Cite as Det. No. 14-0285, 34 WTD 557 (2015)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 14-0285
. . .	)	Registration No. . . .

RCW 82.04.050(3)(a)(i); RCW 82.04.4282; WAC 458-20-183; ETA 3080.2009: RETAIL SALES TAX – USING THE ACTUAL RECORDS OF FACILITIES USAGE METHOD FOR ALLOCATING GOLF FEES BETWEEN DEDUCTIBLE AND TAXABLE AMOUNTS. In using a market comparison of the value of eighteen holes of golf, a private golf course could use a comparable nine hole golf course that is capable of being played twice, but could not use non-USGA certified courses or par-3 courses that don't over the same eighteen-hole layout as the private course.

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.

Sohng, A.L.J. – Private golf and country club protests the exclusion of six nine-hole golf courses from its market comparison for purposes of determining the taxable amount of its membership fees and dues under the actual usage of facilities method pursuant to WAC 458-20-183 and ETA 3080.2009. The petition is granted in part and denied in part.[1]

ISSUE

May a private eighteen-hole golf course include nine-hole golf courses in its market comparison for purposes of determining the taxable amount of its membership fees and dues under the actual usage of facilities method pursuant to WAC 458-20-183 and ETA 3080.2009?

FINDINGS OF FACT

[Taxpayer] operates a private golf course and country club in [Washington]. The majority of Taxpayer's income consists of membership fees and dues.

Taxpayer's facilities include a full-length eighteen-hole golf course, tennis courts, swimming pool, clubhouse with restaurant and bar, snack bar, pro shop, and banquet facility. All club members must first pay a one-time initiation fee to join and then pay monthly dues for

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

continuing membership. Taxpayer offers several types of memberships, including varying levels of golf memberships (proprietary, senior, associate, intermediate, and junior) and social memberships. The golf membership includes access to the golf course, tennis courts, and swimming pool at no additional charge. Social members pay lower dues and have no golf privileges, but have full access to the other facilities at no additional charge. Both golf and social members must pay separately for food and beverage at the clubhouse and snack bar.

The Department of Revenue's (the "Department") Audit Division examined Taxpayer's books and records for the period . . . (the "Audit Period"). On June 7, 2013, the Audit Division issued Assessment No. . . . , in the amount of $ . . . , including $ . . . in tax[2] and $ . . . in interest. The Audit Division disallowed the inclusion of the following private and public golf courses in Taxpayer's market comparison under ETA 3080.2009, arguing that Taxpayer may only use eighteen-hole courses in its market comparison:

Name	Type	Location	No./Type of Holes
. . .	Private	[Washington]	9 holes – certified for 18
. . .	Private	[Washington]	9 holes – certified for 18
. . .	Public	[Washington]	9 holes – par 3
. . .	Public	[Washington]	9 holes – par 3
. . .	Public	[Washington]	9 holes – par 3
. . .	Public	[Washington]	9 holes – par 3

The two private courses listed above (. . .)(the "Private Courses") are both nine-hole courses, but are certified by the United States Golf Association ("USGA") as eighteen holes. The holes at the Private Courses vary from par-3 to par-5. Generally, a nine-hole course is able to secure an eighteen-hole rating by establishing two sets of tee boxes, two sets of flag positions, and different yardage and slope ratings for each hole. The USGA recognizes the Private Courses as eighteen-hole courses, even though they physically only have nine holes.

The four public courses listed above (. . .) (the "Public Courses") are *not* recognized by the USGA as eighteen-hole courses. These courses are "executive" nine-hole, par-3 courses. An executive course is a course with a total par that is significantly less than a traditional eighteen-hole course. Executive courses are designed to be played quickly by those who do not have the time to play a full eighteen-hole course or by beginners who are just learning to play golf.[3]

ANALYSIS

Washington imposes retail sales tax on each retail sale in this state. RCW 82.08.020. The term "retail sale" includes the sale of "amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others when provided to consumers." RCW 82.04.050(3)(a)(i). The Department adopted WAC 458-20-183 ("Rule 183") to administer the taxation of amusement and recreation services. Rule 183(2)(b) provides that amusement and recreation services include (but are not limited to) the following activities:

[2]The tax included $ . . . in retail sales tax, $ . . . in retailing B&O tax, and credits for litter tax and service and other activities B&O tax in the amounts of $ . . . and $ . . . , respectively.
[3]*See* http://en.wikipedia.org/wiki/Golf_course

> Golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, and all batting cages. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance.

