

Cite as Det No. 10-0340, 32 WTD 30 (2013)

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. 10-0340
)	
...)	
)	Registration No. . . .
)	Document No. . . .
)	Docket No. . . .
)	

RCW 82.04.290, RCW 82.04.050: SERVICE AND OTHER ACTIVITIES B&O TAX – RETAIL SALE — RENTAL CAR – OPTIONAL DAMAGE WAIVER OR ROADSIDE ASSISTANCE COVERAGE. A rental car agency’s charges for optional collision damage waiver or roadside assistance coverage are not considered retail sales under RCW 82.04.050 subject to retailing business and occupation (B&O) tax. The charges are not encompassed within any of the business activities specifically classified under chapter 82.04 RCW; therefore they are subject to service and other business activities B&O tax.

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.

Eckholm, A.L.J. The owner of a car rental facility contests a portion of a tax assessment reclassifying income for the sale of optional collision damage waivers and roadside assistance coverage from the retailing business and occupation (B&O) tax classification to the service and other business activities B&O tax classification. Held: Rental car options for collision damage waivers and roadside assistance coverage added to a car rental purchase by election of the customer are not considered retail sales pursuant to RCW 82.04.050. The taxpayer’s petition is denied.¹

ISSUE

Are rental car options for collision damage waiver or roadside assistance coverage added to a car rental purchase by election of the customer considered retail sales pursuant to RCW 82.04.050?

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

FINDINGS OF FACT

[Taxpayer] operates a car rental facility in Washington State. The Audit Division (Audit) of the Department of Revenue (Department) conducted a compliance audit of the taxpayer's records for excise tax purposes for the period January 1, 2005, through March 31, 2009. As a result, Audit issued an assessment for service & other business activities B&O tax of \$. . . , use/deferred sales tax of \$. . . , insurance agents/brokers tax of \$. . . , and a credit for retailing B&O tax of \$. . . , resulting in a total assessment of \$ The assessment remains unpaid.

The taxpayer appealed the portion of the assessment resulting from Audit's reclassification of its income from fees paid by car rental customers for optional collision damage waivers and optional roadside assistance coverage. Audit reclassified this income from the retailing B&O tax classification to the service and other business activities B&O tax classification. Audit determined that because these charges are for options elected by the customer and not required as part of the car rental, the income from these charges are not reportable as part of the rental car retail sale. The taxpayer asserts that the collision damage waiver and roadside assistance coverage options fall within the definition of "retail sale" under RCW 82.04.050. The taxpayer explains that under the base terms of the car rental agreement the customer is absolutely responsible for the vehicle and that any damage to it is the responsibility of the customer, therefore, the customer's election to pay additional charges for the collision damage waiver or roadside assistance coverage is a way of varying the terms of the car rental contract. In addition, the taxpayer notes that "automobile towing and similar automotive transportation services" are explicitly included in the definition of retail sale under RCW 82.04.050(2)(e), and asserts that the optional collision damage waiver and roadside assistance charges are fundamentally the same as an extended warranty, which is specifically included in the definition of a retail sale pursuant to RCW 82.04.050(7).

ANALYSIS

Washington imposes a retail sales tax on each retail sale in this state. RCW 82.08.020. The rental of motor vehicles is considered a retail sale. RCW 82.04.050(4)(a); WAC 458-20-180. An additional retail sales tax is imposed on the rental of cars. RCW 82.08.020(2). Retail sales taxes are trust funds, collected by the seller from the buyer, held in trust and then remitted to the Department. RCW 82.08.050.

Washington also imposes a B&O tax "for the act or privilege of engaging in business" in this state. RCW 82.04.220. Washington's B&O tax applies to various tax classifications, including making sales at retail pursuant to RCW 82.04.250, making wholesale sales under RCW 82.04.270, and providing services pursuant to RCW 82.04.290. Persons engaged in any business activities that are not specifically included in a tax classification under chapter 82.04 RCW, are taxable under the service and other business activities classification upon gross income from such business. RCW 82.04.290.

