

Cite as Det. No. 18-0197, 39 WTD 086 (2020)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 18-0197
)	
...)	Registration No. . . .
)	

RULE 182; RCW 82.04.280: B&O TAX – STORAGE WAREHOUSE. Taxpayer does not qualify for the preferential warehousing B&O tax rate for operating a storage warehouse when the warehouse is not a place where items are received for storage for compensation.

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.

Margolis, T.R.O. – A service provider protests the reclassification of receipts from the warehousing business and occupation (B&O) tax classification to the service and other activities B&O tax classification. We deny the petition.¹

ISSUE

Whether Taxpayer engages in the business of operating a storage warehouse and qualifies for the preferential warehousing B&O tax rate under RCW 82.04.280(1)(d).

FINDINGS OF FACT

Taxpayer is an [out-of-state] LLC, headquartered [out-of-state], that contracts with clients to provide freight handling services at warehouses in Washington. The Department of Revenue’s (Department) Audit Division (Audit) examined Taxpayer’s records for the period January 1, 2013, through December 31, 2016, and on June 7, 2017, assessed Taxpayer \$ The assessment is comprised of \$. . . in service and other activities B&O tax, \$. . . in use/deferred sales tax, a credit of \$. . . in warehousing B&O tax, \$. . . in 29% delinquent penalty, and \$. . . in interest.

Taxpayer reported income for 2013 and January-June of 2014 under the warehousing B&O tax classification and reported its subsequent income under the service and other activities B&O tax classification. Audit found that Taxpayer’s income is from staffing warehouses, subject to service and other activities B&O tax, rather than operating warehouses, subject to warehousing B&O tax,

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

because it is not fully responsible for operating the warehouses. Audit credited Taxpayer for the warehousing B&O tax that it reported and reconciled service income with the amounts reported to assess tax on the differences under the service and other activities B&O tax classification.

Taxpayer petitions for correction of the assessment, as well as for a refund of amounts allegedly overpaid due to subsequently reporting income under the service and other activities B&O tax classification, on grounds that it qualifies for the preferential warehousing B&O tax rate.

The warehouses are owned or leased by Taxpayer's clients, who hold title and physical possession of the goods in the warehouses. Taxpayer's clients are responsible for warehouse safety, security, maintenance, utilities, and repairs. Taxpayer's clients direct Taxpayer's onsite management, and Taxpayer's management directs Taxpayer's employees at the warehouses.

Taxpayer does not know the destination of outbound shipments nor the origin of inbound shipments, as these logistics are managed and controlled by its clients. Taxpayer's clients own all of the equipment and computer-tracking software for selecting and shipping products, scheduling the delivery of goods, and determining product types, quantities, and destination of goods for shipment. Taxpayer's employees use the equipment provided by clients and engage in the warehousing activities of selecting goods; loading goods; unloading goods; sorting, segregating, and storing goods; and handling pallets and packing materials. Taxpayer's management team provides job and safety training and worker's compensation to its employees, and uses its own software to track employee hours for compensation purposes. Taxpayer incurs costs for recruiting, insurance, worker's compensation, training, travel, damage caused by its employees, hand tools, and employee tracking software, but no general warehouse-related costs such as maintenance and utilities. Clients pay Taxpayer specified fees for specified warehousing activities, such as: stackdown declines and transfers; loading regular and stuff pallets; non-conveyable cases and pallets; bailing; put-to-light; liquor picks and replenishments; and supplemental labor hours.

ANALYSIS

Washington imposes B&O tax on every person for the act or privilege of engaging in business activities in Washington. RCW 82.04.220. The B&O tax is measured by applying particular rates against the value of products, gross proceeds of sales, or gross income of the business as the case may be. *Id.* RCW 82.04.280 provides a preferential rate as follows (in pertinent part):

- (1) Upon every person engaging within this state in the business of: . . . (d) operating a cold storage warehouse or storage warehouse . . . ; as to such persons, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.484 percent.
- (2) . . . "Storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation

RCW 82.04.280(1)-(2) (emphasis added). Business activities other than those classified elsewhere in Chapter 82.04 RCW fall under the catch-all service and other activities B&O tax classification, which imposes a tax equal to gross income multiplied by 1.5 percent. RCW 82.04.290(2)(a).

WAC 458-20-182 (Rule 182) is the administrative rule regarding warehouse businesses. It reflects the provisions of RCW 84.04.280 and states that gross income from operating a warehouse includes “all income from the storing, handling, sorting, weighing, measuring, and loading or unloading for storage of tangible personal property.” Rule 182.

The statute and rule provide that gross receipts accruing to persons engaged in operating storage warehouses, which are defined as places where goods, wares, or merchandise are received for compensation, are subject to tax under the warehousing B&O tax classification.

In Det. No. 91-071, 10 WTD 423 (1990), the taxpayer, a distributor of ski products, operated a warehouse in a building that it neither owned nor leased. In that determination, a person other than the taxpayer, “A,” leased the building from a third party. “A” hired the taxpayer to receive, store, box, and ship merchandise in and from the building, and paid the taxpayer for those services. In that determination, the Interpretation and Appeals Division (predecessor to the Administrative Review and Hearings Division) held as follows:

The warehouse involved in this case is a storage warehouse in that goods or merchandise are stored there for compensation. The rule doesn't say that the compensation has to be to the owners or lessees of the warehouse, nor does it say that the compensation has to be so much per day per item(s). Compensation based on the monthly salaries of those who perform the necessary labor in the warehouse is still compensation.

Further, Rule 182 (2)(a) says that those engaged in operating a warehouse business are subject to tax under the Warehousing classification. That is precisely what this taxpayer does. It operates the warehouse.

10 WTD 423 (emphasis in the original).

Rule 182(2)(a) does not say that those engaged in operating [any type of] a warehouse business are subject to tax under the warehousing B&O tax classification. Instead, it states that “[p]ersons engaged in operating any ‘storage warehouse’ . . . as defined herein, are subject to tax under the warehousing classification.” It is a well-established rule of statutory construction that “[s]tatutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). The preferential rate applies to those operating *storage* warehouses, which are warehouses where items are received *for storage for compensation*.² In this case, the items are not received for storage for compensation. Clients are storing their own items in

² To the extent Det. No. 91-071, 10 WTD 423 stands for the proposition that the preferential storage warehousing B&O tax rate applies to a warehouse, like the one at issue here, in which a business pays a contractor to store its own goods, rather than an actual “storage warehouse” in which the business receives and stores the “goods, wares, or merchandise” of third-parties for “compensation,” as is statutorily required under RCW 82.04.280, that decision is hereby overruled.

warehouses that they control, and Taxpayer is compensated for providing services in connection with operating the warehouses, but not for storage.³

Because the warehouses at issue are not places where items are received for storage for compensation, the warehouses do not meet the definition of “storage warehouses” under RCW 82.04.280, and Taxpayer does not qualify for the preferential rate.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 13th day of July 2018.

³ While we do not address the issue of whether Taxpayer is a staffing business, we note that, under WAC 458-20-274, the B&O tax rate for staffing businesses is determined by the classification of the activity engaged in by the assigned workers.