Cite as Det. No. 15-0291, 36 WTD 444 (2017)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of Assessment of	)	DETERMINATION
	)	No. 15-0291
. . .	)	Registration No. . . .

Rule 194: B&O TAX – SUBSTANTIAL NEXUS – TAXPAYER'S REPRESENTATIVE. Where a commercial bank exercises significant control and direction over account solicitation activities, and provides marketing materials that are used by store employees to solicit customers to sign up for private label credit cards. Those employees are acting as the commercial bank's representatives in promoting the private label cards, and these activities are sufficient to establish taxing nexus.

Rule 194; RCW 82.04.460: APPORTIONMENT – PLACE OF BUSINESS. If a taxpayer has activities in a state sufficient to create nexus under Washington standards, then it is deemed to have a "place of business" in that state for apportionment purposes.

Rule 14601(4); RCW 82.04.460: PRE-2010 APPORTIONMENT. Washington receipts include income received from Washington cardholders, which should be included in the numerator in computing an apportionment percentage.

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.

Kreger, A.L.J. – A commercial bank in the business of originating, managing, and servicing credit cards protests an assessment, asserting that it lacks substantial nexus with Washington. Alternatively, it asserts that the private label card business is distinct and separate from its general credit card business so income was incorrectly apportioned. We conclude that the Taxpayer has taxing nexus with Washington, and that the Taxpayer has failed to provide sufficient detail to support adjustment to the apportionment approach applied during the audit and, accordingly, deny the Taxpayer's petition.[1]

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

ISSUES

1. Under WAC 458-20-194, are the actions of retailer employees promoting and initiating agreements for the Taxpayer's credit cards, in conjunction with the Taxpayer's activities in managing and approving those accounts, sufficient to establish taxing nexus with Washington?

2. Has the Taxpayer established that income was incorrectly apportioned based on the assertion that its private label credit cards are a distinct and separate line of business from other credit card accounts?

3. Has the Taxpayer established a basis to revise the apportionment of income under WAC 458-20-194(4)?

FINDINGS OF FACT

. . . (Taxpayer) is a commercial bank, headquartered [out-of-state].[2] The Taxpayer is a wholly-owned subsidiary of a publicly traded bank holding company . . . . The Taxpayer is a commercial bank but does not carry on branch banking businesses, but rather, is in the business of originating, managing, and servicing unsecured loans as a credit card issuer.

The Department of Revenue (Department) audited the Taxpayer's business activities for the period of January 1, 2007, through May 31, 2010.[3] This audit resulted in an assessment for additional tax due, Document No. . . . in the amount of $ . . . . The assessment comprised $ . . . in service and other activities (Service) business and occupation (B&O) Tax, a delinquent penalty of $ . . . , $ . . . in interest, and a 5% assessment penalty of $ . . . . The Taxpayer timely appealed the assessment.

Business Activities:

The Taxpayer issues Visa and MasterCard general credit cards, and also issues private label store branded credit cards. The majority of the cards issued by the Taxpayer were Visa, MasterCard, and other general credit cards. The private label cards include both cards that can only be used at the retailer named on the card, as well as linked accounts, which are a retailer linked MasterCard or Visa card that can also be used at other establishments. As a credit card issuer, the Taxpayer engages in both loan origination and servicing activities. . . .

The Taxpayer does not maintain a place of business in Washington, and does not have any resident employees in the state. During the audit period, the Taxpayer issued credit cards to Washington customers. The Taxpayer also purchased accounts receivable from retailers that accept the Taxpayer's credit cards. The purchase of these accounts was governed by the terms of a network agreement for the general credit cards and the retail services agreement for the private label cards.

[2] On July 1, 2011, the business of [Taxpayer] was acquired by . . . .
[3] The audit period at issue here is longer than the usual audit period because the Taxpayer signed a statutory non-claim period waiver agreement covering January 1, 2007, through December 31, 2008.

