

Cite as Det No. 11-0099, 32 WTD 174 (2013)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| In the Matter of the Petition For Correction of |) | <u>D E T E R M I N A T I O N</u> |
| Letter Ruling of |) | |
| |) | No. 11-0099 |
| |) | |
| ... |) | Registration No. . . . |
| |) | Letter Ruling . . . |
| |) | Docket No. . . . |
| |) | |

RCW 82.04.050: RETAIL SALES TAX – DATING SERVICE. Taxpayer who operates an online dating website that allows individuals to post and view personal profiles is providing a dating service that is subject to retail sales tax.

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.

De Luca, A.L.J. – A corporation (the taxpayer) protests a letter ruling from the Taxpayer Information & Education (TI&E) Section of the Department of Revenue (DOR) declaring that it is providing a dating service and should have been collecting and remitting retail sales tax and reporting retailing business and occupation (B&O) tax rather than service and other activities B&O tax. . . . Holding: TI&E was correct in concluding that the taxpayer is providing a dating service that is subject to retail sales tax¹

ISSUES

1. Is the taxpayer providing personal services that are dating services subject to retailing B&O tax and retail sales tax per RCW 82.04.050(3)(g), RCW 82.04.250, and RCW 82.08.020(1)? . . .

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410. Nonprecedential portions of this determination have been deleted.

FINDINGS OF FACT

The taxpayer is a . . . Washington corporation. It owns and operates a website that allows individuals to post and view personal profiles, including photographs. . . . The taxpayer's website also provides tips on dating. The taxpayer's website allows members and other users to search the individual profiles. Members pay a monthly fee that allows them greater access to the profile database than nonmembers by allowing them to contact persons they are interested in by using the taxpayer as a go-between to transmit their [personal information].

On March 21, 2009, a taxpayer representative requested by email a letter ruling from TI&E regarding how the taxpayer should report B&O tax for prepaid membership fee income in the context of a change to the taxpayer's method of accounting. The email in describing the taxpayer declared "[t]he industry is a membership based dating website collecting fees in advance." On April 3, 2009, TI&E replied, but it did not address the accounting method question presented. Instead, TI&E declared that the taxpayer was a self-described dating service and concluded that the taxpayer should have collected retail sales tax for its membership subscription income per RCW 82.04.050(3)(g), *infra*.

TI&E added that for tax periods beginning on or after July 1, 2008, the taxpayer should collect sales tax only from its Washington subscribers due to the enactment of the Streamlined Sales Tax Agreement. *See* RCW 82.32.730(1). But for periods prior to July 1, 2008, TI&E declared that sales tax was due on all of the taxpayer's subscriber income regardless of the subscribers' locations. TI&E sourced all retail dating services prior to July 1, 2008 to the taxpayer's Washington headquarters because the dating services were primarily performed there. TI&E added that the advertising income earned by the taxpayer was subject to service and other activities B&O tax. The taxpayer does not dispute the B&O tax classification for advertising revenue. Finally, TI&E informed the taxpayer that it would need to amend its tax returns back to January 1, 2005, and then going forward to reflect membership subscription income as subject to retailing B&O tax and retail sales tax. The taxpayer has not filed amended returns and DOR has not initiated an audit nor issued a tax assessment against the taxpayer.

Effective July 26, 2009, the Washington legislature enacted Chapter 535, Laws of 2009 (ESHB 2075) (the Digital Products Law). This law was the legislature's first comprehensive effort regarding the tax treatment of digital products. The legislature clarified the law in its next session, Chapter 111, Laws of 2010 (SHB 2620), effective July 1, 2010. With the enactment of ESHB 2075 on July 26, 2009, the taxpayer began collecting and reporting sales tax and retailing B&O tax on its sales to its Washington subscribers.² But periods prior to July 26, 2009, remain in dispute. . . .

² The taxpayer concedes that beginning July 26, 2009, its gross income from its services is subject to retailing B&O tax and retail sales tax under RCW 82.04.050(8) as a sale of either a digital good or a digital automated service. It is DOR's position that the taxpayer's services still are dating services. In any case, both the taxpayer and DOR agree that they are subject to retail sales tax and retailing B&O tax, *infra*.

ANALYSIS

Dating services are defined as retail sales that are subject to retail sales tax and retailing B&O tax:

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities . . .

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

RCW 82.04.050. *See also* RCW 82.04.250; RCW 82.08.020(1).

The taxpayer's website [identifies it as an online dating site.] . . . It provides dating tips. Its members upload their individual profiles and photographs onto the taxpayer's website to allow other members and users to review them [to find romantic partners]. . . .

