Cite as Det No. 08-0356, 28 WTD 81 (2009)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 08-0356
. . .	)	
	)	Registration No. . . .
	)	Invoices . . .
	)	Docket No. . . .
	)	

RULE 224, RULE 211(2)(e); RCW 82.04.290(2), RCW 82.04.050(4), RCW 82.08.020(1): B&O TAX – WEDDING DJ – MUSIC SERVICE -- TRUE OBJECT. Taxpayer who provides wedding DJ services is taxable under the Service & Other B&O tax classification. Under the true object test, the Taxpayer's wedding DJ services are a music service, rather being subject to the retail sales tax as the rental of sound equipment with an operator.

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.

Munger, A.L.J. – The Taxpayer, whose business is providing wedding DJ (Disk Jockey) services, appeals two tax assessments that re-classified his income from service & other as reported, to retailing, subjecting him to retailing B&O tax and uncollected retail sales tax. Because the Taxpayer provides a music service per WAC 458-20-224, we find that he is not a renter of audio equipment, and that he had reported correctly as service & other.

ISSUE

Whether the services of a wedding DJ are a retail sale, or subject to the service & other B&O tax under RCW 82.04.290(2) as a music service?[1]

FINDINGS OF FACT

The Taxpayer . . . provides DJ services for weddings and other events. The Taxpayer owns his own sound equipment, as well as numerous music CDs, and music saved on his laptop computer

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 Nonprecedential portions of this determination have been deleted.

that he can hook-up to his sound system (or into an existing sound system). For weddings, he will meet with the bride and groom to discuss their music preferences, and during the events, he can take requests for music to play. A number of years ago when he first registered with the Department, the Taxpayer [was engaged in a different activity that was generally subject to retailing B&O tax and retail sales tax]. In late 2007, the Department's TAA Division looked into why the Taxpayer was reporting as service & other.[2] TAA contacted the Taxpayer about his current business, and reclassified him to retail sales on the basis that he was renting sound equipment for the 2003 to 2006 period. The resulting December 7, 2007, assessment was for retailing B&O tax, uncollected retail sales tax, and penalties. Credit was given for the service and other B&O tax reported and paid. Another balance due notice was issued on October 20, 2008, for the year of 2007 for the same reasons.

ANALYSIS

WAC 458-20-224, derived from RCW 82.04.290(2), describes the types of services subject to the 1.5% service and other B&O tax.

> (2) Persons engaged in any business activity, other than or in addition to those for which a specific rate is provided in the statute, are taxable under a classification known as service and other business activities, and so designated upon return forms. In general, it includes persons rendering professional or personal services to persons (as distinguished from services rendered to personal property of persons) such as . . . music teachers, . . . orchestra or band leaders contracting to *provide musical services*, . . . and numerous other persons.
>
> (4) Business and occupation tax. Persons engaged in any business activity, other than or in addition to those for which a specific rate is provided in chapter 82.04 RCW, are taxable under the service and other business activities classification upon gross income from such business.

(Emphasis added.) RCW 82.04.050(4), part of the statute defining "retail sale" for the purpose of the retail sales tax imposed by RCW 82.08.020(1), includes the rental of equipment with an operator as a retail sale.[3] In the present case however, the Taxpayer's service is clearly a music service. He is hired to play recorded music as per the tastes of the customer. That he uses his own sound equipment does not automatically make the transaction the rental of equipment. Music services are subject to the service & other B&O tax as described in Rule 224 above. We conclude that the "true object" of the Taxpayer's service is music.

WAC 458-20-211 (Rule 211)(2)(e)[provides:] . . .

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[2] The Taxpayer indicates that he had been told by the Department several years ago that this was how he should report for his DJ services. *See* RCW 82.32A.020. Alleged oral advice is not a basis for waiving taxes. Det. No. 00-001, 19 WTD 681 (2000). Excise Tax Advisory 419.32.99 (ETA 419). The advice, however, was correct.

[3] *See also* WAC 458-20-211(5)(b).

> (e) The term "true object test" as it relates to this section means the analysis of a transaction involving equipment and an operator to determine if the lessee is simply purchasing the use of the equipment or purchasing the knowledge, skills, and expertise of the operator beyond those needed to operate the equipment. Even if it is determined that the customer is purchasing the knowledge, skills, and expertise of the operator, the transaction may still be a retail sale if the activity is specifically included by statute within the definition of a retail sale. This test can also be applied to rentals of tangible personal property when the seller performs some service in connection with the rental. . . .

Example (8)(g) in Rule 211 addresses a situation relevant to the Taxpayer's, as follows:

> ABC Sound Productions provides lighting, amplifying equipment, and speakers as part of the services it sells to entertainment promoters. ABC also provides several operators of the equipment. This is a rental of equipment with operator. In applying the true object test, the promoter is primarily purchasing the use of the lighting and sound equipment. The performer or promoter could be expected to specify the color, location, and degree of lighting and may also request changes and modifications to the level of sound amplification during the performance.

In Det. No. 00-073, 19 WTD 1032 (2000), we addressed a situation similar to example (8)(g) and concluded the taxpayer was liable for retailing B&O and retail sales tax on its receipts from customers, rather than service and other B& O tax because it was renting equipment with an operator. We reasoned, "The key is the true object test," and "Promoters are primarily purchasing the use of sound and lighting equipment, not expertise of the taxpayer beyond those skills needed to operate the equipment." See Rule 211(2)(e). In Det. No. 00-073, the taxpayer provided sound and lighting systems for live bands, speakers, sporting events, and at fairs. The taxpayer delivered and set up sound and lighting equipment, then operated the equipment during the event, and took it down when the performances were over.

By contrast, we conclude that, in the present case, the true object of the transaction is a music service. In Det. No. 00-073 the "true object was the equipment and its operation." The music and other entertainment were not the responsibility of the taxpayer in Det. No. 00-073. In the present case, the true object of his service is the provision of the music for the wedding or other event. We conclude, "the customer is purchasing the knowledge, skills, and expertise of" the Taxpayer in selecting and playing music at weddings and other events. Rule 211. Per Rule 224, this is a music service subject to the service and other B&O tax. Consequently, the Taxpayer was reporting under the correct classification for his DJ services.

DECISION AND DISPOSITION

The two assessments as they relate to DJ music services reclassified from service and other to retailing are reversed. . . .

Dated this 26th day of December 2008.