

Cite as Det. No. 18-0146, 38 WTD 224 (2019)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 18-0146
) )	
. . . )	Registration No. . . .
) )	

[1] RCW 82.04.280; WAC 458-20-144: B&O TAX – TAX ON PRINTERS, PUBLISHERS. The Department correctly reclassified Taxpayer’s business activities from the Retailing to the Publishing Business and Occupation Tax Classification based on conversations with Taxpayer’s tax representative and its own observations at the time of the audit.

[2] RCW 82.32A.020: TAXPAYER RIGHTS AND RESPONSIBILITIES. Taxpayer is not entitled to a waiver of a tax deficiency resulting from the reclassification of its income because it did not rely to its detriment on specific, official written advice or tax reporting instructions.

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.

Peña, T.R.O. – A wholesale and retail print shop objects to the reclassification of its business activities to the Printing and Publishing Business and Occupation (“B&O”) Tax Classification and the amount of its tax assessment [asserting that its main business activity is duplicating materials provided by customers]. Taxpayer’s petition is denied.<sup>1</sup>

### ISSUES

1. Whether, under RCW 82.04.280, the Department correctly reclassified a print shop’s income to the Printing and Publishing B&O Tax Classification.
2. Whether, under RCW 82.32A.020(2), a print shop is entitled to a waiver of tax resulting from the reclassification of income, when the print shop called the Department to request a tax return filing extension and the Department did not inform the print shop that it was incorrectly reporting.

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

## FINDINGS OF FACT

. . . (“Taxpayer”) is a wholesale and retail print shop in [Washington]. Taxpayer’s business activities include printing letterhead, envelopes, business cards, brochures, forms, folders, and similar items, as well as mailing printed items and pallet storage.

The Department’s Audit Division (“Audit”) conducted an audit of Taxpayer’s business for the period of January 1, 2013, through June 30, 2016, (“Audit Period”). On April 28, 2017, Audit issued tax assessment . . . (“Assessment”), in the amount of \$ . . . , against Taxpayer, [which] includes \$ . . . of retail sales tax, \$ . . . of Printing and Publishing B&O tax, and \$ . . . of interest. Taxpayer disputes only the Printing and Publishing B&O tax.

During the Audit Period, Taxpayer primarily reported its revenues under the Wholesaling and Retailing B&O Tax Classifications. However, based on its fieldwork and conversations with Taxpayer’s tax representative, Audit determined Taxpayer should have been reporting its main business activity under the Printing and Publishing B&O Tax Classification. . . . Audit credited Taxpayer \$ . . . for the B&O tax incorrectly paid under the Retailing Classification and assessed \$ . . . under the Printing and Publishing Classification. Audit also credited Taxpayer \$ . . . for service and other B&O tax that Taxpayer incorrectly paid for direct mailing postage reimbursements.

Taxpayer often provided mailing services in combination with its printing. Audit concluded that these constituted “mailing bureau services” that are reportable under the Retailing B&O Tax Classification; however, Taxpayer’s sales invoices did not include separate line charges for printing and mailing. Because Audit could not determine the specific revenue attributable to mailing bureau services, Audit attributed all of Taxpayer’s revenue from printing in combination with mailing bureau services to the Printing and Publishing B&O Tax Classification.

On May 30, 2017, Taxpayer requested a review of only the Printing and Publishing B&O tax portion of the Assessment. Taxpayer disputes the reclassification because it claims that it is not the type of printing company described in WAC 458-20-143, the Department’s Administrative Rule titled “Printers and publishers of newspapers, magazines, and periodicals.” Taxpayer states that it “prints business papers; i.e. letterhead, envelopes, business cards, brochures, forms, folders and the like. We duplicate customer supplied files, we do not create, assemble or produce the content we print.” Taxpayer’s Petition. Taxpayer further states that the majority of its business is printing with only a small portion coming from mailing. Taxpayer states it never offers just mailing services; it only offers mailing services as an option for items it has printed.

. . . Taxpayer has not presented any evidence or records in support of its claim that [duplicating activities] are its main business activities . . . .

Taxpayer also claims that it has asked for excise tax return filing extensions in the past and the Department employees handling the extensions never told Taxpayer that it was filing incorrectly.

## ANALYSIS

1. Reclassification to Printing and Publishing B&O

Washington imposes a B&O tax “for the act or privilege of engaging in business” in this state. RCW 82.04.220. The tax rate varies based on the type of business activity the taxpayer engages in and the statute provides numerous classifications of activities. The tax is measured by applying particular rates against the value of products, gross proceeds of sale, or gross income of the business, as the case may be. RCW 82.04.220. The B&O tax is “extensive and is intended to impose . . . tax upon virtually all business activities carried on in the State.” *Analytical Methods, Inc. v. Dep’t of Revenue*, 84 Wn. App. 236, 241, 928 P.2d 1123 (1996) (quoting *Palmer v. Dep’t of Revenue*, 82 Wn. App. 367, 371, 917 P.2d 1120 (1996)).