(Emphasis added.) RCW 82.04.4282 provides a deduction from certain "amusement and recreation services" for bona fide initiation fees, dues, contributions, and donations, but not if they are in exchange for a significant amount of goods or services. The statute provides:

> In computing tax there may be deducted from the measure of tax amounts derived from bona fide (1) initiation fees, (2) dues, (3) contributions, (4) donations, ... This section may not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property . . . or upon providing facilities or other services for which a special charge is made to members or others. If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction under this section.

RCW 82.04.4282 (emphasis added). The Department has long allowed country clubs, golf clubs, and tennis clubs that have a substantial social component, and derive their income from initiation fees and dues, to allocate their membership fees and dues income between taxable amounts (payment for goods or services rendered) and deductible amounts (bona fide initiation fees and dues). Det. No. 85-178A, 3 WTD 387 (1987); No. 87-218, 3 WTD 295 (1987); Det. No. 87-348, 4 WTD 281 (1987); Det. No. 88-247, 6 WTD 105 (1988).

Rule 183 provides two alternative methods of allocating fees and dues income between taxable and deductible amounts: the actual records of facilities usage; or the cost of production of facilities. During the Audit Period, Taxpayer used the actual records of facilities usage method. Under the actual use method, the taxable amount may be computed in one of two ways: (i) allocation of a reasonable charge for the specific goods or services rendered; or (ii) the average comparable charges for such goods and services made by other commercial businesses. Taxpayer elected to calculate its taxable amount using the average comparable charges made by other comparable businesses. Rule 183(4)(c) provides:

> (i) **Actual records of facilities usage.**
> (A) Persons may allocate their income based upon such actual records of facilities usage as are maintained. This method is accomplished by either: The allocation of a reasonable charge for the specific goods or services rendered; or, the average comparable charges for such goods or services made by other *comparable businesses*. In no case shall any charges under either method be calculated to be less than the actual cost of providing the respective good or service. When using the average comparable charges method the term "comparable businesses" shall not include subsidized public facilities when used by a private facility.

Rule 183(4)(c)(i)(A)(emphasis added).

On February 2, 2009, the Department issued Excise Tax Advisory 3080.2009 ("ETA 3080")[4] to explain how to apply the average comparable charges method allowed by Rule 183(4)(c)(i)(A) to golf clubs. ETA 3080 provides, in relevant part, as follows:

> **Use of Market Comparisons by Golf Businesses**
> **Reporting on the "Actual Records of Facilities Usage" Method**
>
> This excise tax advisory provides a method to calculate the fair market value of a round of golf for the purpose of determining the taxable value of club initiation fees and membership dues.
>
> * * *
>
> In order to administer this particular section of Rule 183 and to maintain uniformity among this class of taxpayers, the Department has determined that taxpayers who wish to use a market comparison must follow the procedure outlined below.
>
> Both public and private golf courses must be considered in the market comparison. The taxpayer must use the weighted averages (weekend and weekday rates should be weighted by a factor of two and five respectively) of **eighteen holes of golf** at the ten closest public courses, and the ten closest private courses (including itself as one of the courses). Linear map distances (as opposed to road mileage) will be used to select the courses for comparison; however, courses across major bodies of water not accessible by bridge will not be considered. The average will be recalculated as of April 1 of each calendar year, and may be used until the next recalculation.

(Underlined emphasis in original, bolding emphasis added).

