

Cite as Det. No. 00-040, 19 WTD 957 (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. 00-040
	)	
...	)	Registration No. ...
	)	Notice of Balance Due ...

RULE 224: B&O TAX – RETAIL SALES TAX – MAILING SERVICES. Mailing services, meaning the mailing of packages for customers, are not retail sales.

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:

Mail service protests the disallowance of deductions taken for postal charges.<sup>1</sup>

FACTS:

Dressel, A.L.J. -- ... (taxpayer) conducts a packaging and mailing service. On his February, 1999 state excise tax return, he claimed \$. . . in deductions from the measure of his Retailing B&O and retail sales taxes. Although he did not include the deduction detail page with his return, the taxpayer advises the \$. . . represents income from mailing services. In the above-captioned Notice of Balance Due, dated April 21, 1999, the Department of Revenue (Department) disallowed the claimed deductions and demanded payment of \$. . . The taxpayer appeals.

The taxpayer provides a mailing service. Customers bring in packages. The taxpayer arranges to have them shipped by Federal Express (FedEx), United Parcel Service (UPS), the United States Post Office (USPS), or a similar shipping entity. For this service, the taxpayer charges a fee that is marked up over that charged by the actual shipping entity. The taxpayer does not charge sales tax to its customers for this service. He does charge sales tax on his sale of office supplies, greeting cards, boxes, etc. In addition the taxpayer charges sales tax for copying, faxing, rubber stamps, and printing.

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

Through February, 1999 the taxpayer had been reporting all income under the Retailing classification of the business and occupation (B&O) tax. After that date the taxpayer reported his mailing services under the Service and Other Business Activities B&O category and his sales of the tangible items mentioned above under Retailing B&O. Although he admits to some early confusion, the taxpayer believes he is now properly reporting his taxes. He states that FedEx, UPS, and USPS do not charge sales tax for their mailing services. Additionally, he says that mailing services are not mentioned in the definition of "retail sale" at RCW 82.04.050.

The Department's Taxpayer Account Administration Division (TAA) believes the deductions taken by the taxpayer were for the "cost of freight for UPS, FedEx, etc." It denied those deductions. TAA also stated that it needed more information about what the taxpayer does. TAA did state that it thought the taxpayer should fill in something on his state tax return under the Service B&O category for UPS, FedEx, etc. mailings.

ISSUE:

Are the taxpayer's mailing services retail sales?

DISCUSSION:

[1] With several exceptions, the sale of tangible personal property is a retail sale. RCW 82.04.050. Some service activities are also denominated retail sales. Included are, speaking generally: installing, repairing, cleaning, altering, improving, constructing, decorating, imprinting, fumigating, razing, lodging, golfing, parking, and renting. *Id.* *Mailing or mailing services*, however, are not found on the list. The B&O category for services, not otherwise specifically classified, is established by RCW 82.04.290, which reads, in part:

(2) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, 82.04.2905, 82.04.280, 82.04.2635, and 82.04.2907, and subsection (1) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.5 percent.

This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale."

Because mailing services are not included in any of the above-quoted Revenue statutes, the retail sale statute, or the wholesale sale statute,<sup>2</sup> we conclude that they are properly taxed under the

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<sup>2</sup> RCW 82.04.260.

“catch-all” B&O category, Service and Other Business Activities, as found at RCW 82.04.290.<sup>3</sup> Thus, the taxpayer’s recent reporting of tax, as related at the hearing of this matter, is correct.<sup>4</sup> His sale of office supplies and other items of tangible personal property is taxable under Retailing B&O and subject to retail sales tax. His provision of mailing services is taxable under the Service B&O category. He should not report all of his income under Retailing and take a deduction for the mailing services. Had TAA had the same facts we did at the time it issued the Notice of Balance Due, we suspect it would have come to the same conclusion.

DECISION AND DISPOSITION:

The taxpayer’s petition is granted in part and denied in part.

DATED this 15<sup>th</sup> day of March, 2000.

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<sup>3</sup> Mailing services, as described here, should not be confused with the services provided by a *mailing bureau*. A mailing bureau is deemed as altering, imprinting, or improving tangible personal property and is, thus, considered as performing *retail* services. See WAC 458-20-141.

<sup>4</sup> It must be remembered, however, that the tax return at issue for February of 1999 was not filled out in a manner consistent with the way his attorney thought it should have been at the time of the hearing.