Cite as Det. No. 15-0279, 35 WTD 27 (2016)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 15-0279
. . .	)	Registration No. . . .

[1] RULE 193; RCW 82.32.730: B&O TAX – SOURCING – RECEIPT OF GOODS. Where a purchaser of goods had constructive possession of those goods outside of Washington, there was no receipt of the goods in Washington.

[2] RULE 193; RCW 82.32.730: B&O TAX – NEXUS – WARRANTY SERVICES. Where a seller advertises that it offers warranty services in Washington through a third-party contractor, the seller has nexus with Washington.

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.

Yonker, A.L.J. – An out-of-state wholesaler of commercial vehicle chassis protests a tax assessment for business and occupation (B&O) tax on sales Taxpayer claims are not subject to B&O tax. Specifically, Taxpayer argues that it lacks nexus in Washington to subject it to taxation here, and further argues that the vehicle chassis at issue were received by the purchasers outside of Washington. We grant Taxpayer's petition in part, finding the [Vehicle 1] chassis were received outside the state, and remand for adjustment of the tax assessment.[1]

ISSUES

1. Under RCW 82.32.730 and WAC 458-20-193, were the sales of [Vehicle 1] chassis subject to B&O tax in Washington, where such chassis were shipped from the [out-of-state seller] to "body shops" outside of Washington to be incorporated into completed [vehicles] according to the buyers' specifications, and then afterward delivered by the "body shops" to such buyers in Washington?

2. Under RCW 82.32.730 and WAC 458-20-193, was a sale of a [Vehicle 2] chassis subject to B&O tax, where such chassis was sold to an out-of-state buyer, but delivered in Washington at the direction of that buyer?

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

FINDINGS OF FACT

[Taxpayer] is [an out-of-state] limited liability company that wholesales commercial vehicle chassis to dealers nationwide.[2] An affiliated company, [Affiliate], manufactures chassis for three types of commercial vehicles: (1) [Vehicle 1], (2) [Vehicle 2], and (3) [Vehicle 3].[3] During the time period at issue, Affiliate sold the chassis for [Vehicle 1] directly to dealers, and transferred the chassis for [Vehicle 2] and [Vehicle 3] to Taxpayer, who then sold those two categories of chassis to dealers.[4] During the time period at issue, Taxpayer reported its income and the income of [Affiliate] under the service and other activities B&O tax classification, and apportioned all reported income outside of Washington, thereby resulting in Taxpayer claiming "no tax due" during the time period at issue.

In 2014, the Department of Revenue's (Department's) Taxpayer Account Administration Division (TAA) conducted a desk examination of Taxpayer's books and records for the period of January 1, 2010 through December 31, 2013 (review period). Based on Taxpayer's reported business activity of wholesaling vehicle chassis, TAA reclassified Taxpayer's reported income from the service and other activities B&O tax classification to the wholesaling B&O tax classification and disallowed Taxpayer's apportionment of reported income outside of Washington.

During its review, TAA found that Taxpayer had established relationships with various service centers with locations in Washington to provide warranty and other services to chassis manufactured by Affiliate. Four written agreements related to such services in Washington, are in the record as follows:

1. On April 23, 2008, Affiliate entered into an Authorized Dealer Agreement with [Service Center A], in which Service Center A agreed to maintain a stock of not less than $ . . . in Affiliate's "exclusive/proprietary" parts, and to purchase from Affiliate not less than $ . . . in "common vendor" parts annually.
2. On May 2, 2008, Affiliate entered into a second Authorized Dealer Agreement with Service Center A, in which Service Center A agreed to (1) promote and sell [Vehicle 1] chassis to customers, (2) maintain a stock of Affiliate's parts, and (3) provide "pre-delivery adjustments, warranty, campaign and transportation damage work" to [Vehicle 1] chassis.
3. On an unspecified date, Affiliate entered into an Authorized Parts and Service Associate Agreement with [Service Center B], in which Service Center B agreed to (1) promote and sell [Vehicle 1] chassis to customers, (2) maintain a stock of Affiliate's parts, and (3) provide "pre-delivery adjustments, warranty, campaign and transportation damage work" to [Vehicle 1] chassis.

