



comprised of \$. . . in small business credit, \$. . . in retail sales tax, \$. . . in retailing business and occupation (B&O) tax, \$. . . in wholesaling B&O tax, \$. . . in interest, and a 5% assessment penalty of \$. . .

Taxpayer raised three issues on appeal. The first two were resolved by Audit with a post assessment adjustment (PAA).<sup>2</sup> The third issue, however, was not resolved. Taxpayer asserted that the assessment was incorrect because sales of currency were included in the measure of retail sales tax and are exempt as legal tender up to the face value in US dollars with the remainder subject to service and other activities B&O tax. The sales invoices that were sampled showed sales of currency, comprised of \$1,000 bills, \$500 bills, and silver certificates,<sup>3</sup> which may be legal tender, but are not generally recognized as a medium of exchange for goods and services.<sup>4</sup> Audit found that these were sales of tangible personal property and made no adjustment.

In support of its assertion, Taxpayer provided a copy of a letter from the Department's Taxpayer Information and Education Section (TI&E) dated March 7, 1997. The letter has a blank space where addressee information is normally found, and reads as follows (in pertinent part):

Amounts received from the "sale" of currency which is currently recognized as a medium of exchange and debt of the issuer in the United States or a foreign country is exempt from tax up to its face value in U. S. dollars. Income derived from the exchange of such currency which exceeds its face value is subject to the service and other activities classification of the business and occupation (B&O) tax. Retail sales tax is not collected.

Thus, the "sale" of a \$500 bill for \$575 when the bill is currently recognized as a medium of exchange and debt payable by the federal government is taxable as follows: The first \$500 is exempt from tax and \$75 is subject to the service and other activities classification of the B&O tax. Retail sales tax is not collected. The same principles would apply to a \$1 bill sold for \$1,000.

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<sup>2</sup> Taxpayer asserted that the sample measure of retail sales included a \$. . . sale of gold and silver that was not a retail sale, and a \$. . . wholesale sale. Taxpayer provided supporting documentation, and Audit adjusted its calculation of test percentages and tax liability accordingly. On June 28, 2012, Audit issued a PAA with a new total due of \$. . . The PAA was comprised of \$. . . in small business credit, \$. . . in retail sales tax, \$. . . in retailing B&O tax, \$. . . in wholesaling B&O tax, \$. . . in interest, a 5% assessment penalty of \$. . ., and additional interest of \$. . .

<sup>3</sup> A silver certificate is defined as "a paper certificate issued by a government against silver deposited with it to a specified amount and payable to the bearer on demand." Webster's Third New International Dictionary 2119 (1993).

<sup>4</sup> The present denominations in production are \$1, \$2, \$5, \$10, \$20, \$50, and \$100. Production of \$500 and \$1,000 currency notes stopped during World War II, and the Federal Reserve Banks remove them from circulation and destroy them as they are received. See <http://www.treasury.gov/resource-center/faqs/Currency/Pages/denominations.aspx> (last accessed May 8, 2013). Due to their rarity, collectors will pay more than the face value of high-denomination bills to acquire them. See [http://en.wikipedia.org/wiki/Large\\_denominations\\_of\\_United\\_States\\_currency](http://en.wikipedia.org/wiki/Large_denominations_of_United_States_currency) (last accessed May 8, 2013). Silver certificates can no longer be traded for silver dollars, but "may have a numismatic value to collectors and dealers." [http://www.treasury.gov/resource-center/faqs/Currency/Pages/edu\\_faq\\_currency\\_sales.aspx](http://www.treasury.gov/resource-center/faqs/Currency/Pages/edu_faq_currency_sales.aspx) (last accessed May 8, 2013).

Currency which is no longer recognized as a medium of exchange or debt of the issuer is considered to be merely an article of tangible personal property. The gross income derived from the sale of such currency is subject to the retailing classification of the B&O tax. In addition, retail sales tax must be collected.

### ANALYSIS

Washington imposes B&O tax upon the privilege of engaging in business activities in this state. The measure of the tax as well as the tax rate vary depending upon the nature (or classification) of the activity. RCW 82.04.220. RCW 82.08.020 imposes retail sales tax on each retail sale in Washington. The seller must collect sales tax from the buyer, and then remit the collected tax to the Department. RCW 82.08.050. If the seller fails to collect the tax, the seller must still pay the tax to the Department. RCW 82.08.050(3).

RCW 82.04.050 defines the terms “sale at retail” and “retail sale.” These definitions apply to both Washington’s B&O tax and retail sales tax, and include “every sale of tangible personal property.” RCW 82.08.010(6); RCW 82.04.050(1)(a).<sup>5</sup>

The issue on appeal is whether Taxpayer sells collectible currency that is “tangible personal property” as that term is used in RCW 82.04.050(1)(a). The statute does not define the term “tangible personal property.” Thus, we look to its common and ordinary definition: “Words in a statute are given their ordinary and common meaning absent a contrary statutory definition.” *John H. Sellen Constr. Co. v. Dep’t of Revenue*, 87 Wn. 2d 878, 882, 558 P.2d 1342 (1976). The word “tangible” is defined, in pertinent part, as “capable of being touched : able to be perceived as materially existent esp. by the sense of touch.” Webster’s Third New International Dictionary 2337 (1993). The term “personal property” is defined as “estate or property other than real property consisting in general of things temporary or movable including intangible property : property recoverable by a personal action : CHATTELS.” *Id.* at 1687.

Taxpayer essentially argues that it is exchanging intangible property in the form of legal tender rather than selling tangible personal property, so the transactions are not retail sales and Taxpayer is instead subject to tax on receipts in excess of the money value of the currency it tenders to its customers under the catch-all service and other activities B&O tax classification. We disagree. Because Taxpayer sells currency as collectables rather than using it as a medium of exchange for goods and services, it is not exchanging the intangible money value represented by the notes, but is instead selling physical papers based on numismatic value. The papers are capable of being touched and are property other than real property. Taxpayer’s sales of currency are sales of tangible personal property subject to retail sales tax [on the selling price].

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<sup>5</sup> RCW 82.04.062(1) provides that “retail sale” and “sale at retail” do not include the sale of precious metal bullion or monetized bullion. Precious metal bullion is made of precious metal, and monetized bullion means “coins or other forms of money manufactured from gold, silver, or other metals . . .” RCW 82.04.062(2). The bills and certificates at issue here are made of paper, so these exclusions do not apply. See also WAC 458-20-248; Det. No. 99-112, 19 WTD 799 (2000).

Taxpayer provided a letter from TI&E indicating that “sales” of currency currently recognized as a medium of exchange are not retail sales, and asserts that because the currency it sells is legal tender, its sales are not retail sales.

RCW 82.32A.020 provides that taxpayers enjoy certain rights, including:

- (2) The right to rely on specific official written advice and written tax reporting instructions from the department of revenue **to that taxpayer**, and to have interest, penalties, and in some instances, tax deficiency assessments waived **where the taxpayer has so relied to their proven detriment**;

(Emphasis added.) Since the letter is dated March 7, 1997, and Taxpayer did not open until . . . 2010, we find that these reporting instructions were not issued to Taxpayer. Further, Taxpayer did not rely upon the letter, as it did not report service and other activities B&O tax as instructed. Thus, we conclude that Taxpayer cannot now rely upon the letter, which was issued to another taxpayer under potentially different circumstances, and we find no grounds for applying its guidance in this matter.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 21<sup>st</sup> day of May.