

Cite as Det. No. 13 WTD 9 (1993).

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

In the Matter of the Petition	)	<u>F I N A L</u>
For Correction of Assessment of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 89-89R
	)	
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .
	)	

- [1] RULE 103 -- RCW 82.04.050 -- RETAILING B&O TAX --  
RETAIL SALES TAX -- CREDIT BUREAU BUSINESSES --  
SERVICES DEFINED AS RETAIL SALES -- LOCATION OF SALE.  
With respect to services defined as "sales at retail"  
under RCW 82.04.050, the sale takes place and is  
subject to retailing B&O tax and retail sales tax at  
the location where the services are performed. Thus,  
credit bureau businesses are liable for retailing  
business tax and collection of retail sales tax  
measured by gross receipts from credit reports where  
the retail services which generate such reports are  
performed in this state regardless of where the  
customer is located and regardless of where the credit  
report is delivered. Accord: Final Det. No. 86-82A, 1  
WTD 133 (1986).
- [2] RULE 103 -- RCW 82.04.050 -- RETAILING B&O TAX --  
RETAIL SALES TAX -- SERVICES COMPRISING CREDIT BUREAU  
BUSINESS DEFINED -- SERVICES DEFINED AS RETAIL SALES --  
LOCATION OF SALE -- APPORTIONMENT THROUGH ALLOCATION.  
The credit bureau business consists of the rendition of  
fundamental services to clients, including information  
gathering, information analysis, information formatting  
and explanation, and information dissemination. When  
these services are performed in Washington State, the  
gross receipts paid by the client are fully taxable in  
Washington State.
- [3] RULE 103 -- RCW 82.04.050 -- RETAILING B&O TAX --  
RETAIL SALES TAX -- SERVICES DEFINED AS RETAIL SALES --  
LOCATION OF SALE -- APPORTIONMENT THROUGH ALLOCATION.

In the case of credit bureau businesses and other services statutorily defined as "retail sales," the taxable incident or event is allocated to the location where the fundamental services or business activities are primarily performed.

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: . . .

#### NATURE OF ACTION:

Credit bureau business petitions for reconsideration of Determination No. 89-89, which upheld the assessment of retailing B&O tax and retail sales tax on taxpayer's charges for credit bureau services.

#### FACTS:

Faker, A.D. -- Determination No. 89-89 was issued on February 17, 1989. In part, it both deleted and sustained certain excise taxes which are no longer in question. In material part, the Determination sustained the assessment of retailing B&O tax and retail sales tax upon charges for engaging in the credit bureau business. The operative facts are fully reported in Determination No. 89-89 and are not restated here except as necessary for clarification of the issue under reconsideration.

#### ISSUES:

Where are the credit bureau services which generate gross receipts performed, and where are such receipts taxable?

#### DISCUSSION:

After full reconsideration of the facts and issues in this case and the findings and conclusions of Determination No. 89-89 the Department concludes as follows:

[1] With respect to services defined as "sales at retail" under RCW 82.04.050, the sale takes place and is subject to retailing B&O tax and retail sales tax at the location where the services are performed. See WAC 458-20-103. Washington State has traditionally taxed such retail services at the state of origin; that is, if the services are performed in this state, the gross receipts derived therefrom are subject to this state's retailing B&O tax and retail sales tax.

As we said in Final Determination No. 86-82A, 1 WTD 133 (1986), Washington credit bureau businesses are liable:

. . . for retailing business tax and collection of retail sales tax measured by gross receipts from credit reports where the retail services which generate such reports are performed in this state. This is correct, under the law, even where the customer or client is located outside this state at a place where the credit report, which tangibly evidences the retail services rendered, is delivered.

(Emphasis supplied.)

We hereby reaffirm this position.<sup>1</sup>

[2] The foregoing, reaffirmed conclusion begs the questions: What are the business activities or services which constitute the "credit bureau business" under RCW 82.04.050, and where are such activities or services performed?

It is the Department's position that the credit bureau business consists of the rendition of fundamental services to clients, consisting of:

- Information gathering
- Information analysis
- Information formatting and explanation
- Information dissemination

These activities, however performed, together with collateral functions which may be performed from time to time, all relate to the credit history and credit worthiness of the potential customers of the credit bureau's client. When these services or activities are performed in Washington State, the gross receipts paid by the client are fully taxable in Washington State. This is so regardless of how the credit bureau business may internally account for these revenues by distributing them between its offices located within or outside of this state. Traditionally, Washington State does not bifurcate or segregate revenues derived from business activities which are statutorily defined as "retail

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<sup>1</sup>The Department presently has under consideration the possible adoption of an Administrative Code Regulation which could change this tax application, prospectively, so as to assert retailing B&O tax and retail sales tax collection liability based upon the location where the credit bureau has commerce clause nexus and where the credit report is received by the credit bureau's customer.

sales." Rather, when such activities are performed in interstate commerce from locations within multistate taxing jurisdictions, Washington State accomplishes a fair apportionment by allocation of the sales of services to the jurisdiction where the services are performed. Constitutional authority for such an approach is found in Goldberg v. Sweet, 488 U.S. 252 (1989).

Confusion is born when the activities or services which constitute the "credit bureau business" are performed within a number of states where the business has a physical presence constituting commerce clause nexus. See Quill v. North Dakota, 112 S. Ct. 1904 (1992). The courts have not directly addressed such situations except for very specific tax applications such as the sales of telecommunication services in Goldberg v. Sweet, supra. Moreover, a business may have physical presence (commerce clause nexus) in a number of states where it does not engage in taxable business activities.

Most pointedly, under Washington State's unique tax structure, it is only the act of "engaging in business" (RCW 82.04.150) or making "sales at retail" (RCW 82.04.050) which constitute taxable events. Washington State has no business income tax. A business entity may have all kinds of commerce clause physical presence in this state (e.g., a place of business) without necessarily incurring this state's excise tax liability. It is for this very reason that Washington State attributes taxing jurisdiction over retail services to the interstate location at which the business activities are performed which generate the income sought to be taxed. Without such an attribution or allocation a state such as Washington State which taxes gross receipts from business activities would violate the constitutional mandates of Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977). Simply put, Washington State traditionally apportions gross receipts through allocation.

[3] Again, in the case of credit bureau businesses and other services statutorily defined as "retail sales," the taxable incident or event is attributed to the location where the fundamental services or business activities are performed. In the instant case, the taxpayer asserts that it has reported and paid tax to Washington State in all instances where any of the fundamental credit bureau activities were performed here, through its physical presence here (offices located in this state). Conversely, when all of the fundamental activities were performed outside this state (in Illinois or other states in which the taxpayer has commerce clause, physical presence) it has not reported and accounted for this state's taxes. The taxpayer itself has attributed its services to this state and seeks no refund of taxes based upon such attributions. We agree with that result, subject to further audit confirmation of these facts by

reference to documents which the taxpayer purports will reflect those transactions where the fundamental services were performed entirely outside this state.

DECISION AND DISPOSITION:

The taxpayer's petition with respect to the issue under reconsideration is sustained, subject to audit confirmation of facts. In all other respects Determination No. 89-89 is reaffirmed and sustained. The tax assessment will be adjusted to delete retailing B&O tax and retail sales tax in those instances where records reveal that the fundamental credit bureau services were performed from locations outside this state. The taxpayer may continue to report retailing B&O tax and retail sales tax to this state according to the guidelines contained herein unless and until changes are made in statutory law or the Department adopts and publishes an administrative rule pertinent to the taxation of interstate credit bureau services.

DATED this 24th day of November 1992.