

BEFORE THE DEPARTMENT OF REVENUE OF THE STATE OF WASHINGTON

In the Matter of the Petition) D E T E R M I N A T I O N
For Refund of)
) No. 86-216
)
) Registration No.
) Petition for Refund
)

RULES 118 & 224 AND RCW 82.04.260(10): SERVICE B&O
TAX -- TRAVEL AGENT COMMISSIONS -- COMMISSION FROM
CONDOMINIUM OWNERS (LESSORS) -- TRAVELER (LESSEE)
BOOKS PACKAGE PLAN.

Where taxpayer received commissions from condo
owners on securing customers to rent condo, the
commissions are subject to Service B&O tax, not
Travel Agent Commissions B&O tax (lower rate).
While taxpayer may be in the "travel business," it
did not "act as a travel agent" when another person
arranged the travel portion of the package plan and
received commission as travel agent. Ticketing and
making reservations for travel is the basic activity
which distinguishes a travel agent from all others
who may be serving the traveler.

This headnote is provided as a convience for the reader and is
not in any way a part of the decision or in any way to be used
in construing or interpreting this Determination.

TAXPAYER REPRESENTED BY: . . .

DEPARTMENT OF REVENUE REPRESENTED BY
INTERPRETATION AND APPEALS SECTION: Abraham J. Krebs
 Administrative Law Judge

DATE OF TELEPHONE CONFERENCE: May 21, 1986

FACTS:

. . . (taxpayer) is engaged in the business of securing
customers to rent, usually on a weekly basis, privately owned

condominiums located in . . . , Mexico, for which activity the taxpayer receives a commission from the condominium owners.

The taxpayer began its business operation in March 1984. The taxpayer filed quarterly excise tax returns under the classification of Service and Other Activities for the first three quarters of 1984 and under the classification of Travel Agent Commissions for the fourth quarter of 1984.

In April 1985, the taxpayer filed amended tax returns for the first three quarters of 1984 in which it reclassified its activity from Service to Travel Agent (lower rate of tax). As a result thereof, the Department of Revenue issued a credit notice in the amount of \$784.32 on July 16, 1985.

Subsequently on October 14, 1985, the Department disallowed the reclassification and issued a Notice of Balance Due in the amount of \$868.86 for the four quarterly periods of 1984 which was paid on December 20, 1985.

TAXPAYER'S EXCEPTIONS:

The taxpayer contends that its commission income is properly subject to business and occupation (B&O) tax under the classification of Travel Agent Commissions, not Service and Other Activities.

The taxpayer-corporation shares office space with an affiliated corporation, . . . Both corporations have the same owner, . . . The taxpayer has no separate employees.

The taxpayer and . . . cooperate in making arrangements for a customer to spend a vacation in . . . , Mexico. . . . arranges the transportation and gets a commission from the airline carrier. The taxpayer arranges for lodging at a condominium and gets a commission from the condo owner. The customer gets a lower price by this package deal of air portion and land portion than if booked separately.

The taxpayer asserts that travel agents generally make arrangements for both transportation (air portion) and lodging (land portion), receive separate commissions from the suppliers of both, and report such commissions as subject to Travel Agent Commissions B&O tax. The taxpayer contends that the taxpayer, while doing the land portion business only, should also be subject to the lower Travel Agent Commissions B&O tax, not the higher Service B&O tax, because it is in the travel business.

The taxpayer points to a letter dated October 28, 1985, . . . , which it received from the Department's Taxpayer Information and Education Section holding the taxpayer to be correct in reporting its income under the Travel Agent Commissions classification; but the Department thereafter rescinded its holding by a letter dated December 6, 1985, The taxpayer contends that the rescission was incorrect and "contrary to the revenue laws of the State of Washington and rules promulgated by the Department of Revenue."

Therefore, the taxpayer seeks refund of the amounts paid when it was reclassified as subject to the Service B&O tax.

DISCUSSION:

The B&O tax is imposed by RCW 82.04.220 which provides:

There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be. (Emphasis supplied.)

RCW 82.04.260(10) provides for the travel agent classification as follows:

Upon every person engaging within this state in the business of acting as a travel agent; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of (Emphasis supplied.)

RCW 82.04.290 provides for the Service classification as follows:

Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW . . . 82.04.260 . . . ; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of

Thus, if the taxpayer acts as a travel agent, it is within the travel agent classification for tax purposes. Otherwise, its business activity is within the Service classification. Neither the statutory law nor the administrative regulations define the term "travel agent." Nor do law and general dictionaries define such term. We believe that the "yellow pages" of the telephone directory (Tacoma and Seattle) which has a separate classification for "travel agencies and bureaus" and their advertisements describing the "business activities" of a travel agent will serve to tell what a travel agent does. Such advertisements stress ticketing and reservations for travel by air, bus, cruise ship and train, and the rendering of other related travel services such as car rental and hotel reservation, tours, passport and visa assistance.

The "yellow pages" of the telephone directory have a separate classification for "hotels-reservations," (none for "condominium-reservations") which list includes a number of hotels and hotel chains. None of them advertise or indicate that they render related travel services such as "ticketing and reservations for travel."

The taxpayer's business activity is to arrange for lodging at a condominium. The taxpayer's income consists of a commission from the condo owner. It renders no related travel services such as "ticketing and reservations for travel," the basic activity which distinguishes a travel agent from all others who may be serving the traveller. Merely being in the broadly general and unspecified "travel business" does not make a person to be "acting as a travel agent." RCW 82.04.260(10). We conclude that the taxpayer's business activity was not that of "acting as a travel agent." Accordingly, it was properly subject to the Service B&O tax. RCW 82.04.290.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 21st day of July 1986.