[2] A "chassis," as used in this determination, refers generally to the underpart of a vehicle, consisting of the frame, the wheels, the engine, and the "cab" for driving the vehicle.
[3] Taxpayer represented that it and Affiliate "are consolidated for financial statement purposes and are both wholly-owned subsidiaries of the same parent company."
[4] Taxpayer represented that [Vehicle 2] and [Vehicle 3] were "just transferred on the books. There is no actual sale or agreement."

4. On April 4, 2014, Taxpayer entered into a Service Center Agreement with Service Center B, in which Service Center B agreed to "use its best efforts to promote and sell" Taxpayer's [Vehicle 3] chassis and to perform "warranty, campaign and other diagnosis, replacement and repair services" on [Vehicle 3] chassis.

Taxpayer and Affiliate do not maintain separate publicly-available websites, but instead share one website. According to that website, Service Center A and Service Center B both have locations in Washington, which provide service on [Vehicle 1], as well as [Vehicle 2] and [Vehicle 3].[5] The website states the following:

. . .[6]

As a result of TAA's review, on August 21, 2014, the Department issued a tax assessment for $ . . . , which included $ . . . in wholesaling B&O tax, a $ . . . five-percent assessment penalty, and $ . . . in interest. Taxpayer subsequently appealed. The tax assessment remains unpaid.

On appeal, Taxpayer provided a sample of invoices indicating that the sales it reported during the review period were actually all sales of [Vehicle 1] chassis made by Affiliate. According to Taxpayer, all sales reported during the review period were for [Vehicle 1] chassis, which were sold directly by Affiliate to Washington dealers. Initially, Taxpayer provided evidence that it had made three sales of [Vehicle 2] chassis during the review period, but provided further evidence that those three sales were never finalized, and that those three [Vehicle 2] chassis were ultimately sold to dealers in other states. One of those sales, memorialized in Invoice No. . . . , indicates that Taxpayer sold a [Vehicle 2] chassis to [Customer] in . . . , for $ . . . on June 21, 2013. According to that invoice, Customer directed delivery of that [Vehicle 2] chassis to a location in . . . , Washington. Taxpayer reported that it did not make any sales of [Vehicle 3] chassis during the review period. [7]

Taxpayer described the following four-step process for Affiliate's sale and delivery of . . . truck chassis to dealers located in Washington during the review period:

Step One – Sale of Chassis to Dealers located in Washington

Affiliate sold [Vehicle 1] chassis to various dealers in Washington for subsequent sale to Washington consumers. Taxpayer represented that at the time of purchase, the [Vehicle 1] chassis is considered an "incomplete vehicle" without an outer body, and is not legal to drive on roads, but already contains at least an air conditioner, fuel system, brakes, and a transmission system.

[5] Found at . . . , last visited on October 5, 2015.
[6] Found at . . . , last visited on October 5, 2015.
[7] According to the four service agreements in the record, and according to Taxpayer on appeal, Affiliate and Taxpayer may have had additional income for the sale of parts to service centers located in Washington. Taxpayer indicated on appeal that it did not report such income, nor did TAA address this income during its review.

Step Two – Delivery of Chassis to Carrier [Out of State]

Affiliate shipped the purchased chassis to a third-party motor contract carrier, [Carrier] in . . . . Once delivered, Carrier stored the chassis until such time as the purchasing dealer notified Carrier to transport the chassis to a body shop for further work. While the chassis was stored by the Carrier, it conducted periodic inspections of the chassis, and if problems with the chassis were identified, Carrier notified Affiliate for appropriate remedial measures to be performed.

