Cite as Det No. 10-0231, 30 WTD 70 (2011)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of TI&E Letter Ruling / Refund of . . .	)))))	D E T E R M I N A T I O N No. 10-0231 Registration No. . . . Docket No. . . .

[1] RCW 82.08.020; 82.04.050: RETAIL SALES TAX – TRUE OBJECT TEST. A seller of youth sports program materials and support services to third parties who use the materials and services to provide youth sports leagues makes a "retail sale" under the true object test for periods prior to July 1, 2008.

[2] RCW 82.08.190; 82.08.195: STREAMLINED SALES AND USE TAX AGREEMENT – BUNDLED TRANSACTIONS – RETAIL SALES TAX. For periods after July 1, 2008, a seller of sports program materials along with support services provides them in a "bundled transaction" under RCW 82.08.190(1)(a) when the products are "distinct and Identifiable" and "sold for one nonitemized price." As a bundled transaction, selling tangible personal property along with related services is subject to retail sales tax under RCW 82.08.195(1).

[3] RCW 82.04.050(1)(a); 82.12.010(6)(a): RETAIL SALES TAX – SALES FOR RESALE – INTERVENING USE. Retail sales made to event organizers are not sales for resale when the event organizers use or consume the materials in putting on youth sports leagues, even though some of the items are resold to the league participants.

[4] RCW 82.04.4271: BUSINESS AND OCCUPATION TAX – EXEMPTION FOR NONPROFIT YOUTH ORGANIZATIONS. A nonprofit corporation is not entitled to the B&O tax exemption in RCW 82.04.4271 when the third parties it sells to, not the nonprofit corporation, provide the camping and recreational services on property exempt from property tax under RCW 84.36.030(2), and the league participates do not become members of the nonprofit corporation.

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.

Jensen, A.L.J. – A nonprofit corporation that sells sports materials and support services to churches who subsequently provide sports leagues to youth participants appeals a refund denial and letter ruling issued by the Department of Revenue's (Department's) Taxpayer Information and Education Section (TI&E). The taxpayer argues that: (1) its provision of material and related services to churches is not a retail sale under the true object test; (2) alternatively, if a retail sale, its materials are resold by the churches to league participants, and therefore wholesale sales; and (3) it may deduct the proceeds of its sales from business and occupation (B&O) tax under RCW 82.04.4271 because it is a "nonprofit youth organization" that provides recreational services to its members. We find that Taxpayer provides retail sales of its products to churches, which do not purchase the products for resale, and Taxpayer may not deduct the amounts from B&O tax under RCW 82.04.4271.[1]

ISSUES

1. Does the taxpayer provide a retail sale under the true object test for periods before July 1, 2008, and under RCW 82.08.190 and RCW 82.08.195 for periods after that date when it sells sports program materials and support services to churches at a per child rate?

2. If a retail sale, are the materials resold under RCW 82.04.050(1)(a) by the participating churches to the children participating in the sports leagues or consumed by the churches putting on such leagues?

3. Is the taxpayer a "nonprofit youth organization" providing recreational services to its members such that its proceeds are deductible from B&O tax under RCW 82.04.4271?

FINDINGS OF FACT

[Taxpayer] is a nonprofit corporation that is recognized by the Internal Revenue Service as exempt from tax under Internal Revenue Code § 501(c)(3). Taxpayer is a . . . ministry organization that markets sports programs for children in . . . to participating churches throughout the United States. Specifically, Taxpayer provides uniforms, literature, and training for basketball, soccer, flag football, and cheerleading. Taxpayer markets its training and products to participating . . . churches at a cost per child, and then helps the churches to implement the sports programs using Taxpayer's materials.

Taxpayer is based [outside of Washington] and maintains most of its staff from its headquarters in that state. Taxpayer employs one individual based in Washington State who provides support and training for churches that use Taxpayer's program in Washington and other states.

Taxpayer first contacted the Department in June of 2008, close to the time that Taxpayer hired its Washington employee. Taxpayer asked the Department if it was required to collect and remit retail sales tax on the products that it ships into Washington State. The Department sent two

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

secure messages to Taxpayer in the latter half of 2008, indicating that Taxpayer had nexus with the State of Washington and needed to collect and remit retail sales tax on it retail sales in this state. The Department also instructed Taxpayer to pay either retailing B&O tax or wholesaling B&O tax on its sales, depending on whether they were wholesale sales or retail sales. The Department did not actually determine, at that time, whether Taxpayer was making retail or wholesale sales.

