

Cite as 1 WTD 337 (1986)

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

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u>
<u>N</u>		
For Correction of Assessment and)	
Refund of)	No. 86-289
)	
. . .)	Registration No. . . .
)	Tax Assessment No. . .
.)	
)	
)	

- [1] **RULE 103 AND RCW 82.04.050:** RETAIL SALES -- CREDIT BUREAU SERVICES -- OUT-OF-STATE SALE. Retail sales by credit bureau services take place in this state when the services are performed herein. No credit bureau services were performed by in-state taxpayer under the following circumstances: (1) out-of-state member organizations requested the credit reports from an out-of-state provider; (2) credit reports were delivered directly to the out-of-state customers by the out-of-state provider utilizing interstate communications; and (3) instate taxpayer did not correct, delete, or add any information to the credit reports.
- [2] **RULE 224:** SERVICE B & O -- COLLECTION SERVICES. Taxpayer's income received for coordinating and/or facilitation sales of credit reports and for providing collection services is subject to Service B & O tax.
- [3] **RULE 111 AND RULE 159:** SERVICE B & O -- SERVICE CHARGES -- ADVANCE-MENTS/REIMBURSEMENTS. Taxpayer liable only for Service B & O tax on amounts charged as override or service charge if it meets the requirements of Rules 111 and 159.

[4] **RULE 111, RCW 82.04.080 AND RCW 82.04.140:**
 RETAILING B & O TAX -- ADVANCING COSTS -- TRADE
 GROUP MEALS. Payments to reimburse the taxpayer for
 advancing the costs of its members' trade group
 meals are not deductible where the taxpayer has
 personal liability for making the payment.

These 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.

TAXPAYER REPRESENTED BY: . . .
 . . .

DATE OF HEARING: May 29, 1986

NATURE OF ACTION:

The taxpayer's account was examined for the period January 1,
 1981 through June 30, 1985. The examination disclosed a
 balance of taxes and interest owing in the amount of \$. . . .
 Tax Assessment No. . . . in that amount was issued on
 December 5, 1985.

FACTS AND ISSUES:

Anne Frankel, Administrative Law Judge--The taxpayer's
 petition sets forth the relevant facts and the issues raised
 by this appeal as follows:

[Taxpayer] is a Washington non-profit corporation
 that coordinates the provision of credit information
 to its members in Western Washington and Alaska.
 Various businesses are members of [Taxpayer],
 including banks and insurance companies.
 Approximately 70 member firms are resident in
 Alaska.

An arrangement has been established by [Taxpayer]
 with a California organization, [Corporation C],
 which provides a data base of credit information on
 a variety of businesses. [The taxpayer] coordinates
 the providing of that data by [Corporation C] to its
 members both in Washington and Alaska. At all
 times, all of the credit information is owned
 exclusively by [Corporation C]. Since the Alaska
 transactions are the subject matter of the above

referenced assessment, the remainder of this background will focus on that relationship.

When a member in Alaska desires to receive credit information on a particular business, that member has access to a computer terminal in its office which is directly on-line with the California data base The information requested is transmitted, via satellite, directly from California to the member in Alaska. There is no physical or electronic intervention by [the taxpayer] in the state of Washington. The requested information is printed out on a printer contained in the member's office. Again, there is no physical or electronic intervention by [the taxpayer] with respect to the display or printing of the information.

On a monthly basis, [Corporation C] submits bills to [the taxpayer] containing a list of members which have requested information. The charge varies depending upon the size of the particular member and the number of requests. [The taxpayer] then bills each member that requested the information. No sales tax is added to the bills for Alaska members, nor does [The taxpayer] charge a sales tax on the information that it provides to the Alaska members or in its bill submitted to [The taxpayer].

[The taxpayer's] sole function with respect to the reports requested by its Alaska members is to act as a facilitator and coordinator for obtaining the reports, to provide a mechanism for adding a limited amount of material to the [The taxpayer] data base, and to act as an interface with [The taxpayer] for billing and other purposes. The Department of Revenue has assessed sales tax on the Alaska transactions, to which the taxpayer now objects.

