

Cite as Det. No. 06-0280, 26 WTD 169 (2007)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| 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. 06-0280 |
|) | |
| ...) | |
|) | Registration No. . . . |
|) | 200506981/Audit No. . . . |
|) | Docket No. . . . |
|) | |

[1] RCW 82.04.050: RETAIL SALES TAX – DATING SERVICE. Taxpayer that charges a fee for bringing together strangers seeking romantic partners is operating a dating service, and its charges are subject to retail sales tax.

[2] ETA 419: ORAL INSTRUCTIONS – ESTOPPEL. The Department’s long-standing policy is that oral instructions alone do not provide the quantum of proof necessary to sustain an estoppel claim.

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.

Lewis, A.L.J. -- A self-described “faith-based social club” protests the reclassification of its income from service and other activities business and occupation (“B&O”) tax classification to the retailing B&O and retail sales tax classifications. Taxpayer contends that either it is not a dating service or that, because it allegedly received incorrect oral advice from the Department of Revenue (“Department”), it should be relieved from its responsibility to collect retail sales tax for past periods. We deny Taxpayer’s petition.¹

ISSUES

1) Does a faith-based social club that promotes dating and development of relationships fall within the definition of “dating services” for purposes of RCW 82.04.050(3)(g), making it subject to retail sales tax?

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

2) Should a taxpayer be relieved from its responsibility to collect retail sales taxes under RCW 82.08.050 because it claims to have received incorrect oral advice from a Department employee?

FINDINGS OF FACT

Taxpayer describes itself as a “faith-based social club.” It operates in . . . Washington

Taxpayer currently has about . . . members. The members range in age Membership requires the completion of a membership application, a profile, a photograph, a background check, and payment of a membership fee. Memberships may be purchased from . . . months to . . . years. The fees are as much as \$. . . for a . . . month membership.

According to Taxpayer’s Mission statement, Taxpayer’s focus – and what its members seek in exchange for the payment of their membership fee – is [the opportunity to meet other single people]. Taxpayer attempts to accomplish its mission by providing three distinct member benefits:

- Taxpayer provides the opportunity to meet and associate with a group of people whose background has been screened.
- Taxpayer provides a diverse calendar of events which allows the members to pick and choose what activities they want to participate in.
- Taxpayer provides classes that members may attend to foster personal growth.

Taxpayer explains that individuals may purchase a membership for a variety of reasons. Some people might be new to the area and look at membership as an efficient way of making friends and getting involved in a variety of activities. Other people may join for the security in knowing the members they meet have undergone background checks. Others may be drawn to membership by the classes offered and the possibilities of personal growth. While Taxpayer does not deny that some individuals may be joining in hopes of finding a life-time partner, Taxpayer makes clear that members are told that they are not joining a dating service and no efforts will be made to match individuals.

The Department’s Audit Division examined Taxpayer’s business records for the period January 1, 2001, through September 30, 2004. The Audit Division determined that Taxpayer’s income was derived from providing dating services and required reclassification from the service and other activities B&O tax classification to the retailing B&O and retail sales tax classifications.

Prior to finalizing the assessment, on March 4, 2005, the Audit Division held a supervisor’s conference with Taxpayer to explain the reasoning for its conclusion that Taxpayer operated a dating service. The Audit Division’s conclusion was based on the following facts:

- Taxpayer advertises in the yellow pages under “dating service” rather than “church organization,” “clubs social,” “clubs fraternal,” “clubs sport,” or “clubs special interest.”
- “[The taxpayer provided] NAICS Code 812990, “All Other Personal Services,” including “Dating Services,” . . . to IRS, rather than something like 813410, “Civic and Social Organizations,” which includes “social clubs.”
- Taxpayer’s website focuses on dating. The first paragraph on the homepage talks about [developing relationships and uniting singles].
- Internal procedures and documents show the business as a dating service.
- The membership agreement states the membership entitles access to member profiles, activities, workshops, and seminars.
- All library information, events, workshops, and seminars focus on dating and personal relationships.
- Members agree to provide Taxpayer accurate biographical background information and post their profile and picture on [a singles website].
- Members must notify Taxpayer if there is a change in their marital status and membership will automatically be terminated if a member marries.
- There is a separate invitation procedure for how to ask someone for a date.
- On hold status-notifying others that you are “exclusively dating someone.”
- Taxpayer’s “Dating Guidelines” instruct each new member in how to date another . . . member.
- “. . . Profile” completed by every member addresses [preferences regarding age, marital status, children, race, and traits].
- Taxpayer provides activities exclusive to the enablement of dating. It is not a social group of individuals who share an interest in stamp collecting, politics, charity fundraising, sailing or any activity other than dating and relationship building (as it relates to dating).
- The fact that Taxpayer is available to singles only suggests that it is a dating service.

