BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment/Refund of	)	F I N A L D E T E R M I N A T I O N
	)	No. 98-033E
. . .	)	Registration No. . . .
	)	FY. . ./Audit No. . . .

[1] RULES 179, 250: RCW 82.04.310, 82.04.4291; 82.16.010, 82.16.020; ETB 534.04\16.250\179: REFUSE COLLECTION BUSINESSES -- SOLID WASTE COLLECTION BUSINESSES -- PUBLIC SERVICE BUSINESSES -- BUSINESS AND OCCUPATION TAX - PUBLIC UTILITY TAX -- MUNICIPALLY OWNED REFUSE OR SOLID WASTE COLLECTION BUSINESSES. A municipally owned refuse or solid waste collection business is subject to tax under the service and other classification of the business and occupation (B&O) tax.

[2] RCW 82.04.4291: REFUSE OR SOLID WASTE COLLECTION BUSINESS -- POLITICAL SUBDIVISIONS -- COMPENSATION FOR SERVICES. Amounts received by a municipal corporation from a county health department are deductible under RCW 82.04.4291.

[3] RULE 250: SOLID WASTE COLLECTION TAX -- SCOPE OF TAX -- EXCLUSION OF RECYCLABLE MATERIALS AND HAZARDOUS WASTES. The solid waste collection tax is not imposed on recyclable materials or on hazardous wastes.

[4] RULE 250: SOLID WASTE COLLECTION TAX -- IDENTITY OF TAXPAYER -- REFUNDS. A municipal corporation is not entitled to a refund of overpaid solid waste collection tax because it was not the taxpayer, unless the municipal corporation becomes subrogated to the refund claims of all of the actual taxpayers or unless the municipal corporation demonstrates the remitted tax came from its own funds.

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:

A city appeals a tax assessment for service classification business and occupation (B&O) tax on reimbursements from other municipal corporations for hazardous waste services, and requests an adjustment to the assessment for nontaxable components of the rate base. The taxpayer also seeks a refund for the period January 1, 1991 through December 31, 1994, for claimed overpayments of the solid waste collection tax that did not exclude the nontaxable components of the rate base.[1]

FACTS:

Price, A.D. and Gray, A.L.J. -- The taxpayer (City) in this appeal is a first class city[2] that operates a solid waste utility (Utility). The Department of Revenue (Department) audited the City for the period January 1, 1991 through December 31, 1994. The Department issued tax assessment FY. . . on August 16, 1995, assessing B&O tax . . .; use tax . . .; solid waste collection tax . . .; and, interest . . .. The total amount of the assessment was . . .. The City appealed to the Appeals Division (Division) on all issues except the use tax assessment. The City requested and was granted an executive level hearing pursuant to WAC 458-20-100(6).

The B&O Tax Issue:

Background on the Taxes:

Before the 1985 legislation, municipal refuse collection businesses were taxed under the public utility tax. In Laws of 1985, chapter 471, the legislature made "refuse collection businesses" subject to the public utility tax. RCW 82.16.010(1)(f) provides the rate of tax:

> Water distribution and refuse collection businesses: Four and seven-tenths percent.

In Laws of 1986, chapter 282, the legislature deleted the phrase "and refuse collection" from RCW 82.16.010(1)(f), leaving only water distribution businesses subject to the rate articulated in the above-referenced provision. The Department contends the legislature's action in 1986 returned refuse collection businesses to the service classification of the B&O tax. See, WAC 458-20-250. The City argues its Utility is still subject to the public utility tax because it is a "public service business" as defined in RCW 82.16.010(10).

The City's Arguments:

In Schedule II of the audit, the Department's Audit Division (Audit) assessed B&O tax on reimbursements received from a county health department (Health Department) for hazardous waste collection services provided by the City. These reimbursements are part of a program developed by the City and other political subdivisions for the collection of hazardous household waste. By agreement, the Health Department administers the program and contracts for the services required to

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

2 RCW 35.01.010: "A first class city is a city with a population of ten thousand or more at the time of its organization or reorganization that has a charter adopted under Article XI, section 10, of the state Constitution."

fulfill the program's goals. Pursuant to its agreement with the Health Department, the City must collect and dispose of a potion of the waste, and educate the public. The program is funded through fees collected by each of the agencies from their "customers."[3] Each of the participating agencies remits the fees to the Health Department. The Health Department then reimburses the City for all costs incurred in providing services through its Utility.