The Audit Division disallowed the inclusion of the Private Courses and the Public Courses because they only have nine holes. We do not read ETA 3080 to limit the market comparison to eighteen-hole golf courses. Rather, ETA 3080 only requires that Taxpayer use the weighted averages of "eighteen holes of golf." "Eighteen holes of golf" is not necessarily equivalent to an "eighteen-hole golf course."

While we do not interpret ETA 3080 to exclude nine-hole courses from the market comparison, the plain language of Rule 183 still requires that the golf courses included in the market comparison be *comparable* to Taxpayer's golf course. Taxpayer may use "the average comparable charges for such goods or services made by other *comparable businesses*." Rule 183(c)(i)(A)(emphasis added). Because Rule 183 does not define the word "comparable," we may look to the dictionary meaning for guidance. *See, e.g., Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 609, 998 P.2d 884 (2000); *Palmer v. Dep't of Revenue*, 82 Wn. App. 367, 372, 917 P.2d 1120 (1996); *Garrison v. Wash. State Nursing Bd.*, 87 Wn.2d 195, 196, 550 P.2d 7 (1976). The dictionary definitions of "comparable" are as follows:

[4] The predecessor to ETA 3080 was Excise Tax Bulletin 548.04.114 ("ETB 548"), effective August 20, 1990. On February 2, 2009, the Department cancelled ETB 548 and reissued it as ETA 3080 in substantially identical form.

1. "capable of being compared: having enough like characteristics or qualities to make a comparison appropriate;" and
2. "suitable for matching, coordinating, or contrasting: EQUIVALENT, SIMILAR"

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 461 (1993).

The Private Courses maintain eighteen-hole layouts, even though they physically only have nine holes. This is accomplished by playing each of the nine holes twice and using varying tee boxes and yardages. We conclude that the Private Courses are "comparable" to Taxpayer's course. Because of their eighteen-hole layout, they have enough like characteristics and qualities to Taxpayer's traditional eighteen-hole course. Because the Private Courses are "comparable" under Rule 183, they may be included in the market comparison required by ETA 3080. The Public Courses, on the other hand, are not certified by the USGA as eighteen holes and do not offer the same eighteen-hole layout as the Private Courses. They are also shorter, par-3 courses. Even if played twice, the Public Courses are not "comparable" to Taxpayer's full eighteen-hole course and may not be included in the market comparison.

Taxpayer argues that ETA 3080 (and its predecessor, ETB 548.04.111) explicitly eliminated any requirement that the courses chosen for the market comparison be "comparable" or "of like kind." Taxpayer states, "The comparability of courses cannot be considered because [ETA 3080] is mandatory and rejection of a course within the 10 closest public or private courses is not permitted."[5] In support of its position, Taxpayer cites Det. No. 86-55A, 2 WTD 353 (1987), in which a private eighteen-hole golf club included certain "inferior" courses in its market comparison under former WAC 458-20-114. The Department stated:

> [T]axpayers who use the actual usage of facilities method and perform a comparable worth survey or study must include a representative number of all golfing facilities within the survey. It is not appropriate or acceptable to exclude so-called "good" golf courses or "bad" golf courses. The rule seeks to determine the "average" charge for golf, not the charge for golf at a comparably good facility.

Taxpayer argues that the underlined portion in the quoted language above requires the inclusion of, literally, "*all*" golf courses within the linear distance range specified in ETA 3080, regardless of whether such golf courses are "comparable" to Taxpayer's golf course. We disagree with such a broad interpretation of the determination. We conclude that 2 WTD 353 stands for the proposition that the Department may not exclude golf courses from the market study on the grounds that they are "better" or "worse" in quality or condition than the taxpayer's own golf course. Here, the Audit Division did not exclude golf courses from the market comparison based upon such factors. Therefore, 2 WTD 353 is inapplicable.

Taxpayer's petition is granted with respect to the Private Courses and denied with respect to the Public Courses.

[5] Taxpayer's Appeal Petition at 6 (Sept. 3, 2013).

DECISION AND DISPOSITION

Taxpayer's petition is granted in part, denied in part, and remanded to the Audit Division for adjustment to the assessment in accordance with this determination.

Dated this 5th day of September, 2014.