

Cite as Det. No. 98-067, 18 WTD 285 (1999)

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. 98-067
	)	
...	)	Registration No. . . .
	)	FY. . . /Audit No. . . .
	)	

[1] RULE 155; RCW 82.04.055; RCW 82.04.290; ETB 901: B&O TAX --  
SELECTED BUSINESS SERVICES; CANNED SOFTWARE TRAINING.  
Classroom training in the use of canned software is taxable under the service and  
other activities B&O tax classification, not under the selected business services  
classification.

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.

NATURE OF ACTION:

A taxpayer that provides classroom training on canned software appeals the reclassification of its  
gross receipts from that activity from the service and other activities B&O tax classification to  
the selected business services B&O tax classification.<sup>1</sup>

FACTS:

Prusia, A.L.J. (successor to Bauer, A.L.J.) -- The taxpayer's primary activity is instructor-led end-  
user training on standard, prewritten ("canned") software commonly found in the business  
environment. It provides the training principally in its own classroom facilities, but also provides  
classroom training at customers' premises and at third-party training facilities. The taxpayer does  
not sell computers or software, nor does it design computer systems. The taxpayer performed the  
software training activities in Washington.

The Department of Revenue (the Department) examined the taxpayer's records for the period  
January 1, 1991 through December 31, 1994. During the audit period, the taxpayer had reported all

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

gross income from software training activities under the service and other activities business and occupation (B&O) tax classification. As a result of the audit, the Department reclassified the taxpayer's gross receipts from software training activities since July 1, 1993, from the service and other activities B&O tax classification to the selected business services B&O tax classification, and made other adjustments. On October 18, 1995, the Department assessed \$ . . . in taxes and interest. . .

The Auditor's Detail of Differences and Instructions (audit report) explained the reclassification as follows:

You provide computer training to businesses for standard, off-the-shelf software programs. Currently, you report this income under the service and other activities classification. Effective July 1, 1993, a new tax classification, the selected business services classification, was created. It applies to certain services generally provided to businesses. These services were previously taxed under the service and other activities classification. Included in this new category are those computer services which were previously taxed under the service classification. It is the department's policy to include computer training of all types in this category. This schedule therefore reclassifies all income for training reported under the service and other activities classification since July 1, 1993 to the selected business services B&O tax classification. ETB 901 is included for your reference.

On November 17, 1995, the taxpayer paid uncontested portions of the assessment, and filed a petition for correction of the assessment. The petition protests the reclassification of gross receipts from training activities. The taxpayer contends that the services it provides are not within the purview of RCW 82.04.055, which defines the business activities subject to taxation under the selected business services classification. It contends that its business is providing technical training, similar to the training provided by for-profit technical schools in such subjects as auto mechanics, cosmetology, and truck driving. It argues that technical training in those subjects is taxed under the service and other activities classification, and that it is improper for the Department to tax similar training services at a different rate based solely upon the subject taught.

#### ISSUES:

Are gross receipts from classroom training in the use of canned computer software taxable under the selected business services B&O tax classification or under the service and other activities B&O classification?

#### DISCUSSION:

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 rate is determined by the type of business activity in which a person is engaged. RCW 82.04.290. Unless specifically enumerated elsewhere in chapter 82.04 RCW, business activities are subject to the general B&O tax rate currently set out

in subsection (4) of RCW 82.04.290. At all times relevant to this appeal, that rate was 2.0 percent.

Effective July 1, 1993, certain services generally provided to businesses were reclassified for B&O tax purposes as selected business services.<sup>2</sup> RCW 82.04.055. The tax rate for the new classification was 2.5 percent. RCW 82.04.290.<sup>3</sup>

Included within the statutory definition of selected business services are “computer services.” RCW 82.04.055 provides as follows with respect to computer services:

(1) “Selected business services” means:

...

(b) Computer services, including but not limited to computer programming, custom software modification, custom software installation, custom software maintenance, custom software repair, training in the use of custom software, computer systems design, and custom software update services.

The Department has not promulgated a permanent rule to implement RCW 82.04.055. It issued emergency rule WAC 458-20-901(e) (Rule 901-e) and Excise Tax Bulletin 901 (ETB 901) to assist taxpayers in reporting their income under the correct tax classification. ETB 901 provides:

**(4) Selected business services.** These services are taxable at the new rate unless specifically exempted under RCW 82.04.055. Though these services are generally performed for businesses, the services are not required to be performed for businesses to be taxable at the new rate. The new B&O tax classification for selected business services include the following services:

...

**(b) Computer services.** This category includes but is not limited to computer programming, custom software maintenance, custom software training, and computer systems design. The sale of software which will be sold to multiple users (generally referred to as “canned software”) will continue to be a retail sale. The change in the law is to make those computer services which were previously taxed under the service classification taxable under this new B&O tax classification.<sup>4</sup>

Neither RCW 82.04.055 nor ETB 901 defines the term “computer services.” They provide examples of “computer services,” but neither includes training in the use of canned software among the examples, and both expressly do not limit the term to the examples provided.

