

Cite as Det. No. 15-0167, 35 WTD 71 (2016)

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. 15-0167
	)	
...	)	Registration No. . . .
	)	

[1] RCW 82.04.050(3)(c); RCW 82.04.192: CREDIT BUREAU SERVICES – RETAIL SALES – DIGITAL AUTOMATED SERVICES. Taxpayer’s credit bureau services were taxable as retail sales under RCW 82.04.050(3)(c) prior to the digital products legislation of 2009, and taxable as digital automated services after the legislation under RCW 82.04.192.

[2] RCW 82.32.730: SOURCING – CREDIT BUREAU SERVICES. Taxpayer’s credit bureau services, taxable as digital automated services, are sourced either to the purchaser’s location or to the purchases address in the seller’s business records, not to the seller’s location.

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.

Sattelberg, A.L.J. – A [credit bureau] protests the Department of Revenue’s (“Department”) assessment of retail sales tax and business and occupation (“B&O”) tax under the retailing and wholesaling classifications. The taxpayer argues that its sales were either exempt as digital goods used solely for a business purpose or were predominantly wholesale sales, and that they should not be sourced to Washington. We deny the petition.<sup>1</sup>

ISSUES

1. Did Taxpayer sell digital goods under RCW 82.04.192(6)(a) and WAC 458-20-15503(202) (“Rule 15503”), digital automated services under RCW 82.04.192(3)(a) and Rule 15503(203), and/or a retail credit bureau service under RCW 82.04.050(3)(c)?
2. Whether Audit correctly sourced the taxpayer’s sales under RCW 82.32.730 to the buyer’s address or should have allowed the taxpayer to continue to source its sales outside the state under RCW 82.32.730 or WAC 458-20-103 (“Rule 103”).

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

## FINDINGS OF FACT

[Credit Bureau] is . . . credit bureaus in the United States. [Credit Bureau] is divided into three operating subsidiaries: (1) [Subsidiary 1], (2) [Subsidiary 2], and (3) [Subsidiary 3]. This appeal focuses on [Subsidiary 1] (“Taxpayer”).

Taxpayer’s clients are businesses. Taxpayer collects and researches the credit information of individuals in the United States. It provides consumer credit and data reports, credit scores, analytical services, and decisioning technology to its clients from its offices [out of state]. Its typical clients are financial institutions, mortgage lenders, credit card companies, and leasing companies. Taxpayer also complies with the United States Fair Credit Reporting Act (“FCRA”), providing dispute investigations and free annual credit reports.

Taxpayer operates digitally, providing direct access to portions of electronic information for some services and generating customized reports and sending them to its customers for other services. Taxpayer generally derives its income from subscriptions. Taxpayer describes its business activities as “service lines,” of which it has three: (1) online data services, (2) credit marketing services, and (3) decision services.

Taxpayer’s first service line, online data services, includes electronic deliveries of real time information to qualified businesses that are seeking to assess the creditworthiness of potential customers. The information in these deliveries is provided from the [Credit Bureau] Consumer Database (“Database”) Taxpayer maintains, and is provided in an unfiltered format upon customer request via the internet. Taxpayer provided a redacted invoice as a sample of a billing for online data services, giving a description of the service provided, the quantity, the unit price, and the amount due. A sampling of the invoice is as follows:

Description	Quantity	Unit Price	Amount
Credit Report	...	...	\$ ...
ID Mismatch Alert	...	...	\$ ...
Inquiry Analysis	...	...	\$ ...

Taxpayer’s second service line, credit marketing services, includes electronic deliveries of information from Taxpayer’s Database that are tailored to suit its customer’s request for lists of potential or existing customers based on certain criteria. This data can be used to market new products or services, evaluate risk among existing customers, or for other uses. Like online data services, the underlying information is garnered from Taxpayer’s Database; unlike online data services, this data is not directly accessed but is provided in a batch dataset according to specific customer criteria upon request.

