

Cite as Det No. 11-0081, 32 WTD 46 (2013)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Tax Ruling of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 11-0081
...)	
)	Registration No. . . .
)	TI&E Letter Ruling
)	Docket No. . . .

- [1] RCW 82.04.192, RCW 82.04.050: RETAIL SALE – DIGITAL AUTOMATED SERVICES. Domain name registration services purchased from a domain name registrar are “digital automated services” under RCW 82.04.192(3)(a).
- [2] RCW 82.04.050, RCW 82.04.190: RETAIL VS. WHOLESALE SALE – CONSUMER – END USER. Computer data center’s purchase of digital automated services from a domain name registrar for resale to its own customers is a wholesale sale.
- [3] RCW 82.04.050, RCW 82.04.190: RETAIL VS. WHOLESALE SALE – CONSUMER – END USER. Computer data center’s sales of digital automated services to its customers are “retail sales” under RCW 82.04.050(8)(a).

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. – A computer data center appeals a letter ruling by the Department of Revenue’s Taxpayer Information and Education section advising that it is required to pay retailing business and occupation tax and collect retail sales tax on amounts received for performing “digital automated services.” The petition is denied.¹

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

ISSUES

1. Are domain name registration services that Taxpayer purchased from a registrar “digital automated services” under RCW 82.04.192(3)(a)?
2. If so, is Taxpayer’s purchase of digital automated services from a registrar a “retail sale” under RCW 82.04.050(8)(a)?
3. Is Taxpayer’s resale of digital automated services to its customers a “retail sale” under RCW 82.04.050(8)(a)?

FINDINGS OF FACT

A resolution of the issues in this determination requires an understanding of the domain name registration process. The Domain Name System helps users find their way around the internet. Every computer on the internet has a unique address, called an Internet Protocol address (or IP address). Each IP address is a unique string of numbers and/or symbols. To ease comprehension of the IP addresses, each sequence is given a secondary, simpler expression called a domain name.² For example, instead of typing in the IP address “192.0.34.163,” which is difficult to remember, users type in “www.icann.org” to access ICANN’s webpage.

No two domain names can be the same. To insure that all websites have unique domain names, a global nonprofit organization called ICANN (or Internet Corporation for Assigned Names and Numbers) was formed to manage the distribution of domain names and to ensure that each domain name maps to the correct IP address. Direct access by individual users to this clearinghouse for names is not permitted. Those wishing to establish or purchase a domain name must do so through a licensed third party, called a domain name registrar.³

Each domain name has a suffix that indicates which top level domain it belongs to, such as “.com” for commercial businesses, “.edu” for educational institutions, and “.gov” for government agencies. Thus, in the URL <http://dor.wa.gov>, the domain name is “dor.wa.gov” and the top-level domain is “.gov.” A domain name registry is a database of all domain names registered in a top-level domain. A registry operator keeps the database of domain names and converts domain names to IP addresses.⁴

[Taxpayer] is a Washington limited liability company that operates a data center in . . . Washington. Taxpayer’s core services include colocation solutions, data backup, dedicated servers, shared hosting, virtual private servers, and hybrid computing. Taxpayer provides some of its existing customers with domain name registration services, which comprise a small portion of all services provided by Taxpayer.

² ICANN Home Page, <http://www.icann.org/tr/english.html> (last visited February 28, 2011).

³ *Id.*

⁴ Wikipedia, http://en.wikipedia.org/wiki/Domain_name_registry (last visited February 28, 2011).

Taxpayer maintains a reseller account with [a registrar company] which allows Taxpayer to purchase and resell domain names to or on behalf of third parties. [The registrar company] is a Washington corporation that is a registrar of domain names. Taxpayer registers domain names with [the registrar company] in the following manner:

- Taxpayer receives a domain name registration request from a customer.
- Employees gather relevant data from the customer and manually input that data into a ticket tracking system, which manages and maintains a queue of all customer activity. Employees typically spend about ten minutes performing this task.
- Employees place a flag in the ticket system, which forwards the customer's ticket to the billing department for fee collection. The billing department processes the ticket by sending an invoice to the customer and sometimes charging the customer's credit card. It takes approximately two minutes to complete this step.
- After the customer has been billed, a flag is placed in the ticket tracking system to indicate that it is ready to move forward for further processing.
- Employees then complete the domain name registration process by logging on to Taxpayer's reseller account on [the registrar company's website] and manually entering the customer information into [its] database, such as the desired domain name, administrative contacts, technical contacts, billing contacts, and domain name service information. This process takes approximately five minutes.
- [The registrar company's] automated system handles the registration process and corresponds with the necessary third parties: the registry . . . and ICANN. [The registrar company] uses software to perform this automated process, which allows it to instantaneously notify Taxpayer that the domain name has been successfully registered (or renewed, as the case may be).

