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BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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>
Tax Ruling of )	
)	No. 19-0253
)	
... )	Registration No. ...
)	

RCW 82.04.263: B&O TAX – CLEANUP OF RADIOACTIVE WASTE. To qualify for the cleanup of radioactive waste B&O tax rate, the items cleaned up must either be radioactive waste itself or must be a by-product of weapons production and nuclear research and development.

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, T.R.O. – An environmental remediation business protests the Department’s tax ruling, arguing that the Department’s Taxpayer Information and Education (“TI&E”) section erroneously concluded that its activities do not qualify for the Cleanup of Radioactive Waste for the United States Government Business and Occupation (“B&O”) Tax Classification. We deny the petition.<sup>1</sup>

ISSUE

Whether an environmental remediation business qualifies for the Cleanup of Radioactive Waste for the United States Government B&O Tax Classification under RCW 82.04.263.

FINDINGS OF FACT

... Taxpayer performs environmental remediation services largely in ... [including Washington State]. [During the Audit Period, Taxpayer remediated radioactive waste from a mine. No weapons grade radioactive materials were mined from the site, nor was any nuclear research performed at the site.]

Taxpayer’s remediation activities at the former mine include:

1. Excavating and consolidating mine waste rock into disposal pits,
2. Removing contaminated water and soils to be treated,
3. Removing loose rock from slopes,

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

4. Constructing contractor facilities and a permanent access road,
5. Constructing a decontamination facility, dewatering system, sub-waste liner system, temporary influent pipelines and a pit cover, and
6. Grading and revegetating the site.

Taxpayer has historically reported its income from these activities as subject to retail sales tax and retailing B&O tax.

On July 6, 2018, Taxpayer wrote to the Department's TI&E Section seeking a tax ruling regarding the application of the Cleanup of Radioactive Waste for the United States Government B&O Tax Classification to its activities at the former mine. On August 22, 2018, TI&E issued Taxpayer a tax ruling holding the reduced B&O tax rate did not apply. . . . Regarding the application of RCW 82.04.263, TI&E concluded:

While the taxpayer's activities clearly involve the cleanup of radioactive waste and by-products at the [site], we find that the activities performed at the [site] were not directly related to "weapons production and nuclear research and development." Rather, the [mining company] was an extractor and seller of raw (and in some cases minimally processed) "[radioactive material] ore," for which the purchaser either directly or through a separate contract, further processed the materials to be used as a nuclear fuel fabricant [at a different location].

TI&E tax ruling dated August 22, 2018, at 3-4.

Taxpayer timely sought review of the August 22, 2018, tax ruling. . . .

#### ANALYSIS

Washington levies its B&O tax for the act or privilege of engaging in business activities in Washington. RCW 82.04.220. The B&O tax measure is "the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be." *Id.* The rate used is determined by the type of activity in which a taxpayer engages. *See generally* Chapter 82.04 RCW.

Washington imposes retail sales tax and retailing B&O tax on each retail sale in this state. RCW 82.08.020; RCW 82.04.250. The term "retail sale" includes labor and services rendered in respect to the clearing of land and moving of earth, and constructing any structure upon real property of or for consumers. RCW 82.04.050(2)(b). Taxpayer historically reported its income as subject to retail sales tax and retail sales tax B&O tax as its activities fit these definitions of "retail sale."

RCW 82.04.263 provides a reduced B&O tax rate for cleaning up radioactive waste and other by-products of weapons production and nuclear research and development. RCW 82.04.263(1) states:

Upon every person engaging within this state in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development; as to such persons the

amount of the tax with respect to such business shall be equal to the gross income of the business multiplied by the rate of 0.471 percent.<sup>2</sup>

RCW 82.04.263(2) defines “cleaning up radioactive waste and other by-products of weapons production and nuclear research and development” to mean:

- (a) The activities of handling, storing, treating, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, nonradioactive hazardous solid and liquid wastes, or spent nuclear fuel;
- (b) Spent nuclear fuel conditioning;
- (c) Removal of contamination in soils and groundwater;
- (d) Decontamination and decommissioning of facilities; and
- (e) Services supporting the performance of cleanup. For the purposes of this subsection (2)(e), a service supports the performance of cleanup if it:
  - (i) Is within the scope of work under a clean-up contract with the United States department of energy; or
  - (ii) Assists in the accomplishment of a requirement of a clean-up project undertaken by the United States department of energy under a subcontract entered into with the prime contractor or another subcontractor in furtherance of a clean-up contract between the United States department of energy and a prime contractor.

Looking at the above list of activities without considering the overall context of the statute, Taxpayer could possibly meet (c), given that its activities are in the nature of removing contaminated soils. However, what Taxpayer has failed to show is that these activities involve cleaning up the radioactive waste and other by-products of weapons production and nuclear research.

