

Cite as Det. No. 17-0169, 37 WTD 049 (2018)

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>
Assessment of )	
)	No. 17-0169
)	
... )	Registration No. . . .
)	

[1] RCW 82.08.195; WAC 458-20-166 – RETAIL SALES TAX – BUNDLED TRANSACTIONS – LODGING BUSINESSES: Taxpayer’s business of offering bed and breakfast services, which constitute both retail sales and non-retail sales, for one non-itemized price, are subject to retailing B&O and retail sales tax.

[2] RCW 82.32.160; WAC 458-20-100 – SCOPE OF ADMINISTRATIVE REVIEW: The Department’s Administrative Review and Hearings Division may not answer prospective tax questions unless it is part of a petition arising out of an adverse ruling on future liability from the Department’s taxpayer information and education section.

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.

Fisher, T.R.O. – A firm in the business of providing bed and breakfast services and venues for events protests the imposition of retail sales tax and retailing business and occupation (“B&O”) tax on its income. . . . The petition is denied.<sup>1</sup>

ISSUES

1. Whether, under RCW 82.08.195 and WAC 458-20-166, the taxpayer’s revenue from its business activities is subject to retail sales tax and retailing B&O tax when the taxpayer offers various goods and services as a part of a nonitemized package of services.

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FINDINGS OF FACT

... (“Taxpayer”) is a Washington limited liability company. Until 2014, Taxpayer sold packages offering venues for weddings and other events. According to Taxpayer’s brochure, packages

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

include use of the entire estate, chairs, tables, linens, piano, sound equipment, event planning, dining with a customized menu, and use of the bride/groom suites. Audit Response to Taxpayer's Petition, Exhibit A; *see also* . . . (last accessed July 3, 2017). According to Taxpayer's petition, Taxpayer began offering bed and breakfast services in 2014; the bed and breakfast services were added to some of Taxpayer's packages. According to the brochure and Taxpayer's website, the packages are sold for one, nonitemized price.

The Department of Revenue ("Department") audited Taxpayer to ensure that Taxpayer was complying with its Washington tax obligations from December 1, 2012, through December 31, 2014 (hereafter, "audit period"). The Department determined that Taxpayer's packages were subject to retailing B&O tax as well as retail sales tax because the packages were sold for one, nonitemized price and included items subject to retail sales tax. The Department noted that Taxpayer charged and collected \$ . . . in retail sales tax during the audit period, but only remitted \$ . . . to the Department. Thus, the Department determined Taxpayer collected but failed to remit \$ . . . in retail sales tax, which made up 90% of the retail sales tax Taxpayer collected during the audit period. The Department ultimately assessed Taxpayer \$ . . . in retail sales tax, \$ . . . in retailing B&O tax, \$ . . . in use tax and deferred sales tax, \$ . . . in an evasion penalty, \$ . . . in a substantial underpayment penalty, and \$ . . . in interest; the Department credited Taxpayer with having paid \$ . . . in service and other B&O tax during the audit period.

Taxpayer timely sought administrative review. In its petition, Taxpayer disputed the imposition of retail sales tax, alleging that Taxpayer's packages were not priced as one, nonitemized price, but were instead itemized as to all goods and services provided. Taxpayer did not submit any documentation to support its assertion that the packages' pricing were itemized as to all goods and services provided in each package. Further, Taxpayer argued that its rental of space for weddings is not subject to retail sales tax because it was a mere license to use real property.

In a letter dated December 15, 2016, Taxpayer supplemented its petition. Taxpayer alleges that its former bookkeeper instructed Taxpayer that it did not need to collect and remit retail sales tax from Taxpayer's customers. Taxpayer explained that it is in the processing of separating its venue services and its bed and breakfast services into separate and distinct businesses, and requested a written ruling in connection with the administrative review regarding how this proposed business structure would be taxed.<sup>2</sup>

Taxpayer did not dispute the imposition of use tax, deferred sales tax, retailing B&O tax,<sup>3</sup> the substantial underpayment penalty, or interest in its petition or its December 15, 2016, letter.

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<sup>2</sup> WAC 458-20-100 lists the four departmental actions that are subject to administrative review: "assessment of tax, interest, or penalties; denial of a refund, credit, or deferral request; the issuance of a balance due notice or a notice of delinquent taxes; and the issuance of an adverse ruling on future liability from the taxpayer information and education (TI&E) section." WAC 458-20-100(1)(a). Taxpayer has not obtained a letter ruling from the Department from which it could seek administrative review under WAC 458-20-100. Taxpayer should submit its question to TI&E. More information on this process may be found on the Department's website. *See* Washington State Department of Revenue, Binding Rulings, [http://dor.wa.gov/content/contactus/con\\_taxrulings.aspx](http://dor.wa.gov/content/contactus/con_taxrulings.aspx) (last visited July 3, 2017).

<sup>3</sup> While Taxpayer does dispute whether certain transactions are subject to retail sales tax, Taxpayer does not dispute whether such transactions are subject to retailing B&O. If Taxpayer is correct in that the services it sells are not "retail sales" within the definition of RCW 82.04.050, then Taxpayer's services would be subject to the service and other

## ANALYSIS

**Retail Sales Tax on Taxpayer's Packages**

Washington imposes a B&O tax “for the act or privilege of engaging in business” in the State of Washington. RCW 82.04.220. The B&O tax measure and rate are determined by the . . . nature of the business activity in which a person is engaged. Ch. 82.04.RCW. Washington also levies a retail sales tax on each retail sale in this state. RCW 82.08.020 and 82.04.050. Under RCW 82.08.050, persons making retail sales are liable for retail sales tax when they fail to charge, collect, and remit the retail sales tax to the Department.

