

Cite as Det. No. 95-160, 15 WTD 92 (1995).

BEFORE THE INTERPRETATIONS 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 Balance Due)	
Notice of)	No. 95-160
)	
. . .)	Registration No. . . .
)	Document No. . . .
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RULE 901; RCW 82.04.055: B&O TAX -- SELECTED BUSINESS SERVICES -- GRAPHIC DESIGN SERVICES. Selected business services include public relation services and advertising services, which are defined to include, inter alia, layout, art direction, and graphic design services. Such services are not excluded from being a selected business service by the exclusion of "services provided as part of broadcast or print advertising."

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:

Graphic designer protests the classification of his business under the selected services business and occupation (B&O) tax classification.¹

FACTS:

Mahan, A.L.J. -- The taxpayer provides graphic design services for business and individual clients. He prepares camera ready art work for brochures, logos, posters, and other items as requested by his clients. Almost all of his work ends up in printed form.

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

Based on an examination of his 1993 annual excise tax return, the Department of Revenue (Department) issued a balance due notice. This resulted from the Department classifying the taxpayer's business as a selected business service for B&O tax purposes. The taxpayer appealed based on the contention that his business should continue to be classified under the service and other activities B&O tax classification.

ISSUE:

Should a graphic design business be classified as a selected business service?

DISCUSSION:

Effective July 1, 1993, certain businesses were reclassified for B&O tax purposes as selected business services. These services were previously subject to the service and other business activities tax classification. The tax rate for this new classification is 2.5 percent. RCW 82.04.290.

Included within the definition of selected business services are advertising services, which are defined to include graphic design services. In this regard, the term selected business services includes:

Public relations or advertising services, including but not limited to layout, art direction, graphic design, copy writing, mechanical preparation, opinion research, marketing research, marketing, or production supervision, but excluding services provided as part of broadcast or print advertising.

RCW 82.04.055(1)(k).

Accordingly, the taxpayer's graphic design services would be subject to the selected business service B&O tax classification unless we construe the provision that excludes "services provided as part of broadcast or print advertising" as applying to this taxpayer. In order for us to construe the provision to exclude the taxpayer's services, we would have to construe it such that all layout, art direction, graphic design, and copy writing that becomes part of print advertising would be excluded. Such a broad interpretation would have the effect of excluding most of the services provided by companies involved in preparing print advertising.

We cannot construe the exclusion this broadly. In construing the language at issue, we start with the observation that the

language is in the nature of a proviso or exception to the statute. A proviso or exception to a statute operates as a limit upon the general terms of the statute and, as such, should be strictly construed, with any doubt to be resolved in favor of the general provision, rather than the exception. State v. Wright, 84 Wn.2d 645, 652, 529 P.2d 4534 (1974). Further, legislative intent is to be ascertained from the statute as a whole, and all statutes relating to the same subject matter should be considered. Id.; Clark v. Pacificorp, 118 Wn.2d 167, 176, 822 P.2d 162 (1991).

Under RCW 82.04.280, a separate B&O tax rate generally applies to persons engaged in either printing and publishing or radio and television broadcasting. See also WAC 458-20-143 (printing) and WAC 458-20-241 (broadcasting). In the context of other existing laws and rules, the exclusion is an expression of legislative intent to not change the B&O tax rate applicable to publishers and broadcasters. To construe it in an expansive manner would result in a substantial weakening or abatement of the general provisions of the statute in favor of the exclusion. We cannot do this.

Having reached this conclusion, we note that emergency rule WAC 458-20-901-e (Rule 901-e) and Excise Tax Bulletin 901 (ETB 901) were issued to assist taxpayers in reporting their income under the correct tax classification. They both provide:

Public relations and advertising services. This includes, but is not limited to, layout, art direction, graphic design, copy writing, mechanical preparation, opinion research, marketing research, marketing, or production supervision. It does exclude services provided as part of broadcast or print advertising. Services performed as part of broadcast or print advertising continue to be taxable under the service and other business activities tax classification.

Because the B&O tax rate applicable to publishers and broadcasters is not the service and other business activities tax rate, the emergency rule appears to apply the exclusion to activities other than those activities subject to the B&O tax rate for publishers and broadcasters.

In considering this rule, we start with the proposition that rules of statutory construction apply to the interpretation of administrative rules and regulations. Multicare Medical Ctr. v. Department of Social and Health Services, 114 Wn.2d 572, 591, 790 P.2d 124 (1990). The spirit or the purpose of the legislation should prevail over express but inept language in a statute.

Alderwood Water Dist. v. Pope & Talbot, Inc., 62 Wn.2d 319, 321, 382 P.2d 639 (1963).

For the reasons stated above, we must construe the exclusionary language narrowly. While there may be certain broadcast or print related services not before us that would continue to be taxable under the service and other business activities classification, we cannot conclude that those services include independent graphic design services. Accordingly, the services provided by an independent graphic designer for use in print advertising are not excluded from the selected business service classification.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 16th day of August, 1995.