On December 5, 2008, Taxpayer remitted sales taxes for the second and third quarters of 2008. Taxpayer remitted sales taxes for fourth quarter of 2008 on February 16, 2009. On April 29, 2009, Taxpayer filed a request for refund of the taxes it remitted and requested a ruling from the Department that it is exempt from collecting retail sales tax beginning in the second quarter of 2009 and going forward.

In its refund request and request for ruling, Taxpayer provided the following facts related to its business activities in Washington State:

> [Taxpayer] is a parachurch organization that currently partners with churches . . . (the "partner churches") to share the gospel with children and their families by means of various sports programs. [Taxpayer] does not engage directly in ministry with children and their families. Instead, [Taxpayer] provides expertise, training and materials so that partner churches may use sports programs to minister directly with children and their families.
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> [Taxpayer's] various sports programs have been designed and developed by a team of professionals working at [Taxpayer's] headquarters in . . . . Building on this expertise, [Taxpayer] provides partner churches with training and with some of the materials needed to conduct [a Taxpayer] program. For example, [Taxpayer] provides materials for league directors and coaches, jerseys for players, and . . . books and other items that support the [Taxpayer] program. . . . The materials provided by [Taxpayer] are intended exclusively for participants and they are not available to the public at large.[2] The partner church uses [Taxpayer] programs to provide recreational services for character building of the children involved in the program.
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> As the entities that conduct the actual sports programs, partner churches in Washington provide facilities and equipment such as balls and goals, as well as snacks and anything else needed to make the program function. Partner churches also provide coaches, referees and other volunteers who conduct the program. In order to contribute toward [Taxpayer's] cost of developing the program, maintaining its headquarters staff, and the cost of the materials supplied by [Taxpayer] to partner churches, partner churches pay [Taxpayer] . . . for each child participant. Partner churches, in turn, may elect to charge each child participant a . . . higher [fee] so that the partner churches may recover some or all of the additional costs associated with conducting the [Taxpayer] program. Programs

[2] Some materials are available to the public at large. [One] can purchase some materials from Taxpayer without participating in one of its sports programs. . . .

> offered by [Taxpayer] have a specific start and stop date. [Taxpayer] programs consist of (i) camp offerings a church may implement for a one to two week period or (ii) a league offering that a church may implement for a ten to twelve week period.

Taxpayer asked the Department for the following rulings: (1) that it is exempt from Washington's retail sales tax because its sales are "wholesale" in nature and its sales are at a camp or conference center and therefore exempt under RCW 82.08.830; and (2) that it is exempt from B&O tax under RCW 82.04.363 because it sells product at a qualifying camp or conference center, or may deduct the amounts under RCW 82.04.4271 because Taxpayer is a "nonprofit youth organization."

TI&E issued a letter ruling on June 5, 2009, which ruled that: (1) Taxpayer's sales to churches are retail sales because its goods and services are sold as a package price per child and the training is incidental to the products that Taxpayer provides to churches; (2) Taxpayer's sales to churches are not wholesale sales because the churches consume the products in implementing the sports programs; and (3) Taxpayer is ineligible for the exemption from B&O tax in RCW 82.04.363 because Taxpayer does not sell its product at the qualifying camp, conference, or meeting.[3] Taxpayer appeals this ruling and refund denial.

On appeal, Taxpayer makes the following arguments: (1) under the true object test, the program materials and jerseys are incidental to Taxpayer's services and training, and therefore the true object of Taxpayer's activities is non-retail services; (2) alternatively, if the services and goods are considered retail sales, Taxpayer provides them at wholesale to the churches who subsequently sell them to their participants; and (3) Taxpayer may deduct the proceeds of the sales from B&O tax under RCW 82.04.4271 because it qualifies as a "nonprofit youth organization" that provides recreational services to its members.

To support these arguments, Taxpayer provides the following additional facts. With respect to its first contention on appeal, Taxpayer claims that it requires churches to attend a . . . training session. After the training is complete, Taxpayer enters into an agreement with the church. In that agreement, Taxpayer describes itself as a provider and licensor of its "materials, programs, and services." The church is described as "an independent purchaser and licensee." According to Taxpayer, only after a church attends the . . . training session and signs the agreement are they allowed to start Taxpayer's program.

