

Cite as 6 WTD 227 (1988)

BEFORE THE DIRECTOR  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition	)	
For Refund of	)	<u>F</u> <u>I</u> <u>N</u> <u>A</u> <u>L</u>
	)	<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>
	)	
	)	No. 88-287
	)	
. . .	)	Registration No. . . .
	)	Tax Assessment No. . . .
	)	

**RULE 143 AND RCW 82.04.280:** B&O TAX -- CLASSIFICATION --  
PRINTING & PUBLISHING -- PUBLISHERS OF MAGAZINES. Where  
a significant part of publishing a magazine occurs within  
the state, the B&O tax shall be levied upon the  
classification of publishing.

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: . . .  
. . .

HEARING CONDUCTED BY DIRECTOR'S DESIGNEES:  
Garry G. Fujita, Assistant Director  
Edward L. Faker, Sr. Administrative Law Judge

DATE AND PLACE OF HEARING: April 13, 1988 at Olympia, Washington

NATURE OF ACTION:

Petition for Refund for B&O taxes allegedly assessed and paid under  
an erroneous classification. Petition is heard as a Final  
Determination at the Director's level.

FACTS AND ISSUES:

Faker, Sr. A.L.J. -- The taxpayer is the publisher of the Northwest  
edition of . . . magazine. The various activities associated with  
publishing that magazine are located in different localities. The  
headquarters are located in . . . , California, where the officers  
of the corporation and most editors reside. Printing takes place

in Los Angeles. An editorial office is located in Seattle where the Northwest Edition is created. Six editorial people are in Seattle. Advertising offices are located through the United States including one in Seattle that has a large staff. Most subscription services are performed in California.

The auditor assessed tax on the advertising revenue generated by the Seattle office. The auditor concluded that since only a part of the operation occurred in Washington, the appropriate tax classification under WAC 458-20-243 (Rule 243) was not that of printing and publishing but service and other business activities which bears a higher tax rate. The taxpayer has paid the assessment and has petitioned for refund.

At issue is the proper B&O tax classification for an integrated publisher with operations inside and outside the state for income from advertising.

#### DISCUSSION:

Rule 143 provides:

##### BUSINESS AND OCCUPATION TAX

PRINTING AND PUBLISHING. Publishers of newspapers, magazines and periodicals are taxable under the printing and publishing classification upon the gross income derived from the publishing business.

Persons who both print and publish books, music, circulars, etc., or any other item, are likewise taxable under the printing and publishing classification. However, persons, other than publishers of newspapers, magazines or periodicals, who publish such things and do not print the same, are taxable under either the wholesaling or retailing classification, measured by gross sales, and taxable under the service classification, measured by the gross income received from advertising.

The rule provides for the following three classes of taxpayers for B&O tax purposes:

1. Publishers of newspapers, magazines and periodicals who are taxed under printing and publishing.
2. Persons who both print and publish books, music circulars, and any other item (except those newspapers, magazines or periodicals) who are also taxed under printing and publishing.

3. Persons who would be in the second class except that they do not print the materials and they are taxed under the Service classification.

These distinctions are founded on the statute (RCW 82.04.280) which provides a separate classification for printers and publishers of newspapers, magazines and periodicals. Publishers of other written materials fall into the Service and other business activities classification.

The auditor has interpreted Rule 143 to require that the printing be done in the state in order to qualify for the printing/publishing rate. That requirement is not provided in either the statute or the rule. Rather, publishers of magazines in this state are entitled to the lower tax classification.

The taxpayer clearly meets the definition of a publisher of a magazine. The fact that all of its activities are performed inside this state does not change the tax classification.

#### DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 26th day of July 1988.