The City is not regulated by the Washington Utilities & Transportation Commission ("WUTC") with respect to the rates charged or the services rendered.

The City makes two arguments challenging the B&O tax assessment: First, it argues the Utility is not subject to any B&O tax because it meets the definition of a "public service business" provided in RCW 82.16.010. Alternatively, the City contends that even if the Utility is subject to the B&O tax, the reimbursements from the Health Department are exempt from the B&O tax pursuant to RCW 82.04.4291.

Regarding its first argument, the City asserts that gross receipts from the Utility are subject to the public utility tax rather than the B&O tax because the Utility is a "public service business." The City asserts the Utility satisfies 2 of the 4 criteria, posed in the alternative in the statute, for a public service business: (1) it has the power of eminent domain (RCW 35.92.020); and, (2) it is subject to state control. The City argues the Department's imposition of the B&O tax is wrong notwithstanding the 1986 Amendment because even though the phrase "and refuse collection" was removed from RCW 82.16.020(1)(f), municipal refuse collection remained subject to public utility tax under RCW 82.16.010(10). Instead, the City argues, the 1986 Amendment reclassified *private* refuse collection businesses under the service and other businesses category, thereby making them subject to the service B&O tax.[4]

At one of the two hearings before this Division, the City argued the legislative intent of the 1986 Amendment was not the reimposition of B&O tax on municipal refuse collection businesses, but to ease the tax burden on municipal refuse businesses and to increase the amount of money available for solid waste disposal. Municipal refuse businesses were exempt from the B&O tax prior to the 1986 amendment; in support of this contention, the City cites RCW 82.04.310, 82.04.419, and WAC 458-20-250 (Rule 250). In sum, the City contends the legislature placed all refuse collection businesses under the public utility tax in 1985; the 1986 Amendment simply returned municipal refuse collection businesses to the tax classification it enjoyed prior to 1985 (public utility) and reclassified private refuse collection businesses as subject to service B&O.

The City distinguishes the cases of Continental Grain Co. v. State, 66 Wn.2d 194, 401 P.2d 870 (1965) and Shurgard v. Department of Rev., 40 Wn.App. 721, 700 P.2d 1176 (1985). The City argues both cases examine the criteria of "public service business," as defined in RCW 82.16.010. In Continental Grain, the court concluded the business was a public service business under "state

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[3] In the example provided by Audit, the City adds a sixty-cent fee to each monthly billing sent to its customers, as well as a per car charge (a fee charged for each motor vehicle that delivers hazardous waste to a transfer station) at transfer stations.

[4] A private business has none of the attributes of a "public service business" found in RCW 82.16.010(10).

control" was found; in Shurgard , the court determined there was no public service business because there was an absence of "state control."

Alternatively, the City argues the Health Department, and the cities from which the reimbursements ultimately come, are other political subdivisions within the scope of RCW 82.04.4291. Further, the City argues RCW 82.04.4291 specifically exempts hazardous household waste reimbursements.

The Solid Waste Tax Issues:

Background on the Taxes:

During the audit period, two taxes on solid waste collection were in existence. One tax, found in RCW 82.18.020, will be referred to in this determination as the "refuse collection tax" (the rate of this tax is three and six-tenths percent). The other tax, found in RCW 82.18.100, will be referred to in this determination as the "solid waste collection tax" (the rate of this tax was one percent). The solid waste collection tax expired on July 1, 1995. RCW 82.18.100(3). It is the expired solid waste collection (1%) tax that at issue in this appeal.

The solid waste collection tax was imposed on each person using the services of a solid waste collection business, and on the consideration charged for the services. However, the tax was applied only to a service charge for provision of actual solid waste collection services. RCW 82.18.100 provided:

> (1) There is imposed on each person using the services of a solid waste collection business a solid waste collection tax of one percent of the consideration charged for the services. This tax shall be applied only to a service charge for actual solid waste collection services are provided. For residential collection service only, the tax shall apply to the lesser of the consideration charged for the services or:
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> (a) For customers with less than two-can service, the first eight dollars of the monthly charge for the services.
>
> (b) For customers with two-can service or more, the first twelve dollars of the monthly charge for the services.
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> . . .
>
> (3) This section expires July 1, 1995.