Taxpayer also claims that most of its staff is employed to develop and support its program and have little or no involvement with the tangible products it provides. These employees train the churches, and help them to successfully implement the program. Employees consult with

[3] The Department's ruling also effectively denied Taxpayer's claim that it was entitled to the retail sales tax exemption in RCW 82.08.830. This provision exempts sales "made at a camp or conference center if the gross income from the sale is exempt under RCW 82.04.363." RCW 82.08.830. Because TI&E ruled that Taxpayer was ineligible for the B&O tax exemption in RCW 82.04.363, it would also be ineligible for the retail sales tax exemption in RCW 82.08.830.

churches, especially during their first year of using Taxpayer's program, and provide staff to answer questions that may arise.

To support its second argument, Taxpayer provides additional explanation regarding how participants and churches pay for the products and services. The churches first solicit children to participate in the sports program. The churches collect a fee that they determine will allow them to recoup the . . . per-child fee from Taxpayer and any additional expenses the church incurs. The churches then provide registration information to Taxpayer who prepares individualized player kits and charges the churches . . . for each child. Taxpayer explains that this fee allows Taxpayer to recoup the cost of the materials it provides, as well as the cost of developing the program, providing training, and maintaining its staff and other expenses.

Finally, with respect to Taxpayer's last contention, Taxpayer explains that the vast majority of sports activities conducted under Taxpayer's program take place on the churches' own facilities. However, some of the activities are conducted on facilities that the churches rent for a short time.

ANALYSIS

1. Retail Sales Tax:

[1] Washington imposes retail sales tax on each retail sale in this state. RCW 82.08.020. RCW 82.04.050 defines "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. . . ." RCW 82.04.050(1).[4] Taxpayer first argues that its provision of materials and services to churches is not a retail sale. Taxpayer argues that while it sells tangible personal property in the form of apparel, literature, and other miscellaneous items, this is not the true object of its business activities. Taxpayer also argues that its sales are sales for resale under RCW 82.04.050(1)(a).

Taxpayer sells tangible personal property to churches. However, Taxpayer also provides training and support to ensure that the property is used in a manner consistent with its purpose – which is to share its . . . message to youth through organized sports. The overall package of product and services is all provided under the agreement Taxpayer enters into with various churches.

A) The True Object Test:

Before July 1, 2008, when considering transactions that involved both services and some tangible personal property in exchange for compensation and the contract for those services is not subject to bifurcation, the Department looked to the "true object" (Det. No. 03-0170, 24

[4] Taxpayer's ruling request does not address the tangible personal property it sells . . . to persons who are not churches that use Taxpayer's program. Nevertheless, we note that such sales to Washington residents would be subject to retail sales tax in Washington State.

WTD 393 (2005)) of the transaction to determine its proper tax classification.[5] Because Taxpayer asks for a refund of retail sales taxes it paid on its sales for the second quarter of 2008, we must analyze the nature of those transactions by considering the true object test.

An explanation of the true object test can be found in Det. No. 98-213, 19 WTD 777 (2000), which provides:

> When determining whether a retail sale of tangible personal property or some other type of property or service has been purchased, the Department has frequently focused on the "true object" of the transaction sought to determine the proper tax classification. Det. No. 89-009A, 12 WTD 1 (1992) (discount memberships); Det No. 94-115, 15 WTD 019 (1994) (food demonstrations). *See also* WAC 458-20-211, ETA 520.04.211, and ETA 573.04.224. . . . Although the OEM does receive some tangible personal property, i.e. a reproducible master copy, this tangible copy is only incidental to the intangible right to reproduce and re-license the product. It is not the "true object" of the transaction. Instead the "true object" of this transaction is the right to reproduce and distribute copies of Taxpayer's computer program.

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 Vand. L. Rev. 961, 970 (1986); Det. No. 03-0170; Det. No. 94-115, 15 WTD 19 (1995).

Taxpayer's customers (i.e. churches) ultimately purchase Taxpayer's all inclusive package of sharing a . . . message through youth sports programs. This program includes tangible personal property in the form of player uniforms, literature, and other materials to enable the churches to implement Taxpayer's unique program. Taxpayer also provides these customers with customer support and training to help the churches achieve greater success with the materials.

Taxpayer does not actually run the youth sports programs, but provides the instruction so that the church can run the program. It is the church's responsibility to find facilities suitable for the activities, and recruit participants, coaches, and referees. Because Taxpayer provides the materials, but does not actually implement the program, we find that the true object of the transaction is the materials and other items Taxpayer sells to the churches. Therefore, the sales that occurred before July 1, 2008 are retail sales.[6]

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[5] The true object test has also been referred to as the "primary activity" test, or the "predominate nature" test. *See* Det. No. 92-183ER, 13 WTD 96 (1993); Det. No. 91-163, WTD 203 (1991).