The issue in this matter is whether the sale of optional collision damage waivers and roadside assistance coverage are considered retail sales and classified under the retailing B&O tax

classification, or whether the income from the optional charges are classified under the service and other business activities B&O classification. The taxpayer reported its income from the rental of its automobiles under the retailing B&O tax classification and collected retail sales tax and rental car tax on these charges. The taxpayer also reported its income from the optional charges for collision damage waiver and roadside assistance coverage under the retailing B&O classification, and collected retail sales tax and rental car tax on these charges. Audit reclassified the optional charges under the service and other business activities B&O classification and credited the taxpayer for retailing B&O tax amounts paid.²

The charges imposed by the taxpayer for the rental of its cars are properly subject to retailing B&O tax because the renting of tangible personal property is defined as a retail sale. RCW 82.04.050(4). "Renting" is "the act of granting to another the right of possession to and use of tangible personal property for a consideration." WAC 458-20-211. The collision damage waiver charges and the roadside assistance coverage charges, however, are not for renting. These charges are for optional items elected by the customer and are not required as part of the car rental retail purchase. Where the charges are for optional items and charged separately from the rental price, the income from those charges are taxable under the service and other business activities B&O tax classification and are not subject to retailing B&O or retail sales tax. *See* Det. No. 91-164, 11 WTD 337 (1992)(Taxi cab rental company's income from charges for optional dispatching services is subject to service and other business activities B&O tax because the dispatching charges were not required as part of the taxi cab rental price.)

The taxpayer expressed its belief that the definition of "retail sale" in RCW 82.04.050 is intended to be a broad classification to include ancillary charges and services that are part of a retail sale transaction. The taxpayer explains that under the base terms of the car rental agreement the customer is absolutely responsible for the vehicle and, therefore, the customer's election to pay additional charges for the collision damage waiver or roadside assistance coverage is a way of varying the terms of the rental contract. The taxpayer also asserts that the optional collision damage waiver and roadside assistance coverage should be treated as retail sales because they are fundamentally the same as the purchase of an extended warranty, which is specifically included in the definition of a retail sale as set forth in RCW 82.04.050(7):

The term [retail sale] also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this

² The retail sales and rental car taxes are funds that belong to the taxpayer's customers and the tax cannot be refunded to Taxpayer. The taxpayer has not requested refund of these amounts, however, should the taxpayer refund an amount equivalent to the tax to its customers it may then seek a refund from the Department if such a refund claim is made within the nonclaim period. RCW 82.32.060; WAC 458-20-229. *See* Det. No. 05-0190ER, 27 WTD 11 (2008).

subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

In addition, the taxpayer notes that "automobile towing and similar automotive transportation services" are explicitly included in the definition of retail sale under RCW 82.04.050(2)(e).

The taxpayer is correct that the sale of automobile towing or transportation services is considered a retail sale but the taxpayer is not selling automobile towing or transportation services. The optional roadside assistance coverage offered by the taxpayer could be described as a protection service whereby the consumer elects to pay a flat fee up front for roadside services *in the event* roadside assistance is needed. The taxpayer retains these charges and presumably uses this income to cover expenses incurred in providing³ roadside assistance to the customers that may find themselves in need of such assistance.

Similarly, the sale of collision damage repair services would be considered a retail sale under RCW 82.04.050, but the taxpayer's customer is not purchasing collision damage repair services. The customer who elects to pay the charges for the optional collision damage waiver is paying a flat fee to be released from liability for repair costs for damage that may occur while the taxpayer's vehicle is in the customer's possession. The taxpayer retains these charges and presumably uses this income to cover future collision repair expenses.

The optional collision damage waiver and roadside assistance coverage would also not fall within the definition of extended warranty under RCW 82.04.050(7) which defines an extended warranty as "an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property . . ." The taxpayer's customers are not purchasing the taxpayer's agreement to repair or replace the taxpayer's vehicle. In regards to the collision damage waiver, the customer is paying a fee to be relieved of the responsibility to pay the costs of repair resulting from collision damage to the taxpayer's vehicle. The collision damage waiver is not an extended warranty; it is a waiver of liability Similarly, in regards to the optional roadside assistance coverage, the customer is not purchasing an extended warranty for repair or replacement of the taxpayer's vehicle. As discussed above, the customer is paying a flat fee for potential roadside protection services, i.e., towing or automobile transportation. The optional collision damage waiver and roadside assistance coverage are not extended warranties classified as retail sales pursuant to RCW 82.04.050(7).

The charges for optional collision damage waiver or roadside assistance coverage do not fall within the definition of "retail sale" under RCW 82.04.050 and do not fall within any of the business activities specifically classified under chapter 82.04 RCW, therefore, they are subject to service and other business activities B&O tax.

³ During the hearing the taxpayer was not certain whether the roadside assistance services were provided directly by the taxpayer or through a third party.

DECISION AND DISPOSITION

The taxpayer's petition is denied.

Dated this 9th day of November, 2010.