RCW 82.18.040 declared taxes collected under this chapter are trust fund taxes. Thus, the City is in the equivalent role of the retailer who collects the retail sales tax from the consumer and remits the collected sales tax to the Department. See RCW 82.08.050. Refunds are issued to the taxpayer, not to the intermediary. This trust fund relationship is further noted in Rule 250(16):

> The refuse-solid waste collection tax is imposed in much the same manner as retail sales tax; that is, it is payable by the refuse-solid waste consumer to the refuse-solid waste service provider who does the customer billing.

The City's Arguments:

The City operates a solid waste utility pursuant to ch. 70.95 RCW. That chapter requires that cities, in cooperation with counties, create a solid waste management plan. The plan must include a comprehensive waste reduction and recycling element, including "source separation" (e.g., curbside recycling in urban areas) and yard waste collection. In short, the City has a recycling program.

Pursuant to chapter 70.95 RCW, the City must also implement a hazardous waste management plan, including the management of "moderate-risk waste," which is defined, in part, as "household hazardous waste (cleaning products, batteries, etc.). The county has adopted a solid waste interlocal agreement to which the City is a party. The agreement provides for household hazardous waste collection and disposal financed through a special fund managed by the county. The City contributes to the fund by charging its solid waste customers.

For various reasons, the City does not separately state each component of its services on customer invoices. However, the City asserts it builds the fees for recycling and hazardous waste disposal services into its rate base. The City claims it embeds all costs in the rate, including those costs relating to collecting recyclable and hazardous materials. The City does not charge separately for those services. To calculate the amount received from its recycling and hazardous waste collection services, the City has allocated revenue to recyclable and hazardous materials collection based on the associated direct costs captured by the City's cost accounting system. The amounts for recycling and hazardous waste collection reflected in the original petition and refund claim were taken from annual cost reports and represent actual cash outlays, not estimates.

The City does not contest Audit's conclusion that solid waste collection tax applies to transfer station revenue from solid waste collection; further, the City does not contest the residential service limit did not apply to dumpster revenue. The City does assert, however, Audit assessed tax on amounts that were, and are, not subject to the refuse collection or the solid waste collection taxes. The City acknowledges the revenue in question arose from charges "embedded" in the rate base for the collection of hazardous waste and recyclable materials. The City argues services for the collection of any items other than "solid waste" are not subject to either of these two taxes. The City relies upon RCW 82.18.010(3) for the definition of "solid waste":

> "Solid waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste nor does it include material collected primarily for recycling or salvage.

The City also cites and relies upon Det. No. 92-035, 12 WTD 035 (1992) and Det. No. 89-435, 8 WTD 167 (1989). In Det. No. 92-035, we concluded that sludge was "collected primarily for recycling or salvage" and therefore was not "waste" as defined in RCW 82.18.010(3), and not subject to the refuse collection tax. In Det. No. 89-435, we concluded :

> Yard waste . . . collected primarily for recycling . . . is not subject to either the refuse collection tax (3.6%), or the solid waste collection tax (1%), when the yard waste is separately collected, separately billed, and separately delivered, to a facility not a landfill or other disposal site, for the purpose of making compost which is later resold.

We further stated:

> The charge of a city internally identified in its rate base as a charge for curbside pickup of materials collected primarily for recycling is not subject to either the refuse collection tax (3.6%) or the solid waste tax (1%); Provided, the service is actually performed. The service is performed when recyclables are actually picked-up on a regular scheduled basis. To the extent a charge for curbside service is levied but no actual collection and removal services are performed, the charge is a "base" charge subject to the 3.6% refuse collection tax, but not the 1% solid waste tax.

The City asserts the absence of a "separately identified charge" for the hazardous and recyclable materials does not convert those charges into taxable services. The City argues there is no statutory requirement for a separate statement of those charges, unlike RCW 82.08.050, which requires a separate statement of sales tax from the selling price. The City argues further its position is directly supported by Det. No. 89-435 to the extent that determination involved recyclable materials, and there is no reason why the logic of that determination should not also extend to hazardous materials.

However, while the City picks up items set out for curbside recycling from residential customers on a weekly basis, and yard waste on a regular schedule that varies according to the time of year, it does not pick up hazardous wastes. The City accepts hazardous waste free of charge at transfer stations during specified hours. The City argues delivery by its customers to the transfer station does not indicate hazardous waste collection services have not been performed:

> The City collects waste for disposal at a landfill regardless of whether waste arrives at the transfer station in a City vehicle or a private vehicle. We see no reason to distinguish between hazardous waste and other waste delivered to a transfer station in determining what falls under collection services.

