

Cite as Det. No. 04-0087, 23 WTD 302 (2004)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Refund of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 04-0087
...	)	
	)	Registration No. . . .
	)	. . . /Audit No. . . .
	)	Docket No. . . .
	)	

RCW 82.18.020; RULE 195: – REFUSE AND SOLID WASTE COLLECTION TAX – MEASURE OF TAX. A city imposed solid waste tax that a waste disposal business collects from its customers is a cost of doing business that is not excludable from “gross income of the business” and measure of the Refuse and Solis Waste Collection Tax.

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.

Lewis, A.L.J. -- Taxpayer requests a refund of tax assessed on billings it made to its customers for city-imposed solid waste collection tax on waste collection and disposal businesses. The city-imposed solid waste collection tax is a tax on Taxpayer’s business activity and not a direct tax on Taxpayer’s customers. We conclude the billing of the tax to Taxpayer’s customers is the recovery of a business expense, and taxable as gross income of the business. Accordingly, we deny Taxpayer’s refund request.<sup>1</sup>

ISSUE:

Is Taxpayer’s collection of city-imposed solid waste collection tax from its customers a recovery of a cost of doing business, includable as gross income of the business, and subject to tax?

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

### FINDINGS OF FACT:

Taxpayer operates a waste disposal business in Washington. Its business activity includes the pick-up and disposal of residential and commercial waste in the cities of . . . . Taxpayer operates its waste disposal business under license from the various cities. Each city has passed an ordinance imposing a privilege tax on Taxpayer's waste collection and disposal business activities. An example of such an ordinance is . . . City Ordinance . . . , which states in pertinent part:

[T]here is levied upon each person, . . . holding a license for the collection and hauling of garbage, . . . within the city . . . for disposal at some point . . . outside of the city, a tax for the privilege of doing so . . . .

The ordinance makes clear that the tax falls on the garbage hauler. Taxpayer, however, recovered the tax expense by including the city-imposed solid waste collection tax as a separate line item on its customer billings.

The Department of Revenue ("Department") audited Taxpayer's business records for the period January 1, 1998 through March 31, 2001. On March 26, 2002, the Department issued an \$ . . . tax assessment. The Audit Division concluded that the funds it received from its customers for the city imposed waste collection tax was a reimbursement of its business expense and taxable as part of its taxable gross income. In making that conclusion, the Audit Division relied on RCW 81.77.170, which states: "For rate-making purposes, a fee, charge, or tax on the disposal of solid waste shall be considered a normal operating expense of the solid waste collection company." Having concluded that the city-imposed solid waste collection tax was taxable gross income, the Audit Division imposed; 1) refuse tax on the total amount of city tax received; 2) service B&O tax on the portion of the city tax imposed on waste collection fees; and, 3) retailing B&O tax and retail sales tax on the city tax imposed on the rental of refuse collection containers.

Taxpayer disagrees, maintaining that the city utility tax was a liability of Taxpayer's customers and thus its collection of the tax was not a recovery of a business expense. Taxpayer reasons that the city utility tax is an expense of its customers and not its business expense because the Washington State Utilities and Transportation Commission ("WUTC") must approve any charge contained on a customer billing before it becomes part of the tariff.<sup>2</sup>

### ANALYSIS:

RCW 82.18.010(1) defines "Solid waste collection business" as:

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<sup>2</sup> RCW 81.77.030 states, in part, "The commission shall supervise and regulate every solid waste collection company in this state, (1) By fixing and altering its rates, charges, classifications, rules and regulations . . . ."

"Solid waste collection business" means every person who receives solid waste for transfer, storage, or disposal including but not limited to all collection services, public or private dumps, transfer stations, and similar operations.

It is unchallenged that Taxpayer is involved in the solid waste collection business as defined in RCW 82.18.010. RCW 82.18.020 provides that the solid waste collection tax is "imposed on each person using the solid waste services of a solid waste collection business" and is measured by "the consideration charged for the services." RCW 82.18.030 provides that the operator of a solid waste collection business is required to collect the solid waste tax from its customer and that if it doesn't it is personally liable for the tax.

