Cite as Det. No. 92-363, 12 WTD 519 (1992).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Tax Assessment of	) D E T E R M I N A T I O N)) No. 92-363)
. . .	) Registration No. . . .) . . ./Audit No. . . .)

[1] RULE 241: MANUFACTURING B&O TAX -- USE TAX -- MASTER AUDIO TAPE -- ORIGINAL. An original one-of-a-kind master . . . created by the taxpayer for a specific client is merely the tangible evidence of an artistic-type service, and is not subject to manufacturing B&O and use tax. Accord: Det. No. 91-091, 11 WTD 113, (1991).

[2] RULE 112: MANUFACTURING B&O TAX -- USE TAX -- VALUE OF THE PRODUCT -- RENTAL TAPES. Licensing fees paid by the taxpayer to . . . companies for using [parts of programs] belonging to their . . . artists on pre-recorded rental [programs] manufactured by the taxpayer in Washington, should be included as a cost in determining the value of the product under Rule 112.

[3] RULE 241: B&O TAX -- RADIO/TV BROADCASTING TAX -- TRANSMITTED AUDIO MUSIC -- SUBSCRIBER FEES. Delivering pre-recorded [programs] to clients for a fee by use of FM sideband radio waves or direct satellite broadcasting, did not constitute Radio/TV broadcasting. Therefore, subscriber fees were taxable under the Service and Other Activities B&O tax classification. See Community Telecable of Bellevue, et. al. v. Department of Rev., (1981), Thurston County Superior Court, Doc. No. 81-2-01717-4.

[4] RULE 194: SERVICE B&O TAX -- APPORTIONMENT -- COSTS -- COMPUTATION -- COSTS GENERATING INCOME. Costs attributable to a . . . facility located [out-of-state] were correctly excluded from the apportionment formula,

where the facility did not contribute to generating the income sought to be apportioned. Accord: Det. No. 89-448, 8 WTD 189 (1989).

[5] RULE 245: B&O TAX -- RETAILING -- NETWORK TELEPHONE SERVICE -- INTERSTATE SERVICE -- ORIGINATING OR TERMINATING IN WASHINGTON. Amounts charged by a satellite transmission company for receiving and relaying a signal to a facility located in another state are included within the definition of "network telephone service" if the signal originates or terminates within the state of Washington and the transmission services are subsequently billed to an apparatus within the state. See, Det. No. 88-193, 5 WTD 347 (1988).

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.

NATURE OF ACTION:

The taxpayer originally filed a petition for refund of overpaid manufacturing B&O and use taxes paid on [masters] on December 28, 1989. Subsequent to that filing the taxpayer was audited by the Department which resulted in the above tax assessment being issued. Because of the related nature of the issues involved and the overlapping time periods, the two petitions have been consolidated and will be fully addressed in this single determination.

TAXPAYER REPRESENTED BY: . . .

DATE OF HEARING: . . .

FACTS:

Okimoto, A.L.J. -- [Taxpayer] operates a [programming] service [and program distribution business] based in . . . , Washington. Its books and records were examined by a Department of Revenue (Department) auditor for the period January 1, 1985 through June 30, 1989. An adjusted audit tax assessment resulted in additional taxes and interest owing in the amount of $ . . . and Document No. . . . was issued in that amount [in January 1992]. The taxpayer has protested the assessment in full, and it remains due.

[Taxpayer's programs are intended to affect the behavior of its audience. In order for the effect to be that which the taxpayer's customers desire, taxpayer studies the intended

audience, the customer's current environment, and other factors. Taxpayer's programmers then determine which material should be included in the program. The rights to virtually all of the material included in taxpayer's programs are owned by others. Taxpayer pays all fees for the use of such materials by its customers.

After receiving a list of material to be included in the program, technicians hired by taxpayer create the program through proper editing techniques. Once an original master program has been developed, the master is duplicated. The duplicating masters make many more copies of the program, and the copies are rented to customers.