The loan origination process generally has five components:

1) Solicitation - initiating contact with a potential customer. This may occur through the Internet, by phone, and through distribution of printed marketing materials. For the private label card, the retailer may also engage in marketing activities to promote its particular credit card. The Taxpayer makes printed marketing materials available to the retail credit card partner, but does not compensate the retailer for the distribution of these materials. (Private label transactions are addressed in greater detail below.)
2) Credit investigation - determining the credit worthiness of the potential customer. The Taxpayer uses an automated process to apply specific criteria to applications. On occasion, there may also be a manual review by an employee to review a specific application in more detail than automated review.
3) Negotiation of terms – offer of specific credit amount, interest rate, frequency of repayment, and security requirements. These terms are based on guidelines established by the Taxpayer's senior management and do not involve negotiation of terms for a specific individual cardholder. Rather, this process established standardized lending terms based on the nature of the cardholder, category of creditworthiness of the cardholder, and considering the likely use of the borrowed funds.
4) Loan underwriting approval – evaluation and approval of a revolving line of credit for a specific prospective cardholder. This involves evaluation of the application submitted in conjunction with the results of an investigation of the prospective cardholder.
5) Administration and servicing – managing the revolving line of credit issued to a cardholder. This involves collection of payments, engaging in collection activities where necessary, and reporting the status of credit card agreements. Some individual retailers may also accept payments for accounts at their store locations from customers, which are then forwarded to the Taxpayer for processing and accounting.

<u>Typical Credit Transaction</u>

A typical credit card transaction involves the following five parties: 1) cardholder, purchaser of goods or services; 2) merchant, seller of goods or services and normally responsible for collecting and reporting and sales or use taxes due on the transaction; 3) acquiring bank, member of one or more payment networks that contract with merchants to process and settle credit card transactions using a depository account; 4) issuing bank, the lender in the sales transaction who is also a member of one or more payment networks, and contracts with the cardholder and maintains a revolving line of credit for that cardholder; and 5) payment network, (Visa/MasterCard) operates to process the transaction and sets the responsibilities rules, payment schedules, and other requirements for participation in the credit card transactions. The payment networks also arbitrate disputes between the parties.

After a cardholder has selected goods for purchase and presented a credit card to the retailer for purchase, the merchant captures account information from the credit card at the point of sale and requests an authorization for the transaction from the issuing bank. The merchant then transmits the cardholder's account information and transaction information to the merchant's acquiring bank for processing. The acquiring bank routes an authorization request to the issuing bank over the

payment network. If the cardholder has sufficient credit to fund the transaction, the issuing bank puts a hold on the amount of credit for that transaction and then issues an authorizing code to the acquiring bank using the payment network. The acquiring bank sends an authorization code back to the merchant, who prepares a sales draft or receipt. The cardholder signs the sales draft.

Merchants compile their sales drafts, generally daily, and send the sales drafts and authorization codes in a "batch" submission. The Taxpayer purchases the retailer's accounts receivable (bundled with other accounts receivable created by that retailer and being sold to the Taxpayer) by making a payment to a designated settlement account, net of any applicable "interchange fees" or "merchant discounts." Generally, within 24 to 72 hours, the issuing bank transfers the amount of the sales draft through the payment network to the acquiring bank, less the interchange fee. The issuing bank establishes a loan receivable for the amount of the account receivable acquired from the merchant. The acquiring bank then deposits the proceeds received from the issuing bank into the merchant's account, less a discount fee.

Private Label Cards

The private label credit cards includes cards that may exclusively be used at a specific retailer, as well as cards that can be used at any business location that accepts credit cards. All of the private label cards at issue also carry the Taxpayer's name and logo. The Taxpayer and the individual retailer jointly oversee and manage the respective credit card programs, which are governed by contracts between those parties. As noted above, the Taxpayer participates in developing the marketing plan for these cards and provides marketing and promotional materials to the retailer. In addition to the in-store marketing, the Taxpayer also reviews and approves promotional materials and information included in billing statements sent to customers. *See, e.g.,* Private Label Program Agreement by & Between . . . and . . . (. . . Private Label Agreement), dated May 21, 2002, § 4.05.[4]

In addition to the in-store marketing and promotional efforts, the Taxpayer also reviews its current account list for customers that match the retailer's desired demographics and will engage in a coordinated marketing campaign up to four times per calendar year, including billing statement inserts sent to existing customers, and direct mail or similar offers to prospective customers. . . . Private Label Agreement § 4.06. The Taxpayer also jointly owns the transaction data and accountholder list. . . . Private Label Agreement § 5.02.