Taxpayer sells packages that include venues, event planning, and meals. Audit Response to Taxpayer's Petition, Exhibit A. A “sale” for purposes of the retail sales tax includes “the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.” RCW 82.04.040. WAC 458-20-119 is the administrative rule regarding sales by caterers and food service contractors. Sales of meals and prepared foods by caterers to consumers are subject to the retailing B&O tax and retail sales tax. WAC 458-20-119(2); *see also* Det. No. 13-0059, 32 WTD 232, 234 (2013). Thus, the packages include a product subject to retail sales tax.

Before it offered bed and breakfast services as a part of its packages in 2014, from December 1, 2012, to December 31, 2013, Taxpayer's packages included the use of a facility. WAC 458-20-118 is the administrative rule regarding the sale or rental of real estate and the license to use real estate. WAC 458-20-118(1) provides that income from the rental of real estate is exempt from B&O tax, but a license to use real property is subject to B&O tax under the service and other activities classification, and is not subject to retail sales tax, unless it is otherwise taxed under another classification by a specific statute. WAC 458-20-118(2) explains that the rental of real property conveys an estate or interest with an exclusive right in the lessee of continuous possession against the world, including the owner, and grants “the absolute right of control and occupancy during the term of the lease or rental agreement.” In contrast, a license “does not confer exclusive control or dominion . . . . Usually, where the grant conveys only a license to use, the owner controls such things as lighting, heating, cleaning, repairing, and opening and closing the premises.” WAC 458-20-118(3). Because before 2014 Taxpayer sold the use of a facility for events, and did not grant an absolute right of control or occupancy, we conclude that the packages also include a license to use real property, a product that is not a retail sale. *Id.*

In this case, before 2014, Taxpayer offered some services that are clearly retail sales (sales of meals to its customers) and some services that are not retail sales (licenses to use Taxpayer's real property). A transaction that includes retail and non-retail components can be subject to retail sales tax. Specifically, a bundled transaction is subject to retail sales tax “if the retail sale of any of its component products would be subject to [retail sales] tax . . . .” RCW 82.08.195(1). RCW 82.08.190(1)(a) defines a “bundled transaction” as “the retail sale of two or more products . . . where: (i) [t]he products are otherwise distinct and identifiable; and (ii) [t]he products are sold for one, nonitemized price.” RCW 82.08.190(1)(a). The term “product” under these provisions is

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B&O tax classification, which is a higher B&O tax rate than retailing B&O tax. *Compare* RCW 82.04.470(2)(a) (service and other B&O tax is 1.5%) *with* RCW 82.04.250(1) (retailing B&O tax is 0.471%).

defined as “tangible personal property, digital goods, digital codes, digital automated services, other services, extended warranties, and anything else that can be sold or used.” RCW 82.32.023.

Here, Taxpayer’s brochure and website indicate that Taxpayer sold its packages, which consisted of more than one distinct and identifiable [product], for one, nonitemized price.<sup>4</sup> Under RCW 82.08.190(1)(a) if any of the goods and services offered by Taxpayer fall within the definition of “retail sale,” then Taxpayer was required to collect and remit retail sales tax on such sales. *See also* Det. No. 15-0314, 35 WTD 451, 454 (2016) (sales of packages that include both services defined as retail sales and services that are not defined as retail sales are subject to retail sales tax as measured by the price of the entire package). Accordingly, because Taxpayer’s packages consisted of separate and identifiable products defined as retail sales and services that do not fall within the definition of a retail sale for one, nonitemized price, the sales of Taxpayer’s packages before 2014 were bundled transactions and were subject to retail sales tax.<sup>[5]</sup> The Department properly assessed retail sales tax against Taxpayer on these transactions.

Regarding the transactions in 2014, after Taxpayer began offering bed and breakfast services, RCW 82.04.050(2)(f) defines transient lodging provided by a hotel, motel, or similar business as being a retail sale. *See also* WAC 458-20-166(5) (Persons providing lodging and other services generally must collect and remit retail sales tax on the gross price of the lodging and other services). A bed and breakfast is a similar business to a hotel or motel. Starting in at least 2014, all of Taxpayer’s packages included providing a bed and breakfast. Accordingly, all of Taxpayer’s services provided in 2014 and thereafter, . . . in connection with its bed and breakfast business, [which included sales of meals to customers and other non retail sales for one, non-itemized price,]fall within the definition of a [bundled transaction], and are subject to retail sales tax. RCW [82.08.190]. Accordingly, the Department properly assessed retail sales tax against Taxpayer on these transactions.<sup>6</sup>

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#### DECISION AND DISPOSITION

Taxpayer’s petition is denied.

Dated this 7th day of July 2017.

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<sup>4</sup> While Taxpayer alleged in its petition that the sales of its packages were itemized, Taxpayer has provided no documentation to substantiate this assertion.

<sup>5</sup> [A transaction that otherwise meets the definition of “bundled transaction” is not a bundled transaction if certain conditions are met; however, none of those circumstances applies in this case. *See* RCW 82.08.190(4).]

<sup>6</sup> Taxpayer asserts that its former bookkeeper misinformed Taxpayer of its tax obligations. RCW 82.32A.030(2) indicates that it is Taxpayer’s responsibility to know its tax reporting obligations, and when it is uncertain about its obligations, to seek instructions from the Department. Taxpayer has not cited to any authority that would permit the Department to waive the retail sales tax on the basis of the advice Taxpayer allegedly received from its former bookkeeper.