In addition to rentals, taxpayer receives income for providing programs which are supplied to customers via radio waves. The taxpayer considers this to be broadcast income. It explains its "broadcasting" process as follows:

> Once a master has been created, the taxpayer plays that program through its own system and transmits that signal from its equipment (a satellite dish) located in Washington to a satellite owned by others orbiting in space. The satellite receives the signal and relays the signal to downlink equipment owned by others located in other states. There, the signal is clarified and enhanced, and uplinked back to a satellite. From that satellite, a direct broadcast by the satellite (DBS) is received by customers who process special receivers sold by the taxpayer.

Taxpayer also broadcasts over side carrier authority (SCA), which is a sideband of an FM broadcast. Again, only taxpayer's customers generally have specially designed equipment to decipher taxpayer's programs off of an FM sideband broadcast.]

TAXPAYER'S EXCEPTIONS:

Schedule VI: Manufacturing B&O and Use tax on Master & Rental [Programs]

During the period in question, the taxpayer reported manufacturing B&O and use tax on its monthly excise tax returns on 100 per cent of the costs associated with its Master [Program] Department. The taxpayer now contends that this was a grossly overvalued amount and petitions for a refund.

The taxpayer made two arguments at the hearing. First, the taxpayer argues that the original master is the tangible medium of a professional service rendered by the taxpayer to its client.

Therefore, since the taxpayer is performing a service, the tangible evidence of that service is not subject to manufacturing B&O and use taxes. The taxpayer does concede, however, that it owes manufacturing B&O and use taxes on the value of the duplication masters. Second, the taxpayer argues that even if the original master tapes were considered manufactured tooling, as contended by the auditors, that the auditor's valuation of the masters is incorrect. The taxpayer explains that the auditors took all costs included in the Master [Program] Department and attributed it to the cost of making the master . . . . The taxpayer, however, argues that much of the programmers time is spent [familiarizing himself/herself] with available [material]. The taxpayer argues that the time spent to familiarize oneself with the available [material] is not attributable to the development of any particular master . . . , and should not be included in the taxable value of the [program].

In addition, although the taxpayer agrees that its activity of manufacturing rental [programs] within the state of Washington is subject to the manufacturing tax based on the value of the product, it disputes the method used by the auditor. Both the taxpayer and the auditor agree that there are no similar sales of the manufactured rental [programs] and that cost is the appropriate method of determining the taxable value. The taxpayer's sole objection is the auditor's inclusion of copyright fees as a cost of producing the pre-recorded rental [programs]. The taxpayer explains that these fees are actually licensing fees paid to [others] for each time . . . copyrighted [material is used] by the taxpayer's customer. The taxpayer argues that the fees have nothing to do with the value of the [program] produced, but are only fees for utilizing that [program]. The taxpayer stresses that if the pre-recorded [program] was never [used], no additional copyright fees would be due. The taxpayer contends that these expenses are primarily the obligation of the subscriber and not the taxpayer.

Schedule VII: Broadcast Income Assessed under Service Tax

In this schedule, the auditor assessed Service B&O tax on income received for SCA and DBS income. The taxpayer argues that this income should be taxable under the . . . Broadcasting Tax classification because its activity is essentially the same as a . . . broadcaster. The taxpayer contends that it is simply delivering pre-recorded [programs] to its customers via . . . airwaves. In the alternative, the taxpayer argues that this income should be taxable under RCW 82.04.065 as a telephone business.

Even assuming that the income is taxable under the Service and Other Tax classification, the taxpayer then disputes the manner

that the auditor apportioned income attributable to Washington state. In arriving at a percentage of costs attributable to Washington service income, the auditor excluded from the out-of-state cost totals amounts attributable to its [out-of-state] facility. The auditor contended that this facility did not contribute in any manner to generating the SCA and DBS income being apportioned. Although the taxpayer agrees that this facility did not contribute to generating SCA and DBS income, it nevertheless believes that these costs should be included because other Washington facilities (such as the master [program] facility) also did not contribute to generating the apportioned income but have been included as Washington costs. The taxpayer argues that either all costs not attributable to generating the apportioned income should be included or none.