The domain name registrations that Taxpayer performs are effective for one year, after which they must be renewed. Taxpayer also performs renewals for these domain names using a similar automated process. The vast majority of Taxpayer's domain name registration services are for renewal, rather than initial registration. . . . [The registrar company] charges Taxpayer . . . for each domain name registration, and Taxpayer, upon resale, charges its customers [a higher fee] for each domain name registration. Taxpayer does not alter, use, or consume the domain name registrations purchased from [the registrar company] before reselling it to its own customers. Taxpayer's customers have no contractual right of further commercial redistribution of the domain names after purchase. After Taxpayer's customers pay the annual . . . fee, they are not required to make continued payments as a condition of sale. Taxpayer currently does not pay retail sales tax to [the registrar company], nor does Taxpayer collect retail sales tax from its customers.

On August 18, 2010, Taxpayer requested a written ruling from the Department's Taxpayer Information and Education ("TI&E") section asking, "Is the purchase of domains for the purpose of resell subject to sales tax?" On August 25, 2010, the TI&E section ruled that the purchase of domain name registration services were digital automated services and "if [Taxpayer] transfers the same service they purchased, they are essentially reselling a digital automated services and

the sale is subject to sales/use tax if sourced in Washington.” Taxpayer appeals that written ruling.

ANALYSIS

The B&O tax is a gross receipts tax levied on the privilege of engaging in business in the state of Washington. RCW 82.04.220. The B&O tax rate for those in the business of “making sales at retail” is .471 percent. RCW 82.04.250. . . .

Taxpayer Purchases Digital Automated Services from [the registrar company].

[1] Recent legislation, retroactive to July 26, 2009, clarifies the excise taxation of digital products. 2010 Wash. Laws ch. 111. Under the new law, the terms “sale at retail” and “retail sale” now include, among other things, sales to consumers of digital goods, digital codes, and digital automated services in which the purchaser is not obligated to make continued payment as a condition of the sale. RCW 82.04.050(8)(a)(iii). “Digital automated services” means any service transferred electronically that uses one or more software applications. RCW 82.04.192(3)(a). “Transferred electronically” means obtained by means other than tangible storage media. RCW 82.04.192(8). Because [the registrar company’s] domain name registration services are transferred via the internet (through its website . . .), they are “transferred electronically.” And because [the registrar company’s] automated domain name registration service on its website uses computer software applications, it is a “digital automated service” as defined by RCW 82.04.192(3)(a).

Taxpayer’s Purchases from [a registrar company] are at Wholesale.

[2] Businesses that make retail sales within the meaning of RCW 82.04.050 are required to collect retail sales tax from sales to their customers, hold the tax in trust on behalf of the state, and report and remit the collected tax to the Department. RCW 82.08.050. One exemption from the retail sales tax is the wholesale sale. “Wholesale sales” are generally sales that are not retail sales. RCW 82.04.060. For instance, the retail sales tax does not apply if the purchaser resells an item of tangible personal property without intervening use. RCW 82.04.050(1)(a)(i). In the digital products context, “wholesale sale” includes any sale that is not a retail sale of digital goods, digital codes, or digital automated services. RCW 82.04.060(1)(h).

As previously discussed, the term “sale at retail” explicitly includes certain “sales to consumers of digital goods, digital codes, and digital automated services.” RCW 82.04.050(8)(a) (emphasis added). RCW 82.04.190(11)(a) defines “consumer” as “[a]ny end user of a digital product or digital code.” “Digital product” means digital goods and digital automated services. RCW 82.04.192(7). . . .

Taxpayer’s purchase of digital automated services from [the registrar company] is at wholesale because it is not a “retail sale.” It is not a “retail sale” because Taxpayer is not a “consumer” under RCW 82.04.190(11)(a). Taxpayer is not a “consumer” because it is not an “end user.” Taxpayer is not an “end user” because its reseller account with [the registrar company] is a

contractual relationship that permits Taxpayer to resell or otherwise commercially redistribute the digital automated services to its own customers. Thus, Taxpayer purchases digital automated services from [the registrar company] at wholesale and is not required to pay retail sales tax to [the registrar company] for those transactions.

[3] Taxpayer Resells DAS to Its Customers at Retail.

The next issue is whether Taxpayer resells the digital automated services to its customers at retail. We have already established that Taxpayer purchases digital automated services from [the registrar company] at wholesale. Taxpayer's customers to whom the digital automated services are resold are "consumers" under RCW 82.04.190(11)(a) because they are "end users" of the digital product. And they are "end users" because they do not have the contractual right to commercially distribute the digital automated services purchased from Taxpayer to others. Furthermore, Taxpayer's customers are not obligated to make continued payments to Taxpayer as a condition of the sale of domain name registration services. Therefore, Taxpayer's sale of digital automated services to its customers are "retail sales" under RCW 82.04.050(8)(a) and Taxpayer must collect sales tax on these transactions and remit them to the state. In addition, Taxpayer must also pay B&O tax under the "retailing" classification.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 8th day of March, 2011.