Taxpayer’s third service line, decision services, includes various internet platforms that help businesses evaluate business risks and opportunities, including new consumer credit and checking accounts, insurance applications, account collection, patient registrations, and apartment rental requests. Taxpayer’s decision services are accessed through a number of

internet platforms to “facilitate real-time automated decisions at the time of the customer interaction,” utilizing Taxpayer’s Database.<sup>2</sup>

Taxpayer enters into Reseller Service Agreements with its clients. These agreements authorize the client to resell Taxpayer’s “consumer credit reports, or information therefrom, to end users who have a permissible purpose in accordance with the FCRA.”<sup>3</sup> End users can be provided access directly to Taxpayer’s Database if certain requirements of the agreements are met. The client has to identify the end user to Taxpayer before allowing access in accordance with the FCRA.

In 2013, the Department’s Audit Division (“Audit”) selected Taxpayer for audit for the period January 1, 2008 through September 30, 2011. Audit stated the following:

1. Taxpayer reported minimal income to Washington in 2008 and 2009, and reported no income to Washington in 2010 and 2011.
2. Taxpayer’s credit bureau services were retail services under RCW 82.04.050(3)(c) for the audit period prior to the digital products law that took effect on July 26, 2009.
3. A substantial portion of Taxpayer’s revenue is derived from online searchable databases, which are taxed as digital automated services subject to retail sales tax and retailing B&O tax as of July 26, 2009 under RCW 82.04.192.
4. A smaller portion of Taxpayer’s sales were wholesale sales under RCW 82.04.060, taxed under the wholesaling B&O tax classification. These sales did not become taxable until July 26, 2009, and were sourced similar to retail sales.
5. Another smaller portion was exempt from retail sales tax but subject to retailing B&O tax. Before July 26, 2009, this portion was not considered a digital automated services, so retail sales tax did not apply.
6. Taxpayer’s sales of credit bureau services were sourced to Washington under RCW 82.32.730 starting on July 1, 2008 and subject to retail sales tax and retailing B&O tax.

Audit used Taxpayer’s accounting records to prepare an assessment, which it issued on June 9, 2014, totaling \$ . . . .<sup>4</sup>

Taxpayer timely appealed the assessment making several arguments. Taxpayer first argues that all of its sales were exempt as digital goods used solely for a business purpose through January 1, 2011, under the Department’s Special Notice titled “Online Searchable Databases are Digital Automated Services” issued on November 2, 2010 (“Notice”). Taxpayer points to Rule 15503, Example 33, for the proposition that credit bureau services can sometimes be digital goods.<sup>5</sup>

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<sup>2</sup> Taxpayer’s petition dated July 1, 2014.

<sup>3</sup> Reseller Service Agreement with . . . dated September 7, 2007.

<sup>4</sup> The assessment consists of \$ . . . in retail sales tax, \$ . . . in retailing B&O tax, \$ . . . in wholesaling B&O tax, \$ . . . in interest, and a \$ . . . substantial underpayment penalty.

<sup>5</sup> **Example 33.** ABC creates a “canned” digital report on Company X’s creditworthiness prepared prior to a customer request for the report. The report may be a credit bureau service and/or a digital good (if transferred electronically). The “canned” report is listed for sale on ABC’s web site. An employee of InvestCo, Inc. purchases and downloads a digital copy of the “canned” credit report from ABC’s web site for InvestCo’s business purpose. ABC is selling a digital good generally subject to retail sales tax. However, the “canned” report is purchased by

Taxpayer also argues that it should be subject to the exempt treatment discussed in the Notice even though it didn't previously report its online searchable databases as digital goods. After January 1, 2011, Taxpayer argues some of its sales were digital goods, and that these sales should be subject to the business purposes exemption. Additionally, Taxpayer argues it is entitled to an exemption for all sales made for resale to resellers after June 30, 2010. . . . It states that many of its sales are to wholesalers who repackage and resell its credit bureau services to their customers outside of Washington.