RCW 82.04.280(1) imposes Printing and Publishing B&O tax as follows:

Upon every person engaging within this state in the business of: (a) Printing materials other than newspapers, and of publishing periodicals or magazines . . . as to such persons, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.484 percent.

WAC 458-20-144 addresses the taxation of the “printing industry.” “Printers are subject to the business and occupation tax under the Printing and Publishing classification upon the gross income of the business.” WAC 458-20-144(3)(a). “The phrase ‘printing industry’ includes letterpress, offset-lithography, and gravure processes as well as multigraph, mimeograph, autotyping, graphing and similar activities.” WAC 458-20-144(2).

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In contrast, duplicating activities are taxed under the Manufacturing and either the Retailing or Wholesaling B&O Tax Classifications. WAC 458-20-141(2)(a), (b). RCW 82.04.240 imposes Manufacturing B&O Tax as follows:

Upon every person engaging within this state in business as a manufacturer, except persons taxable as manufacturers under other provisions of this chapter; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured, multiplied by the rate of 0.484 percent.

The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state.

RCW 82.04.110(1) states that “‘manufacturer’ means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from his or her own materials or ingredients any articles, substances, or commodities.” “A person duplicating tangible personal property for sale or

commercial or industrial use (the use of manufactured property as a consumer) is subject to the manufacturing B&O Tax Classification.” WAC 458-20-141(2)(b). “Duplicating is the copying of typed, written, drawn, photographed, previously duplicated, or printed materials using a photographic process such as photocopying, color copying, or blueprinting.” WAC 458-20-141(2).

RCW 82.04.440 provides that:

- (1) Every person engaged in activities that are subject to tax under two or more provisions of RCW 82.04.230 through 82.04.298, inclusive, is taxable under each provision applicable to those activities.

Persons duplicating and selling duplicated products must report the income under both the Manufacturing B&O Tax Classification and the Retailing or Wholesaling B&O Tax Classification. WAC 458-20-141(2)(a), (b). To prevent multiple B&O taxation, RCW 82.04.440(2) allows a multiple activities tax credit for the lesser of the manufacturing tax or the total selling tax.

Here, Taxpayer disputes the reclassification of its main business activity to the Printing and Publishing B&O Tax Classification . . . and asserts that its main business activity is duplication of materials supplied by customers. Taxpayer has not provided any support for this assertion. . . . [Audit’s reclassification of Taxpayer’s main business activity to printing & publishing is reasonable and is based on conversations with Taxpayer’s tax representative and its own observations at the time of the audit, Taxpayer’s activities met the description of printing industry under WAC 458-20-144.2] In the absence of documentary evidence, such as sales contracts or other books and records, showing that Taxpayer’s main business activity was solely duplicating customer-supplied electronic files [the copying of typed, written, drawn, photographed, previously duplicated, or printed materials using a photographic process such as photocopying, color copying], we sustain Audit’s reclassification of Taxpayer’s business activities. . . .

## 2. Taxpayer’s Responsibility and Advice from the Department

Under RCW 82.32A.020(2), a taxpayer has a right to waiver of a tax deficiency where it relied to its detriment on specific, official written advice or tax reporting instructions. Taxpayer has not identified any prior audit reports or written statements by the Department to Taxpayer where the Department provided instructions, or even addressed, the classification of its main business activity. Instead, Taxpayer asserts that the Department failed to offer unsolicited reporting advice. Because Taxpayer has failed to show that it relied on specific, official, written tax reporting advice from the Department, Taxpayer is not entitled to waiver of taxes under RCW 82.32A.020(2).

In addition, where a taxpayer’s improper reporting was overlooked, the Department is not barred from asserting a tax liability because an auditor failed to find an error during an earlier audit. *Dep’t*

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<sup>2</sup> [A version of Taxpayer’s website that was available during the audit period lists types of projects Taxpayer works on and includes, among other activities, printing magazines. Magazine printing is an activity that falls under Printing and Publishing under certain circumstances. <https://web.archive.org/web... 1>. The website also supported the auditor’s conclusion that the Taxpayer’s business activities during the audit period appeared broader than the Wholesaling and Retailing activity it was reporting. Further, the B&O tax classification for printers in RCW 82.04.280(1) and WAC 458-20-144 do not contain a requirement that the printer also “create, assemble or produce the content” as asserted by the Taxpayer]

*of Revenue v. Martin Air Conditioning*, 35 Wn. App. 678, 688, 668 P.2d 1286 (1983); *Kitsap-Mason Dairymen's Assoc. v. Tax Commission*, 77 Wn.2d 812, 818, 467 P.2d 316-317 (1970); Det. No. 93-191, 13 WTD 344 (1994); Det. No. 91-059, 10 WTD 413 (1990). Thus, Taxpayer's assertion that the Department did not tell Taxpayer it was filing incorrectly when it previously requested filing extensions is insufficient to waive the assessment of tax. Based on the foregoing analysis, the Department correctly reclassified the taxpayer's activities under the Printing and Publishing B&O Tax Classification.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 31st day of May 2018.