

Cite as Det. No. 11-0313, 31 WTD 90 (2012)

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. 11-0313
...)	
)	Registration No. . . .
)	Doc. No.
)	Docket No. . . .
)	

RULE 183; RCW 82.04.050; RCW 82.08.020: RETAIL SALES TAX – AMUSEMENT AND RECREATION SERVICES - PURCHASE OF BAIT - NOT A PURCHASE FOR RESALE. The purchase of bait by a charter fishing boat business is subject to retail sales tax even though the business charges its customers retail sales tax on a flat fee for the fishing excursion, the use of fishing gear, and the provision of bait. The purchase of the bait by the business is not a purchase for resale in the regular course of business without intervening use.

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 sole proprietor (the taxpayer) who operates a charter fishing business questions whether his purchases of bait should be subject to retail sales Holding: Fishing bait purchases by the taxpayer are subject to retail sales tax Petition denied.¹

ISSUE

Is the purchase of fishing bait by a charter boat operator for use by his customers subject to retail sales tax per RCW 82.04.050 and WAC 458-20-183 (Rule 183)? . . .

FINDINGS OF FACT

The taxpayer is a sole proprietor who operates a charter fishing boat business along the Washington coast. For a fee, the taxpayer will take customers to fish in the ocean. Included in that fee is the transportation to the fishing areas, the fishing rod, reel, tackle, and bait that the

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 Nonprecedential portions of this determination have been deleted.

taxpayer provides. The taxpayer adds sales tax to that all-inclusive charge. Occasionally, passengers will bring their fishing rods and equipment and the taxpayer will adjust the price and charge sales tax on the adjusted price. During the audit period the taxpayer purchased bait from a vendor without paying sales tax on the purchases.

The Audit Division audited the taxpayer for the period, from January 1, 2006, through June 30, 2010 and assessed \$. . . sales tax, retailing B&O tax, use tax, interest, and a 5% substantial underpayment penalty. . . . The assessment remains unpaid. . . .

ANALYSIS

The taxpayer argues that he should not have to pay sales tax on the bait because he charges his customers sales tax on the all-inclusive fee for the charter, which includes the bait. We disagree. The taxpayer operates a charter fishing boat in which he provides the boat, the fishing gear and bait. Consequently, he is in the recreation and amusement services business and subject to retail sales tax and retailing B&O tax. RCW 82.04.050(3)(a); Rule 183; Det. No. 94-118, 16 WTD 011 (1994).

Rule 183(5) provides:

- c) The retail sales tax applies upon the purchase or rental of all equipment and supplies by persons providing amusement, recreation, and physical fitness services, other than merchandise that is actually resold by them. For example, the retail sales tax applies to purchases of such things as soap or shampoo provided at no additional charge to members of a health club.

One of the supplies that the taxpayer purchased and provided to his customers was the fishing bait. *See also Mayflower Park Hotel, Inc. v. Dep't of Revenue*, 123 Wn. App. 628, 98 P.2d 534 (2004) (hotel's purchase of amenities like soap or shampoo is subject to sale tax). [**The taxpayer did not purchase bait for resale in the regular course of business without intervening use. See RCW 82.04.050(1)(a).**] Consequently, the taxpayer's purchase of bait as a supply for his amusement and recreation services business was and is subject to retail sales tax. Rule 183(5).

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 27th day of October 2011.