The Refund Issue:

The City's refund request for solid waste collection tax for the period January 1, 1991 through December 31, 1994, is based upon the same arguments it advances to challenge the tax assessment. In addition to the arguments previously set forth challenging the tax assessment for refuse collection tax and solid waste collection tax, the City addresses the question of whom, if anyone, is entitled to a tax refund. This issue arises because the tax is paid by the City's customers to the City, and the City in turn remits the tax to the Department, much like the retail sales tax.

The City argues because it does not separately state the amount of the tax charged on its invoices, the City itself calculates its monthly tax remittance by dividing actual collections between tax and revenue. The City further argues the Department has not taken issue with this method in the instant audit or in earlier audits.

The City argues the City Council sets a rate base includes both taxable and nontaxable services, as well as applicable taxes. The rate charged to individual customers has changed over the years. The

City argues the total receipts must be divided among three components (taxable services, nontaxable services, and tax) for reporting purposes. The City offers two alternative methods of making division.

	Alternative 1	Alternative 2
Taxable Services	$95,602	$86,042
Nontaxable Services	-0-	$10,000
Tax	$4,398	$3,958
Total Receipts	$100,000	$100,000

The City prefers alternative 2 because it removes the nontaxable services from the total receipts before the tax is calculated. The City says this is the only reasonable method to determine the tax collected from customers. The City also claims its use of alternative 1 was a mistake:

> If the City had originally remitted tax under alternative 2, then without question the . . . would have been characterized as fees for services rendered, not as tax. The City would have retained those funds with no dispute over whether it must remit them to the State or refund them to customers. We see no reason the City's calculation error should recharacterize those funds from fees for services to tax. The City has simply overpaid tax from its own funds and should be entitled to retain the full amount of the refund.

Audit replied to the City's arguments on this point, saying:

> [We] are not able to confirm [that the city uses a rate base which includes receipts from all services, including receipts from the collection of recyclable materials and hazardous waste]. At the time the audit was performed, [the auditor] did not have access to individual customer billings to confirm how the customer was billed. [We] did not assess for any recycling materials in audit [sic]. I do not know what percent of general customers receive recycling services, nor have I any information of what constitutes the `rate base.'

To recap, the City does not contest the assessment except as to amounts the City claims should not be a part of the taxable gross amount. The City also seeks a refund as the taxpayer, arguing the refund, if any, should not go to the residential customers.

ISSUES:

1. Whether the City's gross receipts from the county health department for services for the collection of hazardous household waste are exempt from the B&O tax because:

   a) the Utility is subject to the public utility tax as a "public service business;" OR

   b) the 1986 Amendment to RCW 82.16.010(1), which eliminates the phrase "refuse collection" business from the public utility tax, does not apply to municipally operated refuse collection business?

2. Whether the assessment should exclude from the taxable gross receipts amounts representing compensation for recycling and hazardous waste services?

3. Whether the City is entitled to a partial refund of the solid waste collection tax for the period January 1, 1991 through December 31, 1994, if the tax received by the state included tax on hazardous waste and recycling charges?

DISCUSSION:

The B&O Tax Issue:

[1] At the heart of the City's challenge to the service B&O classification is the contention that the 1986 Amendment did not subject the Utility to the B&O tax. Instead, the City argues, the 1986 Amendment only affected the tax classification of private refuse collection businesses.

"Public service business" is defined in RCW 82.16.010(10). That statute provided[5]:

> (10) "Public service business" means any of the businesses defined in subdivisions (1), (2), (3), (4), (5), (6), (7), (8), and (9) or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business as defined in RCW 82.04.065 and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, log patrol, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

WAC 458-20-179(5) defined "subject to control by the state:"[6]

> The term "subject to control by the state" means control by the utilities and transportation commission or any other state department required by law to exercise control of business of a public service nature as to rates charged or services rendered. However, businesses may be taxed under the public utility tax as public service businesses whether or not they are or have been regulated by the state.

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[5] The legislature amended RCW 82.16.010(10) during the audit period, adding "and low-level radioactive waste site operating companies as redefined in RCW 81.04.010." The amendment did not affect the language relied upon by the City.

[6] The Department amended Rule 179 in 1994 and the amendments affected the definition of "subject to control by the state." Rule 179(2)(c) now defines "subject to control by the state:"

> The term "subject to control by the state" means control by the utilities and transportation commission or any other state department required by law to exercise control of a business of a public service nature as to rates charged or services rendered.