Taxpayer also makes several arguments about how its sales should be sourced. First, it argues that its services were received at its servers which are located [out of state], and should be sourced outside of Washington under [ RCW 82.32.730(1)(a)]. Taxpayer draws a distinction between when data is "pushed," sent [out of state], and when data is "pulled," received from [out of state]. Taxpayer argues that its customers are generally "pulling" data from its servers [out of state], and that it doesn't know where these customers are physically located, nor does it matter for them to access Taxpayer's data. Therefore, Taxpayer argues, "first use" occurs either [out of state] or any other location where it maintains data on servers, none of which is in Washington. Since "first use" occurs outside Washington, Taxpayer concludes, its sales are not sourced to Washington.

Taxpayer also argues that that credit bureau services should be sourced to the location where the services were performed according to Rule 103. While Taxpayer recognizes that sourcing in Washington was statutorily changed with the enactment of the Streamlined Sales and Use Tax Agreement ("SSUTA") on July 1, 2008, it nonetheless argues that since Rule 103 was not updated to reflect SSUTA, it was correct to continue to source its Washington sales to [ another state] under Rule 103. Taxpayer additionally argues that it was entitled to rely on Rule 103 under the Taxpayer Bill of Rights, RCW 82.32A.020(2). Finally, Taxpayer argues it is not required to source credit bureau services to where the customer makes first use of the services under Excise Tax Advisory 3107.2009 ("ETA 3107") because the ETA was invalidly promulgated under RCW 34.05.230.

## ANALYSIS

### 1. a. Did Taxpayer sell digital goods, digital automated services, and/or retail credit bureau services?

"Credit bureau services" are specifically included in the definition of "sale at retail" and "retail sale." RCW 82.04.050(3)(c). Retail sales in Washington are subject to retail sales tax, RCW 82.08.020, and B&O tax under the retailing classification, RCW 82.04.250.

[Credit bureau services include the assembly or evaluation of information bearing on the credit worthiness of any person for the purpose of furnishing such information to third parties. ETA 3107. Credit bureau services are not limited to assembly or evaluation of information provided for the purpose of extending credit. *Id.* Credit bureau services also include the assembly or evaluation of information provided to third parties who use such information to decide whether to accept a check

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InvestCo solely for a business purpose and therefore exempt from retail sales tax (see subsection (505) of this section for more on this exemption).

or other form of payment, enter into a lease transaction, or make any decision where credit worthiness is a consideration. *Id.*

Taxpayer's consumer credit and data reports, credit scores, analytical services, and decisioning technology are all credit bureau services as they are the assembly or evaluation of information bearing on the credit worthiness of any person for the purpose of furnishing such information to third parties. Prior to July 25, 2009, Taxpayer's credit bureau services were taxed retail sales subject to retail sales tax and retailing B&O tax.]

In 2009, the Washington legislature passed comprehensive digital products legislation, Engrossed Substitute House Bill 2075, which became effective July 26, 2009. The legislation provided that sales of digital products were to be taxed as retail sales, with several exclusions and exemptions.

Digital products, under the legislation, included both "digital automated services" and "digital goods." RCW 82.04.192(7). A "digital automated service" is defined as ". . . any service transferred electronically that uses one or more software applications . . . ." RCW 82.04.192(3)(a). The term "digital good" is defined as ". . . sounds, images, data, facts, or information, or any combination thereof, transferred electronically." RCW 82.04.192(6)(a).

"Sale at retail" or "retail sale" includes certain "sales to consumers of digital goods, digital codes, and digital automated services." RCW 82.04.050(8)(a). RCW 82.04.190(11)(a) defines "consumer" as "[a]ny end user of a digital product or digital code." "End user" does not include a "taxpayer who receives by contract a digital product for further commercial . . . distribution . . . of the product, in whole or in part, to others." RCW 82.04.190(11)(b)(i). "Sale at wholesale" or "wholesale sale" means "[a]ny sale, which is not a retail sale, of . . . [d]igital goods, digital codes, or digital automated services. . . ." RCW 82.04.060(1)(h); Rule 15503(502).