The Taxpayer and the retailer establish an Operating Committee with each party having the right to designate an equal number of representatives. . . . Private Label Agreement § 5.08. The Operating Committee engages in the review of ongoing operations; oversees policy, marketing, and operations; reviews program terms and conditions; reviews site strategies including training, staffing, and expansion; and evaluates product development. *Id.* There is also a Management Committee, again with equal representation. . . . Private Label Agreement § 5.09. The duties of the Management Committee include setting and reviewing strategy for the program, overseeing competitive positioning of the program, and overseeing the financial performance of the program. *Id.* The Taxpayer and the retailer jointly establish servicing standards that also apply to retailer store associates. . . . Private Label Agreement § 6.04.

[4] . . .

The Taxpayer has a variety of income streams from its business activities. It receives interest income from cardholders on outstanding balance amounts. The Taxpayer also received interchange income from the conduct of its card-issuing and receivables-purchasing activities. There are also a number of fees that cardholders are required to pay. Some cards issued by the Taxpayer also have an annual fee that is paid by the cardholder. Cardholders pay fees for taking out cash-advances on their cards, as well as balance transfer fees, late payment fees, fees for exceeding the specified credit limit, and fees for return items. The Taxpayer also received speed-pay fees from cardholders for payment processing to a designated third-party payee on behalf of the credit card issuer. The Taxpayer also has income from trading and investment activities. The Taxpayer emphasizes that the services it renders to generate these fees, and the activities in processing and recording these activities, occur outside of Washington.

ANALYSIS

Washington imposes a B&O tax "for the act or privilege of engaging in business" in this state. RCW 82.04.220. The tax rate varies based on the type of business activity the taxpayer engages in and the statute provides numerous classifications of activities. Taxpayers engaging in service businesses that are not otherwise classified are subject to the service and other activities B&O tax. RCW 82.04.290. The B&O tax is "extensive and is intended to impose . . . tax upon virtually all business activities carried on in the State." *Analytical Methods, Inc. v. Dep't of Revenue*, 84 Wn. App. 236, 241, 928 P.2d 1123 (1996) (quoting *Palmer v. Dep't of Revenue*, 82 Wn. App. 367, 371, 917 P.2d 1120 (1996)). "Business" is defined broadly to include "all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly." RCW 82.04.140.

Notwithstanding the broad definition of "business" in RCW 82.04.140, which essentially includes all business activities that benefit a taxpayer, a state cannot tax transactions that do not have sufficient connection or "nexus" with the state. *See Complete Auto Transit v. Brady*, 430 U.S. 274 (1977); *Tyler Pipe Indus., Inc. v. Washington Dep't of Revenue*, 483 U.S. 232 (1987); *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992); Det. No. 05-0376, 26 WTD 40 (2007).

In *Complete Auto Transit* . . ., the U.S. Supreme Court repudiated the "underlying philosophy that interstate commerce should enjoy a sort of 'free trade' immunity from state taxation" and articulated a four-pronged test that a state tax must satisfy to withstand a Commerce Clause challenge to its jurisdiction to tax. [430 U.S.] at 278-79. The Court held that the Commerce Clause requires that the tax: (1) be applied to an activity with "substantial nexus" with the taxing state, (2) be fairly apportioned, (3) not discriminate against interstate commerce, and (4) be fairly related to the services provided by the state. *Id.* at 279.