The City argues the solid waste utility is a public service business because the City has the power of eminent domain, expressly conferred in RCW 35.92.020, and because the City is subject to state control because the state regulates solid waste management, embodied in ch. 70.95 RCW. The City argues the public utility tax applies because of the rule of statutory construction that "[w]here there is a conflict in taxing statutes, the specific controls the general," citing Sutherland, Statutory Construction, § 66.03, p. 17 (5th ed.). The City argues that, in effect, the 1986 legislation created an ambiguity because of the interplay between the bill made refuse collection businesses subject to the B&O tax, on the one hand, and the definition of "public service business" in RCW 82.16.010(10), on the other hand.

Privately owned refuse collection businesses were taxed at the service B&O rate prior to the 1985 legislation. In 1985, the legislature made refuse collection businesses subject to the public utility tax, greatly increasing their tax rate. In 1986, the House of Representatives sought to modify certain aspects of the law regarding public works contracts in HB 1447. The Senate attached amendments that returned refuse collection businesses to the B&O tax and created the refuse collection tax. The House Bill Report on ESHB 1447[7] (as passed by the House on February 18, 1986 and as amended by the Senate) said:

> The following taxes replace the utility tax on refuse collection businesses:
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> (1) a 1.5% business and occupation (B&O) tax is placed on refuse collection businesses; and
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> (2) a new excise tax is placed upon the consumers of refuse collection services, equal to 3.6% of the refuse collection charges, with the tax receipts earmarked for the public works assistance account. This latter tax on consumers operates similarly to sales and use taxes.

The Senate Bill Report on ESHB 1447 said:

> Background:
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> . . .
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> In 1985, refuse collectors paid a 1.5 percent business and occupation tax; with the passage of SSB 4228[8], their tax rate increased 3.5 percentage points to 5.028 percent. Most refuse collectors were permitted by the Utilities and Transportation Commission to adjust their rates to pass on this increased tax burden. Most municipalities who had contracts with private firms also adjusted their fees to account for the increased tax.
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> Summary: Refuse collection businesses are removed from the public utility tax. In its place, these businesses are subject to the 1.5 percent business and occupation tax, and consumers of

[7] Engrossed Substitute House Bill; an "engrossed bill" means "a bill which reflects all amendments made in the house of its origin." Seeberger, Sine Die (1989), 173. A "substitute bill" means "an amendment that replaces an entire bill or resolution." Ibid, 185. "House Bill" reflects the house of origin of the original bill.

[8] 55B 4228 15 The 1985 legislation that moved refuse collection businesses from the B&O tax to the public utility tax.

> refuse collection services are subject to a 3.6 percent tax. This latter tax on consumers operates similarly to the sales and use tax with the same enforcement provisions.
>
> Pyramiding and multiple taxation of a single transaction are prohibited.

The Senate Bill Report noted no one testified against ESHB 1447.

Even though ESHB 1447 did not expressly state refuse collection businesses were again subject to the B&O tax, was the bill's result. It placed refuse collection businesses in the "service and other" B&O classification found in RCW 82.04.290. RCW 82.04.290(4) taxes "every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and 82.04.280, and subsections (1), (2), and (3) of this section." It is intended to be the tax classification for all business activity that is not expressly classified elsewhere. Det. No. 88-379, 6 WTD 443 (1988). There is nothing in the statute or in the legislative history to suggest the legislature intended to distinguish between municipally owned solid waste utilities and privately owned solid waste utilities.

Even though the legislature did not intend to distinguish between privately and publicly owned solid waste utilities, we conclude that the City's solid waste utility is a "public service business" as that term is defined in RCW 82.16.010(10) and as interpreted by Shurgard v. Department of Rev., 40 Wn. App. 721, 700 P.2d 1176 (1985). In Shurgard, the appellate court held :

> The last sentence of former RCW 82.16.010(11) is merely descriptive of the types of business or activities defined in the first sentence as businesses either subjected to state control, having the powers of eminent domain, or declared to be of a public service nature. Each of the businesses enumerated in the last sentence was regulated by the State. Specifically, the operation of a storage warehouse, which was described as a building where goods are received for storage for compensation (but excluding certain agricultural goods), required licensing by the State and the filing of rates and, furthermore, was declared to be a "public service company." Former RCW 81.92, repealed by Laws of 1981, ch. 13, SS 6. The warehousing of certain agricultural commodities was also controlled by RCW 22.09 during the audit period. These kinds of activities are clearly public service businesses encompassed by the statute.
>
> In the instant case the facilities rented out by the operator are free from any similar type of licensing or regulation by the State.

