

Cite as Det. No. 99-022, 19 WTD 542 (2000)

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. 99-022
)	
...)	Registration No. ...
)	FY. ... /Audit No. ...

[1] RULE 214; RCW 82.04.4287; RCW 82.04.330: B&O TAX EXEMPTION – PACKAGING OF FRESH HORTICULTURAL PRODUCTS – PALLETIZATION INCOME. Income received by a fruit packer from the buyer for the palletization of fruit boxes does not qualify for the B&O tax exemption allowed for fruit packaging activities. Palletization assists the shipper in the movement of the fruit boxes, but is not part of or even an extension of the packaging process. Furthermore, the B&O tax exemption is only available for charges incurred by the grower and not the buyer.

...

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:

Taxpayer appeals the assessment of service business and occupation (B&O) tax on the income derived from the palletization of fruit¹

FACTS:

Lewis, A.L.J. -- Taxpayer is a fruit grower and packer. Taxpayer cleans, sorts, stores, packs, and sells fruit grown on its own land. In addition, it provides packing services to other fruit growers and sells fruit as their agent.

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410. Nonprecedential portions of this determination have been redacted.

According to Taxpayer, it is customary in the fresh fruit packing industry for a packer to sell fruit as an agent of the grower. In such cases, the packer/agent usually receives payment from the fruit buyer and internally deducts its itemized cleaning, sorting, storage and packing fees from the amount received before the net amount is paid to the grower for the fruit. However, when Taxpayer palletizes boxes of fruit for shipment, a separate charge is made to the buyer and not the grower. Taxpayer explained that:

Approximately 90% of fruit buyers request that their purchases be bundled and strapped to pallets for ease of handling in their warehouses. It is an industry practice to charge customers an additional fee for palletizing the fruit boxes. For internal bookkeeping purposes, [Taxpayer] treats this fee differently than the other packing fees as palletizing income is separately charged to the buyer and is not deducted from the amount remitted to the third party growers.

...

Taxpayer's books and records were audited by the Department of Revenue (Department) for the period January 1, 1994 through March 31, 1997. On July 1, 1998, the Department issued a \$. . . assessment. Much of the tax assessment arose from the service B&O tax assessed on palletizing income The Audit Division assessed tax on palletizing income, maintaining that the palletizing of fruit boxes was not part of the packing process. The Audit Division reasoned that the B&O exempt activities of washing, sorting, and packing of fruit stops at the end of the packing line. In addition, the Audit Division maintained that the palletizing of boxes was not part of the B&O exempt packing process because the buyer and not the grower paid for the service.

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On July 24, 1998 Taxpayer paid part of the assessment and filed a petition protesting the assessment of service tax on the palletizing income. . . . Taxpayer's petition maintained that the palletizing activity was an extension of the agricultural packing activity and, thus, B&O tax exempt. . . .

ISSUE:

1) Is the palletization of fruit boxes part of the B&O tax-exempt fruit packing activity?

...

DISCUSSION:

[1] Taxpayer protested the assessment of service B&O tax on palletizing income. RCW 82.04.4287 provides for an exemption from tax for income received for the packaging of fresh perishable horticultural products. RCW 82.04.4287 provides:

In computing tax there may be deducted from the measure of tax amounts derived by any person as compensation for the receiving, washing, sorting, and packing of fresh perishable horticultural products and the material and supplies used therein when performed for the person exempted in RCW 82.04.330, either as agent or as independent contractor.

RCW 82.04.330 provides a B&O tax exemption for “any farmer that sells any agricultural product at wholesale.” WAC 458-20-214 (Rule 214) implements the exemption provided by RCW 82.04.4287 and provides clarification as to which types of activities are exempt.

(2) Persons who derive income from receiving, washing, sorting, packing, or otherwise preparing for sale, perishable horticultural products for others are also subject to business and occupation tax, except when such activities are performed for the growers of such products (RCW 82.04.4287.)

(a) Service and other business activities. Taxable with respect to:

...

(iv) Charges for receiving, washing, sorting, and packing of fresh perishable horticultural products and the material and supplies used therein, when performed for persons other than the growers thereof;

...

(vi) Other miscellaneous charges, including analysis fees, but excepting actual charges made for foreign brokerage and bona fide charges for receiving, washing, sorting and packing fresh perishable horticultural crops and the materials and supplies used therein when performed for the grower, either as agent or independent contractor.

We find that that the income derived from palletization of fruit boxes does not enjoy an exemption from the B&O as being part of the fruit packing activity. We agree with the Audit Division’s reasoning that the packing of the fruit ends at the conveyor belt. The fruit, once in boxes, has been cleaned and sorted and is ready for its journey to warehouses and stores. Palletization assists the shipper in the movement of the fruit boxes, but it is not part or even an extension of the packing process. Taxpayer’s petition is denied. Palletization is not part of the packing process.

In addition, we find that even had we found that the palletization was part of the packing process, the B&O exemption could not be allowed because the palletization was not being done for the grower. The B&O tax exemption for the packaging of fresh fruit is available to the growers of the

fruit. In this instance, it is the buyer of the fruit that orders and pays for the palletization. Taxpayer has alleged that the palletization is done for the buyer as agent of the grower. We do not deny that such a relationship could theoretically exist, however in this instance no evidence has been presented to support Taxpayer's allegation. Based on the facts presented, we find that no such relationship exists.

. . .

DECISION AND DISPOSITION:

Taxpayer's petition is denied as it relates to the palletization income. . . . This file will be remanded to the Audit Division for the proper adjustments consistent with this determination.

Dated this 9th day of February 1999.