Since the enactment of the digital products law, the Department has treated credit bureau services, which are still retail services, also as digital products when they are transferred electronically and otherwise meet the definition of either a digital good or a digital automated service. Rule 15503(601).<sup>6</sup> When credit bureau services do not meet the definition of a digital automated services or digital good, they are still taxed as retail services. RCW 82.04.050(3)(c).

Rule 15503, Example 35 illustrates that when credit bureau services also fit the definition of digital automated services, the service will be taxable as digital automated services:

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<sup>6</sup> WAC 458-20-15503(601) provides:

**Retail services.** Washington imposes retail sales and use tax on certain enumerated services under RCW 82.04.050 ("retail services"). For example, the sale of credit bureau services is subject to retail sales tax. However, when a retail service is transferred electronically and also meets the definition of digital automated service or digital good, such service will be treated as a digital product and is eligible for all applicable digital products retail sales and use tax exemptions as described above in Part 5 of this rule. . . .

(Emphasis added.)

**Example 35.** Company sells an online credit reporting service. The service includes access to searchable data bases, digital data analysis, and digital data reporting tools. ManageCo investigates the credit worthiness of individuals and therefore purchases access to Company's online service. Company is selling a digital automated service to be used solely for a business purpose by ManageCo. However, the "used solely for a business purpose" exemption is limited to digital goods and is not applicable to digital automated services. As such, Company is required to charge and collect retail sales tax on its sale of the digital automated service to ManageCo.

Taxpayer has three service lines: (1) online data services, (2) credit marketing services, and (3) decision services. For online data services, Taxpayer's customers electronically access Taxpayer's Database. For credit marketing services, Taxpayer provides batch datasets according to specific customer criteria using information from its Database and sends them electronically to its customers upon request. For decision services, Taxpayer offers various automated credit bureau services accessed through a number of internet platforms to [utilize] Taxpayer's Database. All three services are digital automated services because they are services that are transferred electronically that use one or more software applications. [While these services provide data, facts, or information, similar to a digital good, they also provide additional functions, such as search, retrieve, and storage capabilities (software applications).] Taxpayer provides these services to businesses which generally use them and occasionally resell them, see the wholesaling section below. Since Taxpayer's services are all digital automated services, they are subject to retail sales tax and retailing B&O tax when sold to Washington end users as of July 26, 2009. When sold for resale after July 26, 2009, Taxpayer's sales to Washington customers are subject to wholesaling B&O tax.

Taxpayer argues that its sales were exempt as digital goods used solely for business purposes through January 1, 2011. *See* RCW 82.08.02087 (effective 7/26/09). Taxpayer has not provided any evidence to show that its sales of online data services, credit marketing services, or decision services were digital goods or that the sales otherwise qualify for the exemption. Accordingly, we deny Taxpayer's petition on this issue.

While the assessment did include some B&O tax under the wholesaling classification, Taxpayer argues that additional sales should be classified as wholesale sales as well. Since Taxpayer has not provided any additional documentation to show that further sales were wholesale sales of digital automated services, we deny its petition on this issue.

**b. The "Online Searchable Databases are Digital Automated Services" Special Notice**

Taxpayer argues that all of its sales were exempt as digital goods used solely for a business purpose through January 1, 2011, because of the Department's Notice. The Notice briefly discussed the history of digital products legislation, proclaimed that services such as legal research services are online searchable databases, announced they are to be uniformly taxed as digital automated services as of January 1, 2011, and said that the Department would honor prior reporting of online searchable databases as digital goods given its prior inconsistent advice. Specifically, the Notice states:

The Department has determined that online searchable databases (OSD) are digital automated services (DAS). As such, they do not qualify for the exemption provided for digital goods used solely for a business purpose.

OSDs are subject to retail sales or use tax unless some other exemption applies.