While RCW 82.04.263 defines “cleaning up radioactive waste and other by-products of weapons production and nuclear research and development,” and not just “cleaning up,” to include the activities listed above, we cannot read “weapons production and nuclear research and development” out of the statute. When interpreting statutes, our “fundamental objective in determining what a statute means is to ascertain and carry out the legislature’s intent.” *Group Health Co’op v. Dep’t of Revenue*, 8 Wn. App. 2d 210, 214, 438 P.3d 158 at 160 (2019) (quoting *Durant v. State Farm Mut. Auto. Ins. Co.*, 191 Wn.2d 1, 8, 419 P.3d 400 (2018)). If the statute’s meaning is plain on its face, we give effect to its plain meaning as an expression of what the Legislature intended. *Id.* Clearly, the listed activities are the kinds of activities that would qualify so long as they also involve [the clean-up of] radioactive waste and “other by-products of weapons production and nuclear research and development.” *Id.* Like courts, when interpreting statutes, we do not add or omit words in the statute. *See Millay v. Cam*, 135 Wn.2d 193, 955 P.2d 791 (1998). Taxpayer’s reading would qualify the disposing of *any* nonradioactive hazardous solid wastes or *any* contaminated soils, *whether radioactive or not*, for this reduced rate, which is not what the

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<sup>2</sup> . . . For activities classified as retailing, the B&O tax is 0.471 percent of the gross proceeds of sales, plus retail sales taxes must be remitted on the sales. The rate of tax is the same under RCW 82.04.263, 0.471 percent, but it is measured by the gross income of the business for qualified activities, and retail sales tax does not apply.

statute says. Also, like courts, we construe statutes to avoid strained or absurd consequences. *Wright v. Engum*, 124 Wn.2d 343, 351-52, 878 P.2d 1198 (1994).

Further, by utilizing the phrase “and other by-products,” the Legislature has indicated that the radioactive waste to be cleaned up must also be a by-product of weapons production and nuclear research and development. To interpret the statute to include cleanup activities of all radioactive waste regardless of its source gives no meaning to the phrase “and other by-products of weapons production and nuclear research and development.” Statutes should not be construed so as to render any portion meaningless or superfluous. *Stone v. Chelan County Sheriff’s Dep’t*, 110 Wn.2d 806, 756 P.2d 736 (1988).

Finally, “weapons production and nuclear research and development” is in the title of the act creating this statute, lending it additional weight. The title of a legislative act may be referred to as a source of legislative intent. *Covell v. Seattle*, 127 Wn.2d 874, 887-88, 905 P.2d 327 (1995). “It is quite generally recognized that in states having a constitutional provision like ours, where the object of the act must be stated in the title, even more importance is attached to it.” *Maximillian v. Clausen*, 117 Wash. 74, 83, 203 P. 379 (1922) (Hovey J., concurring). The title of the 1996 act giving rise to RCW 82.04.263 was “AN ACT Relating to taxation of persons engaged in the business of cleaning up for the United States, . . . radioactive waste and other byproducts of *weapons production and nuclear research and development*.” Laws of 1996, ch. 112 (emphasis added) (enacting SSB 6510). For these reasons of statutory construction, and because Taxpayer has not shown that the radioactive waste and other materials cleaned up at the site were the by-products of weapons production and nuclear research and development, we hold that TI&E correctly concluded that Taxpayer’s activities at the mine do not qualify for the reduced B&O tax rate in RCW 82.04.263.

Taxpayer cites to the Board of Tax Appeals’ decision in *Lampson, Inc. v. Dep’t of Revenue*, Docket No. 59222, 2004 WL 2376340 (2004) in support of its argument.<sup>3</sup> In *Lampson*, the taxpayer unloaded spent nuclear submarine reactor cores from the Port of Benton County, transported them to the Hanford Nuclear Reservation, and then unloaded them to be buried there. *Lampson*, 2004 WL 2376340 \*1-2. The Department had held that the reduced B&O tax rate in RCW 82.04.263 did not apply because the reactor cores were not “other by-products of weapons production and nuclear research and development.” *Id.* at \*2. The Board disagreed with the Department. *Id.* The Board looked to the definition of “cleaning up radioactive waste and other by-products of weapons production and nuclear research and development” in section 2 of the statute, and concluded that this definition negated any requirement that the radioactive waste be the by-product of weapons production and nuclear research and development. *Id.* We disagree with the BTA’s conclusions expressed in *Lampson*. The Legislature intended for this reduced B&O tax rate to apply only to “[radioactive waste and ]other by-products of weapons and nuclear research and development,” which is why it put the phrase in the title of the act and defined, as a single term, “cleaning up radioactive waste and other by-products of weapons production and nuclear research and

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<sup>3</sup> We note that *Lampson* was an informal appeal before the BTA under Chapter 456-10 WAC. Informal appeals are not subject to judicial review under the Administrative Procedure Act and bind only the parties subject to the appeal for the issue and period appealed. See WAC 456-10-010; see also *Olympic Tug & Barge, Inc. v. Dep’t of Revenue*, 163 Wn. App. 298, 259 P.3d 338 (2011). Although the *Lampson* decision is not binding for other matters and time periods, we discuss *Lampson* in order to address Taxpayer’s argument.

development.” Taxpayer’s interpretation reads “other” out of the defined term in the statute. Accordingly, we deny Taxpayer’s petition.<sup>4</sup>

#### DECISION AND DISPOSITION

We affirm TI&E’s tax ruling dated August 22, 2018.

Dated this 24th day of September 2019.

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<sup>4</sup> We note that while RCW 82.04.263 does not apply to Taxpayer’s activities here, we cannot conclude how these activities would be taxed without a full review of the contracts and work orders involved, which is beyond the scope of this review. Because Taxpayer’s activities include retail activities (constructing a decontamination facility and contractor facilities) and non-retail activities (removing contaminated soil), we would need to determine whether the predominant activities test in RCW 82.04.051 could apply here or if those services could be taxed separately. We do not have facts sufficient to apply the predominant activities test in this determination.