WAC 458-20-250 ("Rule 250") is the administrative rule that implements the solid waste collection tax and explains the taxation of income derived from operating a refuse-solid waste collection business. Rule 250(3)(f) defines the term "Consideration charged for the services" as:

the total amount billed to a taxpayer as compensation for refuse-solid waste collection services, without any deduction for any costs of doing business or any other expense whatsoever, paid or accrued, provided, that the term does not include any amount included in the charges for materials collected primarily for recycling, nor the refuse-solid waste collection tax itself whether separately itemized or not, nor any similar utility taxes or consumer taxes, imposed by the state or any political subdivision thereof or any municipal corporation, directly upon the consumer-taxpayer and separately itemized on the taxpayer's billing. (Emphasis added.)

Thus, the refuse and solid waste tax applies to the total compensation the solid waste business receives without deductions for the cost of doing business. The question to be answered is whether the city-imposed solid waste tax is a cost of doing business that is a non-excludable business expense. WAC 458-20-195 ("Rule 195") explains the deductibility of taxes. Rule 195(4) explains that certain taxes may be excluded from the measure of tax:

The amount of taxes collected by a taxpayer, as agent for municipalities, the state of Washington or its political subdivisions, or the federal government, may be deducted from the gross amount reported. These taxes are deductible under each tax classification of the Revenue Act under which the gross amount from such sales or services must be reported.

This deduction applies only where the amount of such taxes is received by the taxpayer as collecting agent and is paid by the agent directly to a municipality, the state, its political subdivisions, or to the federal government. When the taxpayer is the person upon whom a tax is primarily imposed, no deduction or exclusion is allowed, since in such case the tax is a part of the cost of doing business. The mere fact that the amount of tax is added by the taxpayer as a separate item to the price of goods sold, or to the charge for services rendered, does not in itself, make such taxpayer a collecting agent for the purpose of this deduction. (Emphasis added.)

In this instance, the city ordinances make clear that their solid waste collection tax is imposed on Taxpayer, not on Taxpayer's customers. Thus, the tax is a cost of Taxpayer's doing business. In addition, RCW 81.77.170, which discusses the operation of solid waste companies explains that "a fee, charge, or tax on the disposal of solid waste shall be considered a normal operating expense of the solid waste collection company." Accordingly, we conclude that the Audit Division correctly assessed the solid waste collection tax on Taxpayer's recovery of its city-imposed solid waste collection tax expense.

Taxpayer also protested the B&O tax and retail sales tax assessed. The Audit Division assessed service and other B&O tax on the reimbursement Taxpayer received from its customers for the city-imposed solid waste tax related to its collection services. Rule 250(17) explains:

There is no exemption from business and occupation tax measured by gross income of any person engaged in the refuse-solid waste collection business. Such persons are subject to the service classification of the business and occupation tax measured by their gross receipts. (See RCW 82.04.290.)

We have already determined that the funds Taxpayer receives from its customers as a reimbursement of the city-imposed solid waste collection fee is a recovery of its business expense and includable as its taxable gross receipts. Accordingly, we uphold the imposition of service and other B&O tax on the funds it receives as a reimbursement of the city-imposed solid waste tax related to collection service.

Similarly, Taxpayer protested the retailing B&O and retail sales tax assessed on the reimbursement Taxpayer received from its customers for the city-imposed solid waste tax related to the rental of waste receptacles, containers, and dumpsters. Rule 250(21) states:

Refuse-solid waste collection businesses which provide waste receptacles, containers, dumpsters, and the like to their customers for a charge, separate from any charge for collection of the waste, are engaged in the business of renting tangible personal property separate and apart from the refuse-solid waste collection business. Charges for such rentals, however designated, are subject to retailing business and occupation tax when they are billed separately or are line itemized on customer billings. Such businesses are engaged in more than one taxable kind of business activity and are separately taxable on each. (See RCW 82.04.440.)

We have already determined that the funds Taxpayer receives from its customers as a reimbursement of the city-imposed solid waste collection fee is a recovery of its business expense and includable as its taxable gross receipts. Accordingly, we uphold the imposition of retailing and retail sales tax on the funds it receives as a reimbursement the city-imposed solid waste tax related to the rental of waste receptacles, containers, and dumpsters.

#### DECISION AND DISPOSITION:

Taxpayer's petition for refund is denied.

Dated this 31<sup>st</sup> day of March 2004.