In recognition of prior inconsistent advice, and in order to accommodate taxpayers adjusting to this guidance, the Department will accept prior reporting of exempt or taxable sales. However, as of January 1, 2011, the Department will enforce this policy.

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OSDs, such as online legal research services, are DAS because they are transferred electronically and use one or more software applications. While these services provide “data, facts, or information” similar to a DG, they also provide additional functions, such as search, retrieve, and storage capabilities (software applications).

Taxpayer argues that the Notice states that all online searchable databases are subject to exempt treatment as digital goods prior to January 1, 2011. This argument is not supported by the Notice. Under the Notice, online searchable databases are considered digital automated services before and after January 1, 2011. If a taxpayer had sold but not reported online searchable databases as digital goods prior to January 1, 2011, then they are treated as digital automated services when reported.

Taxpayer also argues it should be entitled to the digital goods used solely for a business purpose tax treatment even though it did not report any sales to Washington because it understood its sales to not be sourced to Washington. In order to qualify for this treatment, a taxpayer must have reported to the Department treating online searchable databases as digital goods. Since Taxpayer here did not report any sales of online searchable databases to the Department, it has not shown it reported in reliance on prior inconsistent advice and, therefore, is not entitled to this treatment.

## 2. Sourcing under RCW 82.32.730 or Rule 103

Prior to July 1, 2008, credit bureau services were sourced according to Rule 103, which states: “With respect to the charge made for performing services which constitute sales as defined in RCW 82.04.040 and 82.04.050, a sale takes place in this state when the services are performed herein.” *See also* Det. No. 89-89R, 13 WTD 9 (1993). Accordingly Audit did not source any credit bureau services to Washington prior to July 1, 2008.

The Washington legislature signed SSUTA into law on March 22, 2007.<sup>7</sup> Laws of 2007, ch. 6, §501; *see also North Central Washington Respiratory Care Services, Inc. v. Dep’t of Revenue,*

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<sup>7</sup>SSUTA is the “result of the cooperative effort of 44 states, the District of Columbia, local governments and the business community to simplify sales and use tax collection and administration by retailers and states. The Agreement minimizes costs and administrative burdens on retailers that collect sales tax, particularly retailers operating in multiple states.” *Frequently Asked Questions*, Streamlined Sales Tax Governing Board, Inc.,

165 Wn. App. 616, 268 P.3d 972 (2011). SSUTA changed the manner in which sales are sourced for purposes of paying sales or use taxes to the appropriate jurisdictions, and became effective July 1, 2008. *Id.* The legislature codified the sourcing provisions of SSUTA in RCW 82.32.730. RCW 82.32.730(1) provides:

Except as provided in subsections (5) through (8) of this section, for purposes of collecting or paying sales or use taxes to the appropriate jurisdictions, all sales at retail shall be sourced in accordance with this subsection and subsections (2) through (4) of this section.

(a) When tangible personal property, an extended warranty, a digital good, digital code, digital automated service, or other service defined as a retail sale under RCW 82.04.050 is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(b) When the tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service defined as a retail sale under RCW 82.04.050 is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

(c) When (a) and (b) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith . . . .

RCW 82.32.730(9)(f) defines "receive" and "receipt" as:

[T]aking possession of tangible personal property, making first use of digital automated services or other services, or taking possession or making first use of digital goods or digital codes, whichever comes first . . . .

a. Sourcing retail sales of digital automated services and retail services

Here, Taxpayer's customers receive its digital automated services at the computer or mobile device where they are first accessed. Since they are not received at the seller's business location, we move down RCW 82.32.730's sourcing hierarchy to the next option.