[One way] substantial nexus is created is by sending employees or representative agents into Washington. *See, e.g., Standard Pressed Steel Co. v. Washington Dep't of Revenue*, 419 U.S. 560 . . . (1975) (rejecting a commerce clause challenge to a tax on an out-of-state corporation that employed a single person in-state); *Tyler Pipe*, 483 U.S. 232 (1987) (holding that a showing of sufficient nexus cannot be defeated by the argument that the seller's representative was properly characterized as an independent contractor instead of as an agent); [*Lamtec Corp. v. Dep't of Revenue*, 170 Wn.2d 838, 246 P.3d 788 (2011) (B&O tax properly imposed where company

regularly sent sales representatives into the state to maintain its market); *see also*] *Scripto, Inc. v. Carson*, 362 U.S. 207 (1960) (holding that nexus was established by a seller's in-state solicitation performed through independent contractors); Det. No. 05-0376, 26 WTD 40 (2007); Det. No. 01-074, 20 WTD 531 (2001).

Rule 194 sets forth Washington's nexus standards for taxpayers that are subject to the service and other activities B&O tax.[5] "Nexus" is defined in Rule 194(2)(a) as:

> [T]hat minimum level of business activity or connection with the state of Washington which subjects the business to the taxing jurisdiction of this state. Nexus is created when a taxpayer is engaged in activities in the state, either directly or through a representative, for the purpose of performing a business activity. It is not necessary that a taxpayer have a permanent place of business within a state to create nexus.

(Emphasis added.)

The determination of whether in-state activities create nexus looks to the entire collection of a taxpayer's different activities, the totality of which creates substantial nexus. *GMC v. City of Seattle*, 107 Wn. App. 42, 25 P.3d 1022 (2001)[6]; *see also General Motors Corp. v Washington,* 377 U.S. 436 (1964) (Holding that it is the bundle of corporate activity that determines whether a taxpayer has nexus with a state), *rev'd on other grounds, Tyler Pipe Industries, Inc. v. Dep't. of Revenue*, 483 U.S. 232, 250 (1987); WAC 458-20-193. Thus, establishing taxing nexus requires consideration of the entire bundle of a taxpayer's in-state activities.

The Taxpayer emphasizes that it did not own property, have employees, or directly engage in business activities in this state. However, Rule 194(2)(a) makes clear that nexus can also be established "through a representative." In this case, employees of the retailers of the Taxpayer's

---

[5] Effective June 1, 2010, RCW 82.04.067 provides a new nexus standard [based on economic presence in Washington] for such income. *See also* WAC 458-20-19401.

[6] In *GMC,* the Washington Court of Appeals recognized that it is the collective activities of a taxpayer within the state that may be used to support a finding of substantial nexus for B&O tax purposes. The court in *GMC* stated:

> In this case, both GM and Chrysler direct national advertising to the City of Seattle. They send sales, service, and parts managers to their dealers in Seattle on a monthly basis to discuss market conditions, new products, retail customer satisfaction levels, and the like. These representatives speak with dissatisfied customers and discuss problems that may be occurring with certain makes of automobiles. The representatives also train the dealers in sales and management techniques. Finally, the Seattle dealers actively market the automakers' warranties that accompany the sale of an automobile and make service repairs at the dealerships in Seattle on behalf of the automakers. These warranties serve an important marketing function because customers are unlikely to purchase a new vehicle without a warranty.
>
> . . .
>
> We are satisfied that in this case**, the collective activities** of each automaker are strategically designed to maximize their sales within the City and that the absence of these activities would significantly affect their ability to maintain a share of the Seattle market. Without these activities, their name recognition, goodwill, ability to obtain market data, customer feedback, and trends unique to Seattle, and their ability to compete with other automakers would be adversely impacted. We hold that substantial nexus exists to justify the City's imposition of its business and occupation tax upon the automakers. . . .

