

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

In the Matter of the Petition) D E T E R M I N A T I O
N
For Determination of the Tax)
Liability of)
)
) 89-174
)
) Registration No. . . .
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)

[1] **Rule 245 AND RCW 82,04.065(2):** TAXATION OF
INTERNATIONAL TELEPHONE SERVICES. The lack of a
specific reference to foreign or international
telephone service in RCW 82.04.065(2) does not
affect the taxability of foreign or international
telephone services when the statutory provision
taxes all "Network telephone services" originating
or terminating in this state for which charges are
billed to persons in the state. It is the local
activity (sale) of the service that is the
determining factor not the character of the
transaction. Distinguishing: Simpson v. State, 26
Wn.App 687. 615 P,2d 1297 (1980).

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.

FACTS AND ISSUES:

Zagelow, A.L.J. -- The petitioner seeks a prior determination
of tax liability. The petitioner is an international company
providing a full range of telecommunication services which
includes international services. The petitioner presents the
legal question of whether the omission of the words
international or foreign in RCW 82.04.065(2) prevents the
State of Washington from taxing such international or foreign

telecommunication services. The petitioner argues in the affirmative citing Simpson v. State, 26 Wn.App 687. 615 P.2d 1297 (1980) as authority for its position that the legislature knows how to say "international or foreign" whereby the exclusion of such language evidences the legislative intent to exclude such services.

DISCUSSION:

The discussion of this ruling begins with as analysis of the statute in question and the statutory scheme of the taxation of telecommunication services. RCW 82.04.065 states:

(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 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.

(3) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in subsections (1) and (2) of this section.

(4) "Telephone business" means the business of providing network telephone service, as defined in subsection (2) of this section. It includes

cooperative or farmer line telephone companies or associations operating an exchange. (Emphasis added)

A simplified summary of the above quoted statutory scheme is that all "network telephone services" originating or terminating in this state the charges for which are billed to persons in this state are included in the tax base. It is the local activity (sale) of the service that is the determining factor not the character of the transaction. The statutory method of RCW 82.04.065(2) was specifically sustained by the United States Supreme Court in GTE Sprint Communications Company v. Sweet, ___ U.S. ___, (1989).

As this question involves the determination of legislative intent in the enactment of RCW 82.04.065(2), it is appropriate to determine the general intent of the Legislature in taxation legislation. The Washington Supreme Court interprets the general legislative intent as follows:

". . . This court has repeatedly ruled that when the Legislature enacted the business and occupation tax the Legislature intended to tax all business activities not expressly excluded. Rena-Ware Distribs., Inc. v. State, 77 Wn.2d 514, 517, 463 P.2d 622 (1970)." Coast Pacific Trading v. State, 105 Wn.2d 912, 719 P.2d 541 (1986).

Therefore, an activity (sale) is taxed unless such activity (sale) is expressly excluded from taxation.

The petitioner argues that the omission of the word "foreign or international" from RCW 82.04.065(2), above, means that the Legislature did not intend to tax foreign or international transactions. The authority for the petitioner's argument is Simpson v. State, supra. In Simpson, the court in interpreting RCW 82.12.035, applied the rule of "inclusio unius est exclusio alterius", express mention of one thing in a statute excludes others not mentioned.

The express mention of states and the District of Columbia, which is a federal district within the United states, combined with the commonly understood meaning of the word "state," indicates that foreign countries are not included. In addition, RCW 82.12.030 itself provides that "The provisions of this chapter shall not apply:... (4) In respect to the use of any airplane, locomotive, railroad car or

watercraft used primarily in conducting interstate or foreign commerce...' If the legislature had intended the word "state" to mean both American states and the governmental units of foreign countries, it would have been unnecessary to refer to foreign commerce in the forgoing subsection. Simpson, supra at 690.

[1] The statute in question here, RCW 83.04.065(2), unlike the statute construed above, does not attempt to list activities (sales) to which it applies. The telecommunications statute applies to all "network telephone services", with interstate services limited to those activities (sales) originating or terminating in this state for which the charge for such service is billed to a person in this state. The omission of the words "foreign" or "international" does not exclude those services from the application of the statute, any more than the omission of the words "in this state" or "intrastate" excludes those services. The reference to interstate activities is merely an announcement of the statutory plan to comply with federal constitutional standards. This is a completely different statutory provision than the provision considered in Simpson v. State, supra. The effect of different statutory language is stated in Weyerhaeuser v. State, 106 Wn.2d 557, 564, 723 P.2d 1141 (1986).

(W)here the Legislature uses certain statutory language in one instance, and different language in another, there is a difference in legislative intent. UPS, Inc. v. Department of Rev., 102 Wn.2d 355, 678 P.2d 186 (1984); Van Dyk v. Department of Rev., 41 Wn.App.71, 702 P.2d 472 (1985) (where different statutory language is used, there is a difference in legislative intent which courts cannot alter).

As the court in Simpson, supra, based its decision upon the "inclusio unius est exclusio alterius" rule of statutory construction, an analysis of the rule itself is appropriate. As stated above, if the rule were to be applied here, the inclusion of only "interstate" would exclude, not only international or foreign activities (sales), but also intrastate transactions. As it was clearly the intent of the legislature to tax all "network telephone services" activities (sales),

. . .as we have repeatedly cautioned, the maxim of express mention and implicit exclusion `is to be used only as a means of ascertaining the legislative intent where it is doubtful, and not as a means of defeating the apparent intent of the legislature.' DeGrief v. Seattle, 50 Wn.2d 1,12, 297 P.2d 940 (1956);. . . State v. Williams, 94 Wn.2d 531,537, 617 P.2d 1012 (1980).

Here there is no doubt as to the legislative intent, to impose the tax on all "network telephone services" which originate or terminate in this state and the charge for such service is billed to a person in this state. Such intent may not be thwarted by a rule of statutory construction, State v. Williams, supra., and,". . . .A statute must be read to avoid absurd results." General Telephone v. Utils & Transp, 104 Wn.2d 460,471, 706 P.2d 625 (1985)

While,... "(a)ny doubts as to the meaning of a statute under which a tax is sought to be imposed will be `construed against the taxing power.' Duwamish Warehouse Co v. Hoppe, 102 Wn. 249,254, 684 P.2d 703 (1984); Mac Amusement Co. v. Department of Rev., 95 Wn.2d 963, 966, 633 P.2d 68 (1981)." Weyerhaeuser v. State, supra at 566, here, there are no doubts in the tax imposing statute. All "network telephone services" originating or terminating in this state for which the charge for service is billed to a person in this state are included in the tax base.

Therefore, finding that Simpson v. State, supra, is distinguished and non-applicable on the basis of the differences in the statutes compared, international or foreign telecommunication services are properly taxable under RCW 82.04.065 as no statutory exclusion is provided.

RULING:

International telecommunication services are subject to taxation under RCW 82.04.065(2).

This ruling is issued pursuant to WAC 458-20-100(18) and is based upon only the facts that were disclosed by the petitioner. In this regard, the department has no obligation to ascertain whether the petitioner has revealed all of the relevant facts or whether the facts disclosed are actually true. This legal opinion shall bind this taxpayer and the department on this facts. However, it shall not be binding if there are relevant facts which are in existence but have not

been disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately found to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have prospective application only.

DATED this 24th day of March 1989.