If the digital product is not received at the seller's business location, then the next option for where to source it is where the buyer takes receipt, if known to the seller. RCW 82.32.730(1)(b);

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[http://www.streamlinedsalestax.org/index.php?page=gen\\_1](http://www.streamlinedsalestax.org/index.php?page=gen_1) (last visited June 30, 2014); see also *Qualcomm, Inc. v. Dep't of Revenue*, 171 Wn.2d 125, n.8, 249 P.3d 167 (2011); *Indiana Dep't of Revenue v. Kitchin Hospitality, LLC*, 907 N.E.2d 997, 1000, n.2 (Ind. 2009). SSUTA seeks to accomplish its goal by providing uniform definitions and sourcing rules. *Id.* States that wish to participate must enact laws, rules, and regulations that conform to SSUTA's provisions.

*supra*. While computers are generally stationary, mobile devices are not, so it is likely that a percentage of Taxpayer's Washington customers will receive Taxpayer's products and services at locations outside of Washington. Taxpayer has not provided any data regarding where Taxpayer's customers have accessed Taxpayer's digital products and services. The seller here, Taxpayer, would source sales to Washington if it knew its customers received its products and services in Washington. If it does know, then it would source according to the next option.

If the seller does not know where the buyer takes receipt, then the next sourcing option is the buyer's address from the seller's business records. RCW 82.32.730(1)(c); *supra*. This is the correct method to source when the seller, Taxpayer, does not know where its Washington-based customers received its products and services.

[Taxpayer] argues that its services are received by its customers outside of Washington. Taxpayer makes a distinction between sales of its services that are "pushed" and those that are "pulled," and argues that those that are "pulled" are not received in Washington but instead are received [out of state] where it maintains its information Database.

Taxpayer states it has no way of knowing where or how its customers access its servers, so they argue its customers "receive" or "first use" its services either at its corporate address [out of state] or where its servers are located.<sup>8</sup> Taxpayer notes that a customer's billing address does not always have a relationship with where it has been "receiving" or "first using" its services, while its servers are always involved in these transactions, and therefore are a better indicator of where its services should be sourced. We disagree.

Rule 15503 contains an example that is instructive for sourcing digital automated services:

Example 25. Nani Corp., located in California, purchases a digital automated service generally subject to retail sales tax and retailing B&O tax from Company located in Washington. The purchase contract between Nani and Company provides that Nani may have 5 users access the digital automated service. Company does not know where the digital automated service is actually received. However, Company has Nani's California address in its business records and will therefore source the sale to Nani's California address. Because the sale is sourced outside Washington, it is not subject to Washington's retail sales tax or retailing B&O tax. Note, to the extent that Nani Corp., receives the service at locations in Washington, it may have a use tax liability. See subsection (403) of this section for more on use tax.

Like Nani Corp. in the example, Taxpayer would source to the address in its business records under option (c) when it doesn't know where the digital automated services are received. When it does know where they are received, it would source to that location, under option (b). Either way, (b) and (c) are the correct sourcing options for Taxpayer's retail sales here, not (a), and we deny Taxpayer's petition on this issue.

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<sup>8</sup> The taxpayer does not offer any of the other locations where its servers are located.

b. Sourcing wholesale sales of digital automated services

RCW 82.04.257 gives the B&O tax rates for the retail and wholesale sales of digital automated services, and discusses when sales of digital automated services are subject to B&O tax. [Subsection] (3) states:

. . . a person is considered to be engaging within this state in the business of making sales of . . . digital automated services . . . if the person makes sales of . . . digital automated services . . . and the sales are sourced to this state under RCW 82.32.730 for sales tax purposes or would have been sourced to this state under RCW 82.32.730 if the sale had been taxable under chapter 82.08 RCW

As mentioned above, “[s]ale at wholesale” or “wholesale sale” means “[a]ny sale, which is not a retail sale, of digital goods, digital codes, or digital automated services.” RCW 82.04.060(1)(h); Rule 15503(502). Taxpayer has made wholesale sales of digital automated services, which would have been retail sales were they not resold. These sales “would have been sourced to this state under RCW 82.32.730” if they were not resold, and are thus subject to wholesaling B&O tax. This leads us to the same conclusion as in the immediately preceding section, that RCW 82.32.730(1)(b) & (c) are the correct sourcing options, not (a). Accordingly, we deny Taxpayer’s petition on this issue.

