

Cite as 5 WTD 265 (1988)

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Ruling of Tax Liability of)	
)	No. 88-170
)	
)	Registration No. . . .
. . .)	
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)	

RULE 155 AND RCW 82.04.050: RETAIL SALE -- CREDIT BUREAU BUSINESS --CHECK GUARANTEE AND VERIFICATION -- INFORMATION SERVICES DISTINGUISHED. A business's check guarantee and reporting service on bank checks for its merchant subscribers and its account screening service for depository customers both fall within the definition of a "credit bureau business" as that term is used in RCW 82.04.050.

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.

TAXPAYER REPRESENTED BY: . . .
. . . .

DATE OF HEARING: August 19, 1987

NATURE OF ACTION:

The taxpayer seeks a ruling that its check guarantee and verification activities do not make it a "credit bureau business" within the meaning of RCW 82.04.050.

FACTS AND ISSUES:

Frankel, A.L.J. -- The taxpayer is the regional franchisee of It registered for business in this state in . . . as a check verification business. The taxpayer and its predecessor business, . . . , have paid business and occupation tax under the Service classification.

The taxpayer's records were audited in 1984; the auditor concluded that the taxpayer was properly reporting its income under the Service category. The auditor believed the taxpayer's services resemble those of an insurance company, as the taxpayer accepts the risk on checks it guarantees.

After the audit was completed, the Audit Section contacted the taxpayer and stated it was in the process of reviewing the taxpayer's activities to determine if the taxpayer should be considered a "credit bureau business." The taxpayer supplied a copy of its service agreement for the Department's review.

After reviewing the agreement, the Department concluded that the taxpayer's business did involve the credit bureau business. The taxpayer was told to report its activities as a retail sale beginning January 1, 1987. (Letter from Chief of Audit, October 22, 1986). The taxpayer disagreed with the Department's request. Due to problems encountered in programming sales tax into its billing process, it requested additional time. The Department then authorized a delay in the implementation of the collection of sales tax until July 1, 1987 (letter from Chief of Audit dated June 3, 1987).

The taxpayer then requested a ruling under Section 18 of WAC 458-20-100 as to the correct application of the Washington excise tax laws on its activities. The taxpayer contends that it is not a credit bureau business and should continue to be classified as a Service business for Washington excise tax purposes. (Letter of June 24, 1987).

The taxpayer maintains a data bank of information identifying persons who have had a dishonored check. It provides two basic types of services: a check verification and guarantee service to merchants and an account screening service for depository institutions.

The taxpayer's service agreement with a subscribing merchant provides that the merchant may call the taxpayer prior to accepting a check from a customer to inquire if the taxpayer will commit to purchase the check in the event the check is dishonored. The taxpayer stated that merchants do not request, and are not given, any verbal or written report on the credit standing or credit worthiness of any customer. The taxpayer indicates, generally by a computer-generated code, whether or not it will commit to the purchase of a particular check if it is dishonored. If it will guarantee the check, the taxpayer charges the merchant a fee based on the face amount of the check.

The taxpayer stated that its computer database basically consists of identification information about persons who have written outstanding dishonored checks which it or other . . . franchisees have purchased or otherwise hold. The taxpayer stated it holds

checks for six and one-half years and that the names are purged after that time or if the check is paid. The taxpayer does not maintain a history file of those who have in the past had dishonored items. The taxpayer will not commit to the purchase of a check drawn by a person if it or any other franchisee holds an outstanding dishonored check drawn by the person.

The taxpayer argues it is not acting as a credit bureau, as it is not providing information to persons interested in extending credit. Rather, the taxpayer stated its merchant subscribers are interested in shifting to the taxpayer the check collection risks.

The taxpayer stated it provides a similar service for its depository customers. Its new account screening service allows financial institutions, when processing new checking account applications, to inquire to the taxpayer whether the customer has abused checking account privileges at another institution. The taxpayer advises subscribing financial institutions if it or another . . . franchisee is holding a dishonored check drawn by a particular person or if another subscribing financial institution has closed the customer's checking account with an unpaid balance.

The taxpayer stated that the financial institutions do not use its services for making credit decisions, but to avoid opening "problem" checking accounts. The taxpayer argues that the information provided to the financial institution falls within the definition of "information services" in WAC 458-20-155 (Rule 155).

After receiving the Department's letter advising it to report its activities as retail, the taxpayer spent \$4800 for a custom software program to allow it to bill for sales tax if required. The taxpayer still seeks a ruling that it should be classified as Service business. If the decision is that its activities are retailing, it asks the Department to take steps to advise the competing check acceptance services of the decision.