Schedule XI: Deferred sales tax on Satellite space . . . .

In this schedule, the auditor assessed deferred retail sales tax on charges[1] paid to [Satellite] and [Communications] for providing satellite transmission services. The auditor believed these services fell within the definition of telephone services under RCW 82.04.065. The taxpayer explained at the hearing that [Satellite] owns a communications satellite that orbits the earth. [Satellite] leases space in a transponder attached to the satellite to various communication companies, including [Communications]. [Communications] in turn charges other customers, such as taxpayer, for the use of that transponder.

Upon further review, the auditor determined that [Communications] did not have sufficient nexus for the state of Washington to subject [Communications]'s transactions to the Washington retail sales tax. Therefore, the auditor deleted these charges in a post-assessment adjustment. Amounts paid to [Satellite], however, remain.

The final issue involves a balance due adjustment attributed to taxpayer's May 1989 excise tax return that was added to the original field audit schedules by Audit Review in Olympia. The taxpayer maintains that it had previously talked with . . . of the Department and explained that its May 1989 excise tax return contained a transposition error. The taxpayer explained that once the transposition error is corrected, it will have correctly reported its income. This issue is purely a factual

---

[1]The auditor assessed tax on two payments made to [Satellite]. One for reference # . . . in the amount of $ . . . and dated . . . . Another for reference # . . . in the amount of $ . . . and dated . . . . The auditor also assessed tax on one payment to [Communications] for reference # . . . in the amount of $ . . . and dated . . . .

determination and will be remanded to the Audit Division for further investigation.

ISSUE:

1. Are original one-of-a-kind [masters] created by the taxpayer for a specific client subject to manufacturing and use tax?

2. Should licensing fees paid by the taxpayer to . . . companies for using [material attributable] to their [rights in the material] be included as a cost in determining the value of the product under Rule 112?

3. Are fees received from subscribers for delivering [programming] via FM sideband radio waves or direct broadcast by satellite subject to tax under the Service and Other Activities B&O tax classification?

4. Should costs attributable to [an out-of-state] facility be excluded from the apportionment formula where the facility does not contribute to generating the income sought to be apportioned?

5. Do amounts charged by a satellite transmission company for receiving and relaying a signal to a facility located in another state constitute "network telephone service" if the signal originates or terminates within the state of Washington and the services are subsequently billed to an apparatus within the state?

DISCUSSION:

Schedule VI: Manufacturing B&O and Use tax on Master & Rental [Programs]

[1] WAC 458-20-241 (Rule 241) is the applicable rule for determining the tax classification of [masters] produced by radio and television broadcasters or independent filmmakers. Although we do not believe that the taxpayer is, per se, a . . . broadcaster, its activity of producing master [programs] is sufficiently similar to those of broadcasters and independent studios, so that Rule 241 provides guidance for determining the tax classifications of its various activities. It states in part:

> SERVICE AND OTHER ACTIVITIES. Taxable on gross income from personal or professional services, including gross income from producing and making custom commercials or special programs, fees for providing writers, directors, artists and technicians, charges for the granting of a license to use facilities ...

Applying the above rule to the taxpayer's facts, we believe that the [masters] which the taxpayer produces for its customers constitute "custom ...special programs" within the meaning of Rule 241. We note that each original master . . . was of "an original, one-of-a-kind nature" made specifically for a specific client. Significant amounts of research, programming and expertise are required to create the mood and atmosphere desired by the clients. Consequently, we believe that these [masters] constitute only the tangible evidence of an artistic-type service being performed by the taxpayer and are not subject to either the manufacturing B&O or use taxes. We note, however, that the custom status applies only to the production of the original [masters] and does not apply to the duplicating masters or rental [programs]. The production of copies or dubs from the original [masters] is a manufacturing activity fully subject to manufacturing B&O and use tax on the value of the product. WAC 458-20-241.

