

Cite as 10 WTD 423 (1990).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Correction of Assessment)	
of)	No. 91-071
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	

[1] RULE 182: RCW 82.04.280 -- B&O TAX -- WAREHOUSE -- OPERATION OF -- DISTRIBUTION. Income from the operation of "distribution warehouse" by a party who neither owns nor leases the warehouse is taxable under the Warehousing category of the B&O tax.

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.

TAXPAYER REPRESENTED BY: . . .

DATE OF HEARING: March 12, 1991

NATURE OF ACTION:

Petition by distributor of ski products protesting assessment of Service B&O tax on warehouse activities.

FACTS AND ISSUES:

Dressel, A.L.J. -- . . . (taxpayer) does shipping and warehousing activities from a [Washington] warehouse. The taxpayer's books and records were examined by the Department of Revenue (Department) for the period January 1, 1985 through December 31, 1989. As a result, a tax assessment, identified by the above-captioned numbers, was issued for \$ The taxpayer appeals.

[The] taxpayer has only two Washington employees. The employees work in the referenced warehouse. The warehouse is

leased by [A], a ski manufacturer, from a third party. The taxpayer does not own or lease the warehouse. [A] and, previously another company, hired the taxpayer to receive, store, box, and ship merchandise from the warehouse. This function is what the taxpayer's two employees do. They also perform the concomitant paperwork chores. The warehouse is 22,000 square feet. It is not used for any other purpose. The taxpayer receives compensation from [A] based on the monthly salaries of the employees plus a profit factor. Compensation is not paid on a "per unit" of merchandise basis. The taxpayer describes the employees' work as warehouse labor. The taxpayer's president also said that the employees operate the warehouse. The skis and other products are typically in the warehouse from one to ninety days. The taxpayer does not own the products. [A] does.

The Department's auditor assessed the business and occupation (B&O) tax at the Service and Other Activities rate. The taxpayer agrees with the income amount upon which the tax was calculated but says that the proper rate is that of the special Warehousing B&O category.

The issue is whether one who receives, stores, boxes, and ships merchandise from a warehouse is subject to Service or Warehousing B&O tax.

DISCUSSION:

The applicable Department rule WAC 458-20-182 (Rule 182). It reads in part:

WAREHOUSE BUSINESSES.

(1) DEFINITIONS. For purposes of this section the following terms and meanings will apply:

(a) "Warehouse" means every structure wherein facilities are offered for the storage of tangible personal property.

(b) "Storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation

. . .

(2) BUSINESS AND OCCUPATION TAX. Warehouse businesses are taxable according to the nature of their operations and the specific kinds of goods stored, as follows:

(a) Persons engaged in operating any "storage warehouse" or "cold storage warehouse," as defined herein, are subject to tax under the warehousing classification, measured by the gross income of the business. (See RCW 82.04.280.)

. . . .

(3) TAX MEASURE. The gross income of the business of operating a warehouse includes all income from the storing, handling, sorting, weighing, measuring, and loading or unloading for storage of tangible personal property.

[1] The warehouse involved in this case is a storage warehouse in that goods or merchandise are stored there for compensation. The rule doesn't say that the compensation has to be to the owners or lessees of the warehouse, nor does it say that the compensation has to be so much per day per item(s). Compensation based on the monthly salaries of those who perform the necessary labor in the warehouse is still compensation.

Further, Rule 182 (2)(a) says that those engaged in operating a warehouse business are subject to tax under the Warehousing classification. That is precisely what this taxpayer does. It operates the warehouse.

In addition, the fact that distribution is one of the taxpayer's major functions does not preclude taxation of the income under the Warehousing category. The measure of tax under Warehousing is gross income. Rule 182 (2)(a). ¶(3) of the same rule states that gross income includes all income from "storing, handling, sorting, weighing, measuring, and loading or unloading". From this, we deduce that income from services incidental to warehousing per se, whatever that is, is also subject to tax under the Warehousing category. Here, distribution, which includes many of the activities mentioned in the above quote from ¶(3), is deemed part of the Warehousing operation.

We conclude, then, that the Department improperly classified the taxpayer's income when it classified it as subject to Service B&O tax. Warehousing B&O is the correct classification. At least, it is correct for the majority of the audit period. Previously, Rule 182 provided in part, "Persons engaged in the business of operating any type of warehouse other than a cold storage warehouse are taxable

under the classification other public service business upon the gross income from such business". "Other Public Service Business" was a classification of the public utility tax as opposed to the B&O tax. The current version of Rule 182 says at ¶(2)(d), "Effective July 1, 1986, no warehouse business or operation of any kind is subject to tax under the public utility tax of chapter 82.16 RCW". From January 1, 1985 through June 30, 1986, therefore, the taxpayer's income was subject to the "Other Public Service" category of the public utility tax. From July 1, 1986 through December 31, 1989, the taxpayer's income was subject to the Warehousing category of the business and occupation tax.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. The Department's Audit Division will issue an amended assessment consistent with this Determination.

DATED this 20th day of March 1991.