Taxpayer provided a blank copy of an Extended Storage Authorization form, which indicates that the purchasing dealer authorizes Carrier to store the purchased chassis until such time that the purchasing dealer provides instruction on the time for further shipment. According to that authorization form, while the chassis is stored by Carrier, the purchasing dealer directs Carrier to maintain the chassis "in compliance with the attached Yard Maintenance Program." The Yard Maintenance Program, in turn, indicates that the Carrier is responsible for the following tasks:

- Start each truck that has been idle for a period of 60 days and let run for a minimum of five minutes.
- Check air conditioner if weather-appropriate.
- Check fuel levels.
- Add fuel conditioner the first time a truck is exercised.
- Check air brakes.
- Check transmission.

According to the Yard Maintenance Program, Carrier must report any concerns to Affiliate, and Affiliate must pay Carrier "$ . . . per truck per exercise plus the cost of fuel and condition as needed."

Step Three – Carrier Delivers Chassis to Body Shops

Once the purchasing dealer provided notification to Carrier, the . . . truck chassis was then transported by Carrier as directed by the purchasing dealer to a third-party body shop. Taxpayer represented that the purchasing dealer – not Taxpayer or Affiliate – determined to which body shop a particular chassis was shipped. Taxpayer also represented that during the review period, there were 12 different body shops used by the purchasing dealers, none of which were located in Washington. Taxpayer provided a sample of five invoices, each showing a "ship to" address of a body shop outside of Washington.[8]

Taxpayer represented that once the body shop received the [Vehicle 1] chassis, the designated body shop incorporated the chassis into a completed [vehicle] by adding an outer body based on the particular specifications of the purchasing dealer, and also by adding other various components, including the " . . . ." Taxpayer represented that neither it nor Affiliate have any further involvement in the handling or use of the chassis upon receipt by the body shop. Taxpayer did not provide any documentation of the relationship between the body shops and the

[8] Two invoices had "ship to" addresses to . . . . , one invoice had a "ship to" address to . . . , one invoice had a "ship to" address to . . . . , and one invoice had a "ship to" address to . . . . . We note that all of the companies to which the chassis at issue in these invoices maintain websites that each indicate they are manufacturers of [Vehicle 1].

purchasing dealers. The final result of the body shop's work was a completed [vehicle] that was legal to drive on roads.

Step Four – Body Shops Deliver Completed [vehicles] to Dealers in Washington

Once completed, the body shop delivered the completed [vehicle], with the chassis as one of its components, to the purchasing dealer in Washington for subsequent sale to that dealer's customer. Taxpayer represented that neither it nor Affiliate had any role in the further transport of the completed [vehicle] after the chassis is received at the designated body shop.

ANALYSIS

1. [Vehicle 1] Chassis Sales

Preliminarily, we note that Taxpayer contends it erred in reporting Affiliate's sales of [Vehicle 1] chassis and Taxpayer's sales of [Vehicle 2] chassis under Taxpayer's tax reporting number. The documents presented on appeal support this contention, with one exception. However, even if that was not the case, we conclude, as discussed below, that the [Vehicle 1] chassis sales at issue during the review period were not subject to B&O tax.

Washington imposes a B&O tax on "every person that has a substantial nexus" with Washington "for the act or privilege of engaging in business" in this state. RCW 82.04.220(1). The B&O tax measure and rate are determined by the type or nature of the business activity in which a person is engaged. Chapter 82.04 RCW. The measure of the B&O tax is the application of rates against the "value of products, gross proceeds of sales, or gross income of the business, as the case may be." RCW 82.04.220(1). Taxpayer does not dispute that if the sales at issue are taxable, then they are taxable under the wholesaling B&O tax classification under RCW 82.04.270.

