

Cite as Det. No. 03-0350, 23 WTD 229 (2004)

BEFORE THE APPEALS 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. 03-0350
...)	
)	Registration No. . . .
)	. . . /Audit No. . . .
)	Docket No. . . .

RCW 82.04.394: B&O TAX -- EXCLUSION -- ON-SITE PERSONNEL HIRED BY PROPERTY MANAGEMENT COMPANIES. The RCW 82.04.394 exclusion from the B&O tax for amounts received by property management companies and used to pay on-site personnel is not ambiguous and applies only when the on-site personnel primarily perform services at a single owner's property.

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.

Coffman, A.L.J. – A property management company protests the assessment of retail sales tax and retailing business and occupation (B&O) tax on amounts it received for the services of a roving maintenance worker who performed maintenance services at multiple properties managed by the Taxpayer. The Taxpayer claims the RCW 82.04.394 exemption from the B&O tax for services provided by “on-site personnel” applies to property management companies which utilized roving maintenance workers.¹

We conclude the Taxpayer is not entitled to the exemption from B&O tax authorized by RCW 82.04.394.

ISSUE

Is a worker, employed by a property management company to perform maintenance at multiple managed properties, “on-site personnel” for purposes of RCW 82.04.394 so that amounts the

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

property management company received from the property owners for services performed by the employee are exempt from the B&O tax?

FINDINGS OF FACT

The Taxpayer manages approximately two dozen properties in [Washington]. These are relatively small properties and include both residential apartment buildings and office space.

A . . . property management contract submitted for our review states:

[The Taxpayer] shall do everything reasonably necessary for the proper management of the property, including periodic inspections, the supervision of maintenance and arranging for such improvements, alterations and repairs as may be required of Owner. . .

[The Taxpayer] shall hire for Owners (sic) account a resident manager and such other personnel as [the Taxpayer] deems necessary to properly operate the property. It is agreed that as a matter of convenience [the Taxpayer] will carry such individuals on its records and all costs advanced to them by [the Taxpayer] shall be promptly reimbursed by Owner.

. . . . Thus, the manager of the retail business property was not required to live on the property. The Taxpayer hired a roving maintenance employee to perform painting, plumbing, and other minor repairs and maintenance at all of the properties managed by the Taxpayer.

The Department of Revenue's (Department) Audit Division reviewed the Taxpayer's books and records for the period January 1, 1999 through December 31, 2002. As a result of that review, the Department issued the above-referenced tax assessment. The Department assessed retail sales tax and retailing business and occupation (B&O) tax based on the amounts received by the Taxpayer for the services of its roving maintenance employee. The Taxpayer made a partial payment against the tax assessment and appealed the balance, which consisted of the retail sales and retailing B&O taxes related to the maintenance individual.

ANALYSIS

RCW 82.04.394 provides an exemption from the measure of the B&O tax for amounts received by property management companies for on-site personnel providing services to the owner of the property being managed.

The Audit Division found that the maintenance person did not perform services primarily for any one owner, rather the Audit Division states:

Based on the records we have examined it is clear that the individual in question is a roving maintenance person who is not primarily assigned to an owner's property. Because of the transient nature of the work assignments, income associated to this

individual does not qualify for the exemption. Charges for maintenance provided by managers primarily assigned to an owner's property have been treated as exempt.

Letter from Field Audit Manager to the Taxpayer, March 31, 2003.

The Taxpayer does not dispute the Audit Division's factual finding, but believes that the Audit Division applies RCW 82.04.394 too narrowly. The Taxpayer believes that the Audit Division's position "takes away its right to hire people."² Further, the Taxpayer claims that the original intent of the legislation resulting in RCW 82.04.394 was to exempt income related to resident managers from the B&O tax and to allow property managers to maintain a single payroll account for the benefit of their clients.

In construing a statute, we seek to ascertain and give effect to the legislature's intent. *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997). When statutory language is clear, we assume that the legislature "meant exactly what it said" and apply the plain language of the statute. *Id.*, at 87. A statute is ambiguous if it is susceptible to more than one reasonable interpretation. *Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 608, 998 P.2d 884 (2000).

RCW 82.04.394 provides:

(1) This chapter [the B&O tax] does not apply to amounts received by a property management company from the owner of a property for gross wages and benefits paid directly to or on behalf of on-site personnel from property management trust accounts that are required to be maintained under RCW 18.85.310.

(2) As used in this section, "on-site personnel" means a person who *meets all* of the following conditions: (a) *The person works primarily at the owner's property*; (b) the person's duties include leasing property units, *maintaining the property*, collecting rents, or similar activities; and (c) *under a written property management agreement*: (i) The person's compensation is the ultimate obligation of the property owner and not the property manager; (ii) the property manager is liable for payment only as agent of the owner; and (iii) the property manager is the agent of the owner with respect to the on-site personnel and that all actions, including, but not limited to, hiring, firing, compensation, and conditions of employment, taken by the property manager with respect to the on-site personnel are subject to the approval of the property owner.

(Emphasis added.)

We must address whether the phrase "the person works primarily at the owner's property" is ambiguous.³ The Taxpayer argues that the phrase can be read as including personnel performing services for multiple property owners. For three reasons, we conclude the legislature intended RCW 82.04.394 to apply to "on-site personnel" working for a single owner.

² Statement made by the Taxpayer's President during the telephone conference.

³ While we make no specific findings or conclusions concerning the other statutory requirements of RCW 82.04.394, neither the Audit Division nor the Taxpayer have disputed that they are met.

First, the plain language of the definition of on-site personnel is phrased in the singular. If the legislature had intended to include in the exemption amounts received for the services similar to those provided by the roving maintenance employee, it could have written RCW 82.04.394(2)(a) as “the person works primarily at owners’ properties.”

Second, RCW 82.04.394(2)(a) states the employee must *primarily* perform services at the owner’s property. The word primarily means “principally: chiefly.” Page 934, WEBSTER’S II NEW RIVERSIDE UNIVERSITY DICTIONARY, 1988. Principal means “first, highest, or foremost in importance, rank, worth, or degree.” *Id.*, at 935. *See also Pacific Northwest Alloys, Inc. v. Washington*, 49 Wn.2d 702, 705, 306 P.2d 197 (1957). The Taxpayer states the roving maintenance employee performs services for 10 to 12 separate owners and does not state that the employee performs services principally for any one of those separate owners. The services are, therefore, not primarily for any particular owner.

Third, even if we decided RCW 82.04.394 was ambiguous, exclusion and deduction provisions are narrowly construed. *Budget Rent-a-Car of Washington-Oregon, Inc. v. Department of Rev.*, 81 Wn.2d 171, 174, 500 P.2d 764 (1972). Thus, when a statute is ambiguous, the restrictive interpretation should be adopted. The Taxpayer’s own statement of the legislative intent (the exclusion was intended to apply to resident managers) supports our conclusion that the legislature did not intend the exemption to apply to the Taxpayer’s roving maintenance person.

Therefore, we conclude that the definition of “on-site personnel” does not include Taxpayer’s roving maintenance employee and that amounts received by the Taxpayer as compensation for the services provided by the roving maintenance employee are not entitled to the RCW 82.04.394 exemption.

DECISION AND DISPOSITION

Taxpayer’s petition is denied.

Dated this 26th day of December 2003.