[6] We do not know whether Taxpayer collected retail sales taxes from its customers. If so, we note that, even if we were to rule in Taxpayer's favor, we cannot refund collected retail sales tax to the seller without the seller first showing that it refunded the collected retail sales taxes to its customers. *See* WAC 458-20-229.

(B) Bundled Transactions Under the Streamlined Sales and Use Tax Agreement:

[2] Effective July 1, 2008, Washington enacted various amendments and provisions to conform "Washington's tax structure to the streamlined sales and use tax agreement." Laws of 2007, ch. 6 (S.S.B. 5089). As part of this law change, Washington enacted RCW 82.08.190 and 82.08.195 applicable to "bundled transactions." These provisions provide guidance on how to tax transactions that involve a combination of retail sales and non-retail services. These provisions supersede use of the "true object test" discussed in previous published Department determinations for all periods after the law change. This analysis is applicable to the remaining portion of Taxpayer's refund request and to its TI&E letter ruling request.

The first inquiry is whether the transaction meets the definition of "bundled transaction" in RCW 82.08.190(1)(a). If the transaction is a bundled transaction, it is taxed according to RCW 82.08.195. If it is not a bundled transaction, generally, the sale is severable and each different product is taxed separately according to its classification.[7]

RCW 82.08.190(1)(a) defines "bundled transaction" as "the retail sale of two or more products, except real property and services to real property, where: (i) The products are otherwise distinct and identifiable; and (ii) The products are sold for one nonitemized price." The term "product" under these provisions is defined as "tangible personal property, digital goods, digital codes, digital automated services, other services, extended warranties, and anything else that can be sold or used." RCW 82.32.023. Taxpayer's sales of apparel, literature, and related services to partner churches involve the retail sale of two or more products. We must next examine whether they meet the other two parts of the definition.

RCW 82.08.190 does not define what constitutes "distinct and identifiable products," but it does indicate what that term excludes. RCW 82.08.190(2) explains that "distinct and identifiable products" excludes:

> (a) Packaging such as containers, boxes, sacks, bags, and bottles, or other materials such as wrapping, labels, tags, and instruction guides, that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes;
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> (b) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or
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> (c) Items included in the definition of sales price in RCW 82.08.010.

[7] One exception to this general rule is found in RCW 82.08.195, which discusses the tax imposed when a transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it meets the requirements of RCW 82.08.190(4)(a) or (b).

The package of products and services Taxpayer provides to partner churches do not fall under any of the above three exclusions, and, therefore, constitute "distinct and identifiable products." None of the products at issue are used for packing, nor are they provided for free. Similarly, there is no evidence that the products include "the seller's cost of the property sold," or "the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller" and the other items included in the definition of "sales price" in RCW 82.08.010(1)(a).

The next element of a "bundled transaction" is that the products must be sold for "one nonitemized price," which, like "distinct and identifiable products," is defined by what items that term excludes. RCW 82.08.190(3) provides as follows:

> "One nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

There is no evidence in this case that Taxpayer's billings separately identify each product that it sells to the churches. Therefore, absent such information, the products are provided under "one nonitemized price."

Finally, RCW 82.08.190 explains various ways that a transaction would not be considered a "bundled transaction" even if it met the above criteria. The first exclusion is for transactions where "the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction." RCW 82.08.190(1)(b). In this case, Taxpayer charges a set . . . per child fee for its products. Therefore, Taxpayer does not meet this exclusion.

In addition, RCW 82.08.190(4) provides the following exclusions from the definition of "bundled transaction:"

> (a) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or
>
> (b) The retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or
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> (c) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis;
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> (i) As used in this subsection (4)(c), de minimis means the seller's purchase price or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products;

(ii) Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis;

(iii) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; . . . .

Taxpayer does not meet the first exclusion because, as we concluded above, the true object of its transaction is not its training and support services, but the materials that the churches use to implement a youth sports program.

The second exclusion is not applicable either because that exclusion involves the provision of two services, where one is a retail service. While certain amusement and recreation services are included in the definition of "retail sale" under RCW 82.04.050(3)(a), the churches provide these services, not Taxpayer. Moreover, the transactions at issue involve retail sales of tangible personal property and related services, not two or more services, which is the factual situation covered by the exclusion in RCW 82.08.190(4)(b).