c. Rule 103 and ETA 3107

Taxpayer acknowledges SSUTA changed the sourcing regime in Washington. However, Taxpayer notes that Rule 103 was not updated to reflect the law change. Taxpayer says it considered this conflict in determining how to source sales to Washington after July 1, 2008, and concluded it would continue to source based on Rule 103 instead of the new controlling statute, RCW 82.32.730. It argues that if it were to source based on SSUTA and RCW 82.32.730, Rule 103 would be meaningless.

In an analogous situation, the Department considered the effect of a separate section of SSUTA in relation to the Department’s historical, not-then-updated rule regarding medical devices, WAC 458-20-18801 (“Rule 18801”). In Det. No. 13-0388, 33 WTD 419 (2014), the taxpayer argued that Rule 18801 applied regardless of the more recently enacted statute that came into effect because of SSUTA. We held that “Rule 18801 cannot be an independent basis for exempting the sales at issue when there is no statutory basis to do so.”<sup>9</sup> Similarly here, Rule 103 cannot be an independent basis for determining sourcing when there is no statutory basis to do so. Although Rule 103 has remained unaltered since 1982, its statutory authority regarding the sourcing of retail services as defined in RCW 82.04.050 was revoked when RCW 82.32.730 was enacted. Therefore, Taxpayer is not entitled to source credit bureau services according to this rule or rely on it under RCW 82.32A.020(2),<sup>10</sup> and we must deny Taxpayer’s petition on this issue.

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<sup>9</sup> With a footnote to see *Coast Pac. Trading, Inc. v. Dep’t of Revenue*, 105 Wn.2d 912, 917 (1986) (the Department cannot contradict a substantive legislative enactment by administrative regulation).

<sup>10</sup> Under RCW 82.32A.020(2), taxpayers of the state of Washington have the “right to rely on specific, official written advice and written tax reporting instructions from the department of revenue to that taxpayer, and to have

The taxpayer also argues that credit bureau services should not be sourced to where the customer makes first use of the services because ETA 3107 was invalidly promulgated.<sup>11</sup> We find this argument unpersuasive as it is RCW 82.32.730 that controls the sourcing of credit bureau services and not ETA 3107.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 1st day of July, 2015.

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interest, penalties, and in some instances, tax deficiency assessments waived where the taxpayer has so relied to their proven detriment." Taxpayer argues it has a right to rely on Rule 103 under this taxpayer right.

Under WAC 458-20-100(2)(b), the Department is authorized to issue specific written instructions to specific taxpayers. These "rulings," while undoubtedly "specific, official written advice," cannot be relied upon in all circumstances. WAC 458-20-100(2)(b) explains that rulings:

. . . will remain binding until the facts change, the applicable statute or rule changes, a published appellate court decision not subject to review changes a prior interpretation of law, the department publicly announces a change in the policy upon which this ruling is based, or the taxpayer is notified in writing that the ruling is no longer valid.

(Emphasis added.)

Even if we assume the Department's rules constitute "specific, official written advice," the ability to rely on them under RCW 82.32A.020(2) is revoked, just like with rulings, when their underlying statutory authority is revoked. Since Rule 103's statutory authority was revoked, Taxpayer did not have a right to rely on it under RCW 82.32A.020(2).

<sup>11</sup> ETA 3107 was initially issued as ETA 2026.04.08 and was reissued under its new number as part of a general renumbering of ETAs as of February 2, 2009. See ETA 3001.2009. Upon being reissued, the Department added the underlined portion to the ETA's first paragraph:

This excise tax advisory provides instructions on the taxability of credit bureau services and on the proper tax treatment of buyers of credit bureau services where the service provider has not collected retail sales tax. The following applies only to periods prior to July 1, 2008. After June 30, 2008, credit bureau services will be subject to retail sales tax based on where the customer makes first use of the services.