

Cite as 9 WTD 281 (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 Correction of Assessment of)
) No. 90-143
)
) Registration No. . . .
) . . . /Audit No. . . .
)

[1] RCW 82.04.050: RETAIL SALES TAX AND B&O TAX --
CREDIT BUREAU BUSINESS -- TENANT SCREENING FOR
LANDLORDS. Taxpayer providing credit and rental
history information to prospective landlords is
engaging in a retailing activity falling within the
definition of a "credit bureau business" as used in
RCW 82.040.050.

[2] MISCELLANEOUS -- ESTOPPEL -- ORAL INSTRUCTIONS FROM
DEPARTMENT. On narrow facts presented, taxpayer has
supported its account of instructions given during
two telephone conversations with the Department
sufficiently to justify permitting it to amend its
reporting methods prospectively.

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 TELEPHONE CONFERENCE: November 21, 1989

NATURE OF ACTION:

Taxpayer petitions for correction of assessment reclassifying
its income from service to retailing B&O and assessing
liability for uncollected retail sales tax on grounds that it

is not a credit bureau and that Department representatives told it to report income under service B&O tax category.

FACTS AND ISSUES:

Johnson, A.L.J. -- Taxpayer is engaged in business as a provider of information about prospective tenants to its customer-landlords.

Its books and records were audited for the calendar years 1985 through 1988, inclusive. The auditor determined that its activities fell within the definition of "credit bureau business" and were taxable under the retailing B&O tax category rather than the service category under which taxpayer had been reporting income. Further, the auditor found that sales tax should have been collected on all reports furnished to prospective landlords.

Taxpayer's screening process information sheet states the business is operated in the following manner:

1. Prospective tenants complete an extensive application form, which is then transmitted to taxpayer, usually by phone or fax machine.
2. Taxpayer obtains a credit report and compares it with information on the application.
3. Applicant's name is checked through taxpayer's own data base file for evictions and for prior screening.
4. Addresses are checked to determine ownership of the property.
5. Addresses on the application and credit report are then checked through cross-reference books.
7. Taxpayer's "screeners" then call each owner of rental property for answers to a number of questions regarding rental, behavioral and payment history, as well as whether the renter had pets and whether the landlord would rent to the party again.
8. Bank information is verified.
9. Eviction information, if found, is checked to verify identity and facts, if applicable. Any judgment or collection information found on the applicant is also verified.

10. Applicant's current and prior employment are verified (as well as spouse's employment, if any); information obtained includes date of hire, salary, security of job, whether the applicant is expected to receive bonuses or salary increases, whether employment is full- or part-time, and identity of supervisor.

11. The information is then supplied to the landlord, who makes the decision whether or not to rent to the applicant.

Taxpayer argues that it is not engaged in a retail B&O taxable credit bureau business, because its customers use the information in deciding to rent property where payment is made in advance. The information is not used in conjunction with making a decision to extend credit to the applicant, as it argues is the case with true credit bureau information. Further, it contends the information "relates principally to a prospective tenant's rental history and not his credit worthiness, credit standing, credit capacity, character, general reputation, or personal characteristic [sic]."

Additionally, taxpayer states its owner contacted the Department in March, 1983, prior to incorporation of the business, to request tax-reporting information and was told to report its income in the Services B&O tax category. The owner supplied a copy of her residence telephone bill for the period, which shows a long-distance (toll) call to one of the Department's Tacoma lines. She also supplied a statement recounting the conversation, in which she contends she clearly and completely explained the nature of her business and was told to report under the services category. Her CPA also supplied a signed statement about a July, 1983, conversation with a named Department employee, in which he contends a detailed explanation was given and the same information received.

DISCUSSION:

[1] The determination of whether taxpayer is engaged in business is addressed in Det. No. 88-170, 5 WTD 265 (1988). In that case, as here, the taxpayer argued that it was not acting as a credit bureau, because it was not providing information to persons interested in extending credit. However, that determination relied on the Fair Credit Reporting Act (FCRA) definition of "consumer reporting agency"

in finding that the taxpayer was acting as a credit bureau for purposes of Washington's Revenue Act.

We find that the reasoning of Det. No. 88-170 controls in this case as well.

Here, taxpayer obtains extensive information on prospective tenants, including circumstances of their employment, of their past living arrangements, and of their credit history. It sells this information to prospective landlords, who base a decision to rent, fully or in part, on this information.

Taxpayer's argument that the landlord is not interested in the tenant's creditworthiness is contradicted by the facts that taxpayer's form requests credit information and that a credit report is obtained and information thereon verified and delivered to the prospective landlord.

Further, we are not persuaded by taxpayer's argument that the FCRA definition does not apply for purposes of classifying its activity. The definition of "consumer reporting agency" includes assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties. 15 USC §1681 et seq. (1970).

Finally, the argument that the report relates not to credit but instead relates "principally" to the prospective tenant's rental history is contradicted both by the requests for credit and employment information and by the disclosure contained on its application forms:

[i]n compliance with the Fair Credit Reporting Act, we are informing you that information as to your character, general reputation and mode of living is verified. The facts set forth in this application are true and complete. I as the prospective tenant agree that a complete investigation of all on this application will not constitute invasion of privacy. I am aware of and extend the privilege to the [Taxpayer] to obtain credit reports and/or character reports as necessary. (Emphasis supplied.)

Consequently, we find that taxpayer is engaged in the retailing business of providing credit and other consumer information to third parties. The auditor, in 1989, correctly informed taxpayer of the proper reporting methods for its type of business.

[2] Taxpayer next protests the audit results based on its contention that its president and its CPA both contacted the Department by telephone and received instructions to report under the services B&O tax category. Normally, alleged incorrect oral instructions will not be grounds for waiver of taxes properly due, because there is no way of showing that the person giving the instructions had all of the necessary facts on which to base an accurate answer. ETB 419.32.99.

In this case, however, taxpayer's president submitted a signed statement detailing her account of her conversation with a Department employee. She also submitted a copy of her telephone bill showing that she made a call to the Department in March, 1983, which lasted for 11 3/4 minutes. Her CPA also submitted a signed statement that he made a telephone call to the Department's Tacoma office and named the person to whom he spoke. Both the president and the CPA contend they explained the nature of the business.

We are persuaded that taxpayer's account of the events warrants relief in this case for the following reasons:

first, taxpayer was able to supply at least some proof that the conversations occurred in the form of a record of the first call;

second, its president and CPA testified during the hearing and made signed statements available recounting the alleged conversations. Although the oral statements were not sworn, they are deemed testimony for the purposes of this Determination, and the signed statements are binding; and

third, the nature of taxpayer's information-selling business is of a type sufficiently different from "traditional" credit bureaus that, although it is clearly providing consumer information as defined in the FCRA, it is possible that the instructions to report under "service" were erroneously given in the 1983 calls.

For these reasons and on these narrow facts only, we are granting taxpayer permission to report its income prospectively. It is now expressly on notice that it is to report income from its consumer reporting business under the retailing B&O tax category and that sales of its information

are subject to retail sales tax, which must be collected from its customers and remitted to the Department of Revenue.

DECISION AND DISPOSITION:

Taxpayer's petition is denied with regard to the manner in which it is to report taxes, but it is granted permission to amend its reporting methods prospectively from the date of this Determination. The file will be remanded to the Audit Section for the necessary adjustments, which should only include deletion of the retailing B&O tax and retail sales tax as well as reinstatement of the assessment of any service B&O tax. The assessment of use tax was not in issue and should not be disturbed.

DATED this 28th day of March 1990.