

Cite as Det No. 11-0006, 32 WTD 7 (2013)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Correction of ) **D E T E R M I N A T I O N**  
Assessment of )  
 ) No. 11-0006  
... )  
 ) Registration No. ....  
 ) Doc. No. .... /Audit No. ....  
 ) Docket No. ....  
 )

RCW 82.08.190 AND .195: RETAIL SALES TAX – RETAILING B&O TAX – BUNDLED TRANSACTION –SALE OF DINNER AND MUSICAL/DRAMA SHOW – NON-ITEMIZED ADMISSION CHARGE. The sale of dinner (generally subject to sales tax) and a musical/drama show (generally not subject to sales tax) for one non-itemized admission charge is a bundled transaction subject to retail sales tax because the meal is not essential or indispensable to the viewing of the performance.

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.

De Luca, A.L.J. – A sole proprietorship (the taxpayer) that operates a . . . dinner club[/theatre] protests the assessment of retailing business and occupation (B&O) tax and retail sales tax on the single non-itemized admission charge that includes both musical entertainment and dinner. Held: the taxpayer was selling prepared meals and musical entertainment as a bundled transaction that is subject to retail sales tax on the full price. Petition denied.<sup>1</sup>

## ISSUE

Under RCW 82.08.190 and .195, is the sale of dinner and a musical/drama show for one non-itemized admission charge a bundled transaction subject to retail sales tax, or is the transaction not bundled because the dinner is essential to the show and is provided exclusively in connection with the show, and the true object of the transaction is the show?

<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410. Nonprecedential portions of this determination have been deleted.

## FINDINGS OF FACT

The taxpayer is a sole proprietorship . . . . Its business activities in Washington during the examination period included operating a . . . dinner club/theatre. The business opens at . . . . The customers are entertained by live music [and a] drama . . . . [Then the audience receives their meal] . . . and enjoy[s] more entertainment. The entire event lasts [several] hours.

The taxpayer charged a single non-itemized admission price . . . per customer. . . . The taxpayer protests the portion of the audit report that assessed \$ . . . in retail sales tax, retailing B&O tax, and interest, for the period from July 1, 2008, through June 30, 2009. . . .

## ANALYSIS

RCW 82.08.190 and .195 became effective July 1, 2008. They are referenced as the “bundled transactions” statutes. A “bundled transaction” is defined as:

- (1)(a) “Bundled transaction” means the retail sale of two or more products, except real property and services to real property, where:
  - (i) The products are otherwise distinct and identifiable; and
  - (ii) The products are sold for one nonitemized price.
- (b) A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

RCW 82.08.190(1). The statute then declares in pertinent part:

- (4) A transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is:
  - (a) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;

RCW 82.08.190(4).

RCW 82.08.195 imposes the retail sales tax by providing in pertinent part:

- (1) Except as provided in subsection (6) of this section, a bundled transaction is subject to the tax imposed by RCW 82.08.020 if the retail sale of any of its component products would be subject to the tax imposed by RCW 82.08.020.
- (2) The transactions described in RCW 82.08.190(4) (a) and (b) are subject to the tax

imposed by RCW 82.08.020 if the service that is the true object of the transaction is subject to the tax imposed by RCW 82.08.020. If the service that is the true object of the transaction is not subject to the tax imposed by RCW 82.08.020, the transaction is not subject to the tax imposed by RCW 82.08.020.

In the present matter, the taxpayer sells a dinner along with a musical show/theatre performance for one non-itemized price/admission charge. The dinner, by itself, is generally subject to retail sales tax, such as in a restaurant or similar business. WAC 458-20-124. The musical show/theatre performance, by itself, is generally not subject to retail sales tax. WAC 458-20-183(2)(m). On its face, this sale would appear to be a bundled transaction as defined by RCW 82.08.190(1) because there is the sale of two products that are otherwise distinct and identifiable and are sold for one non-itemized price and one of those component products would be subject to retail sales tax. RCW 82.08.195(1).

But the taxpayer cites the second sentence in RCW 82.08.195(2) to support its argument that the dinner and musical show/theatre performance are not subject to retail sales tax and, therefore, are not a bundled transaction, because the service (the musical show/theatre performance) is the true object of the transaction and it is not subject to the retail sales tax imposed by RCW 82.08.020.

Accordingly, we must review the definition of what is not a bundled transaction. As quoted above in RCW 82.08.190(4)(a) a transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is:

1. The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service;
2. And the tangible personal property is provided exclusively in connection with the service;
3. And the true object of the transaction is the service.

We agree that the meal is provided exclusively in connection with the musical show/theatre. And it is arguable that the true object of the transaction is the musical show. But we conclude that the sale of the meal is not essential to the use of the musical show/theatre performance. The word "essential" is not defined by the statute. Thus, we will use a dictionary definition. "Words in a statute are given their ordinary and common meaning absent a contrary statutory definition." *John H. Sellen Constr. Co. v. Department of Rev.*, 87 Wn.2d 878, 882, 558 P.2d 1342 (1976). "Essential" is defined as: "**a**: something basic or fundamental esp. belonging to or forming part of the minimal indispensable body, character, or structure of a thing...**b**: something necessary, indispensable, or unavoidable." Webster's Third International Dictionary 777 (1993).

We conclude that the meal is not indispensable to the use or viewing of the musical show/theatre performance. The show can go on without the dinner. In other words, the dinner certainly adds to the overall enjoyment value of the event, but it is not indispensable to the performance of the musical show/theatre performance. We take note that many musical shows, concerts, theatre performances, etc., of similar length are performed without providing dinner or other meals.

Accordingly, we conclude that the taxpayer was selling a bundled transaction that was subject to retail sales tax and retailing B&O tax during the period from July 1, 2008, through June 30, 2009.

**DECISION AND DISPOSITION**

Taxpayer's petition is denied

Dated this 10th day of January, 2011.