The taxpayer's petition on this issue is granted in part and denied in part.

[2] Regarding the valuation of rental [programs] shipped to customers located outside the state, RCW 82.04.450(1) provides that the "value of the product" is to be determined by the "gross proceeds of sale" with three exceptions. The exception applicable to the taxpayer's case states:

> ...(b) Where such products, including byproducts, are shipped, transported or transferred out of the state, or to another person, without prior sale

(Emphasis ours.)

Because the taxpayer ships its rental [programs] out of state without prior sale, it falls within the above exception. We therefore agree that the measure of the manufacturing tax is not "gross proceeds of sale" of the product manufactured, but is determined by the second provision of RCW 82.04.450 which states:

> ...(2) In the above cases the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers,... The department of revenue shall prescribe uniform and equitable rules for the purpose of ascertaining such values.

(Emphasis ours.)

Rule 112, the lawfully promulgated regulation interpreting this statute states in part:

> ALL OTHER CASES. The law provides that where products extracted or manufactured are...
> (2) Transported out of the state, or to another person without prior sale;
> ... the value shall correspond as nearly as possible to the gross proceeds from other sales at comparable locations in this state of similar products of like quality and character, in similar quantities, under comparable conditions of sale, to comparable purchasers, and shall include subsidies and bonuses.
>
> In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis.

RCW 82.04.450 and Rule 112 clearly provide that the ultimate goal for determining the "value of the product" is based on sales of similar products, and that cost is merely an alternative which may be used to arrive at that value. Keeping this goal in mind, we note that the manufactured article to which similar sales must be compared, is the outright sale of a pre-recorded [program]. Sales of pre-recorded [programs] must necessarily include some restricted rights to play those tapes. Certainly, had the taxpayer sold the pre-recorded [programs] to its subscriber (instead of renting), the costs incurred in procuring those restricted rights would be included in the gross proceeds of sale of the pre-recorded [programs]. We do not believe that the mere fact that the taxpayer chooses to rent [programs] on a monthly basis instead of selling them for a one time sales price should affect the determination of the value of the product manufactured. In both cases, once the artistic service of creating the [master] has been completed, subsequent costs incurred in producing and allowing the user to put the manufactured product to its intended use should be included in determining the value of the product manufactured. The right to [use the program] is clearly one of those costs. Therefore, we agree that the auditor properly included the cost of the copyright fees in determining the value of the pre-recorded rental [programs].

Nor do we find the taxpayer's argument that the licenses are the obligation of the subscriber persuasive. The license agreements submitted by the taxpayer clearly identify the taxpayer as the person responsible for payment of the licenses. Although the amount due for the licenses may be contingent or determined by the usage of the subscriber, the liability remains with the

taxpayer. Accordingly, the taxpayer's petition is denied on this issue.

Schedule VII: Broadcast Income Assessed under Service Tax

[3] RCW 82.04.280(6) imposes a B&O tax upon every person engaging within this state in the business of:

> ...(6) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the Federal Communications Commission, or in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 micro-volt signal strength and delivery by wire, if any;

Rule 241 is the lawfully promulgated regulation implementing the above statute and states in part:

> RADIO AND TELEVISION BROADCASTING. Taxable on gross income from the sale of radio or television advertising, and any other gross income from broadcasting, excluding sales to other broadcasters of the right to broadcast material on processed film, sound recorded magnetic tape, and other transcriptions (see service and other activities).

Rule 241 further states that:

> "Broadcast" or "broadcasting" includes both radio and television commercial broadcasting stations unless it clearly appears from the context to refer only to radio or television.

