telepage* are not dissimilar from Taxpayer's Calling Name Delivery services sent via mobile phone." First, we note that the taxpayer does not send information via mobile telephones. Instead, the taxpayer's calling name delivery service transmits data from its database to the carrier's switch. The carrier then transmits the data to its telephone customers, either by wireline, wireless, or other means of transmission. In addition, the object of the service provided by *Western Telepage* differs from the present case. The *Telepage* customer hired *Western Telepage* to transmit data communication from telephone callers to the paging device. [Taxpayer's] customers are instead purchasing access to [Taxpayer's] database of information. The [Taxpayer's] customer pays for the data itself, and for data management and storage services. Because, data transmission is not the true object of the service, *Western Telepage* is not helpful to the taxpayer.

In conclusion, we reject the taxpayer's argument that its services are "network telephone services." Instead, we conclude the taxpayer's services were properly classified under the services classification for B&O tax as information services.

DECISION AND DISPOSITION

The petitions for correction of assessment and for refund are denied.

Dated this 9th day of January 2008.

¹⁵ We reject the taxpayer's argument that the shared WAN Services "are not dissimilar from Taxpayer's Line Information and Toll-Free Database Access services." The true object of purchaser of the WAN services was the transmission of customer data from one computer to another. The true object of the purchaser of the line information and toll free access services is to gain access to the taxpayer's database, and to store information in the taxpayer's database.