

Cite as Det. No. 99-080, 19 WTD 136 (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>
Ruling for)	
)	No. 99-080
)	
...)	Registration No. . .
)	
)	

- [1] RULE 183; RCW 82.04.050(3): RETAIL SALES – WILDLIFE TOURS – DAY TRIPS FOR SIGHTSEEING PURPOSES. A boat trip to view wildlife is still a day trip for sightseeing purposes, despite an optional lecture held off vessel during the week before the tour.
- [2] RULE 183, RULE 256; RCW 82.04.050(3): RETAIL SALES – WILDLIFE TOURS – DAY TRIPS FOR SIGHTSEEING PURPOSES VERSUS EDUCATIONAL ACTIVITIES. To determine whether the paramount purpose of a trip is educational or sightseeing, a variety of factors must be examined: Whether instruction is a substantial part of the trip; whether the sightseeing is incidental to the primary purpose of the trip; whether the trip is in essence a continuation or enhancement of an existing curriculum; whether credit or certification is given; whether established places of interest are visited; and the manner in which the trip is advertised and sold to the public. Rule 256 exempts professional organizations from B&O tax on educational seminars. Whether a tour is closed to the general public is not relevant to whether the trip is a retail sale.
- [3] RULE 183, RULE 189(5)(b); RCW 82.04.050(3), RCW 82.04.419: RETAIL SALES – WILDLIFE TOURS – DAY TRIPS FOR SIGHTSEEING PURPOSES – MUNICIPAL ENTERPRISE ACTIVITIES: A municipal program that is subsidized by more than 50% of its costs is not enterprise activity. Non-enterprise activities are exempt from B&O tax, but not from retail sales tax.

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 requests review of a ruling from the Taxpayer Information and Education Section of the Department of Revenue holding that the taxpayer's [wildlife] watching trips are subject to retail sales tax.¹

FACTS:

Bianchi, A.L.J. -- As part of an array of programs, [the taxpayer] sponsors daylong boat or float tours of [wildlife] habitat. It also sponsors kayak tours in some of these habitats. According to the taxpayer the purpose of the tours is to make the public aware of environmental issues facing marine life by involving people more closely in the marine environment.

The [Taxpayer] staff requested information from the Taxpayer Information and Education Section (TI&E) of the Department of Revenue (Department) regarding the taxability of the tickets sold for these tours. In a letter dated January 20, 1998, TI&E informed the [Taxpayer] that the tickets were subject to retail sales tax because the tours were for sightseeing purposes that lasted a day or less. TI&E further said that for the taxpayer to be entitled to an exemption from sales tax on the grounds that its trips were educational in nature, the trips would have to be an organized educational activity closed to the general public.

The [Taxpayer] appealed the letter contending that the trips should not be subject to retail sales tax because they last more than one day, that they are educational in nature and they are heavily subsidized by the City.

The taxpayer stated that the customer is invited to come to the [Taxpayer's place of business] on the . . . night before a trip to view a lecture and slide show about the marine life that will be the subject of the trip. The spectator does not have to go to the lecture to go on the trip and not all spectators actually do attend. The lecture, however, is open only to persons who will be on the trip and is not open to persons who happen to be at the [Taxpayer's place of business] at the same time as the lecture. There is only one charge for both the lecture and the trip.

The [Taxpayer] also emphasized the educational, as opposed to recreational, nature of the trips--making the public aware of environmental issues facing marine life by involving people more closely in the marine environment. The [Taxpayer] advertises the tours by brochures that are sent to . . . as well as to schools. At least one educator on the staff of the [Taxpayer] and volunteer naturalists accompany each tour and point out sea life to the customers. Nevertheless, no educational credit is given by any educational institution for the tours nor is any curriculum used. The same boat operators with whom the [Taxpayer] contracts offer similar tours on different days. The only difference between the [Taxpayer] tours and the private tours is that the latter usually include a visit to a destination such as . . . , as well.

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

The taxpayer's Education Manager further asserts that the [Taxpayer's] total revenue for education programs is . . . per year. User fees cover only 30% of the costs of the various educational programs. The total revenue for the marine program in 1997 was . . ., but this amount included a \$70,000 subsidy from the City of Less than 50% of the revenue from the boat trips came from user fees.