Finally, the third exclusion applies where the purchase price or sales price of the retail sales taxable portion of the transaction is "de minimus," which the statute explains is "ten percent or less of the total purchase price or sales price of the bundled products." RCW 82.08.190(4)(c)(i). This exclusion is potentially applicable in this case, but we do not have a breakdown of the charges for each item included in Taxpayer's . . . per player charge. To qualify for this exclusion, the retail sales taxable products in this charge would have to constitute [10%] or less of the per player charge. We find this unlikely given the fact that the player kit would include at a minimum player jerseys and some form of literature for the player. The cost of these items would undoubtedly be more than [10% of the per player charge].

Based upon the above analysis, we conclude that Taxpayer's sales of products and services to the churches are "bundled transactions" under RCW 82.08.190. We must next turn to RCW 82.08.195 for the applicable tax treatment of such transactions. Because none of the exclusions in RCW 82.08.190(4) are applicable in this case, the applicable provision is RCW 82.08.195(1), which provides that ". . . a bundled transaction is subject to tax imposed by RCW 82.08.020 if the retail sale of any of its component products would be subject to the tax imposed by RCW 82.08.020." In this case, Taxpayer's sales would be subject to retail sales tax. Therefore, we uphold this portion of TI&E's ruling.

(C) Sales for Resale:

[3] Taxpayer next argues that its sales are for resale because the churches that purchase its products and services subsequently charge league participants for those same items. RCW 82.04.050's definition of "retail sale" exempts sales to "a person who presents a resale certificate under RCW 82.04.470 and who . . . purchases for the purpose of resale as tangible personal

property in the regular course of business without intervening use by such person . . . ." RCW 82.04.050(1)(a).[8]

To show entitlement to the exemption contained in RCW 82.04.050(1)(a), a taxpayer must show: "(1) it purchased the property for resale; (2) it resold the property in its regular course of business, and (3) it did not use the property before the resale." *Glen Park Associates, LLC, v. Dep't of Revenue*, 119 Wn. App. 481, 493, 82 P.3d 664 (2003). The absence of any one of these elements disqualifies the sale from this exemption.[9] Like any tax benefit, "[a]nyone claiming a benefit or deduction from a taxable category has the burden of showing that he qualifies for it." *Budget Rent-A-Car of Washington-Oregon, Inc. v. Dep't of Revenue*, 81 Wash.2d 171, 174-5, 500 P.2d 764 (1972); *citing Group Health Coop. of Puget Sound, Inc. v. Washington State Tax Comm'n*, 72 Wash.2d 422, 433 P.2d 201 (1967). This standard applies to the retail sales tax exemption for sales for resale. *Seattle Filmworks, Inc. v. State Dep't of Revenue*, 106 Wn. App. 448 P.3d 460, 24 P.3d 460 (2001); *Duncan Crane Service, Inc., v. State Dep't of Revenue*, 44 Wn. App. 684, 723 P.2d 480 (1986).

The first element of the sale for resale exemption is that the property is purchased for resale. Taxpayer explains that its sales to the churches encompass many different products and services, including jerseys, training materials, playbooks, computer programs, promotional materials, and support services. Of the above items, only player jerseys, and perhaps some other items, are arguably resold to the youth participants. However, other items (e.g. training materials, playbooks, and promotional materials) and services are not resold to the youth participants, but used by the church to implement Taxpayer's sports program.

Next, Taxpayer must show that the items and services are resold in the regular course of business. The Department previously issued guidance defining the phrase "in the regular course of business" as used in RCW 82.04.050. In Excise Tax Advisory (ETA) 482.12.178, the Department explained that the reference to "in the regular course of business" requires that ". . . the purchaser is actually and regularly engaged in selling the type of property purchased, is registered with the [Department] and reporting the appropriate taxes . . . ." ETA 482.12.178.[10] This language is cited by Department determinations interpreting the requirements of the sale for resale exemption. *See* Det. No. 00-045, 19 WTD 965 (2000); Det. No. 03-0045, 23 WTD 238 (2004). We do not know to what extent the churches resell jerseys and items under Taxpayer's program, or if such churches are collecting retail sales taxes on items resold by them. Under

[8] In Laws of 2009, ch. 563, § 301, Washington amended RCW 82.04.050(1) to require the purchaser to present a reseller's permit or "uniform exemption certificate in conformity with RCW 82.04.470," instead of a resale certificate. The new law requiring wholesale purchasers to use reseller permits became effective on January 1, 2010. RCW 82.04.080(1) was further amended by Laws of 2010, ch. 112, § 14 to delete the section explaining that the purchaser must use a reseller permit to purchase sales for resale under RCW 82.04.050(1). In spite of this deletion from the statute at issue, Washington law is clear that businesses that make wholesale purchases are still required to obtain a reseller's permit from the Department. *See* Laws of 2010, ch. 112, § 1.