GMC v. City of Seattle, 107 Wn. App. at 13 -17 [(emphasis added)].

private label cards distributed marketing materials provided by the Taxpayer, to implement a marketing plan that the Taxpayer jointly developed with the retailer, solicited new accounts, and processed initial applications, which were then reviewed and approved by the Taxpayer. As noted in the facts, the contractual relationship between the Taxpayer and the retailers provide the Taxpayer with significant control and direction over these activities.

We also note that the marketing materials and in-store display materials, as well as the subsequently issued credit cards and billing statements all carried the Taxpayer name and logo, thus promoting and marketing the Taxpayer's brand in Washington. We conclude that while engaged in soliciting customers for the Taxpayer's private label credit cards, the retailer's employees were representing the Taxpayer and promoting the Taxpayer's products under the terms of the specific agreement the Taxpayer had negotiated with the retailer.

The Taxpayer seeks to characterize the activities of the retail employees as benefiting the retailer and in service of the retailer's business. We do not dispute that the initiation of a new credit card account relationship benefited the retailer, but it does not follow that this benefit to the retailer subsumes or negates a benefit to the Taxpayer. The services are provided to solicit and initiate these accounts under the Taxpayer's direction and control, and are services on the Taxpayer's behalf and for the Taxpayer's benefit, as well as that of the retailer. The marketing and solicitation of the credit cards promotes both the retailer's brand and the Taxpayer's brand, and establishes a business relationship for both with the credit card holder.

The services or activities engaged in by the retailer's employees, in promoting and soliciting the Taxpayer's cards as detailed above were subject to the Taxpayer's direction and control, and used materials and information provided by and approved by the Taxpayer. We conclude that these activities are sufficient to characterize the retailer's employees as acting as the Taxpayer's representatives and performing business activities on the Taxpayer's behalf in Washington, which are sufficient to establish taxing nexus for the Taxpayer for the audit period (2007-2010) under the plain language of Rule 194(2)(a).[7]

The Taxpayer asserts that it does not have the requisite physical presence to establish nexus, and that correspondingly, taxation of its activities is prohibited by the Commerce Clause. Additionally, the Taxpayer argues that enacting an economic nexus standard for service activities for periods after June 1, 2010, *see fn 6* supra, serves to emphasize the need for physical presence for prior periods.

The Commerce Clause of the United States Constitution gives Congress the power to "regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3. Despite the express grant to Congress over the power to regulate commerce, there is a prohibition, in the absence of affirmative congressional action, against state interference with interstate commerce (known as the dormant Commerce Clause). *See, e.g., Oklahoma Tax Commission v. Jefferson Lines, Inc.*,

---

[7] *See also* Det. No. 08-0128, 28 WTD 9 (2009). In that case, we held that an out-of-state company that promotes sales on-line and through infomercials did not have substantial nexus because the activities of an affiliated entity, with established taxing nexus, did not engage in any promotional or marketing relationships. In this case in contrast, while the entities are not affiliated, the retailer's employees are engaging in substantial marketing and promotional activities under the direction of the Taxpayer and on its behalf.

514 U.S. 175, 179, (1995); *Quill Corp. v. North Dakota*, 504 U.S. 298, 309, (1992); *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 458, (1959). Limits on state jurisdiction to tax interstate commerce under the dormant Commerce Clause have evolved steadily over the years. *Quill,* 504 U.S. at 298.

The concept of "substantial nexus" with a taxpayer, under the dormant Commerce Clause, is best understood as "a means for limiting state burdens on interstate commerce." *Quill*, 430 U.S. at 313. States may not unduly burden interstate commerce by taxing a person that lacks nexus with the taxing state. However, while the Commerce Clause prevents states from unduly burdening interstate commerce, "[i]t is not the purpose of the Commerce Clause to relieve those engaged in interstate commerce from their just share of state tax burden even though it increases the cost of doing the business." *General Motors Corp. v. City of Seattle,* 107 Wn. App. 42, 50, 25 P.3d 1022 (2001); *see also Dep't of Revenue v. Ass'n of Washington Stevedoring Cos.*, 435 U.S. 734, 748, 98 (1978) ("The Commerce Clause balance tips against the [state] tax only when it unfairly burdens commerce by exacting more than a just share from the interstate activity.").

