Cite as Det. No. 14-0025, 33 WTD 387 (2014)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 14-0025
. . .	)	Registration No. . . .

[1] RULE 183; RCW 82.04.050(3)(a): RETAIL SALES TAX – AMUSEMENT & RECREATION SERVICES. Provision of indoor playground with inflatable structures is an amusement and recreation service, and are not analogous to charges made for entry into carnival rides or amusement parks.

[2] RETAIL SALES TAX - AMUSEMENT & RECREATION SERVICES – TRUE OBJECT TEST. The true object of hosted private parties at an indoor playground facility, which also included exclusive use of party room and party planning services, was access to the indoor playground facility, not the ancillary party planning services.

[3] RCW 82.08.190: RETAIL SALES TAX– BUNDLED TRANSACTIONS. The provision of party planning and preparation services was not essential to the provision of indoor playground services, and therefore, the exception from the bundled transactions contained in RCW 82.08.190(4) does not apply.

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.

Sohng, A.L.J. – Indoor playground operator protests retail sales tax and retailing business and occupation tax on the grounds that (1) it does not provide amusement and recreation services; . . . . The petition is denied.[1]

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

ISSUES

1. Are general admission fees charged for entry into an indoor playground subject to retail sales tax as amusement and recreation services under RCW 82.04.050(3)(a)(i) and WAC 458-20-183(2)(b)?

2. Are reservation fees charged for exclusive access to an indoor playground and party room subject to retail sales tax as amusement and recreation services under RCW 82.04.050(3)(a)(i) and WAC 458-20-183(2)(b)?

3. . . .

FINDINGS OF FACT

[Taxpayer] operated an indoor playground facility in . . . Washington.[2] The facility included two party rooms and two large indoor playgrounds. The playgrounds were comprised of inflatable structures on which young children played, such as interactive games, slides, mazes, obstacle courses, and jump structures. Taxpayer's revenue primarily consisted of fees paid by the general public to gain admission to the facility on a drop-in basis (the "Admission Fees") and fees charged to reserve its facility for private parties (the "Reservation Fees").[3] The Admission Fees ranged from $5 to $7 per person and were collected upon entry to the facility. Drop-in customers had access only to the indoor playground.

The Reservation Fee was a single, non-itemized price ranging from $170 to $270, depending on the day of the week and size of the party. The Reservation Fee granted a customer exclusive use of a party room and an indoor playground, as well as numerous other services in connection with the party. Upon request, Taxpayer arranged for pizza, cake, and other refreshments to be delivered from a third party, for which the customer was separately charged. Children ate pizza and/or cake and opened presents in the party room. Taxpayer provided the following additional services for private parties: a dedicated hostess in the party room, child supervision in the playground, sending party invitations, providing eating utensils, and decorating the facility.[4]

. . .

The Department's Audit Division examined Taxpayer's books and records for the period January 1, 2008, through September 30, 2011 (the "Audit Period"). Taxpayer reported income from the Reservation Fees and Admission Fees under the service and other activities classification of the business and occupation ("B&O") tax. The Audit Division disagreed, concluding that the reservation fees and admission fees were taxable under the retailing classification of the B&O

[2] Taxpayer ceased operations in August 2013.
[3] The balance of Taxpayer's revenue was earned from the retail sales of food and merchandise. This revenue is not at issue in this appeal.
[4] For an additional fee, Taxpayer provided goody bags, balloons, customized cakes, and t-shirts.

tax and subject to retail sales tax. On October 17, 2012, the Audit Division issued an assessment in the amount of $. . . , including $. . . in taxes, $. . . in interest, and $. . . in penalties.

ANALYSIS

At issue here is whether the Reservation Fees and Admission Fees are subject to retail sales tax as amusement and recreation services under RCW 82.04.050(3)(a)(i). Washington imposes retail sales tax on each retail sale in this state. RCW 82.08.020. The term "retail sale" includes the sale of "amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others when provided to consumers." RCW 82.04.050(3)(a)(i). The Department adopted WAC 458-20-183 ("Rule183") to administer this statutory provision. Rule 183(2)(b) provides that amusement and recreation services include (but are not limited to) the following activities:

> Golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, and all batting cages. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance.

Rule 183(2)(m) specifically excludes certain charges from the definition of "retail sale":

> The term "sale at retail" or "retail sale" does not include: The sale of or charge made for providing facilities where a person is merely a spectator, such as movies, concerts, sporting events, and the like; the sale of or charge made for instructional lessons, or league fees and/or entry fees; charges made for carnival rides where the customer purchases tickets at a central ticket distribution point and then the customer is subsequently able to use the purchased tickets to gain admission to an assortment of rides or attractions; or, the charge made for entry to an amusement park or theme park where the predominant activities in the area are similar to those found at carnivals.

Rule 183(2)(m) (emphasis added.)