DISCUSSION:

RCW 82.04.050 defines the term "retail sale" to include:

. . . the sale of or charge made for personal business or professional services, including amounts designated as . . . fees . . . and other service emoluments, however designated, received by persons engaged in the following business activities . . . (c) credit bureau businesses . . . (Emphasis supplied.)

The Department's letter to the taxpayer stating its activities constitute a credit bureau business stated:

Since the law makes no distinction between persons (such as your company) engaged in issuing relatively simple

reports on the checking account and check negotiation activities of individuals and persons engaged in the preparation and issuance of technical and detailed business information which, in both cases in the over-all picture, establishes a person's credit acceptability, we must conclude that your company is engaged in the operation of a "credit bureau business," as contemplated by RCW 82.04.050. Accordingly, you are required to charge, collect and remit retail sales tax on the fees charged to your customers. We do not place any particular significance on the fact that the information is provided to the merchant orally rather than in writing.

. . .

We believe a merchant is purchasing more than a check guarantee service in subscribing to your service. The merchant is primarily interested in the credit worthiness of the customer to the amount of the check. In some cases, the amount of the check may exceed the amount of a warranty you provided. The information the subscriber receives provides information on which to base a decision as to whether a check should be accepted.

The audit supervisor based his decision, in part, on a prior letter to a business that was engaging in the service for fees of notifying its customers (retailers) of closed checking accounts, forged checks and stolen checks of the retailer's customers. (Letter of September 8, 1982 from Interpretation and Appeals).

We agree with the taxpayer that neither a merchant who accepts a check or a bank opening a new checking account is interested in extending credit. A common definition of credit is "the right granted by a creditor to a customer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor." Regulation Z, 12 CFR 226 § 226.2(1) defining credit for purposes of the Truth in Lending Act. See also RCW 19.134 010(3). A check is a negotiable instrument payable upon demand.

Nevertheless, many people do write checks with insufficient funds to cover them. If they didn't, the taxpayer's services would not be needed. We believe that the fact a person has an outstanding check that has been dishonored would relate to that person's credit worthiness and would be an important factor in a merchant's decision as to whether to accept a check from such a person.

Washington's Revenue Act does not define "credit bureau business." The Fair Credit Reporting Act, 15 U.S.C. § 1681 et. seq. (1970), includes the following definitions and rules of construction in Sec 1681 a:

(d) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section 604.¹

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

The taxpayer's Service Agreements for Merchants and for depository institutions provide for FCRA Certification, stating that the subscriber certifies that the information will only be used for permissible purposes as defined by the FCRA. (Except for employment purposes). Also, the subscriber agrees that the information provided by the taxpayer will not be used for any purpose other than the one business transaction between the subscriber and the consumer. The only relevant "permissible purpose" would be for establishing a consumer's eligibility for credit or insurance. The taxpayer's own agreements, therefore, seem to recognize that its services help establish a person's credit worthiness.

Furthermore, at least one state court determined that . . .'s check guarantee and reporting services fell within the definition of "consumer report." Peasley v. Telecheck of Kansas, Inc. 6 Kan. App. 2d 990, 637 P.2d 437 (1981). The Kansas court concluded that the taxpayer's communication to a merchant that it would not guarantee a check which the merchant then relied on in refusing to accept a check, did bear upon a consumer's credit worthiness.

The Kansas court relied on decisions from several jurisdictions interpreting the provisions of the Fair Credit Reporting Act. One case, Greenway v. Information Dynamics, Ltd., 524 F.2d 1145 (9th

¹ The only other permissible purposes are in response to a court order or in accordance with the consumer's written instructions.

Cir. 1975) was a one paragraph opinion affirming a lower court's decision that a report on the previous issuance of an unpaid check taken from check lists maintained by a reporting agency is a "consumer report" under the Act. 637 P.2d at 440.

The Kansas court also relied on the fact that the Federal Trade Commission has consistently held that lists containing the names of consumers who have had checks returned for insufficient funds are consumer reports. 637 P.2d at 442. The agency's opinion should be given deference in construing the meaning of the federal legislation. Rasor v. Retail Credit, 87 Wn.2d 516, 524 (1979).

Although not controlling, the reasoning of the Kansas court supports the Department's decision that the taxpayer's activities constitute a credit bureau business for purposes of Washington's retail sales tax. Accordingly, we affirm the decision of the audit supervisor.

DECISION AND DISPOSITION:

The taxpayer's check guarantee and reporting service on bank checks for its merchant subscribers and its account screening service for depository customers both fall within the definition of a "credit bureau business," as that term is used in RCW 82.04.050. The charges made for these services are subject to Retailing B&O and retail sales tax,

DATED this 30th day of March 1988.

See hardcopy for attachment.