WAC 458-20-193 (Rule 193) explains the B&O tax liability associated with interstate sales of tangible personal property received in Washington.[9] Rule 193(1)(a) provides the following limitation on imposing Washington's B&O tax on "inbound" sales of tangible personal property: "[i]n general, Washington imposes its B&O and retail sales taxes on the sales of tangible personal property if the seller has nexus in Washington and the sale occurs in Washington." Thus, Rule 193 makes clear that for a particular seller of goods to be liable for B&O tax, (1) the seller must have nexus in Washington, and (2) the sale must occur in, or is sourced to, Washington. Because we conclude that the second element is determinative here, we address that element first.

Rule 193(201) states that "RCW 82.32.730 explains how to determine where a sale of tangible personal property occurs based on 'sourcing rules' established under the streamlined sales and use tax agreement." RCW 82.32.730(1), in turn, provides for two general rules for "sourcing"

[9] Rule 193 was amended effective August 7, 2015. While the review period at issue in this case ended prior to that effective date, most Department rules are treated as interpretive statements that may apply retroactively, unless the interpreted statutory language has changed or there has been reliance on the prior rule. *See Association of Washington Businesses v. Dep't of Revenue*, 155 Wn.2d 430, 120 P.3d 46 (2005). As such, all references to Rule 193 in this determination refer to the new version of that rule.

sales. First, according to RCW 82.32.730(1)(a), when tangible personal property "is **received** by the purchaser at a business location of the seller, the sale is sourced to that business location." (Emphasis added). *See also* Rule 193(203)(a). Second, when tangible personal property "is not **received** by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser . . . occurs." (Emphasis added). *See also* Rule 193(203)(b).

RCW 82.32.730(9)(f) defines "receive" or "receipt" as "taking possession of tangible personal property." Rule 193(202)(a) defines those terms further as meaning "the purchaser first either taking physical possession of, or having dominion and control over, tangible personal property." RCW 82.32.730(9)(f) specifically states that receipt does not include "possession by a shipping company on behalf of the purchaser." *See also* Rule 193(202)(b)(i). According to Rule 193(202)(b)(ii), a shipping company is defined as a "separate legal entity that ships, transports, or delivers tangible personal property on behalf of another, such as a common carrier, contract carrier, or private carrier either affiliated or unaffiliated with the seller or purchaser."

In addition, Rule 193(203) states that a sale is "sourced" to either (a) the purchaser's business location, if that is the location of receipt, or (b) the "place of receipt," in which case, "the sale is sourced to the location where receipt by the purchaser or purchaser's donee . . . occurs, including the location indicated by instructions for delivery to the purchaser or purchaser's donee, as known to the seller."[10] Rule 193(203)(b)(iv) then goes on to describe the types of records a taxpayer must retain in order to determine the location to which a particular sale must be sourced:

> The seller must retain in its records documents used in the ordinary course of the seller's business to show how the seller knows the location of where the purchaser or purchaser's donee received the goods. Acceptable proof includes, but is not limited to, the following documents:
>
> (A) Instructions for delivery to the seller indicating where the purchaser wants the goods delivered, provided on a sales contract, sales invoice, or any other document used in the seller's ordinary course of business showing the instructions for delivery; . . . .

Here, Taxpayer first argues that the [Vehicle 1] chassis were received by the purchasing dealers when the chassis were delivered to Carrier, either at Affiliate's distribution location in . . . or at Carrier's "Driveaway Lot" in . . . . We conclude, however, that Carrier, which is clearly described in the Transportation Contract as a "contract carrier," and is engaged for the purpose of storing and shipping the [Vehicle 1] chassis, qualifies as a "shipping company" under RCW 82.32.730(9)(f) and Rule 193(202)(b)(ii). As such, we conclude that there was no receipt by the purchasing dealers when the chassis were delivered to Carrier either in . . . .

