Cite as Det. No. 94-225, 15 WTD 59 (1995).

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

In the Matter of the Petition for Refund of	)	D E T E R M I N A T I O N
	)	No. 94-225
. . .	)	Registration No. . . .
	)	Audit No. . . .

[1] RULE 251; RCW 82.16.020: SEWERAGE SERVICES -- ALLOCATION -- PUBLIC UTILITY TAX -- B&0 TAX. For purposes of allocating gross receipts from all sewerage related activities between the PUT and B&O tax classifications, "sewerage collection" terminates when the sewage reaches a common point, or points, for disposal or for transfer to treatment for disposal. A lift station qualifies as a common point for transfer to treatment for disposal only if the sole function of the station, and the pipe downstream from the station, is to transmit sewage to a treatment plant.

[2] RCW 82.16.050: PUT -- DEDUCTIONS -- SERVICES FURNISHED JOINTLY. In order for payments by one taxpayer to another to qualify for a deduction from gross income under the PUT as "services furnished jointly by both," the payor must demonstrate that it did more than merely purchase the services and pass the cost on to its customers.

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:

Municipal water district protests reallocation of gross receipts between sewerage collection and non-collection functions, and

seeks a deduction from gross receipts for amounts paid to an adjacent municipality for water filtration services.[1]

FACTS:

Prather, A.L.J. -- Taxpayer is a municipal water district. It purchases filtered water from an adjacent municipality and sells it to customers within its boundaries. The adjacent municipality charges Taxpayer separately for water and water filtration.

Taxpayer also provides sewerage collection services to its customers. It collects raw sewage through an array of side sewers, interceptors, lift stations, and force mains, and then transmits the sewage, via pipeline, to the same adjacent municipality for treatment.

During the time period at issue in this case, Taxpayer allocated its gross receipts from all sewerage related activities between its sewerage "collection" and "non-collection" functions. Taxpayer based its allocation on a statute and administrative rule, which provide that gross receipts from sewerage collection services are reportable under the Public Utility Tax (PUT) classification, while gross receipts from non-collection services, such as the transfer, treatment, or disposal of sewage, are reportable under the lower Service and Other Business Activities business and occupation (B&O) tax classification. RCW 82.16.060; WAC 458-20-251 (Rule 251).

Taxpayer's books and records were audited by the Department of Revenue (Department). In the audit, the Department recalculated Taxpayer's allocation of gross receipts between its collection and non-collection functions, two-thirds to PUT and one-third to B&O tax. The reallocation was based upon the Department's conclusion that only one of Taxpayer's three lift stations was used in a non-collection function, since only that station pumped raw sewage directly out of the district to the treatment plant.

Taxpayer contends the Department mischaracterized the function of the other two lift stations by failing to recognize that, due to the terrain of the district, neither one was needed to collect sewage from customers, but that both were needed, together with the third lift station, to pump the sewage out of the district to the treatment plant.

Taxpayer also contends the Department failed to recognize that some of its sewer pipes were used in non-collection functions. For example, smaller pipes, such as the side sewers which collect

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

from individual customers, and interceptors into which the side sewers flow, should be, according to Taxpayer, part of the collection function. Larger pipes, such as the force mains into which the interceptors flow, and which are designed to transmit the sewage to the treatment plant, should be considered part of the treatment function. Thus, with one exception, Taxpayer requests that we characterize all pipe eight inches or smaller in diameter as being associated with sewerage collection, while all pipe eight inches or larger in diameter should be associated with related services functions. The exception is an eight inch pipe which services a single large commercial customer, and which flows from that customer's facility directly to one of the lift stations.

If, as Taxpayer contends, the aforementioned lift stations and pipes are characterized as part of the treatment function, the costs associated with operating and maintaining them would be accounted for in the "cost-of-doing-business" formula set forth in Rule 251,[2] and would result in a larger allocation of Taxpayer's gross receipts to the lower service B&O tax classification.

Finally, Taxpayer contends it is entitled to a deduction from its gross receipts for amounts paid to the adjacent municipality for water filtration services. Taxpayer reasons that these services were "furnished jointly" by both jurisdictions, thus qualifying for an exemption under RCW 82.16.050.

ISSUES:

1. Whether the lift stations and/or larger pipes are associated with Taxpayer's sewerage collection functions.

2. Whether the water filtration services are furnished jointly by Taxpayer and the adjacent municipality.

DISCUSSION:

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[2]If charges for collection and non-collection services are not itemized on customer billings, Rule 251, subsection (6)(b), requires that a "cost-of-doing-business" formula be used to derive the gross receipts public utility tax measure. Under the formula, the costs incurred by a taxpayer in rendering all sewerage services is divided into the costs of providing sewerage collection services only. The resulting number, expressed as a percentage, is then multiplied by the gross receipts from all sewerage related services. The product is the gross receipts PUT measure for that particular sewerage collection business.

RCW 82.16.020 imposes the PUT and provides in part:

> (1) There is levied and there shall be collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. The tax shall be equal to the gross income of the business, multiplied by the rate set out after the business, as follows:
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> (a) . . . sewerage collection . . . : Three and six-tenths percent.

