

Cite as Det. No. 13-0128, 33 WTD 10 (2014)

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. 13-0128
...)	
)	Registration No. . . .
)	Document No. . . .
)	Audit No. . . .
)	Docket No. . . .
)	

RULE 141; RCW 82.08.807, RCW 82.04.4272: RETAILING B&O TAX – RETAIL SALES TAX – EXEMPTION – DELIVERY CHARGE – DIRECT MAIL. Separately stated postage charges for delivery of direct mail are exempt from retail sales tax under RCW 82.08.807, and may be deducted from the measure of B&O tax under RCW 82.04.4272.

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.

Chartoff, A.L.J. – A taxpayer engaged in printing and mailing services petitions for cancellation of an assessment issued by the Taxpayer Account Administration (TAA) Division of the Department of Revenue (Department), contending TAA erred when it denied the taxpayer's deduction of separately stated postage charges for delivery of direct mail. We grant the petition.¹

ISSUE

Whether separately stated postage charges for delivery of direct mail are exempt from retail sales tax under RCW 82.08.807, and may be deducted from the measure of B&O tax under RCW 82.04.4272.

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

FINDINGS OF FACT

The relevant facts are not in dispute. The taxpayer is a sole proprietor in Washington State, engaged in printing and mailing services for business clients. During the period under review, the taxpayer produced personalized thank you cards and other direct mail advertising materials for dealerships. The taxpayer sent the materials by United States mail directly to addresses on a mailing list provided by the dealerships. The taxpayer's invoices to the dealerships separately stated the postage costs. The taxpayer did not charge or collect retail sales tax on postage costs.

TAA performed a desk examination of the taxpayer's account for the period January 1, 2008 through December 31, 2011. TAA found that the taxpayer had taken a deduction on its excise tax returns for postage charges. After discussing the facts with the taxpayer, TAA determined that charges for postage were not deductible from measure of tax for both the B&O tax and the retail sales tax under WAC 458-20-141 (Rule 141) because the costs were part of the consideration paid by the customer. TAA issued an assessment of \$... consisting of \$... in B&O tax, \$... in retail sales tax, \$... adjustment to small business B&O tax credit and \$... in interest. The taxpayer petitioned the Appeals Division of the Department for correction of the assessment.

ANALYSIS

Prior to 2005, the Department's position was that postage costs of a mailing bureau were deductible from the measure of B&O tax and retail sales tax. WAC 458-20-141 (1983); Det. No. 97-222, 17 WTD 167 (1998).

In 2005, the Department amended WAC 458-20-141(Rule 141) to remove language in the rule that had allowed a deduction from the measure of both B&O tax and the retail sales tax where a mailing bureau or printer purchases postage for a customer and charges the customer for the postage. Rule 141 was filed January 11, 2005, with an effective date of July 1, 2005.

Prior the effective date of Rule 141, the legislature enacted engrossed substitute house bill (ESHB) 2314 (Chapter 514, Laws of 2005), which provides a B&O tax deduction and retail sales tax and use tax exemptions for delivery charges for direct mail. This law invalidates parts of Rule 141. *See* Washington State Department of Revenue's Special Notice, Direct Mail – Tax Deduction and Exemptions, June 15, 2005.

RCW 82.04.4272 provides a B&O tax deduction for direct mail delivery charges. It states:

- (1) In computing tax there may be deducted from the measure of tax, amounts derived from delivery charges made for the delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser.
- (2) "Delivery charges" and "direct mail" have the same meanings as in RCW 82.08.010.

RCW 82.08.807 provides an exemption from retail sales tax for direct mail delivery charges. It states:

The tax levied by RCW 82.08.020 does not apply to delivery charges made for the delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser.

In summary, the exemption and deduction apply to: (1) delivery charges (2) made for the delivery of direct mail (3) if the charges are separately stated on the invoice given to the purchaser. In the present case, there is no dispute that all of the elements are clearly met.

The term "Delivery charges" is defined in RCW 82.08.010(4), as follows:

"Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing;

In the present case, the taxpayer bills the customer for postage charges incurred in the delivery of advertising material to addresses designated by the purchaser of the service. Postage charges clearly fit within the meaning of the term "delivery charge." RCW 82.08.010(4).

The terms "direct mail" is defined in RCW 82.08.010(5), in relevant part, as follows:

"Direct mail" means printed material delivered or distributed by United States mail ... to addressees on a mailing list provided by the purchaser ... when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

In the present case, the taxpayer sends printed advertising material by US mail to addresses on a mailing list provided by the purchaser. The recipients are not billed for the cost of the items. These materials clearly fall within the meaning of the term "direct mail." RCW 82.08.010(5).

The last requirement of the exemption is that the delivery charges for direct mail must be separately stated on the invoice or billing document given to the purchaser. In the present case, the taxpayer separately states postage charges on invoices given to the purchaser, and the taxpayer did not charge or collect retail sales tax on the postage charges.

We conclude the postage charges are exempt from retail sales tax under RCW 82.08.807, and may be deducted from the measure of B&O tax under RCW 82.04.4272. We grant the petition for correction of assessment.

DECISION AND DISPOSITION

The petition is granted.

Dated this 8th day of 2013.