Taxpayer next argues that the [Vehicle 1] chassis were received by the purchasing dealers when the [Vehicle 1] chassis were delivered to various body shops around the country, but all of which are outside Washington. In support of its argument, Taxpayer provided a sample of sales

[10] Rule 193(203)(b)(i) defines "purchaser" as including "the purchaser's agent or designee." Rule 193(203)(b)(ii) defines "purchaser's donee" as "a person to whom the purchaser directs shipment of goods in a gratuitous transfer (e.g., a gift recipient)."

invoices for chassis sold to dealers in Washington, each of which includes a "ship to" address to a body shop located in a state other than Washington. "Sales Invoices" are specifically included in Rule 193(203)(b)(iv)(A), as proper evidence used in the ordinary course of a taxpayer's business for sourcing sales to a particular location. Thus, the "ship to" addresses on the sales invoices in the record constitute "instructions for delivery to the purchaser or purchaser's donee, as known to the seller" as described in Rule 193(203)(b). As such, we conclude that Taxpayer may properly rely on such sales invoices, and the "ship to" instructions contained therein, to source all of the sales during the review period to the out-of-state body shops, who were the purchasing dealers' designees, to which Affiliate, through Carrier, shipped the chassis.

Further, while we note there is no evidence that the purchasing dealer or its employees are physically present to receive the [Vehicle 1] chassis at the body shops, and, as such, did not have "physical possession" of the chassis at the time they were delivered to the various body shops under RCW 82.32.730(9)(f), we conclude that the purchasing dealers instead had constructive possession, or "dominion and control," over the chassis, as allowed under Rule 193(202)(a).

We recently addressed a similar issue, albeit with a somewhat different product, in Determination No. 14-0157, 33 WTD 539 (2014). In that case, an out-of-state nutritional supplement manufacturer and wholesaler manufactured a beverage in bulk quantities and sold it to a buyer. *Id.* at 540. The buyer then authorized the wholesaler to deliver the purchased beverage to a third-party packager, also located out-of-state. *Id.* at 541. Upon delivery, the third-party packager removed the beverage from the large bulk "drums" and repackaged it into smaller units, and then delivered the repackaged products to the buyer in Washington. *Id.* The wholesaler had no contract with the third-party packager, and had no further involvement with any aspect of the beverage after delivery to that packager. *Id.*

As we noted in 33 WTD 539, according to Rule 193, "receipt" covers both "physical" or actual possession, and also "dominion and control," or constructive possession. *Id.* at 543.[11] We then concluded that the buyer did not take "physical" possession of the beverage out-of-state. *Id.* at 544. We then went on to consider whether the buyer took constructive possession of the beverage through "dominion and control" outside Washington. *Id.* In concluding that the buyer did receive constructive possession of the beverage outside of Washington, we recognized that the packager was authorized to receive the beverage, and did so, on behalf of the buyer, and proceeded to handle the beverage and repackage it, without the wholesaler having "any further control over the product." *Id.* We note that 33 WTD 539 served as the basis for Example 10 under Rule 193(203).

Here, similar to the packager that repackaged the beverage in 33 WTD 539 (and Example 10 in Rule 193(203)), Taxpayer represents that the body shops handled the chassis and proceeded to incorporate them as a component into a completed [Vehicle 1], at the direction of the purchasing dealer without any further control from Taxpayer or Affiliate. This involved adding an outer body to the chassis to the particular specifications of the purchasing dealer, and the adding of other components necessary to make the vehicle legal for driving on the road, including the addition of the . . . necessary to achieve the proper interface between the chassis and the rest of

[11] Since the issuance of 33 WTD 539, Rule 193 has been amended. However, the relevant language under both versions of the rule is substantially the same.

the completed body. Upon completion, Taxpayer represents that the body shop – not Taxpayer or Affiliate – is solely responsible for delivery to the dealer in Washington. Based on these facts, we conclude that the [Vehicle 1] chassis are received by the purchasing dealers at the location of the various body shops around the country.

Since all such [Vehicle 1] chassis sold during the review period were delivered to a body shop, and because none of those body shops are located in Washington, according to the sample sales invoices, all of the [Vehicle 1] chassis at issue here were received outside of Washington. It follows that, under RCW 82.32.730(1)(b) and Rule 193(203)(b), the sale of the [Vehicle 1] chassis occurred outside of Washington based on the available evidence, and those sales were, therefore, not subject to Washington's B&O tax under Rule 193(1)(a).

