

Cite as Det. No. 93-325, 14 WTD 082 (1994).

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

|                               |   |  |
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| In the Matter of the Petition | ) | <u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u> |
| For Correction of Reporting   | ) |  |
| Instructions of               | ) | No. 93-325   |
|                               | ) |  |
| . . .                         | ) | Registration No. . . .   |
|                               | ) | FY. . ./Audit No. . . .  |
|                               | ) |  |

RULE 194; RCW 82.04.460: B&O TAX--APPORTIONMENT OF SERVICE INCOME. A taxpayer may use separate accounting to apportion its gross income to Washington if that accounting is accurate or clearly reflects services performed in Washington.

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.

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NATURE OF ACTION:

The taxpayer has appealed the future reporting instructions given by the Audit Division of the Department of Revenue relating to apportionment of service income.

FACTS:

Norton, A.L.J. -- The taxpayer is a financial and leasing corporation. Most of its activities involve the truck products of its parent corporation. It provides dealer and customer financing. It also leases personal property through operating and financial leases.

Until January 1992, the taxpayer had been reporting its income for Washington B&O taxes using a cost apportionment method. Starting in 1992, it began reporting on a separate accounting basis. At that time, it began using an "Area Profitability Report" for its own management purposes and as the basis of reporting income to the state of Washington.

The taxpayer reports the gross income for the Western Region as indicated on its "Area Profitability Report" as the income subject to B&O taxation.

The Audit Division has issued Future Reporting Instructions to the taxpayer to begin January 1, 1993. Under these instructions, the taxpayer would return to a cost apportionment method. The taxpayer is instructed to apportion interest costs in accordance with the Determination No. 89-459A, 11 WTD 17 (1991) which is different from the prior method. The taxpayer appeals those instructions and wants to continue using its separate accounting method.<sup>1</sup>

The taxpayer maintains that it takes several days of work each month to create the cost apportionment formula to comply with that requirement. The taxpayer states that its separate accounting method accurately reports the gross income derived from services rendered within the state.

#### ISSUE:

Whether separate accounting can be used by the taxpayer in reporting its gross income from services to the Department of Revenue.

#### DISCUSSION:

RCW 82.04.460 provides in part:

#### BUSINESS WITHIN AND WITHOUT STATE-- APPORTIONMENT.

(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. (Emphasis added.)

WAC 458-20-194 (Rule 194) further states in this regard:

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<sup>1</sup>Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

Persons engaged in a business taxable under the service and other business activities classification and who maintain places of business both inside and outside this state which contribute to the performance of a service, shall apportion to this state that portion of gross income derived from services rendered by them in this state. Where it is not practical to determine such apportionment by separate accounting methods, the taxpayer shall apportion to this state that proportion of total income which the cost of doing business within this state bears to the total cost of doing business both within and without this state. (Emphasis added.)

The statute provides that separate accounting can be used if it is accurate. Rule 194 does not impose any additional requirements but allows the apportionment method if it is not practical to use separate accounting methods.

Where the taxpayer wishes to use separate accounting, our inquiry is whether the accounting is accurate.

The taxpayer has provided information which allows us to compare the apportionment done on the old cost apportionment method, a three factor formula, a four factor formula, and by separate accounting. The three factor formula is the formula cited by the Multistate Tax Compact and used by many states in apportioning income. The four factor formula (which provides a second sales factor) is a formula that is gaining recognition by states and with the adoption by California is used by twenty one states.

Our review of the data reveals that the proposed separate accounting provides a result that is within the range of results provided by the various formulas. We conclude that separate accounting is accurate or clearly reflects the Washington services.

Because we have concluded that the separate accounting may be used, we do not need to explore how or whether interest expense should be apportioned if cost apportionment was used.

#### DECISION AND DISPOSITION:

The petition is granted. The taxpayer may use separate accounting to apportion its gross income.

DATED this 30th day of December, 1993.