

Cite as 9 WTD 071 (1990)

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

In the Matter of the Petition) D E T E R M I N A T I O N
For Refund of)
) No. 90-34
 . . .)
) Registration No. . . .
) Tax Assessment No. . . .

[1] RULE 17001 AND RULE 226: RULE 170 -- B&O TAX --
GOVERNMENT CONTRACTING -- MAINTENANCE OF LAWNS AND
GROUNDS -- GOLF COURSE. A person who mows and
waters the grass and otherwise maintains the grounds
and golf course at a U.S. Army base is a landscape
gardener B&O taxable under the Service category.

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: October 21, 1987

NATURE OF ACTION:

Protest of B&O reclassification from Government Contracting to
Service and Other Business Activities.

FACTS AND ISSUES:

Dressel, A.L.J. -- . . . (taxpayer) provides a grounds
maintenance service for the United States government. An
excise tax examiner for the Department of Revenue (Department)
determined that the taxpayer had been reporting its income
under an incorrect business and occupation tax classification.
He then issued the above-captioned tax assessment which
reclassified the taxpayer's income from Government Contracting
to Service and Other Business Activities. The period covered

was March 1, 1983 through June 30, 1986. The additional tax demanded was \$ The taxpayer has paid said amount but in this action is asking for a refund of same.

On its application for a certificate of registration from the Department, the taxpayer lists its business activity as "grounds maintenance service for U.S. Govt." It engages in this activity at the . . . Army Base. In a March 20, 1987 letter to the Interpretation and Appeals Division of the Department, the taxpayer's attorney further explained that the business "included maintenance of a golf course and lawn, maintaining and repairing sprinkler systems, maintaining the fairways, and doing the landscaping and maintenance work required to keep the facilities in top shape". At a telephone conference held in this matter, the taxpayer's attorney stated that her client was "primarily plumbers", although she was somewhat unsure as to exactly what kind of plumbing it accomplished at She pointed out that the taxpayer had government contracts all over the country.

To better ascertain the precise work operation within the state of Washington, the undersigned requested a copy of a representative contract between the taxpayer and the army at The contract has arrived. It lists 24 major activities: grounds maintenance, mowing, grass trimming, lawn edging, grass clippings, turf repair and re-establishment, storm damage cleanup, leaf removal, irrigation, aeration, dethatching; tree, shrub and vine maintenance; weed control, fertilization, snow and ice removal, installation cemetery, policing grounds, tree and stump removal, topsoil, special events, command activities, command visits, golf course maintenance, and miscellaneous. The paragraphs on special events, command activities, and command visits, incidentally, all provide for additional grooming of the base grounds. An additional section of the contract lists a dollar breakdown of either how much the taxpayer earned or was estimated to earn for a specific activity within a certain period of time. Of the total by far the greatest amount is for "mowing and trimming of grass and weeds in Family Housing parks, playgrounds, and common-use areas at . . . (Approximately 196 acres)".

In a letter dated April 14, 1987, the president of the taxpayer company stated that its work was "grounds maintenance" consisting primarily of mowing, edging, trimming of lawns; repairs and modification to sprinkler systems;

watering of lawns and shrubs; mowing of weeds; re-landscaping; weed control; and furnishing beauty bark and top soil.

The taxpayer argues that this activity is either government contracting or wholesaling as a subcontractor. The taxpayer's attorney states that the taxpayer's main function at . . . was to fix the sprinkler system and that any other grounds maintenance activities were incidental to that main function. Apparently, she means that the taxpayer had to tear up the ground to fix and/or install the sprinkler system which made it necessary to re-sod, re-landscape, or whatever in order to render the repaired area aesthetically presentable. In golfing terms, it was replace your divot but on a grander scale.

The taxpayer fancies itself as a prime or sub government contractor performing construction, installation and/or improvements to real property of the United States. For such activity, the taxpayer claims, there is an exclusion from the definition of sale at retail under RCW 82.04.050 and WAC 458-20-17001 (Rule 17001). In support of its position that it is a contractor, the taxpayer cites definitions of prime and subcontractor found in WAC 458-20-170 (Rule 170).

The issue is whether one who maintains the grounds of an army base is a government contractor.

DISCUSSION:

[1] It is true that under Rule 17001 special tax applications pertain to prime and subcontractors who perform certain construction, installation, and improvements to real property of or for the United States. These specific construction activities are excluded from the definition of "sale at retail" under RCW 82.04.050. The same rule also states that the definitions and general provisions of Rule 170 apply to it. The terms "prime contractor" and "subcontractor" mean a person performing "the constructing, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property . . ." That phrase is further explained later in Rule 170 where it states in part:

(d) The term "buildings or other structures" means everything artificially built up or composed of parts joined together in some definite manner and attached to real property. It includes not only buildings in the general and ordinary sense, but also tanks, fences, conduits, culverts, railroad

tracks, tunnels, overhead and underground transmission systems, monuments, retaining walls, piling and privately owned bridges, trestles, parking lots, and pavements for foot or vehicular traffic, etc.

(e) The term "constructing, repairing, decorating or improving of new or existing buildings or other structures," in addition to its ordinary meaning, includes: The installing or attaching of any article of tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virtue of installation; the clearing of land and the moving of earth;

The evidence presented does not demonstrate to us that the taxpayer constructs, repairs, decorates, or improves any buildings or other structures. Its primary activities are, from the various descriptions given above, mowing grass and picking up branches, tree limbs, brush and similar organic matter. Those and its other grounds maintenance duties are performed on an entirely natural subject, the ground, "Mother Earth", the terra firma. Prime and subcontractors, on the other hand, perform their activities on "buildings or other structures". Lawns, golf courses, and grounds in the general sense do not qualify as buildings or other structures under the above definitions. Therefore, the taxpayer in this case is not a prime or subcontractor. Because the special tax treatment afforded government contractors, including the Government Contracting B&O rate at which this taxpayer's income was originally reported, is restricted to prime and subcontractors, the taxpayer is not eligible for it.

We recognize that installing of a sprinkler system would qualify as government contracting. The taxpayer has alluded to such installation and the maintenance of same but has not quantified that activity or, indeed, proved to our satisfaction that its work for the government at . . . included any of that. Again, the taxpayer's primary functions, as we have determined them, are the mowing and watering of grass and the policing of the base grounds. Based on the evidence submitted, we find that the taxpayer did not install or maintain the sprinkler system. Turning the water on and off, by the way, is not maintaining the sprinkler system.

Having determined that, we turn to the next project which is to decide the correct B&O classification. In that regard the Department's excise tax examiner cited WAC 458-20-226 (Rule 226) in reclassifying the taxpayer's income to Service B&O. Rule 226 states in part:

LANDSCAPE GARDENERS.

The business of landscape gardening ordinarily includes one or more of the following activities:

. . . .

(d) The maintenance of lawns, plants, or gardens, including grass cutting, hedge trimming, watering, and the pruning of trees and shrubs.

. . . .

Such persons are taxable under the classification service and other activities upon gross income from activities of type (d).

That appears to be a good description of the taxpayer's primary function at Of the described activities which stray from lawn maintenance per se, they are still, in our judgment, service activities and, as such, to be taxed under the Service B&O classification. See WAC 458-20-224. We find that the excise tax examiner properly reclassified the taxpayer's income to the Service B&O category.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 25th day of January 1990.