Cite as Det. No. 22-0105, 44 WTD 070 (2025)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Refund of	)	D E T E R M I N A T I O N
	)	
	)	No. 22-0105
	)	
. . .	)	Registration No. . . .
	)	

[1] WAC 458-20-241; RCW 82.04.080: EXCISE TAXES – BUSINESS AND OCCUPATION TAX – RADIO AND TELEVISION BROADCASTING. A television broadcast station was not engaged in television broadcasting when it allowed multichannel video programming distributors to incorporate their own advertising with the station's programming content and retransmit the altered signal to the distributor's customers.

[2] WAC 458-20-241; RCW 82.04.080: EXCISE TAXES – BUSINESS AND OCCUPATION TAX – RADIO AND TELEVISION BROADCASTING. A television broadcast station was not acting as a television broadcast station and was not engaged in qualifying broadcasting when it allowed multi-channel video programming distributors to alter and retransmit its broadcast signal, including its locally-produced content, and does not qualify for the preferential television broadcasting rate on the portion of its gross income attributed to its locally-produced content.

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.

McCormick, T.R.O. – A taxpayer that operates a television station that is licensed and regulated by the Federal Communications Commission (FCC) distributes content through over-the-air broadcasts and via retransmission by third-party multichannel video programming distributors (MVPDs), such as cable operators and direct-to-home broadcast satellite providers. The taxpayer asserts that it engages in television broadcasting with regard to its retransmission to MVPDs, including its own locally-produced content, and is eligible for the preferential business and occupation (B&O) tax rate available for radio and television broadcasting. We deny the petition.[1]

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

ISSUES

1. Whether, under RCW 82.04.280 and WAC 458-20-241, a taxpayer that operates a television station is engaged in television broadcasting when it enters into retransmission consent agreements with MVPDs to retransmit the taxpayer's broadcast signal to a wider audience.

2. Whether, under RCW 82.04.280 and WAC 458-20-241, a taxpayer that operates a television station qualifies for the preferential television broadcasting B&O tax rate on the portion of its gross income received from its locally-produced content included under retransmission consent agreements with MVPDs.

FINDINGS OF FACT

[Taxpayer] operates a [commercial broadcast network (Network)]-affiliated television station that is licensed by the FCC to broadcast to the . . . [cities in Washington] markets. Taxpayer's offices, studios, and transmitters are located in . . . . Taxpayer distributes content through over-the-air broadcasts and via retransmission by MVPDs.

During 2019 and 2020, the Department's Audit Division (Audit) investigated Taxpayer's business activities during the period of January 1, 2015, through October 31, 2019, (Audit Period) including reviewing Taxpayer's combined excise tax returns, books, and records. Audit reconciled the revenue amounts established by Taxpayer's records with the amounts reported on Taxpayer's combined excise tax returns and determined that Taxpayer had additional television broadcasting and service and other activities B&O tax liabilities.

On March 10, 2020, the Department issued Letter ID . . . , a notice of balance due (Assessment) in the total amount of $. . . , comprising $. . . in television broadcasting B&O tax, $. . . in service and other activities B&O tax, a credit of $. . . for amounts overpaid as royalties B&O tax[,][2] and $. . . in interest. The Assessment was due on April 10, 2020.

On March 19, 2020, and March 30, 2020, Audit granted waivers for the total amount of interest due under the Assessment. On March 31, 2020, the Department granted Taxpayer a 60-day extension of the Assessment due date. On May 22, 2020, Taxpayer paid the balance due under the Assessment.

As a [Network]-affiliate, Taxpayer receives [Network's] signal stream, which [consists] of [Network]-provided programming and advertisements. Taxpayer is licensed to retransmit [Network's] signal stream, and may incorporate Taxpayer's own locally-produced programming (such as local news and local sports) and advertisements into the signal stream, as provided under agreement. Taxpayer is authorized only to retransmit [Network's] signal stream and may not "delay the transmission of [Network] programming, edit such programming, or add to such programming in any way . . . ." Petition at 2. Taxpayer is required to retransmit certain [Network]-provided programming at specific timeslots as designated by [Network], while it may fill other

[2] Audit determined that Taxpayer mistakenly reported income from digital advertising as royalties income and, as a result, over-reported its retransmission royalties income by $. . . . Audit credited Taxpayer $. . . for overpaid royalties B&O tax on these amounts.

timeslots with a variety of Taxpayer's own locally-produced programming and advertisements, [Network]-affiliated content, and other filler content (such as syndicated television shows). All of these comprise Taxpayer's broadcast transmission (Transmission).

