

Cite as Det. No. 13-0339, 33 WTD 372 (2014)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition concerning TAA )	<u>D E T E R M I N A T I O N</u>
Instructions Issued to: )	
)	No. 13-0339
... )	
)	Registration No. . . .
)	

[1] RCW 82.04.(2)(g): B&O TAX — “DIGITAL GOODS” -- DIGITAL ENHANCEMENT – BUSINESS PURPOSES. “Photoshop enhancement” of digital photographs for businesses for use in their online advertising is the “altering” or “improving of digital goods subject to the retailing classification of the B&O tax.

[2] RCW 82.08.02087: RETAIL SALES TAX – “DIGITAL GOODS” – DIGITAL ENHANCEMENT – BUSINESS PURPOSE. “Photoshop enhancements” performed on digital photographs that will be used for solely business purposes are exempt from retail sales taxes when customers provide Digital Products and Remote Access Software Exemption Certificates.

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.

Bauer, A.L.J. – A person who digitally manipulates photographs for commercial customers to be used for online viewing protests the Department of Revenue’s Taxpayer Account Administration Division’s instructions that he must charge his customers retail sales tax. We conclude that Taxpayer is providing a retail activity taxable under the retailing classification of the B&O tax, but is not required to charge and collect retail sales tax for sales when customers provide Digital Products and Remote Access Software Exemption Certificates.<sup>1</sup>

ISSUE

Under RCW 82.04.050 is the manipulation of digital photographs delivered electronically to Taxpayer, and delivered back to Taxpayer’s customers electronically, subject to retail sales tax?

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

## FINDINGS OF FACT

[Taxpayer], describes his business as a “digital manipulation service.” He refers to this activity in his contracts as “digital imaging services.” He works for his commercial customers as an independent contractor.

Taxpayer’s customers electronically (via email or remote access) supply him with digital photographs<sup>2</sup> that Taxpayer, using his enhanced Photoshop software, digitally manipulates for use in his customers’ online advertising. He creates a number of different images from each single photograph provided. His enhanced Photoshop software can perform up to 543 individual tasks – only 78 of them color related. His finished work products are delivered to his customers electronically (via email or remote access), and he assigns the copyrights to his work to his customers.

Taxpayer has always reported his gross receipts under the Service and Other Activities classification based on what he contends has been ongoing annual oral advice from the Department.

On May 23, 2012, immediately following a telephone inquiry by Taxpayer, the Department of Revenue’s (Department’s) Taxpayer Account Administration Division (TAA) wrote to Taxpayer advising him that his activities were retail in nature and were therefore subject to the retailing B&O tax and retail sales tax. TAA reasoned that Taxpayer was a photographer performing photo retouching and color correcting in accordance with WAC 458-20-140, and was also “repairing, or otherwise altering or improving personal property of consumers” in accordance with WAC 458-20-173. TAA advised Taxpayer that Taxpayer would need to submit a worksheet describing its gross revenues for the period January 1, 2009 through March 31, 2012, so that an assessment could be issued.

On June 22, 2012, Taxpayer’s representative sent an email to TAA outlining Taxpayer’s services and requesting confirmation that his services are taxable under the service classification of the B&O tax. On July 9, 2012 TAA responded, advising that Taxpayer’s activities are taxable as a retailing activity. TAA provided the following analysis:

- In accordance with RCW 82.04.192, the photographs that customers provided to Taxpayer met the criteria of “digital goods” because they were “images” that were “transferred electronically” to Taxpayer.
- In accordance with RCW 82.04.050(2)(g), the “repairing altering, or improving of digital goods for consumers” constitutes a retail sale that are subject to the retail sales tax.

TAA has not conducted an audit on Taxpayer, and there is no outstanding assessment.

On August 8, 2012, Taxpayer appealed the July 9, 2012 instructions to this office, asserting that he is providing a professional service taxable under the service classification of the B&O tax.

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<sup>2</sup> Taxpayer does not take these pictures.

## ANALYSIS

RCW 82.04.192(6)(a) defines “digital goods” as:

“Digital goods,” except as provided in (b) of this subsection (6), means . . . images. . . transferred electronically, including, but not limited to, specified digital products and other products transferred electronically not included within the definition of specified digital products. . . .

Under this definition, the digital photographs Taxpayer receives electronically via email or downloaded from customers, and then transfers back to them electronically, are digital goods.

RCW 82.04.050(2)(g) provides:

The term "sale at retail" or "retail sale" includes . . . labor and services rendered in respect to the following: . . . (g) The . . . altering, or improving of digital goods for consumers; . . .

RCW 82.04.190(11) includes, in the definition of “consumer”:

(a) Any end user of a digital product. . . .

Thus, under RCW 82.04.050(2)(g), Taxpayer’s enhancement of digital photographs using his enhanced Photoshop software is the “altering” or “improving” of digital goods. Taxpayer’s customers are “consumers” under the RCW 82.04.190(11) definition because they use the finished manipulated photographs in their online advertising. Taxpayer’s service, which under RCW 82.04.050(2)(g) is the altering or improving of digital goods for consumers, is therefore subject to retailing B&O tax and retail sales tax unless otherwise deductible or exempt.

RCW 82.08.02087 provides a retail sales tax exemption for the digital goods when they are used by a business for a business purpose:

(1) The tax imposed by RCW 82.08.020 does not apply to the sale to a business of . . . services rendered in respect to digital goods, where the . . . services rendered in respect to digital goods are purchased solely for business purposes. . . .

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) For purposes of this section, the following definitions apply:

(a) "Business purposes" means any purpose relevant to the business needs of the taxpayer claiming an exemption under this section. Business purposes do not include any personal, family, or household purpose. The term also does not

include any activity conducted by a government entity as that term is defined in RCW 7.25.005; and

(b) "Services rendered in respect to digital goods" means those services defined as a retail sale in RCW 82.04.050(2)(g).

(Emphasis added.) Thus, under RCW 82.08.02087, retail sales tax does not apply to the sale to a business of services rendered in respect to a digital good when such services are purchased solely for a business purpose. Because Taxpayer's customers engage Taxpayer to perform his services on their digital photographs for a business (i.e., advertising) purpose, Taxpayer's services are exempt from retail sales taxes when such business customers provide Taxpayer with an exemption certificate.<sup>3</sup>

When commercial customers electronically send Taxpayer digital photographs so that he can digitally manipulate them for use in on-line viewing, and he electronically returns the final products to his customers, he has altered or improved digital goods for consumers in accordance with RCW 82.04.050(2)(g), and therefore must report retailing B&O tax on the gross proceeds received for his services. Taxpayer will not be required to charge and collect retail sales taxes on his digital manipulation services when customers provide Digital Products and Remote Access Software Exemption Certificates certifying that their digitally manipulated photographs will be used solely for business purposes.

Accordingly, we hold that Taxpayer's charges for "Photoshop enhancement" performed on digital photographs that will be used by his customers for business purposes are taxable under the retailing classification of the B&O tax, but exempt from retail sales tax when his customers provide him with a "Digital Products and Remote Access Software Exemption Certificate."

#### DECISION AND DISPOSITION

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Dated this 13<sup>th</sup> day of November, 2013

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<sup>3</sup> In accordance with Rule 458-20-15503(505)(a): "Buyers may use the department's "Digital Products and Remote Access Software Exemption Certificate" to claim this exemption." The form is available at <http://dor.wa.gov/docs/forms/excstx/exmptfrm/digitalproductsexemptcert.pdf>.