1. Admission Fees

Taxpayer argues that the Admission Fees are not retail sales because they are charges for carnival rides or for entry to an amusement park or theme park where the predominant activities are similar to those at carnivals under Rule 183(2)(m). We have already addressed this issue in Det. No. 06-0048R, 30 WTD 15 (2011), which also involved charges for entry into an indoor playground facility that featured inflatable structures. We said:

> The Department concludes that these activities are not spectator events like a concert or movie. Instead, these activities are analogous to the amusement and recreation services listed in the statute and the rule, in that they are participatory in nature. For that reason, the Department affirms the holding in Det. No. 06-0048 that these activities are

> "amusement and recreation services" and are therefore properly characterized as "retail sales" when provided to consumers.
>
> The Department further holds that the fees attributable to these activities are not analogous to "charges made for carnival rides" or "charges made for entry to an amusement park or theme park." Taxpayer charges its client to provide event activities. Taxpayer is not operating a carnival or an amusement park.

30 WTD 15. Thus, 30 WTD 15 makes clear that indoor playgrounds, such as the one Taxpayer operated, are not carnivals or amusement parks under Rule 183(2)(m). Moreover, the rules of statutory construction (which apply equally to administrative rules) support our holding. Because the term "carnival" is not defined by statute or rule, we may turn to its ordinary dictionary meaning. *See, e.g., Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 609, 998 P.2d 884 (2000); *Palmer v. Dep't of Revenue*, 82 Wn. App. 367, 372, 917 P.2d 1120 (1996)). Non-technical terms may be given their dictionary definitions. *State v. Fjermestad*, 114 Wn.2d 828, 835, 791 P.2d 897 (1990). The dictionary definition of "carnival" is as follows: "a traveling enterprise consisting of such amusements as side shows, games of chance, Ferris wheels, merry-go-rounds, and shooting galleries." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 340 (3rd ed. 1993).

Taxpayer did not offer rides such as merry-go-rounds, Ferris wheels, bumper cars, or similar carnival rides. Nor did Taxpayer offer sideshow attractions that a carnival or amusement park offers. In connection with the Admission fee, Taxpayer did not sell food, candy, and other refreshments that carnivals typically sell. Instead, Taxpayer charged its customers for access to an indoor playground with inflatable structures that children actively played on. Taxpayer's playground does not fall under the ordinary definition of "carnival." Thus, Taxpayer's facility is not an amusement park or theme park where the predominant activities are similar to carnivals. The exceptions to the term "retail sale" found in Rule 183(2)(m) are inapplicable here.

Furthermore, the mere fact that Taxpayer, unlike the one discussed in 30 WTD 15, has a central ticket purchasing point for its customers to gain admission to use the playgrounds does not create a carnival-like entity. RCW 82.04.050(3) and Rule 183(2)(b) provide several examples of amusement and recreation retail services or activities, such as ski lifts, skating rinks, and bowling alleys, where customers must first pay at a central ticket booth or window before they are permitted to engage in that particular activity. We are not persuaded by the fact that Taxpayer collection of admission fees at a central purchasing point (the front desk) is determinative of whether the Admission Fees are amusement and recreation services.

Taxpayer's customers are not mere spectators and are not passively sitting on carnival rides, as required by Rule 183(2)(m). Rather, Taxpayer's activities involving the inflatable playground are much more akin to the participatory amusement and recreation services enumerated in Rule 183(2)(b))(e.g., golf, pool, billiards, skating, bowling, skiing) than the carnival rides and attractions listed in Rule 183(2)(m). The Admission Fees are subject to retail sales tax and retailing B&O tax because they provide access to amusement and recreation services under RCW 82.04.050(3)(a)(i).

2. Reservation Fees

Effective July 1, 2008, the Legislature enacted RCW 82.08.190, 82.08.195, and 82.12.195 to comply with the Streamlined Sales and Use Tax Agreement (or "SSUTA").[5] Laws of 2007, ch. 6. These provisions apply to "bundled transactions" and explain how to tax transactions that involve both retail and non-retail sales. Before the statute was enacted, the Department looked to the "true object" of the transaction to determine the proper tax classification of a transaction that involved both retail and non-retail services. The bundled transaction statutes supersede the true object test for periods after the law change. Here, the Audit Period includes periods both before and after the enactment of the bundled transaction statute. Thus, for periods prior to July 1, 2008, we apply the true object test. And for periods beginning July 1, 2008, we apply the bundled transaction analysis of RCW 82.08.190.

(a) January 1 – June 30, 2008: True Object Test

For periods prior to July 1, 2008, the Department looked to the "true object" test to determine a transaction's proper tax classification.[6] *See* Det. No. 89-009A, 12 WTD 1, 5 (1993). We will apply the "true object" test to the portion of the Audit Period beginning January 1, 2008, through June 30, 2008.

