

Cite as Det. No. 93-321, 14 WTD 072 (1994).

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

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of)	
)	No. 93-321
)	
)	Registration No. . . .
)	FY. . . /Audit No. . . .

[1] RULE 245; RCW 82.04.065: RETAIL SALES TAX -- TELEPHONE SERVICES -- NETWORK TELEPHONE SERVICES -- FACSIMILE CHARGES. The term "telephone services" is broadly defined to include the providing of access or transmission for hire through a telephone network by any person. That term is not limited to services provided by the owner of the telephone network. A business which provides facsimile services is engaged in providing telephone services for its customers, and retail sales tax is due on the facsimile charges.

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:

Company that subleases office space and provides services to its tenants protests the assessment of retail sales tax on income derived from facsimile transmissions.

FACTS:

Mahan, A.L.J. -- The taxpayer is in the business of leasing office space and subleasing it to other businesses. The taxpayer also makes available various business services for use by its tenants. For example, it provides secretarial, facsimile, and copying services. With respect to facsimile services, a tenant gives a secretary or receptionist a document, who then runs it through a facsimile machine and transmits it via the telephone lines to the intended recipient. The original document is then returned to the tenant. The taxpayer charges a per page fee for facsimile transmissions and does not charge tenants a separate telephone line or toll charge. The telephone

company charges the taxpayer for line and toll charges related to the facsimile transmissions.

The taxpayer was audited for the period from January 1, 1989 through June 30, 1992. On December 29, 1992, the taxpayer was assessed additional taxes and interest. Under Schedule III the taxpayer was assessed use or retail sales tax on its photocopying charges, telephone rental charges, and facsimile charges.

The taxpayer takes exception with the assessment of use or retail sales tax on facsimile charges. The taxpayer disputes the auditor's conclusion that facsimile charges are subject to retail sales tax as a "telephone service" under WAC 458-20-245 (Rule 245). The taxpayer specifically argues that Rule 245 is not applicable because: 1) the taxpayer is not a telephone company; 2) its customer's facsimile charges are not billed to any telephone equipment; 3) the telephone company already charges retail sales tax; and 4) it would be unreasonable and arbitrary to categorize facsimile services as a telephone service.¹

ISSUE:

Whether facsimile charges are subject to retail sales tax.

DISCUSSION:

[1] RCW 82.04.050(5) provides that the term retail sale includes the "providing of telephone service." Telephone service is defined at RCW 82.04.065(3) to include "competitive telephone service" and "network telephone service." Those terms are further defined as follows:

(1) "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

(2) "Network telephone service" means 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" includes interstate service, including toll service, originating

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

from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state. "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 added.)

RCW 82.04.065.

Rule 245 repeats these definitions and discusses the B&O tax and retail sales tax liability of companies which provide telephone services.

As defined, the telephone services subject to the retail sales tax are not limited to services provided by telephone companies. By its terms the law applies to "any person". Nowhere is there any limitation on its application to telephone companies as the taxpayer suggests.

In several previous determinations it was held that the term "telephone services" was not limited to the companies which own and operate the telephone network. For example, in Det. No. 89-111, 7 WTD 191 (1989), the taxpayer provided telephone service to customers who were unable to get such services because their prior phone services had been disconnected. The taxpayer contracted with the telephone company to be responsible for the phone charges. In turn the taxpayer billed its customers for the phone charges and charged a mark-up. We held:

Clearly, the taxpayer is reselling the local network telephone service it purchased from the local telephone companies. Thus, [the telephone companies] are the wholesalers, the taxpayer is the retailer, and the taxpayer's customers are the consumers. Accordingly, the taxpayer is subject to Retailing B&O tax on the "gross proceeds of sale." Rule 245.

Similarly, in Det. No. 88-378A, 8 WTD 427 (1989), a hotel provided telephones, telephone equipment, and access to local and long distance phone networks to guests at cost-plus rates. We held:

After reviewing the facts in this case, and the June 26, 1989 letter of the taxpayer's accountant, we find that the taxpayer's telephone activities vis-a-vis its guests constitute that of a retail "telephone business." The taxpayer provides a "network telephone service" by accessing for its guests "local telephone network(s)," "local telephone network switching service(s)," and "toll service(s)" including interstate communications billed locally.

Accordingly, the providing of "access" or "transmission for hire" through a telephone network by "any person" gives rise to a retail sale. In providing facsimile services, the taxpayer is providing the

transmission for hire of written communication via a telephone network. The fact that the apparatus converts written communication rather than voice communications for transmission is not important. The statute clearly covers the transmission of data and other communications over a telephone network.

The taxpayer relies on a portion of Rule 245 in arguing that there was no sale of telephone services because its customers had no specific charge made to telecommunications equipment in this state. In this regard, Rule 245 in part provides that "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." However, we cannot construe this sentence in isolation and must look at the rule in its entirety.

Rules duly adopted by the Department have the force and effect of statutory law until declared invalid by a court of record, from which the Department has not appealed. RCW 82.32.300. Accordingly we construe rules in the same manner as statutes. The language of a statute must be read in context with the entire statute and construed in a manner consistent with the general purpose of the statute. Graham v. State Bar Ass'n, 86 Wn.2d 624, 627, 548 P.2d 310 (1976).

Read in context it is clear that the language relied on by the taxpayer simply identifies when and where a sale takes place; it does not otherwise limit the scope of what constitutes telephone services. In this regard, Rule 145 goes on to provide that the "tax shall also apply to the gross proceeds of sales of network telephone service, other than interstate and intrastate toll service, measured by total gross billings to customers." (Emphasis added.)

Here, a sale took place upon the taxpayer's use of the telephone network, which use was billed to the taxpayer's equipment in Washington. The fact that the taxpayer in effect resold that access based on a per page price does not change the outcome. The tax is due on the "gross billings to [the taxpayer's] customers."

The payment of retail sales tax by the taxpayer to the telephone companies does not relieve the taxpayer of the duty to collect retail sales tax. As stated in Determination No. 88-378A

The taxpayer, however, is entitled to a retail sales tax credit for any retail sales taxes paid by it to the underlying wholesale telephone service and network access providers on charges . . . in the future, the taxpayer is advised to comply with WAC 458-20-102 and obtain the necessary resale certificates for use at the time it purchases those basic telephone services for resale.

As the auditor noted in the instructions to the taxpayer, upon receipt of invoices for the audit period showing payment of retail sales tax

on lines dedicated for facsimile use, a credit will be given for those charges.

Although it may at first appear unusual to classify a facsimile service as a telephone service, such a classification is reasonable and appropriate. The essential aspect of facsimile service is the nearly instantaneous transmission of a document which has been converted to a form which can be transmitted. Although a copy is made at the point of receipt, it is the method of delivery or transmission which is essential to the service. We note that an alternative classification--that is, to classify the service as a sale of a copy of the written document--would also result in retail sales tax being due.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 28th day of December, 1993.