Although the taxpayer contends that it should be taxed in the same manner as commercial . . . broadcasting stations on the grounds that it is performing the same business activity, we disagree. The taxpayer's activity is clearly distinguishable from that of commercial . . . broadcasting stations. Commercial stations broadcast their signals over the public airwaves of a specified region and are intended for reception by an unrestricted number of receivers. In this regard, they perform a public service by disseminating . . . programming to all available [receivers] without charges or fees. Virtually all revenue is derived from the sale of advertising which is included in the freely disseminated programming. In addition, the FCC requires each commercial station to perform certain public

service functions such as providing airtime for public service announcements, equal time for opposing political views, and several other requirements and restrictions. The taxpayer has no such restrictions or requirements. On the contrary its primary source of revenue comes entirely from the fee received for delivering its programming to a specified client. The taxpayer's signal disseminates no news or [other public service] information of any kind. Nor does it perform any significant public service function. Its transactions are of a purely commercial nature. They consist solely of the delivery of pre-recorded [programs] to clients for a fee. We believe that the manner by which the signal is delivered to the clients, (ie. via FM airwaves) to be only one of many factors to be considered when determining if a taxpayer is engaged in . . . broadcasting. It is certainly not the controlling factor.

In addition, we note that the Thurston County Superior Court substantially rejected a similar argument made by cable television companies in the case Community Telecable of Bellevue, et. al. v. Department of Rev., (1981), Doc. No. 81-2-01717-4. Community Telecable involved a cable television company that had paid B&O tax under the "catch all" tax classification of Service and Other Activities tax classification. The taxpayer sought to be taxed under the lower Radio and Television Broadcasting tax classification for all of its income (advertising and subscriber fees) contending that 1) the Legislature intended to include cable companies under that tax classification, or 2) that even if not intended, that the court should include cable companies under the tax classification to avoid being declared unconstitutional, and 3) if the taxpayer's were not included, the Radio and Television tax classification was unconstitutional as a violation of "free speech and press and equal protection" grounds.

In rejecting the cable company's argument that the Legislature had intended to include them in the Radio and Television Broadcasting classification, the Court referred to the legislative history of RCW 82.04.280(6). It stated:

> The critical change in the statutory classification for "broadcasters" occurred in 1967. By Sec. 13, Chapter 149, laws of 1967 Ex. Sess., (RCW 82.04.280(6)) the legislature created a specific tax classification for persons engaged in radio and television broadcasting by granting them the same favorable tax classification accorded newspapers, etc.
>
> The reason for the change was explained by Senator McCormack during discussion of the bill on the floor of the Senate.

> "Senator, this is special legislation which attempts to correct inequities that already exist. In the past, broadcasting companies haven't been taxed at all and newspapers have. This is an attempt to bring both under the business and occupation tax blanket at the same rate."

(Emphasis theirs.) Community Telecable of Bellevue, at p.4.

Based on these facts, the Court then concluded that:

> The purpose of the 1967 amendment to RCW 82.04.280(6) establishing the radio and television broadcaster tax classification was apparently to reach and tax advertising revenue, which could be taxed under the cases decided by the United States Supreme Court and to grant to such broadcasters the same favorable tax status for B&O purposes, as was previously granted to newspapers, etc. While all other income of the telecaster is taxable, the primary, if not the exclusive source of revenue, for telecasters is from advertising. Thus it follows that the financial benefit to the radio and television broadcasters was in the favorable tax treatment of advertising revenues. Community Telecable of Bellevue, at p.19

The Court then went on to hold that advertising revenue derived from original programming generated by cablecasters should be taxed under the Radio and Television Broadcasters tax classification in order to avoid grave constitutional questions. It also held, however, that the state was free to tax cable subscriber fees under the higher Service and Other Activities tax classification.

We believe that this analysis is a reasonable interpretation of the statute and of the constitutional law. Subscriber income is primarily derived from delivering a service to a specified subscriber. Advertising income is derived primarily from including within the freely disseminated programming being distributed, a message from the advertiser. Accordingly, we agree with the auditor that the Radio and Television Broadcasters tax classification does not apply to the taxpayer's subscriber fees.