(Emphasis added.) Rule 251, the Department's administrative regulation which outlines the state tax obligations of businesses performing sewerage collection and non-collection services,[3] provides in part:

> (2) The Department has determined that, within the intent of the law, only the portion of gross receipts from customer billings attributable to the "collection" portion of the services rendered should be taxed under the public utility tax classification . . .

Thus, activities unrelated to sewerage collection are not taxed under the PUT; instead, they are taxed under the service B&O tax classification.

Rule 251, subsection (3)(a), defines the term "sewerage collection business" and provides in part:

> . . . the activity of receiving sewage deposited into and carried off by a system of sewers, drains, and pipes to a common point, or points, for disposal or for transfer to treatment for disposal, but does not include such transfer, treatment, or disposal of sewage.

According to the rule, the business of collecting sewerage ceases when the sewage reaches ". . . a common point, or points, for disposal or for transfer to treatment for disposal . . .," and includes neither the transfer, treatment or disposal.

In applying the rule to the facts of this case, it is clear that Taxpayer is not involved in the treatment of sewage. Indeed,

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[3]Rules appearing in Chapter 458-20 Washington Administrative Code are promulgated by the Department of Revenue to implement and enforce excise tax laws enacted by the legislature. Under RCW 82.32.300, which grants rule-making authority to the Department, these rules have the force and effect of law unless declared invalid by the judgment of a court of record not appealed from.

Taxpayer has no sewage treatment facility of any kind. It is equally clear that the sewage in Taxpayer's system fails to reach any common point, or points, "for disposal." The term "disposal" is not defined in Rule 251. However, absent a statutory definition of that term, we may turn to the dictionary to ascertain its common meaning. Marino Property v. Port of Seattle, 88 Wn.2d 822, 833, 567 P.2d 1125 (1977). Webster's New Riverside Dictionary, Second Edition, defines "disposal" as: ". . . An act of throwing out or away." Under this definition, we believe the "disposal" of raw sewage entails something more final than any activity undertaken by Taxpayer, and would not include merely facilitating the transfer of sewage to a treatment plant.

A different result obtains, however, when we consider whether, under Rule 251, the sewage in Taxpayer's system ever reaches a common point, or points, for "transfer to treatment for disposal." The term "transfer" is not defined in Rule 251. Webster's defines it as ". . . To carry, remove, or shift from one person, position, or place to another . . ." Under this definition, if the sewage in Taxpayer's system reaches a common point, or points, for "transfer to treatment," that is, a point after which the sole function of Taxpayer's system is to carry the sewage to the treatment plant, then the components involved (lift stations, force mains, etc.) would no longer be used in the collection function.

Examining the schematic of Taxpayer's sewer service area provided to us at the hearing, we note that the sewage is collected from customers through a system of gravity lines which terminate at the three lift stations. The lift stations then pump the sewage through pressurized force mains out of the district and into a large interceptor owned and operated by the adjacent municipality. Thus, from the time the sewage reaches the lift stations, to the time it crosses the boundary into the adjacent municipality, the sole function of Taxpayer's system is to transfer the sewage to treatment.

[1] We disagree with the conclusion that there is rational basis for distinguishing between the functions of Taxpayer's three lift stations. All three appear to function identically. Accordingly, we hold that none of Taxpayer's lift stations, nor any of the downstream force mains which convey the sewage from the lift stations out of Taxpayer's district, are part of its collection function. In addition, we hold that all of the pipes in Taxpayer's system which deliver the sewage to the lift stations are part of its collection function. This latter category includes the eight inch pipe referred to above which runs from the large commercial site to the lift station.

With respect to Taxpayer's contention regarding the water filtration charges, RCW 82.16.050 sets forth the applicable deductions from gross income for purposes of computing the PUT. It provides in part:

> In computing tax there may be deducted from the gross income the following items:
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> . . .
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> (3) Amounts actually paid by a taxpayer to another person taxable under this chapter as the latter's portion of the consideration due for services furnished jointly by both, if the total amount has been credited to and appear in the gross income reported for tax by the former;

[2] Taxpayer insists that the water filtration services provided to its customers were "furnished jointly" by "both" it and the adjacent municipality. We disagree. Tax exemptions must be narrowly construed. United Parcel Service v. Department of Rev., 102 Wn.2d 355, 360, 687 P.2d 186 (1984), citing Department of Rev. v. Schaake Packing Co., 100 Wn.2d 79, 83-84, 666 P.2d 367 (1983). As noted above, we may resort to the dictionary to ascertain the meaning of words not otherwise defined in statutes or administrative rules. Webster's defines the word "joint" as ". . . Shared by or common to two or more." The word "furnish" is defined as ". . . To supply: give."

Based upon these definitions, we conclude that Taxpayer does not jointly furnish water filtration services with the adjacent municipality. Taxpayer merely purchases filtered water from the adjacent municipality and passes the cost on to its customers. Therefore, Taxpayer does not qualify for the exemption.

DECISION AND DISPOSITION:

Taxpayer's petition is granted in part and denied in part. This matter is remanded to the Audit Division for a recalculation of Taxpayer's liability in accordance with this Determination.

DATED this 27th day of October, 1994.