We explained the true object test in Det. No. 98-213, 19 WTD 777 (2000), which provides:

> When determining whether a retail sale of tangible personal property or some other type of property or service has been purchased, the Department has frequently focused on the "true object" of the transaction sought to determine the proper tax classification. Det. No. 89-009A, 12 WTD 1 (1992) (discount memberships); Det. No. 94-115, 15 WTD 19 (1994) (food demonstrations). *See also* WAC 458-20-211, ETA 520.04.211, and ETA 573.04.224. . . . Although the [buyer] does receive some tangible personal property, i.e. a reproducible master copy, this tangible copy is only incidental to the intangible right to reproduce and re-license the product. It is not the "true object" of the transaction. Instead the "true object" of this transaction is the right to reproduce and distribute copies of Taxpayer's computer program.

(Emphasis added.)

[5] SSUTA is a multi-state project intended to simplify the administration of sales and use taxes in order to substantially reduce the burden of tax compliance. *Indiana Dep't of Revenue v. Kitchin Hospitality, LLC*, 907 N.E.2d 997, 1000, n.2 (Ind. 2009). SSUTA seeks to accomplish this goal by, among other things, providing uniform definitions within tax laws. *Id.* Participating states must enact laws, rules, and regulations that conform to its provisions.

[6] The true object test has also been referred to as the "primary purpose" test, "primary activity" test, or the "predominate nature" test. *See Qualcomm, Inc. v. Dep't of* Revenue, 171 Wn.2d 125, 145, 249 P.3d 167 (2011); Det. No. 92-183ER, 13 WTD 96 (1993); Det. No. 91-163, WTD 203 (1991).

In order to determine a particular transaction's tax rate, the true object test focuses on the real object of the transaction sought by a taxpayer's customers and not just the transaction's different parts. *See Qualcomm, Inc. v. Dep't of* Revenue, 171 Wn.2d 125, 137, 249 P.3d 167 (2011) (citing Det. No. 90-128-1, 9 WTD 280-1, 280-4 (1990)). This test "seeks the essential reason the buyer enters the transaction . . ." or what the buyer is seeking in exchange for the amount paid to the seller. *Qualcomm,* 171 Wn.2d at 138, 145 (citing *Emery Indus., Inc. v. Limbach*, 43 Ohio St. 3d 134, 134-35, 539 N.E.2d 608 (1989)); *see also* Det. No. 94-115, 15 WTD 19 (1995); Jerome Hellerstein, *Significant Sales and Use Tax Developments During the Past Half Century*, 39 VAND. L. REV. 961, 968 (1986).

Taxpayer sold a variety of different services under one nonitemized reservation fee, including use of the inflatable playground, use of the party room, staffing of the party room, supervision of children, and set-up and clean-up. Here, the "essential reason" customers chose to hold a party at Taxpayer's facility was the opportunity for the children to play on the inflatable structures in the playground area, not the party planning and preparation services Taxpayer provided. It is implausible that a customer would host a party on Taxpayer's premises without access to the indoor playground. Taxpayer's party planning and hosting services [were] incidental to the indoor playground activities, and would have been meaningless to the customers standing alone. The true object was the indoor playground activities, which we have already held, above, is an amusement and recreation service subject to retail sales tax. Thus, from January 1 to June 30, 2008, the Reservation Fees were subject to retail sales tax and retailing B&O tax.

(b) July 1, 2008 – September 30, 2011: Bundled Transactions

Effective July 1, 2008, we must analyze the Reservation Fee under RCW 82.08.190 and RCW 82.08.195 and determine whether it is a bundled transaction.

Because purchase of the Reservation Fee provides customers a variety of services for a single fee, [it may be] a bundled transaction. *See* RCW 82.08.190. [A "bundled transaction" is the retail sale of two or more products sold for one nonitemized price, where the products are otherwise distinct and identifiable. RCW 82.08.190(1); RCW 83.32.023 ("product" includes services).] Generally, a bundled transaction is subject to retail sales tax if the sale of any of its component products is individually subject to retail sales tax. RCW 82.08.195(1). . . . Here, the provision of the indoor playground is a [component] product included in the Reservation Fee, which we have already concluded is subject to retail sales tax as an amusement and recreation service. Thus, the full nonitemized Reservation Fee is likewise subject to retail sales tax under RCW 82.04.190, .195.

RCW 82.08.190(4) provides exceptions to the general bundled transaction rule applied above. Taxpayer argues that RCW 82.08.190(4)(b) applies here, which provides an exception for, "[t]he retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service." We disagree. The provision of party planning and preparation services was not essential to the provision of indoor playground services. Taxpayer's own business practice showed this to be the case: It was not essential that

customers who played in the indoor playground also participated in the party planning or hosting services. Indeed, many customers chose to only engage in the indoor playground portion of Taxpayer's business, rather than the party planning portion. Because the exception contained in RCW 82.08.190(4)(b) does not apply, the Reservation Fees are subject to retail sales tax as a bundled transaction.

. . .

DECISION AND DISPOSITION

We deny the petition.

Dated this 28th day of January, 2014.