Nor do we believe that subscriber fees fall within the definition of a telephone business under RCW 82.04.065. RCW 82.04.065(4) defines telephone business to mean:

> ... the business of providing network telephone service, as defined in subsection (2) of this section. It includes cooperative or farmer line telephone companies or associations operating an exchange.

Subsection (2) defines network telephone service to mean:

> ...the providing by any person of access to a local telephone network, local 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 local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. ... "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio or television stations.

(Emphasis ours.)

The taxpayer's activity of providing [programming] to subscribers for a fee clearly does not constitute providing access to a local telephone network. Nor does it constitute the providing of telephonic, video, data, or similar communication or transmission for hire. The taxpayer merely delivers its own [program] by using a telephonic ... or similar communication system. It does not transmit other persons transmissions for hire.

Accordingly, we find that the auditor correctly taxed subscriber fees derived from the taxpayer's . . . service under the Service and Other Activities tax classification. The taxpayer's petition is denied on this issue.

[4] Having found that subscriber fees were correctly taxed under the Service and Other Activities tax classification, we must then decide whether the auditor has correctly apportioned the income.

Washington is able to tax gross receipts from those activities which occur wholly within its borders. Dept. of Rev. v. Ass'n of Washington Stevedoring Co., 435 U.S. 734 (1978). Likewise, Washington may not tax gross receipts from activities that occur outside its borders. Gwin, White & Prince, Inc. v. Henneford, 305 U.S. 434 (1938). Thus, in those cases where an entity engages in business both within and without the state, the state of Washington must apportion the gross receipts. Separate accounting of the receipts is the preferred method when possible. However, when separate accounting is not possible, some method of apportionment must be provided. RCW 82.04.460 states:

> (1) Any person rendering services taxable under RCW 82.04.290 and maintaining places of business both within and without this state which contribute to the rendition of such services shall, for the purpose of computing tax liability under RCW 82.04.290, apportion to this state that portion of his gross income which is derived from services rendered within this state. Where such apportionment cannot be accurately made by separate accounting methods, the taxpayer shall apportion to this state that proportion of his total income which the cost of doing business within the state bears to the total cost of doing business both within and without the state.

WAC 458-20-194 (Rule 194) is the administrative rule implementing this method of apportionment. Both the taxpayer and the auditor agree that the taxpayer is engaged in business both within and without the state of Washington, and that apportionment is appropriate. The only issue in dispute is the manner in which the apportionment is to be computed.

The Department faced a similar issue in Det. No. 89-448, 8 WTD 189 (1989) and set forth the basic rule for apportioning third party and other costs as follows:

> The intent of the cost apportionment formula is to apportion income of the taxpayer fairly and equitably to where it performs the services that generate the income that is taxed. Obviously, where third parties perform services does not necessarily relate to where the taxpayer performs the service that generates the income. If a third party performs services in a location where the taxpayer is performing no service, we should not apportion the taxpayer's income to that location. We must consider how those costs relate to the service activity of the taxpayer and where those services are performed by the taxpayer to determine whether or not they are costs within the state.

(Emphasis ours.)

In applying the above standards, we first note that the taxpayer readily concedes that the [out-of-state] facility did not contribute in any way to generating the SCA and DBS income sought to be apportioned. Based on this uncontested fact, we agree with the auditor that all costs attributable to the [out-of-state] facility were correctly excluded from the apportionment formula.

Nor do we agree with the taxpayer's assertion that all costs attributable to the in-state Master [Program] Department should be excluded from the apportionment formula because it also did not contribute to generating SCA and DBS income. From the facts it is clear that all pre-recorded [programs] that are eventually played and transmitted over the airwaves to subscribers are originally created and duplicated in the Master [Program] Department located in Washington. Without the creation of these [programs], no SCA and DBS income could be generated. Consequently, we believe that these costs were correctly included in the apportionment formula. The taxpayer's petition is denied on this issue.

