

Cite as Det No. 07-0233, 27 WTD 158 (2008)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For)	<u>D E T E R M I N A T I O N</u>
Correction of Letter Ruling of)	
)	No. 07-0233
...)	
)	Registration No. . . .
)	TI&E Letter Ruling
)	Docket No. . . .
)	

RCW 82.04.290: SERVICE B&O TAX- Production of an indexed, authenticated, and admissible, visual recording by a legal videographer is subject to Service & Other Activities B&O, because the true object of the transaction is the purchase of the Taxpayer's specialized professional skills. *Accord:* Det. No. 91-091, 11 WTD 113, (1991).

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.

Kreger, A.L.J. – A certified court videographer providing video production services appeals a letter ruling concluding those services constituted a retail sale because the business activity at issue was primarily a recording service. On appeal, the Taxpayer provided additional information about the scope and nature of the services provided, which include production activities, integration of colloquy logs, time code synchronization, and certification for admissibility purposes, which establish that the services rendered involve more than bare recording. Therefore, we conclude that the service rendered is more appropriately classified as a professional service rather than a retail sale. Accordingly, we grant the Taxpayer's petition requesting confirmation that the legal videography services offered constitute a professional service. . . .¹

ISSUES

1. Whether video recording of depositions by a certified court videographer who produces an admissible, certified, master recording with an indexed colloquy log is

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 Nonprecedential portions of this determination have been deleted.

providing a professional service subject to business and occupation (B&O) tax under RCW 82.04.290.

FINDINGS OF FACT

[Taxpayer] is engaged in the business of providing video production services. On . . . , 2006, the Taxpayer submitted a ruling request to the Taxpayer Information and Education Division (TI&E) of the Department of Revenue (Department) inquiring if his business activities were taxable under the Service & Other Activities (service) B&O tax classification. On . . . , 2006, TI&E issued a ruling to the Taxpayer informing him that videotaping services were classified as retailing and subject to retail sales and Retailing B&O tax, while production of a one-of-a kind master recording was subject to Service & Other Activities B&O tax. After receiving additional information from the Taxpayer about his business activities on . . . , 2006, TI&E issued a second ruling that the Taxpayer's videotaping of court depositions was a professional service subject to Service & Other Activities B&O tax, and duplication of the master tape would be retail sales. On August 24, 2006, TI&E issued a final ruling to the Taxpayer revising their June ruling to conclude that the recording of depositions was a retail sale subject to retail sales tax and Retailing B&O tax. The Taxpayer timely appealed this ruling asserting that the categorization of his legal videography services had been properly characterized as a professional service.

The majority of the Taxpayer's business is legal videography of depositions. The Taxpayer's recording either supplements the services of a court reporter or replaces them entirely. The Taxpayer produces a legal record of proceedings and tailors his work to assure the admissibility of that record in court. The Taxpayer completed training and is certified. . . .

In addition to the recording, the Taxpayer also prepares a colloquy log, which is synchronized with the court reporters transcript (when there is a court reporter present) and which notes specific points in the testimony including objections and references exhibits. The Taxpayer's training and certification is particularly focused on assuring that the recording complies with the requirements of applicable court rules governing admissibility.² The Taxpayer produces a certificate of authenticity for his recordings and adheres to protocols to address chain of evidence requirements. When requested, the Taxpayer will also perform editing work, extracting particular portions of testimony. The Taxpayer is a certified notary public and can swear in witnesses. . . .

ANALYSIS

The B&O tax (ch. 82.04 RCW) is a tax on the privilege of engaging in business in Washington. RCW 82.04. 220. "[T]he legislative purpose behind the B&O tax scheme is to tax virtually all business activity in the state." *Impecoven v. Department of Rev.*, 120 Wn.2d 357, 841 P.2d 752

² Specifically Rule 30 of the Federal Rules of Civil Procedures, the Rules 1000-1007 of the Federal Rules of Evidence in addition to other applicable local court rules.

(1992). Persons are taxed according to their business activity. Generally, service businesses and business activities that are not otherwise classified are taxed under the “service and other activity” classification. RCW 82.04.290 and WAC 458-20-224.

Individuals making retail sales, are subject to retailing B&O Tax. RCW 82.04.250. RCW 82.04.050(1) defines a “retail sale” as “every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers.” The Taxpayer does not contest that when he sells copies of the recordings he is making a retail sale of tangible personal property. What is disputed, is the categorization of the charge for the recording service itself, which produces the initial or master recording of the event.

1. Legal Videography:

. . . The Taxpayer notes that his legal videography services involve more than “merely” recording depositions. In addition to recording the testimony, the Taxpayer also prepares a colloquy log, authenticates, and certifies the recording to establish its admissibility. After recording the deposition or testimony, the Taxpayer when requested can also produce edited recordings that include specific portions of the testimony taken. The Taxpayer asserts that his legal videography services are significantly similar to those of a court reporter, which are taxed as professional services and should be taxed similarly.

We have previously held that the production of a master audiovisual tape for a customer was a service activity. Det. No. 91-091, 11 WTD 113 (1991). Similar to the production activity at issue in Det. No. 91-091, the Taxpayer’s records are also of “an original, one-of-a-kind nature.”

As we have stated, the inquiry as to the true object of a transaction “should focus on what the buyer is seeking in exchange for the amount paid to the seller.” See Hellerstein, *Significant Sales and Use Tax Developments During the Past Half Century*, 39 V and. L. Rev. 961, 970 (1986); Det. No. 94-115, 15 WTD 19 (1995); Det. No. 03-170, 24 WTD 393 (2005).

In this case, the Taxpayer’s customers are essentially paying for an admissible recording. Just as a court reporter provides an authenticated, indexed transcript, the Taxpayer produces and authenticated, indexed recording. An administrative professional trained to take short hand could generate a record of what was said, but the additional expense of hiring a court reporter produces an authenticated transcript that is admissible in court. Similarly, it would be a relatively simple to videotape a deposition, but by hiring a certified legal videographer the customer receives an indexed, authenticated, and admissible, visual record. The customer is not just purchasing a pictorial record.

. . . The Taxpayer is not hired just to record the event, but also to generate the colloquy log, authenticate the recording and record the necessary details to address chain of evidence requirements and assure the admissibility of the recording in court. The Taxpayer can also

produce certified, edited, custom recordings of particular portions of testimony. For these activities we conclude that the true object of the transaction is the purchase of the Taxpayer's specialized skills and that these services are therefore subject to Service & Other Activities B&O tax.

DECISION AND DISPOSITION

The Taxpayer's petition is granted. The Taxpayer's legal videography services are professional services subject to Service & Other Activities B&O tax

Dated this 30th day of August, 2007