[9] We also note that to be entitled to the deduction for sales for resale, one must have obtained resale certificates for those sales prior to January 1, 2010, and purchased from someone possessing a reseller's permit for sales after that date. We do not know whether the churches provided resale certificates for sales prior to Taxpayer's appeal.

[10] This ETA was subsequently reissued and renumbered on February 2, 2009 as ETA 3005.2009 and the language cited above was taken out of the new ETA.

WAC 458-20-169(4)(b), a nonprofit organization is required to "collect and remit retail sales tax on all retail sales, unless the sale is specifically exempted by statute."

The final requirement is that the purchaser did not subject the property to intervening use. "Intervening use" is not defined, but "occurs when an item held for resale is used by the business as a consumer before the item is sold, or when an item held for lease is also used by the lessor for personal purposes." Det. No. 06-0232, 26 WTD 125 (2006); *see also* Det. No. 04-0145R, 24 WTD 400 (2005); ETA 3005.2009.

Additionally, for use tax purposes, Washington law defines "use," in pertinent part, as:

> With respect to tangible personal property, *the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer)*, and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state;

RCW 82.12.010(6)(a) (Emphasis added).

In this case, the churches use the products and services provided by Taxpayer. The churches use the materials needed to advertise for, and implement the sports program. The churches also use Taxpayer's training and support services to more effectively run the program. To the extent the jerseys and other materials may be passed on by the churches to the youth participants, those items are not severable from the entire package of products and services sold to the churches as explained under the true object test and the bundled transaction analysis above. Therefore, Taxpayer's sales do not qualify as sales for resale.

2. B&O Tax:

[4] Washington imposes B&O tax "for the act or privilege of engaging in business" in this state. RCW 82.04.220. Washington law imposes separate B&O tax rates on various activities conducted in this state, including making "retail sales" under RCW 82.04.250, businesses that make wholesale sales under RCW 82.04.270, and many service providers under RCW 82.04.290. Taxpayer is subject to B&O tax under the retailing B&O tax classification because it provides retail sales as discussed above. Taxpayer's last argument is that it may deduct the proceeds of its sales from Washington's B&O tax under RCW 82.04.4271(2).[11]

RCW 82.04.4271(2) provides a deduction from B&O tax for camping and recreational services provided by a nonprofit youth organization to its members. The statute defines "nonprofit youth

[11] RCW 82.08.0291 provides a retail sales tax exemption for non-profit youth organizations. However, the exemption is for "amusement and recreation services" taxed under RCW 82.08.020. In this case, the churches may perform amusement and recreation services that are "retail sales" under RCW 82.08.020. These services are not performed by Taxpayer; thereby making it ineligible for the exemption under RCW 82.08.0291.

organization" as "a nonprofit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030." *Id.*

To qualify for this deduction, a taxpayer must show: (1) it is a nonprofit youth organization engaged in character building of youth; (2) its property is exempt from property tax under RCW 84.36.030; (3) it provides camping and recreational services; and (4) to members of its organization. RCW 82.04.4271(2).

Taxpayer provides legislative history of the deduction that demonstrates that it was intended to cover membership dues to, and income from camping and recreational services provided by, certain non-profit organizations, such as the Boy Scouts of America and the Young Men's Christian Associations of the United States of America (YMCA). Memorandum from Don Burrows, Deputy Director of the Washington Department of Revenue, to Greg Pierce, Director of Staff, House Revenue Committee (April 8, 1981) (on file with Washington State Archives). Taxpayer argues that like these entities, its income qualifies as camping and recreational services provided to members.

There is little dispute that Taxpayer is a nonprofit youth organization, whose purpose is to build character for youth through . . . sports. The problem in this case is that Taxpayer contracts directly with the church, which ultimately signs up the individual players and hosts the sporting events. Even if the property where those services are performed is exempt under RCW 84.36.030(2), it is the churches, not Taxpayer, that provide the camping and recreational services. Moreover, the youth who participate in the sports leagues may be members of the churches, but they have no direct affiliation with Taxpayer, unlike similar services conducted by the YMCA or Boy Scouts, where the participants actually do become members of the non-profit youth organization. Therefore, we conclude that Taxpayer is not eligible for the B&O tax deduction in RCW 82.04.4271.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 30th day of July, 2010.