Shurgard, 727-28 (footnote omitted). In the City's situation, it has the power of eminent domain (RCW 35.92.020) and operates a solid waste utility that is regulated by the state (ch. 70.95 RCW); however, the City does not file tariffs with the Utilities & Transportation Commission (UTC) and is not otherwise regulated by the UTC.

Thus, there appears to be a conflict between the 1986 Amendment and RCW 82.16.010(10). The 1986 amendments moved all refuse collection businesses from the public utility tax to the B&O tax, but RCW 82.16.010(10), which was not amended by the 1986 legislation, defines the taxpayer's

solid waste utility as a "public service business."[9] Courts must reconcile conflicting statutes by giving effect to both statutes. State ex rel. Royal v. Board of Yakima County Commn'rs., 123 Wn.2d 451, 869 P.2d 56 (1994). One statute should not be read so as to render another pertinent statute superfluous. Ellensburg v. State, 118 Wn.2d 709, 826 P.2d 1081 1992). If two statutes conflict, the later statute prevails unless the earlier statute is more clear, explicit, and specific than the latter. State v. Landrum, 66 Wn.App. 791, 832 P.2d 1359 (1992).

Applying these rules of construction, we conclude that a statute pertaining only to refuse collection businesses is clearer, more explicit, and more specific than a statute defining "public service business" generally. We thus conclude that the City's solid waste utility should be held subject to the B&O tax. The 1986 amendment is more specific than the earlier, more general, definition of public services business. This interpretation does not do violence to RCW 82.16.010(10) because the interpretation applies narrowly to municipally owned solid waste utilities only.

Consequently, we also reject the City's argument that the specific exemption for public utilities from the B&O tax, in RCW 82.04.310, applies to it:

> This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of chapter 82.16 RCW including amounts derived from the sale of commodities for which a deduction is allowed under RCW 82.16.050.

[2] The final issue regarding the B&O tax assessment is the City's alternative argument: if the B&O tax is found to apply, then are the reimbursements from the county health department exempt under RCW 04.4291? RCW 82.04.4291 provides:

> In computing tax there may be deducted from the measure of tax amounts derived by a political subdivision of the state of Washington from another political subdivision of the state of Washington as compensation for services which are within the purview of RCW 82.04.290.

We found no court cases interpreting RCW 82.04.4291. The only Washington Tax Decision is Det. No. 88-172, 5 WTD 293 (1988), in which we held that amounts received by a political subdivision (in that case, a city) from a state university were not deductible because a university is not a "political subdivision" of the state.

AGLO 1975 No. 97 raised a question whether reimbursements to a city from a county (or vice versa) could be deducted under RCW 82.04.4291:

> The deduction provided by RCW 82.04.430(10)[10] is clearly applicable with respect to those activities of the county which are performed for another county and which fall within the

[9] However, the Utilities & Transportation Commission (UTC) does not regulate municipalities; specifically, the UTC does not regulate the taxpayer or its solid waste utility.

[10] This was the earlier codification of the present RCW 82.04.4291.

> service category of the business and occupation tax, for there can be no question but that a county is a "political subdivision" of the state.[n.1] With respect to data processing services furnished by a county to a city, however, the answer is less obvious.
>
> A city is certainly a municipal corporation. "The word city imports a municipal corporation." McQuillin Municipal Corporations (3rd ed.) § 2.32. A county, on the other hand, though it is a political subdivision of the state, is generally not considered to be a municipal corporation.
>
> ". . . it is generally held that, although counties have the general characteristics of municipal corporations, they are not considered such unless made so by constitution or statute and, therefore, fall into the class of bodies politic, called quasi-public or quasi- municipal corporations organized to aid in the proper administration of state affairs with such powers and functions as the law prescribes. . . ." Ibid, § 2.46.
>
> Thus, using the terms in their narrowest sense, "political subdivision" would include only a county, not a city, and the term "municipal corporation" would include a city but not a county.
>
> However, we do not believe that such a narrow reading of the term "political subdivision" as used in RCW 82.04.430(10) [Orig. Op. Page 3] is proper. Such a narrow reading has not been adopted by either the state supreme court or this office. Further, it would attribute to the legislature an intent which could scarcely be called reasonable.