Schedule XI: Deferred sales tax on Satellite space . . . .

[5] The taxpayer made the following arguments at the hearing. First, that the taxpayer did not lease or purchase anything from [Satellite], but only from [Communications]. The taxpayer states that [Communications] leased the transponders from [Satellite], who in turn re-leased the space to the taxpayer. The taxpayer has submitted its contract with [Communications] in support of this argument.

We have examined the contract submitted by the taxpayer. Although it does show that the taxpayer contracted with [Communications] to use transponder space on a . . . satellite, it does not preclude the possibility that the taxpayer may have had a separate agreement directly with [Satellite]. Indeed the [Communications] contract specifically states that "Customer will, at its own expense, deliver Customer's signal to the Uplink Facilities."[2] We further note that the dates are sufficiently overlapping to leave this issue in question. During the hearing we specifically asked the taxpayer to provide documentation of the payments made to [Satellite] in the form of cancelled checks, contracts, or invoices, none of which have yet been received. Absent the requested documentation we cannot rule in the taxpayer's favor.

Second, assuming that the taxpayer does contract with [Satellite] for telephone service, the taxpayer argues that the alleged telephone service is not delivered within the state of Washington. We disagree. Rule 245 in pertinent part provides:

> Persons . . . rendering "telephone service" are taxable under the retailing or wholesaling classification of the business and occupation tax, whichever is applicable, on total gross revenues, as described

[2][Communications] Contract. Section 2.04(b)

herein. Such persons who are taxable under retailing must also collect retail sales tax from consumers, subject to certain exemptions explained more fully herein.

DEFINITIONS

As used herein: The term "telephone service" includes . . . network telephone service.

. . .

The term "network telephone service" means ... the providing of telephonic, . . . data, or similar communication or transmission for hire, over a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes interstate service, including toll service, originating from or received on telecommunications equipment or apparatus if the charge for the service is billed to a person in this state.

. . .

The term "toll service" means the charge for services outside the local telephone network . . .

. . .

BUSINESS AND OCCUPATION TAX

RETAILING AND WHOLESALING. Persons making retail sales of telephone service to consumers are taxable upon the gross proceeds of sales under the retailing classification. Persons making sales of telephone services for resale in the regular course of business are taxable upon the gross proceeds of sales under the wholesaling classification. The tax shall apply to the gross income from all sales of competitive telephone service and network telephone service, as described more fully below.

For purposes of applying the business and occupation tax to telephone service, a sale takes place in Washington when a call originates from or is received on any telephone or other telecommunications equipment, instrument, or apparatus in Washington and the cost for the telephone service is charged to that equipment, instrument, or apparatus, regardless of where the actual billing invoice is sent.

(Emphasis ours.)
We believe that the transmission services rendered by [Satellite] and [Communications] clearly fall within the definition of a network telephone service. Both provide "telephonic, . . . data, or similar communication or transmission for hire, over a ...microwave, or similar communication or transmission system."

Nor do we believe that these transmissions are exempt as interstate transactions. RCW 82.04.065 specifically includes within the definition of "network telephone service":

> ...interstate service, including toll service, originating from or received on telecommunications equipment or apparatus if the charge for the service is billed to a person in this state.

In the taxpayer's case, the . . . signal both originates from taxpayer's own uplink facilities located in [Washington], and is subsequently billed to those facilities. Accordingly, we find that the amounts charged to the taxpayer by [Satellite] are fully subject to deferred retail sales tax. The taxpayer's petition is denied on this issue.

DECISION AND DISPOSITION:

The taxpayer's petition is granted in part and denied in part. The taxpayer's file shall be remanded to the Audit Division for the proper adjustments consistent with this determination.

DATED this 16th day of December 1992.