The taxpayer has paid sales tax on the Alaska transactions for the period following the assessment and now seeks a refund of that amount and all additional amounts paid thereafter on the Alaska transactions.

The second issue raised in the assessment to which the taxpayers object relates to the reimbursement for meals made available to members. Specifically,

the audit relates to luncheons held and sponsored by [The taxpayer] for its members.

For some luncheons, as a convenience to and as agents for the attendees, [The taxpayer] pays the restaurant for a luncheon and bills the members later for reimbursement. In such events, [The taxpayer] is doing so strictly as a service to its members. No profit is made by [The taxpayer] on the reimbursement. At other times, members pay directly for the luncheons.

In the last audit of [the taxpayer] by the Department of Revenue, which was conducted in 1977, the luncheons were held then under the same re-billing terms and conditions and under the same procedure as currently conducted. The issue was not raised in the audit nor was any assessment issued on the basis as claimed in the present assessment.

DISCUSSION:

[1] Alaska Transactions - The taxpayer's file indicates its predecessor, the . . . began as a non-profit credit service bureau association in 1899. The Association The member-owned organization offered several services: an adjustment department, collection division, trade groups, and credit exchange. It also furnished various publications in the credit field.

A business, as the taxpayer, performing multiple activities is taxable under the rate applicable to the activities engaged in. RCW 82.04.440. For example, the taxpayer's commission income earned from the collection of overdue accounts is subject to the Service and Other activities classification and the income from furnishing reports to its members subject to the Retailing classification.

The taxpayer had been reporting its income from the Alaska transactions at issue under the Service and Other Business Activities classification. The term "personal services" refers generally to the activity of rendering services which are not included in the statutory definition of a "sale." WAC 458-20-138; WAC 458-20-224. The auditor reclassified this income to the retailing and Retail Sales Tax classification. (Schedule II). RCW 82.04.050(3)(c) provides that the term "sale at retail" includes the sale of or charge made for personal business or professional services by credit bureau

businesses. "Sales" by credit bureau services take place in this state when the services are performed herein. WAC 458-20-103 (Rule 103).

Both the taxpayer and the auditor rely on RCW 82.04.050 and Rule 103 in support of their respective positions. The auditor assessed retailing tax on the basis the taxpayer is charging for credit bureau services performed in Washington, noting the fact that the customer resides out of state and/or that the taxpayer may send a written report out of state is not controlling. The taxpayer, however, relies on the fact that RCW 82.04.050 and Rule 103 only impose the tax when the credit bureau services are performed in Washington. The taxpayer contends it performed no taxable credit bureau services in Washington related to the Alaska transactions.

The following hypothetical illustrates an "Alaska transaction": Bank A in Alaska calls . . . in California to request credit information. Bank A must be a member of the taxpayer's association to receive information from the California data base. [Corporation C], from its own data base, transmits the information via satellite to Bank A where the information is printed by Bank A's computer. [Corporation C] bills Bank A \$6.00 for the report and submits the bill, along with other charges, to the taxpayer. The taxpayer adds \$2.00 to the charge by [Corporation C] for the credit report and bills Bank A \$8.00. Bank A sends \$8.00 to the taxpayer. The taxpayer keeps \$2.00 and sends \$6.00 to [Corporation C].

Retailing tax was assessed on the \$8.00 amount invoiced by the taxpayer to Bank A. Under these facts, however, we find that the "retail sale" of the credit report takes place outside Washington, as [Corporation C], the California credit business, furnished the credit information directly to the Alaska member with no input from the taxpayer.

If the taxpayer had prepared the credit reports or received income from furnishing credit information for the Alaska transactions, the charges for the reports would be subject to Washington sales tax. ETB 179.08.103. Sales tax would be due even though the reports were prepared for out-of-state customers. In such a case, the credit bureau business is not selling tangible personal property, the credit report itself, but is selling a locally performed service which is statutorily defined as a retail sale.