The AGLO ultimately concluded that RCW 82.04.430(10) applied to amounts received by a county from a city for data processing services rendered both to a county and to a city.

We agree with the City's alternative argument that the amounts received from the Health Department are deductible under RCW 82.04.4291.

The City's petition is granted on its alternative argument that amounts received from the Health Department are deductible under RCW 82.04.4291. The City's petition is denied on all other arguments it advanced regarding this issue.

The Solid Waste Tax Issues:

We agree with the City that charges for services other than "solid waste collection services," as the term is defined in RCW 82.18.010(3), are not subject to the solid waste collection tax levied in RCW 82.18.100. This conclusion extends to charges for recycling, yard waste, and hazardous wastes. The City must be able to prove to the satisfaction of the Audit Division that embedded in the fee for its services are amounts allocable to charges for services other than "solid waste" in order to justify backing out those other charges and thus not taxing them under the solid waste collection tax. If the City can provide proof, then the charges for recycling and yard waste will be backed out of the amounts subjected to the solid waste collection tax.

With regard to the "moderate-risk waste," for which no curbside pickup is provided, we also agree with the City that the essential service provided is the disposal of such wastes and is not necessarily restricted to the actual curbside collection of those wastes. Det. No. 89-435, 8 WTD 167 (1989) restricted the exclusion of charges for curbside pickup of materials collected primarily for recycling by requiring the actual performance of the service and defined the service as performed:

> when recyclables are actually picked-up on a regular scheduled basis. To the extent a charge for curbside service is levied but no actual collection and removal services are performed, the charge is a 'base' charge subject to the 3.6% refuse collection tax, but not the 1% solid waste tax.

Either way, the charges for hazardous waste pickup or disposal are not subject to the 1% solid waste tax, so long as the City can prove, as noted in the paragraph above, the amounts allocable to hazardous waste collection or disposal are a component of the total charge to the customer.

The Refund Issue:

The City is correct when it argues that, with regard to the solid waste collection tax, there is no statutory counterpart to RCW 82.08.050, which requires the amount of sales tax be separately stated from the selling price in any sales invoice or other instrument of sale. The sales tax is also a trust fund tax. RCW 82.08.050. The City argues it is entitled to a refund, and to the benefits of cancellation of a portion of the tax assessment against it, because the City is the actual taxpayer. The City argues it is the actual taxpayer because the City does not separately state the amount of the tax charged on its invoices, but instead calculates its monthly tax remittance by dividing actual collections between tax and revenue. We do not agree, however, that this accounting method makes the City the actual taxpayer.

All that has happened is, for the first time in the process, the City has allocated the tax it remitted. The taxpayers still are the City's customers; they are statutorily the taxpayers (RCW 82.18.040) and it is they who pay the total amount appears on the bill from the City. The fact the City allocates an amount due and remits the money to the state from the money collected from it customers does change the taxpayer of the solid waste collection tax.

As discussed above, the charges for hazardous waste pickup and disposal and for recycling are not subject to the 1% solid waste tax. However, the City is not the taxpayer and cannot receive the refund. However, if the taxpayer can demonstrate to the Audit Division on remand of this decision (1) the refund provides a direct benefit to customers who paid the tax, e.g. a reduction in customer billing for affected customers, not all customers and (2) that the method by which a refund to the customers would be accomplished could be done without a reduction in the tax base for the refund period, then the Audit Division will grant a refund to the City in its capacity as trustee for its customers.

DECISION AND DISPOSITION:

The petition is granted on the B&O issue so that amounts received from the county health department are deductible and provisionally granted on the solid waste collection tax issue, subject to production of proof by the City to the Audit Division. The refund petition is granted subject to oversight by the Audit Division. This matter will be remanded to the Audit Division for the purposes of (1) recalculating the amount of tax due consistent with this determination and, (2) approving or disapproving the method by which the refund to the City's customers is to be accomplished. The method shall ensure that the City's customers who paid the tax receive the benefit of the refund that will be granted to the City on their behalf, in accordance with this determination, for tax charged on recycling and hazardous waste pickup and disposal. The refund must also not reduce the tax base or allocation so as to decrease the amount of the tax due in the period of the refund as a result of the refund . The taxpayer must contact the Audit Division within 30 days from the date of this determination to establish a mutually convenient date or dates for the Audit Division to review the taxpayer's documents pertaining to the solid waste collection tax. The Audit Division will issue a new tax assessment to the City, if appropriate.

DATED this 4th day of March, 1998.