ISSUES:

1. Does an optional lecture held during the week before a one-day sightseeing trip extend the length of the trip beyond one day thus making the income not subject to retail sales tax under RCW 82.04.050(3)?
2. What factors clarify the difference between sightseeing trips, which have a recreational purpose and are subject to retail sales tax, from trips with an educational purpose, which are not subject to retail sales tax?
3. Is the income from the trips exempt from retail sales tax under WAC 458-20-189 (Rule 189) because more than 50% of the revenue for such trips comes from a municipal subsidy?

DISCUSSION:

Day trips for sightseeing purposes are retail sales subject to retail sales tax. RCW 82.04.050 declares:

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

[Emphasis added.]

Prior to 1996, the definition of retail sales included "guided tours." "Guided tours" was removed from the statute in 1996 and replaced with "day trips for sightseeing purposes." The reason for the change was to classify trips likely to be held entirely intra-state as retail sales and separate them from those trips where interstate transportation was likely. See Det. No. 98-060, 17 WTD 202 (1998).

After the legislative change, the Department issued a Special Notice dated April 29, 1996 that stated:

Day trips for sightseeing are still subject to sales tax. Such taxable trips include whale-watching excursions, walking tours of historic areas, bus tours, and aerial tours of scenic areas. School trips and other, similar educational tours are not subject to the tax.

1. Length of Trip

We do not agree that the additional lecture provided at the [Taxpayer's place of business] prior to the trip converts a day trip into a trip lasting longer than a day. Attendance at the lecture is optional. It is held at the [Taxpayer's place of business], not on the chartered boat, bus or kayak. RCW 82.04.050 specifically declares that trips for sightseeing purposes that last a day or less are retail sales. The activity that occurs during the "trip" itself is still completed in one day or less. We reject the argument that the optional lecture makes the ticket prices of such trips exempt from retail sales tax.

2. Recreation vs. Education

The taxpayer's contention that the trips it sponsors have an educational purpose, not an amusement or recreation purpose, is a closer question. Although we think TI&E's result, that the user fees for trips the taxpayer sponsors are subject to retail sales tax, is correct, we do not agree with TI&E's reasoning that to be exempt from retail sales tax educational activities must be closed to the general public. Such a distinction appears in WAC 458-20-256 (Rule 256). It exempts educational seminars conducted by nonprofit professional or trade associations from business and occupation (B&O) tax on the fees such organizations receive to pay for the lease of facilities for such seminars. However the distinction in Rule 256 does not apply to either retail sales tax or to municipalities.

We believe that the legislature intended that sightseeing trips such as the ones conducted by the taxpayer are to be considered recreation and amusement services subject to retail sales tax. The legislature classified "sightseeing" trips as amusement and recreation activities, but it did not define sightseeing. Sightseeing was defined in Det. No. 98-060, 17 WTD 202 (1998). In that determination we held that where a statute does not define a term, the ordinary, dictionary meaning of the term may be applied. *Seattle v Williams*, 128 Wn.2d 341, 908 P.2d 359 (1995). Sightseeing is defined in *Webster's New Universal Unabridged Dictionary* (2d ed. 1979) as:

1. The act of seeing sights; particularly a going about to see interesting places and things for pleasure, *education*, etc.

(Emphasis added). Just because the term sightseeing includes an educational purpose does not by definition foreclose sightseeing tours from also having an amusement and recreation purpose. The Special Notice dated April 29, 1996 issued by the Department makes this clear. It specifically states that whale watching trips and walking tours of historic areas, tours that have an educational element, are the kinds of sightseeing day trips that are amusement and recreation activities and are subject to retail sales tax.

We believe that field trips, on the other hand, which are organized for an educational purpose, whether by schools or other institutions with educational objectives, are distinguishable from sightseeing tours which have an amusement or recreation purpose. To determine whether the educational objective or the amusement and recreation objective is paramount, we must look at various factors:

- Whether instruction is a substantial part of the trip;
- whether the sightseeing is incidental to the primary purpose of the trip;
- whether the trip is in essence a continuation or enhancement of an existing curriculum;
- whether credit or certification is given;
- whether established places of interest are visited; and
- the manner in which the trip is advertised and sold to the public.