The taxpayer distinguished the services it provides its Washington customers from the Alaska transactions. Unlike the

Alaska members, some Washington members do not have direct lines to the data base. In such cases, the credit reports are printed on the taxpayer's computer terminals and forwarded to the customer. As the taxpayer performs some services relating to the credit reports for its Washington customers, it agrees that retail sales tax and retailing B&O tax are proper on the Washington transactions.

For its Alaska members, however, the taxpayer does not provide any such services relating to the furnishing to the credit information. It does not prepare the reports, nor does it correct, delete, or add any information to the reports. Although the taxpayer stated it does add a limited amount of material to the . . . data base, it does not do so in response to a particular request by a customer for a credit report.

[2] We agree, therefore, with the taxpayer's position that the income it receives from the Alaska transactions is not for furnishing credit information, but for acting as a facilitator and coordinator for obtaining the reports and as an interface for billing. We find the payments for the Alaska transactions subject to taxation under the service category.

[3] The taxpayer contends it serves as a conduit through which [Corporation C] is paid for furnishing the reports to the Alaska members. The taxpayer shall be liable for service tax only on the income received from the amount it bills as an override or service charge if it meets the requirements of WAC 458-20-111 (Rule 111 discussed below) and WAC 458-20-159. In summary, these requirements are (1) that the taxpayer must not be primarily or secondarily liable for payment to [Corporation C], other than as agent for the Alaska members and (2) the taxpayer's books and records, including the invoices for the Alaska transactions, must show the charges by [Corporation C] separate from the override or service charges added by the taxpayer. As no evidence has been presented indicating these requirements have been met, the entire charge is subject to the service tax. No exemption is provided to exclude business costs. RCW 82.04.080.

[4] Business Tax - Trade Group Meals -- The retailing business tax was assessed on unreported retail sales of meals. (Schedule III.) Since the taxpayer had paid retail sales tax to the restaurants or caterers, no sales tax was assessed.

The taxpayer contends it was not making retail sales of meals to its members, but only collecting funds from members as

"reimbursements" for amounts it had advanced for the member's meals.

The Department recognizes a limited deduction from the business and occupation tax for advances and reimbursements as set forth in WAC 458-20-111 (Rule 111):

The word "advance" and "reimbursement" apply only when the customer or client alone is liable for the payment of the fees or costs and when the taxpayer making the payment has no personal liability therefor, either primarily or secondarily, other than as agent for the customer or client.

In the present case, the taxpayer arranges for Trade Groups for its members as part of the services it provides. The groups bring together credit managers of business establishments selling like trade, in part to discuss methods to deal with slow paying and marginal accounts. The audit report indicated that the taxpayer has a personal liability for payment of the food vendor's invoices for the trade association meals. The taxpayer has submitted no evidence to rebut that finding. Accordingly, the deduction provided by Rule 111 is inapplicable.

No deduction is permitted simply because the taxpayer may realize no profit from the collection and disbursement of the funds it receives from its members for payment of the meals. See RCW 82.04.080. Nor is the Department estopped from collecting the tax because no assessment was issued on the payments for the meals in a previous audit. See, e.g. Kitsap-Mason Dairymen's Assn. v. State Tax Comm'n., 77 Wn.2d 812 (1970).

DECISION AND DISPOSITION:

The taxpayer's petition is granted in part. The income from the charges for the credit reports to the Alaska members shall be subject to the Service Business tax and the retailing business tax and retail sales tax assessed on these transactions shall be deleted. (Schedule II).

The assessments in Schedules III (unreported retail sales of meals) and IV (use tax) are affirmed. Tax Assessment No. . . . shall be amended and due on the date provided thereon. Because the delay in issuing this Determination was not the result of any action by the taxpayer, interest on the unpaid

balance shall be waived from August 29, 1986 through the new due date.

DATED this 7th day of November 1986.