But the taxpayer contends that when the legislature added dating services to the definition of retail sale in 1993 dating services were different than what the taxpayer offers. Those services predated the internet and included personalized services of matching people, finding similarities in them, setting up meetings for the clients, etc. Even today, the taxpayer notes its services differ from dating services rendered through the internet where computers match clients and the only people that meet each other are those that are matched by computer. In short, the taxpayer argues that it does not offer personal services. It simply allows members to upload their profiles and photos to allow other members to view them and the taxpayer will facilitate an introduction only if the two parties are mutually interested.

The term "dating service" is not defined in the statute. As a result, "it must be given its 'usual and ordinary' meaning, which can be found in dictionaries." Det. No. 06-0280, 26 WTD 169, 173 (2007) (*citing Port of Seattle v. State, Dept. of Revenue*, 101 Wn. App. 106, 1 P.3d 607 (2000)). The usual and ordinary meaning of the term "dating service" is "[a]n organization that arranges introductions (for a fee) for strangers seeking romantic partners or friends." This definition is taken from *Webster's New Millennium Dictionary of English*, Preview Edition.³ It is also the same definition that DOR employed in 26 WTD 169. As a result, we find that this definition of "dating service" fairly represents the usual and ordinary meaning of the term.

The above quoted definition of "dating service" clearly encompasses those businesses that provide "match making" services, by which we mean businesses that actively match clients with one another. The definition also clearly encompasses businesses that make available to its

³ Available on-line from Dictionary.com at <http://dictionary.reference.com/search?r=2&q=dating%20service>.

clients video tapes, photographs, biographical data, member profiles, or other materials from which clients can match themselves. 26 WTD 169, *supra*. Indeed, DOR has declared:

Taxpayer argues that Taxpayer is not a dating service because it “does not arrange introductions for a fee.” That is exactly what Taxpayer does. While Taxpayer does not offer a “matchmaking service” bringing together two individuals for a date, Taxpayer nevertheless charges a fee, albeit a “membership fee” for bringing together “strangers seeking romantic partners.” Taxpayer wishes to limit and restrict “dating service” to a matchmaking service. While a matchmaking service may be a subset of dating service, dating service is not a subset of a matchmaking service. Had the legislature wished to tax only matchmaking services it would have written the law accordingly.

Id. Similarly, in *Doe v. Great Expectations*, 809 N.Y.S. 2d 819 (2005) (clients filed actions under Dating Services Law seeking to recover their payments to internet social referral service) the court wrote:

In relation to the application of the Dating Services Law, more than a decade ago, it was judicially determined that . . . “It does not matter whether defendant actually matches its members. It is sufficient if defendant made available the matching of members ... or supplied the means for matching the members” [citations omitted]; *accord, Chassman v. People Resources*, 151 Misc.2d 525, 528, 573 N.Y.S.2d 589 [Civ.Ct. N.Y. Co.1991, Diamond, J.], member video and biography kept in a library for access by other members, “the distinction between a service that actually matches people for dating and one that provides the means for the match has no meaning in the context of the clear legislative intent to regulate this kind of activity no matter how it is accomplished or implemented”).

809 N.Y.S. 2d at 820-21 (quoting *Great Expectations Creative Management, Inc. v. Attorney-General of the State of New York*, 162 Misc. 2d 352, 356-57, 616 N.Y.S. 2d 917 (Sup. Ct. N.Y. 1994)) (Underlining ours). The fact that the basic social introduction process in *Doe* was to be conducted on the internet did not change the fact that it was still a dating service. *Id.* Likewise, DOR in 26 WTD 169 concluded in 2006 that the taxpayer in that case was a dating service although it, too, provided, among other benefits, internet dating services that allowed its members to match themselves.

Similarly, in the present appeal it does not matter that the taxpayer does not actually match people. It is still a dating service because it provides its subscribers the means for matching. 26 WTD 169. As a dating service, its gross income from such services is subject to retail sales tax and retailing B&O tax. The fact that internet technology has expanded the methods used to provide dating services does not mean that the 1993 dating services amendment to the definition of “retail sale” is not applicable to these expanded dating services methods. There is no language in the definition of “retail sale” that precludes internet dating services from retail sales tax and retailing B&O tax as long as they are dating services. . . .

The taxpayer argues that prior to July 26, 2009, it was simply providing a non-retailing service that by default was subject to service and other activities B&O tax. But, as we have shown, the

taxpayer was providing dating services that were and are subject to retail sales tax and retailing B&O tax. . . .

For these reasons, we affirm TI&E's letter ruling. . . .

DECISION AND DISPOSITION

Taxpayer's petition is denied.