

Cite as Det. No. 97-222, 17 WTD 167 (1998)

BEFORE THE APPEALS 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. 97-222
)	
...)	Registration No. . . .
)	FY. . . /Audit No. . . .
)	

[1] RULES 110 AND 141; RCW 82.04.070: RETAIL SALES TAX -- B&O TAX -- DEDUCTIONS -- POSTAGE --FREIGHT AND DELIVERY COSTS -- MAILING BUREAUS. Postage costs, but not freight and delivery costs, incurred by a mailing bureau that are charged to its customers are deductible from the measure of the B&O tax and retail sales tax.

Headnotes are provided for the convenience of 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 mailing bureau (the taxpayer) protests the future reporting instructions provided by the Department of Revenue (the Department) in an audit report that it may not deduct common carrier charges made to its customers from the measure of business and occupation (B&O) tax and retail sales tax that it owes.¹

FACTS:

De Luca, A.L.J. -- The taxpayer is a mailing bureau. Mailing bureaus mail material for the publishing industry and also mail folders, bulletins, form letters, advertising publications, flyers, and similar materials for other customers. The taxpayer sends these materials either by U.S. Mail or by common carriers, such as United Parcel Service (UPS) or Airborne Freight. The taxpayer has deducted the amounts it charged to its customers for postage and common carrier freight charges from the measure of the B&O tax and retail sales tax it reported.

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

In a prior audit, the Department's Audit Division (Audit) apparently accepted the taxpayer's practice of deducting both the costs of postage and common carrier freight charges. In the present matter, Audit honored the prior audit by not making any adjustments to the taxpayer's deductions for the common carrier charges. However, Audit instructed the taxpayer not to take the deductions in the future for the common carrier charges and to report those amounts as part of its taxable income. Audit allowed the taxpayer to continue taking the deductions for the postage charges. The taxpayer protests the reporting instructions.

ISSUE:

May mailing bureaus deduct from the measure of B&O tax and retail sales tax the amounts that they charge their customers for the costs they incur to ship the customers' materials by common or contract carriers?

TAXPAYER'S EXCEPTIONS:

The taxpayer argues that the present Audit instructions are placing unreasonable restrictions on mailing bureaus and are much more narrow than what has been accepted in the past. The taxpayer declares that members of its industry should not be taxed on "select types of delivery which they need to use to achieve their customers' requests for delivery deadlines and guarantee of no damage." The taxpayer notes that all mailing bureaus use the U.S. Mail, UPS, Airborne Freight, and other common carriers to move their customers' mail from places to other places. It contends that all of these types of shipments should be considered forms of "postage" and charges for all of them should be deductible from the measure of tax because of their similarities to the U.S. Mail. The taxpayer cites WAC 458-20-141 (Rule 141) in support of its argument. The taxpayer further notes that the Internal Revenue Code allows taxpayers to use private delivery services to send their federal tax returns to the Internal Revenue Service.

DISCUSSION:

Generally, freight and delivery costs charged to a buyer are part of the selling price. Amounts received by a seller from a purchaser for freight and delivery costs incurred by the seller prior to the completion of sale constitute recovery of costs of doing business and must be included in the selling price or gross proceeds of sales reported by the seller. WAC 458-20-110 (Rule 110). RCW 82.04.070 provides that "gross proceeds of sale" means:

the value proceeding or accruing from the sale of tangible personal property and/or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(Underlining ours). Thus, amounts received for freight and delivery costs normally are taxable to a seller of retail services, such as the taxpayer. The question is whether amounts received by

the present taxpayer for its freight and delivery costs are an exception to the general rule that such costs are not deductible.

As noted, the taxpayer cites Rule 141, which pertains to mailing bureaus. Rule 141 provides in pertinent part for B&O tax:

Where a mailing bureau purchases stamps, government postals or stamped envelopes for a customer and the customer is charged therefor, the amount of the postage may be deducted from the measure of the business and occupation tax.

Similarly, Rule 141 provides in pertinent part for sales tax:

Where a mailing bureau purchases stamps, government postals or stamped envelopes for a customer and the customer is charged therefor, the amount of the postage may be deducted from the measure of the retail sales tax due.

The rule is clear that the amount charged a customer for postage, including stamps, government postals, or stamped envelopes, is deductible. "Postage" is commonly defined as "the amount charged for mailing a letter or package, esp. as represented by stamps or indicia." Webster's New World Dictionary 1112 (2d college ed. 1974). Postage, as used in the rule and as commonly defined means payment to the government postal service to mail materials. There is no reference in the rule permitting the deductions for payments received for freight or delivery charges paid to common or contract carriers such as UPS or Airborne Freight. Thus, we find that Rule 141 does not allow an exception to the general rule that payments received for freight and delivery costs are taxable as part of the selling price. Rule 110. Exemptions to a tax law will be narrowly construed. The burden is on the person claiming the benefit of an exemption to show that he/she qualifies for it. Budget Rent-A-Car, Inc. v. Department of Rev., 81 Wn.2d 171, at 174-75, 500 P.2d 764 (1972).

Indeed, the Board of Tax Appeals (BTA) in Professional Promotion Services, Inc. v. Department of Rev., Docket No. 36912, 9 WTD 219 (1990) addressed Rule 141's provisions that allow the deduction for postage for mailing bureaus and a similar provision in WAC 458-20-144 (Rule 144) that allows a postage deduction for printers. The BTA refused to extend the rules to cover postage paid by an advertising agency, in part, because advertising agencies do not have a similar Department rule allowing them to deduct payments received for postage charges they incurred.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

Dated this 31st day of October, 1997.