As detailed above, we have found that the retailer's employees were acting as representatives of the Taxpayer establishing the requisite substantial nexus under Rule 194 and correspondingly also satisfy the requirements of the Commerce Clause. Accordingly, we do not agree with the Taxpayer's assertion that it lacked a physical presence in Washington. The Taxpayer's instate activities establish a commercial relationship that benefits the Taxpayer and also serves to market the Taxpayer's brand name. As noted above, in addition to creating a direct client relationship with the private label card holder, the Taxpayer also obtains transaction and personal information about these customers that it can then use for permissible business purposes.

The Taxpayer does not dispute that it has taxing nexus with Washington, for periods after June 1, 2010, under the economic nexus standard. However, we disagree that the existence of economic nexus, for periods after June 1, 2010, should impact the analysis of the Taxpayer's business activities for the prior period under the standards applicable for those periods. We have found that the Taxpayer had representatives soliciting and promoting its business activities in Washington, which creates the requisite substantial taxing nexus under Rule 194. Had the Taxpayer lacked this presence, created by representatives acting on its behalf and under its direction, then there may have been a lack of substantial nexus until the enactment of the economic nexus standard.

The Taxpayer next asserts that to the extent taxing nexus is established, it should be limited to the private label accounts. As noted above, under Rule 194 a taxpayer creates nexus in this state when it "is engaged in activities in the state, either directly or through a representative, for the purpose of performing a business activity. It is not necessary that a taxpayer have a permanent place of business within a state to create nexus." *Id.* The Department has held that a seller of services has taxable nexus with a state by entering its marketplace to sell its services. Det. No. 98-196, 19 WTD 19 (2000). As detailed above, the Taxpayer has established substantial nexus and created the minimum presence necessary to tax in Washington. It also is not disputed that the Taxpayer has substantial business activities outside of Washington. The scope of what income is taxable in Washington is one of apportionment, which is how sources that generate income are sourced or allocated and is addressed below.

Apportionment

During the Audit Period at issue here, RCW 82.04.460(1)[8] provided:

> Any person rendering services taxable under RCW 82.04.290 or 82.04.2908 and maintaining places of business both within and without this state which contribute to the rendition of such services shall, for the purpose of computing tax liability under RCW 82.04.290 or 82.04.2908, apportion to this state that portion of the person's gross income which is derived from services rendered within this state. Where such apportionment cannot be accurately made by separate accounting methods, the taxpayer shall apportion to this state that proportion of the taxpayer's total income which the cost of doing business within the state bears to the total cost of doing business both within and without the state.

There is no dispute that Taxpayer's activities fall into the service and other activities B&O tax classification under RCW 82.04.290. The "place of business" requirement, however, does not mean that the business must maintain a physical location as a place of business in the other states in order to apportion its income. Rule 194(4)(b); *see also* Det. No. 87-186, 3 WTD 195 (1987). If a taxpayer has activities in a state sufficient to create nexus under Washington standards, then it is deemed to have a "place of business" in that state for apportionment purposes. Det. No. 92-252E, 12 WTD 417 (1992); Det. No. 92-262E, 12 WTD 431 (1992). We have already established that Taxpayer has nexus in Washington. The Taxpayer also has nexus in other states. Therefore, it maintained "places of business" in multiple states that contributed to the rendition of taxable services. Taxpayers are entitled to apportion to Washington the portion of their total income derived from services rendered in Washington.

RCW 82.04.460(1) sets forth two distinct methods of apportionment. The statutorily preferred method of apportionment under RCW 82.04.460(1) is separate accounting, under which income is apportioned to the location where the services generating the income were performed.[9] In other words, separate accounting is a method of apportionment that separates Washington income from other income. However, if apportionment by separate accounting cannot be accurately made, then cost apportionment must be used. RCW 82.04.460(1). Taxpayers and the Audit Division agree that separate accounting is not applicable here. Therefore, Taxpayers must use cost apportionment to determine their gross income subject to Washington's B&O tax.