The audit report suggests that a Departmental policy requires that all computer-related training be included under the selected business services classification. We find no published

<sup>2</sup> RCW 82.04.055 has been repealed effective July 1, 1998. Laws of 1997, ch. 7, sec. 5.

<sup>3</sup> Effective January 24, 1996, the rate for service and other activities was changed to 1.75 percent and the rate for selected business services was changed to 2.0 percent.

<sup>4</sup> Rule 901-e had an identical description of “computer services.”

Departmental policy statement that expressly requires that treatment. Accordingly, we must engage in statutory construction to determine whether training in the use of canned software falls within the scope of “computer services” for purposes of RCW 82.04.055.

We begin our analysis with the wording of RCW 82.04.055 itself. The statute is not entirely silent on the subject of software training. In its examples of “computer services,” the statute specifically lists “training in the use of custom software” (emphasis supplied). The use of the limiting modifier creates an inference that the term “computer services” does not include training in the use of canned software.

The eiusdem generis principle of statutory interpretation also supports a conclusion that training in the use of non-custom software is not included in the definition. That principle provides that general terms appearing in a statute in connection with precise, specific terms, shall be accorded meaning and effect only to the extent that the general terms suggest items or things similar to those designated by the precise or specific terms. See, e.g., State v. Thompson, 38 Wn.2d 774, 777, 232 P.2d 87 (1951). The repeated specific references to “custom” software tends to limit the scope of the term “computer services.” The associated examples all indicate that the services being taxed involve services which are custom designed to meet a particular customer’s specific needs. Training in the use of canned software is a generic service that is suitable for anyone who buys off-the-shelf software.

The nature of the other services that RCW 82.04.055 carves out for special treatment also tends to limit the scope of the term “computer services.” The other listed categories relate to activities which generally require knowledge of and involvement in the actual business of the customer, and generally require customized service that meets specific needs of a particular customer.

The Department’s only rule concerning the proper taxation of the provision of information and computer services is WAC 458-20-155 (Rule 155). Rule 155 predates RCW 82.32.055, and does not mention computer training at all. However, the Department’s approach in Rule 155 is consistent with the conclusion that training in the use of canned software is not a “computer service.” Rule 155 defines “computer services” as “every method of providing information services through the use of computer hardware and/or software.” It defines “information services” as:

every business activity, process, or function by which a person transfers, transmits, or conveys data, facts, knowledge, procedures, and the like to any user of such information through any tangible or intangible medium. The term does not include transfers of tangible personal property such as computer hardware or standard prewritten software programs.

Rule 155 distinguishes between services and sales, based upon whether the activity is similar to the professional services rendered to meet the particular needs of specific customers, such as those rendered by a public accountant, architect, lawyer, etc., or is essentially a sale of tangible personal property no different from a usual inventory of tangible personal property held for sale

or lease. Sales of software in connection with custom programs written to meet a particular customer's specific needs are part of a professional service, whereas sales of standard, prewritten software programs are sales at retail.

Classroom training in the use of canned software is not in connection with the provision of information services by the trainer to the trainee's business. It is training in an office skill that the trainee can use in any business that happens to use the same software. It is very different from training in the use of custom software. Training in the use of custom software is provided in connection with custom software program development for a particular business. It is a professional-level service requiring a high degree of expertise in the software and knowledge of the business the trainee works for, and requiring the customizing of training to meet the particular needs of the trainee's business. Custom software training prepares the trainee to serve the particular needs of one business.

We agree with the taxpayer that training in the use of canned software is more like technical school training in such subjects as auto mechanics and cosmetology than like training in the use of custom software, and is properly classified as vocational training rather than a computer service for B&O tax purposes. The only difference between classroom training in the use of canned software and classroom training in auto mechanics is the subject matter.

Training generally is a service for B&O tax purposes. See, Det. No. 89-43, 7 WTD 130 (1989) (training by the vendor of canned software),<sup>5</sup> Det. No. 88-141, 5 WTD 129 (1988) (training students for employment with various employers). If a taxpayer's service activities are not otherwise defined, the proper B&O tax classification is service and other activities. RCW 82.04.290. The selected business service classification does not apply to classroom training in the use of canned software, and therefore the taxpayer properly reported the income under the service and other activities classification.

#### DECISION AND DISPOSITION:

The taxpayer's petition is granted.

Dated this 23rd day of April, 1998.

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<sup>5</sup> In interpreting Rule 155, the Department has held that payments to a vendor of canned software for training on the software is a service, and is not subject to retail sales tax if charges for training are separately stated from the charges for software maintenance. See, Det. No. 89-43, 7 WTD 130 (1989) and Det. No. 93-158, 13 WTD 302 (1993).