From taxpayer's description of the tours, it does not appear that the tours conducted by the [Taxpayer] differ substantially from tours conducted by private tour operators that are clearly subject to retail sales tax. By taxpayer's admission, the tours conducted by the [Taxpayer] differ from their private competitors only in that the latter usually stop at a destination point as well. Although the trips undoubtedly have an educational purpose, no curriculum is used and the trip is not a part of, or an enhancement of, a larger curriculum. No credit or certification is given. Some trips visit established places of interest, others do not. Although exposing the public to the marine environment is an objective, sightseeing is not merely incidental to the primary objective of the trip. The taxpayer's brochures, which advertise the trips, emphasize the sightseeing aspect of the trips more than their educational nature. . . .

. . .

We find the taxpayer's day trips are day trips for amusement and recreation purposes and the taxpayer is required to collect retail sales tax from its customers.

3. The Municipal Subsidy.

TI&E did not discuss the impact, if any, of the municipal subsidy on the taxation of these ticket prices. Certain activities provided by local governments are not subject to retail sales tax. WAC 458-20-189 (Rule 189) covers the taxability of state and local government entities.

Rule 189(4) states:

(v) **Retailing tax.** User fees for off-street parking and garages, and charges for the sale or rental of tangible personal property to consumers are taxable under the retailing B&O tax. The retailing tax does not, however, apply to casual sales. (See WAC 458-20-106.) Fees for amusement and recreation activities, such as golf, swimming, racquetball, and tennis, are retail sales and subject to the retailing tax if the activities are considered enterprise activities. Charges for instruction in amusement and recreation activities are subject to the service tax. (See also WAC 458-20-183 and (a)(i) of this subsection.)

[Emphasis added.]

The list of amusement and recreation activities in Rule 189(4)(a)(v) has not been updated since RCW 82.04.050(3) was amended. The list in the Rule came from the list in RCW 82.04.050(3) before the statute was amended. Therefore, the list in the rule must be read as though it contains “day trips for sightseeing purposes.” Det. No. 97-121, 17 WTD 064 (1998).

Under Rule 189, the trips operated by the City of . . . would be considered a retail sale subject to retailing B&O tax if the activity were an enterprise activity. Enterprise activity is defined as:

(d) "Enterprise activity" means an activity financed and operated in a manner similar to a private business enterprise. The term includes those activities which are generally in competition with private business enterprises and which are over fifty percent funded by user fees. The term does not include activities that are exclusively governmental.

The activity at issue here is operated in a manner similar to a private business and the activity is in competition with private businesses. Nevertheless, according to the taxpayer, the total budget of the tour program is \$130,000 of which \$70,000 comes from the City budget. Ticket sales from the tours finance the remainder of the program. Because the City pays the cost of more than 50% of the program, the activity is not considered an enterprise activity.

Although the marine program is not considered an enterprise activity, this does not resolve the matter. Under RCW 82.04.419, which exempts municipalities from retailing B&O tax on non-enterprise activities and Rule 189(4)(a)(v), these trips are not taxable under the retailing B&O classification. Nevertheless, no similar statutory exemption from retail sales tax exists for the non-enterprise activities of municipalities. Rule 189 specifically states that just because a municipality’s non-enterprise activities are exempt from retailing B&O tax does not mean they are exempt from retail sales tax unless a specific exemption applies to them. Rule 189(5)(b) states:

The state of Washington, its departments and institutions, and all municipal corporations are required to collect retail sales tax on all retail sales of tangible personal property or services classified as retail services unless specific exemptions apply. Retail sales tax must be collected and remitted even through the sale may be exempt from the retailing B&O tax.

None of the specific statutory exemptions listed in Rule 189(6) excuses the City from collecting retail sales tax on the ticket income it receives from providing tours. No other statutory exemption applies. The non-enterprise status of these activities exempts the taxpayer’s gross sales from retailing B&O tax but does not exempt the ticket sales receipts from retail sales tax. RCW 82.04.419.

DECISION AND DISPOSITION:

The taxpayer must collect and pay retail sales tax on the user fees it receives from participants for the [wildlife watching] trips it operates.

Dated this 31st day of March, 1999.