2. [Vehicle 2] Chassis Sales

As discussed earlier, no [Vehicle 2] chassis were sold by Taxpayer during the review period to dealers located in Washington. However, Taxpayer had one sale of a [Vehicle 2] chassis to a dealer in . . . during the review period that had a "ship to" address in . . . . As we concluded earlier, a sales invoice is adequate documentation under Rule 193(203)(b)(iv)(A) used in the ordinary course of a taxpayer's business to determine the sourcing of a particular sale when that invoice includes instructions for the seller to deliver the goods at issue to a certain location. Here, the "ship to" address in Washington satisfies the requirements of Rule 193(203)(b)(iv), and, as such, that sale "occurred" in Washington under Rule 193(1)(a).

Because that sale satisfies the second element under Rule 193(1)(a), we return to the first element under Rule 193(1)(a), whether Taxpayer had nexus in Washington. A state cannot tax transactions that do not have a sufficient connection, or "nexus," with that state. *See, e.g.*, *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279, 97 S. Ct. 1076, 51 L.Ed.2d 326 (1977); *Tyler Pipe Industries, Inc. v. Dep't. of Revenue*, 483 U.S. 232, 250, 107 S. Ct. 2810, 97 L.Ed.2d 199 (1987); *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992); Det. No. 05-0376, 26 WTD 40 (2007). This nexus requirement flows from limits on a state's jurisdiction to tax found in both the Due Process Clause and the Commerce Clause of the United States Constitution. *Quill*, 504 U.S. at 305; *Lamtec Corp. v. Dep't of Revenue*, 170 Wn.2d 838, 843, 246 P.3d 788 (2011) ("A tax on an out-of-state corporation must satisfy both the requirements of the due process clause of the Fourteenth Amendment and the commerce clause."); Det. No. 01-188, 21 WTD 289 (2002).

According to Rule 193(102), "[a] person who sells tangible personal property is deemed to have nexus with Washington if the person has a physical presence in this state, which need only be demonstrably more than the slightest presence." *See also* RCW 82.04.067(6).[12] Rule 193(102)(d) goes on to state the following regarding this "physical presence" requirement:

> Even if a person does not have property or employees in Washington, the person is physically present in Washington when the person, either directly or through an agent or

[12] Effective September 1, 2015, RCW 82.04.067(6) was amended to eliminate the requirement for physical presence for out-of-state taxpayers engaged in wholesale sales. As such, an out-of-state taxpayer engaged in wholesale sales is deemed to have nexus in Washington if it meets certain economic thresholds. *See* Laws of 2015, Ch. 5, § 204 (2015).

> other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in Washington.

Thus, nexus may be established by certain activities performed in Washington, either by the seller, or through the activities of the seller's "agent" or "other representative." *See Tyler Pipe Indus., Inc. v. Wash. St. Dep't of Revenue*, 483 U.S. 232 (1987); *Scripto, Inc. v. Carson*, 362 U.S. 207 (1960). We also note that it is not necessary for the employee or other representative to be engaged specifically in sales to establish nexus; all "activities" performed in Washington on behalf of the seller "that is significantly associated with the [seller's] ability to establish or maintain a market for its products in this state" satisfies nexus. *See National Geographic Society v. California Bd. Of Equalization*, 430 U.S. 551 (1977); *Standard Pressed Steel Co. v. Dep't of Revenue*, 419 U.S. 560 (1975); *Lamtec Corp. v. Dep't of Revenue*, 170 Wn.2d 838, 246 P.3d 788 (2011, *cert. denied at* 132 S.Ct. 95 (2011).