Despite Taxpayer's disagreement, . . . the Department issued a \$. . . assessment.² . . . Taxpayer met with . . . the Audit Division to discuss the tax assessment. [A member of the Audit Division] wrote Taxpayer to explain he had researched the legislative history related to the 1993 legislation which extended the retail sales tax to certain services, including dating services. He explained:

During the last few weeks we reviewed the information that was relied upon to provide a fiscal impact for this 1993 legislation. I suppose you will not be surprised to hear that there was no more specificity in this background information. In fact, the analyst explained to us that the official Standard Industrial Classification (SIC) system which was relied upon at that time placed dating service under the general category of Miscellaneous Personal Services. So, in effect, the statute term of dating services is considered definitive in distinguishing this from other miscellaneous personal services not intended to be reclassified to retail sales.

At this point we are convinced that the position taken in our audit assessment . . . is supportable and we urge you to agree with our findings. . . . We remain convinced that [Taxpayer] conducts itself as a dating service in the general sense of the legislative intent and should therefore collect retail sales tax as other similarly classified businesses.

On January 23, 2006, Taxpayer filed a petition requesting correction of the assessment maintaining it was not a dating service. In the alternative, Taxpayer argued that it was given incorrect tax reporting instructions by a Department employee. Taxpayer maintains [one of its members] spoke with [a specified person] of Taxpayer Services regarding tax reporting. [This person] has no recollection of talking with [Taxpayer's member].

ANALYSIS

[1] RCW 82.04.050³ defines the term of "retail sale" and provides in part:

(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**:

. . .

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and **dating services**.

(Emphasis added.)

² The assessment consisted of \$. . . tax, \$. . . interest, and \$. . . assessment penalty.

³ Although RCW 82.04.050 has been amended, the subsequent changes did not affect the cited statutory language.

The term “dating services” is not defined in the Revenue Act, so it must be given its “usual and ordinary” meaning, which can be found in dictionaries. *Port of Seattle v. State*, 101 Wn. App. 106, 1 P.3d 607 (2000). In this case, the Audit Division relied on the following definition for “dating service” found online:

an organization that arranges introductions (for a fee) for strangers seeking romantic partners or friends.

Webster's New Millennium Dictionary of English, Preview Edition (v 0.9.6).

Taxpayer argues that Taxpayer is not a dating service because it “does not arrange introductions for a fee.” That is exactly what Taxpayer does. While Taxpayer does not offer a “matchmaking service” bringing together two individuals for a date, Taxpayer nevertheless charges a fee, albeit a “membership fee” for bringing together “strangers seeking romantic partners.” Taxpayer wishes to limit and restrict “dating service” to a matchmaking service. While a matchmaking service may be a subset of dating service, dating service is not a subset of a matchmaking service. Had the legislature wished to tax only matchmaking services it would have written the law accordingly.

All of Taxpayer’s services, the classes, background checks, collection of profiles, outings, directions on extending and accepting a date, are . . . designed to bring strangers together that are seeking a partner. Taxpayer charges, and members are willing to pay, a fee because they are seeking a romantic partner. . . .

Because Taxpayer arranges introductions for a fee for strangers seeking romantic partners or friends, we conclude that its business activities constitute “dating services” as contemplated in RCW 82.04.050(3)(g). Accordingly, we affirm the Audit Division’s reclassification of Taxpayer’s income.

[2] Next, we address Taxpayer’s claim that it relied on incorrect oral instructions from the Department. The Department’s long-standing policy is that oral instructions alone do not provide the quantum of proof necessary to sustain an estoppel claim. Det. No. 99-011R, 19 WTD 423 (2000); Det. No. 96-114, 16 WTD 188 (1996); Det. No. 95-093, 16 WTD 29 (1995); Det. No. 86-359, 1 WTD 203 (1986). The Department has set forth its reasons for this policy in Excise Tax Advisory 419.32.99 (ETA 419), as follows:

- (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.

The Audit Division contacted [the specified person], who has no recollection of discussing Taxpayer’s business and giving [Taxpayer’s member] tax reporting instructions. Taxpayer has

presented no corroborating evidence to support its claim. Based on the facts presented we are unable to grant Taxpayer's request to cancel the assessment based on alleged incorrect reporting instructions from the Department.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 16th day of November 2006.