---

[8] Effective June 1, 2010, RCW 82.04.460(1) was amended by Laws of 2010, ch. 23, §§ 102-112 and now provides:

> Except as otherwise provided in this section, any person earning apportionable income taxable under this chapter and also taxable in another state must, for the purpose of computing tax liability under this chapter, apportion to this state, in accordance with RCW 82.04.462, that portion of the person's apportionable income derived from business activities performed within this state."

All references to RCW 82.04.460 in this determination refer to the version in effect prior to the 2010 statutory change, unless otherwise indicated.

[9] Separate accounting is an apportionment method sometimes referred to as geographic or transactional accounting. *See Container Corp. v. Franchise Tax Bd.*, 463 U.S. 159, 164 (1983).

On appeal, the Taxpayer has provided more complete contract information than was produced during the audit and has also provided more detail on the revenue related to its Washington private label accounts, but has not provided detail on all of its Washington income for the audit period.

Before June 1, 2010, WAC 458-20-14601 (Rule 14601) was the applicable rule instructing how income was to be apportioned for financial institutions doing business both inside and outside of Washington.[10] Rule 14601 provides tax reporting guidelines for financial institutions doing business both inside and outside the state of Washington. Under RCW 82.04.460(2) and Rule 14601(2), if a business meets the definition of a financial institution and the business is taxable under RCW 82.04.290 and also taxable in another state, the financial institution shall allocate and apportion its apportionable income under Rule 14601.

The Taxpayer does not substantively contest the applicability of Rule 14601, but rather asserts that the income apportioned under that rule should be limited to services related to banking activities conducted in Washington, and it asserts, as its banking activities occur exclusively outside of Washington, all of its income should be apportioned outside of Washington. The Audit Division responds that some of the credit card receipts received by the Taxpayer are expressly addressed under the receipts factor, under Rule 14601 and accordingly apportionable to Washington. We find no basis or authority supporting the Taxpayer's restrictive reading of Rule 14601, but rather concur with the Audit Division that the plain language of the rule addresses Washington receipts that apply to income the Taxpayer receives from Washington cardholders. For example, Rule 14601(4)(g) specifies that the numerator is to include "interest and fees or penalties in the nature of interest from credit card receivables and income fees charges to card holders, such as annual fees, if the billing address of the card holder is in this state." As detailed in the fact section, the Taxpayer receives income from Washington cardholders covered by Rule 14601(4)(g). Under the rule, the allocation turns on the billing address of the card holder rather than on where those fees are processed or received. Accordingly, we find no basis to the Taxpayer's challenge to the general application of Rule 14601 addressing apportionment for the audit period.

The taxpayer has the burden of proof when contesting a tax assessment. *See* RCW 82.32.160; RCW 82.32.180; *Budget Rent-A-Car of Washington-Oregon*, Inc. v. Dep't of Revenue, 81 Wn.2d 171, 500 P.2d 764 (1972); Det. No. 00-099, 20 WTD 53 (2000). In this case, the Taxpayer has not provided complete business records to establish that the apportionment and income amounts relied upon by the Audit Division were incorrect. Additional contract information was provided and more detail about the private label card income was produced, but complete records on all of its Washington receipts for the period was not provided. As noted, the Taxpayer received income from Washington cardholders, which is apportioned based on the billing address of the card holder, in Washington, and correspondingly, includable in the numerator for apportionment purposes. In the event that the Taxpayer has additional business records to support a specific challenge to the apportionment applied by the Audit Division, it may petition for reconsideration and provide complete business detail supporting an alternative number of receipts allocable to Washington. In the absence of specific business records supporting a different sum allocable to Washington, we sustain the apportionment approach applied by the Audit Division.

[10] Apportionment for financial institutions for periods after June 1, 2010, is addressed in WAC 458-20-19404.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 28th day of October 2015.