Rule 193(102)(d) identifies certain specific activities as "significantly associated with establishing or maintaining a market of a person's products" in Washington. Rule 193(102)(d)(vii)(B) expressly includes "[b]eing available to provide services associated with the product sold (such as warranty repairs, installation assistance or guidance, and training on the use of the product), if the availability of such services is **referenced by the seller in its marketing materials, communications, or other information accessible to customers**" as an activity establishes nexus. (Emphasis added).

Here, the only in-state activity cited as a basis for nexus is warranty repair services provided by third-party service centers to consumers in Washington pursuant to the terms of written agreements between those third-party service centers and either Affiliate or Taxpayer. The record contains four such agreements, three of which were between service centers and Affiliate and were in effect during the review period. Pursuant to Rule 193(102)(d)(vii)(B), we conclude that these three agreements establish that Affiliate clearly had nexus during the review period. This is also consistent with our previous decisions, where we have held that such warranty repair service is a significant, nexus-creating activity, even when performed by independent representatives. In Determination No. 00-098, 22 WTD 151 (2003), a taxpayer contracted with third parties to serve as "authorized service centers" and perform warranty repair services on taxpayer's products for customers in Washington. In that case, we stated the following regarding such activity:

> We believe the existence of local service centers enhances the taxpayer's ability to maintain its Washington market . . . The existence of the service centers is undoubtedly an attractive option for persons buying the taxpayer's product. Because the existence of the service centers [helps] establish and maintain the market for the taxpayer's products in Washington, it is an activity that cannot be dissociated from the sale of those products.

None of these three agreements involve Taxpayer, and, therefore, do not automatically establish nexus for Taxpayer, which is a separate entity from Affiliate. The fourth agreement in the record was between a service center and Taxpayer, yet, was not executed until after the review period

ended.[13] Thus, this fourth agreement also cannot establish nexus for Taxpayer in Washington during the review period.

However, as Rule 193(102)(d)(vii)(B) makes clear, "if the availability of [warranty repair] services is referenced by the seller in its marketing materials, communications, or other information accessible to customers," there is nexus. Here, as discussed earlier, Taxpayer and Affiliate share one website, which makes no distinction between the products sold by Taxpayer, and those sold by Affiliate. While the agreements in the record that were in effect during the review period only relate to Affiliate, the website indicates that Service Center A and Service Center B both offer warranty repair services to all categories of chassis, including the [Vehicle 2] chassis and [Vehicle 3] chassis sold by Taxpayer. As such, we conclude that Taxpayer had nexus in Washington pursuant to 193(102)(d)(vii)(B), and, therefore, the one [Vehicle 2] chassis sale that "occurred" in Washington during the review period is subject to B&O tax.[14]

In summary, we grant Taxpayer's petition as it pertains to all but $ . . . in gross sales, which represents the proceeds of the one sale of a [Vehicle 2] that was delivered to Washington during the review period. We remand this case to TAA for adjustment of the tax assessment consistent with our holding.

DECISION AND DISPOSITION

Taxpayer's petition is granted in part and denied in part. We remand this case to TAA for adjustment of the tax assessment in accordance with this determination. This decision is based on information provided by the taxpayer, without a review of the taxpayer's books and records, and is subject to future audit verification. RCW 82.32.050; WAC 458-20-230(7-8) (explaining statutory limitations on assessments). Further, we note that based on the evidence in the record, both Taxpayer and Affiliate are obligated to file returns separately and report all income sourced to Washington, including the sale of any parts to service centers located in Washington. This decision is without prejudice to the Department assessing tax, interest, and penalties for parts and other sales by Affiliate delivered into Washington.

Dated this 20th day of October, 2015.

[13] Taxpayer represented on appeal that there was no earlier agreement between any service center and Taxpayer prior to 2014.

[14] We note that to the extent Taxpayer had other instances of selling [Vehicle 2's] or [Vehicle 3's] during the review period to dealers outside of Washington, but that were delivered in Washington pursuant to instructions for the out-of-state dealers, such sales would also meet both requirements of Rule 193(1)(a) and would be subject to B&O tax.