

Cite as Det. No. 95-093, 16 WTD 29 (1995)

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

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of)	
)	No. 95-093
)	
. . .)	Registration No. . . .
)	Notices of Balance Due
)	BO. . . and BO. . .
)	

RULE 901E; RCW 82.04.055 AND RCW 82.04.290: DATA ENTRY -- SELECTIVE BUSINESS SERVICE. Posting raw data from charge slips onto a computer for billing constitutes data entry taxable under the selective business services classification.

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.

. . .

NATURE OF ACTION:

A corporation protests the classification of its data processing service as selected business service.¹

FACTS:

Pree, A.L.J. -- The taxpayer is a Washington corporation. Medical providers send their charge slips to the taxpayer. The taxpayer posts the raw data from the slips onto a computer in order to bill patients or insurance companies. The providers pay the taxpayer a negotiated fee for this service.

On June 30, 1994 and on July 14, 1994, the Taxpayer Account Administration Division (TAA) of the Department of Revenue (Department) issued two Notices of Balance Due as a result of reclassifying the taxpayer's business to a selected business service. The taxpayer was asked to pay additional tax and penalty for the fourth quarter of 1993 and additional tax for the January 1994 period. The taxpayer protests the reclassification.

The taxpayer indicates that its president called the Department regarding proper reporting shortly after beginning business in April 1993. According to the president, the taxpayer processed data. It "got a job, processed it, put out product, and got it back." The taxpayer states that it was advised to report

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

its receipts under Code 10 as "processing for hire" which it did until contacted by TAA. Since then it has been reporting under the selected business services classification. The taxpayer did not request a written ruling of its proper reporting classification pursuant to WAC 458-20-100(9).

The taxpayer could not identify the individual with whom it discussed the matter, but did recall that the individual called was in Olympia. In response to our request of the taxpayer's phone records to identify the individual who advised the taxpayer and to corroborate the taxpayer's statement, the taxpayer provided copies of its phone bills at the time. The Olympia number was for provider services, and not a Department of Revenue number. The taxpayer now suggests that it may have used the Department's 800 number.

ISSUE:

Whether a data entry service constitutes a selective business service.

DISCUSSION:

Effective July 1, 1993,² certain businesses were reclassified for business and occupation (B&O) tax purposes as selected business services. These services were previously subject to the service and other business activities tax classification. The tax rate for this new classification is 2.5 percent. RCW 82.04.290.

Included within the definition of a selected business service are "business consulting services." In relevant part, RCW 82.04.055 defines a business consulting service as follows³:

(1) "Selected business services" means:

(a) Stenographic, secretarial, and clerical services.

. . .

(c) Data processing services, including but not limited to word processing, data entry, data retrieval, data search, information compilation, payroll processing, business accounts processing, data production, and other computerized data and information storage or manipulation. Data processing services also includes the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or by the purchaser or other beneficiary of the service.

(Emphasis supplied.)

Posting raw data from the medical providers' charge slips on a computer for billing constitutes data entry. The taxpayer's data entry service clearly falls under the selective business services definition. It is a well established rule that an administrative agency cannot alter or amend a statute by interpretation, even with legislative acquiescence. Burlington Northern, Inc. v. Johnston, 89 Wn.2d 321, 572 P.2d 1085 (1977).

Thus, the Department of Revenue, as an administrative agency, is precluded from usurping those lawmaking powers which only the legislature is entitled to exercise. While the legislature can enact the law, an administrative agency can only interpret and enforce it within clear guidelines.

Whatever oral advice that the taxpayer may have received prior to the enactment of RCW 82.04.055 was not applicable to the periods assessed. Rather, any advice given was superseded by the new law enacted after the alleged advice was given. According to the taxpayer's own testimony, advice was sought prior to passage of the law.

² The bill was signed into law May 28, 1993. We note that this is after the taxpayer stated it had called the Department of Revenue.

³ Emergency rule WAC 458-20-901E provides a similar definition of business consulting services.

Finally, in the absence of written instructions from the Department of Revenue to a taxpayer or in the absence of sufficient corroborating information regarding oral instructions, the Department is not estopped on the grounds that the taxpayer allegedly received erroneous oral instructions regarding its tax liability. Det. No. 93-159, 13 WTD 316 (1993). ETB 419.32.99 issued April 30, 1971 also explains:

The department cannot give consideration to claimed misinformation resulting from telephone conversations or personal consultations with a department employee.

There are three reasons for this ruling:

1) There is no record of the facts which might have been presented to the agent for his consideration.

(2) There is no record of instructions or information imparted by the agent, which may have been erroneous or incomplete.

(3) There is no evidence that such instructions were completely understood or followed by the taxpayer.

(Emphasis supplied.)

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 28th day of April, 1995.