Taxpayer provides its Transmission to the public through over-the-air broadcasts within the . . . [cities in Washington] area. Taxpayer also enters into retransmission consent agreements with MVPDs to disseminate the Transmission to MVPDs' customers. Under these agreements, Taxpayer conveys to the MVPDs the same rights and obligations that it enjoys with respect to retransmitting the [Network]-provided programming; Taxpayer conveys similar rights and obligations with respect to retransmitting Taxpayer's locally-produced content. MVPDs may not delay, edit, or alter, the [Network]-provided[,] and Taxpayer's locally-produced, programming. MVPDs remove the advertising content included in the Transmission and incorporate MVPD-selected advertisements into the Transmission as provided under the retransmission consent agreements. Thus, the only difference in content between the Transmission and MVPDs' retransmission (Altered Transmission) is in the advertising content. Each MVPD enters into agreements with its customers on a one-to-one basis to convey the Altered Transmission, including MVPDs' own selected advertising, in real-time with Taxpayer's over-the-air broadcasts.

During the review period, Taxpayer reported $. . . in retransmission royalties income and paid $. . . in royalties B&O tax on the income Taxpayer received from MVPDs. Audit determined that Taxpayer granted MVPDs a right to use the Transmission when it granted MVPDs license to incorporate its own advertising into the Transmission, resulting in the Altered Transmission, which MVPDs then transmitted to their customers. The Assessment concluded that Taxpayer correctly reported all of the income it received from MVPDs under retransmission consent agreements under the [r]oyalties B&O [t]ax [c]lassification.[3]

On May 13, 2020, Taxpayer timely petitioned for administrative review of all periods included in the Assessment, except the June 2015 and July 2015 periods. Taxpayer asserts it mistakenly reported all of its gross income from retransmission consent agreements with MVPDs under the [r]oyalties B&O [t]ax [c]lassification and that it qualifies for the preferential B&O tax rate for television broadcasting. Taxpayer argues that the plain language of RCW 82.04.280 encompasses the gross income of its business, which is not limited to advertising income.

Taxpayer asserts it was engaged in television broadcasting when it conveyed the Transmission to MVPDs[4,5] for retransmission because it enters into retransmission consent agreements in order to distribute its broadcast signal to a wider audience and the Transmission MVPDs receive is identical to Taxpayer's over-the-air broadcasts. Taxpayer asserts MVPDs are geographically limited to retransmit the Transmission to the same regional areas served by Taxpayer's over-the-air broadcasts. Taxpayer argues that because the programming included in both its over-the-air broadcasts and the Altered Transmission is identical, Taxpayer was engaged in television broadcasting when it conveyed the Transmission to MVPDs, which then retransmitted the Altered

[3] During the June 2015 and July 2015 periods, the royalties B&O tax rate and television broadcasting B&O tax rate were both 0.484 percent of a taxpayer's gross income. Beginning with the August 2015 period, the royalties B&O tax rate increased to 1.5 percent, while the television broadcasting B&O tax rate remained unchanged.
[4] Taxpayer did not describe the method used to convey the Transmission to MVPDs.
[5] At the hearing, Taxpayer stated that the primary MVPD involved here was Comcast Cable Communications, LLC.

Transmission to MVPDs' customers. Taxpayer asserts it qualifies for the preferential broadcasting B&O tax rate on its gross income under the retransmission consent agreements.

Taxpayer cites the Board of Tax Appeals (BTA) decision *Puget Sound Industries, Inc. v. Department of Revenue,* Docket No. 54675 (August 16, 2000) in support of its assertion. In that matter, the taxpayer furnished live traffic reports from its helicopter to various entities, including a radio and television broadcasting company (KIRO) . . . .

. . .

. . . The BTA observed, "we do not see a basis for concluding KIRO's status as a broadcaster should automatically exclude PSI from that status merely because KIRO contracts with PSI for program content and pays a fee for that service." *Id.* at 7. The BTA determined that PSI was acting as [a] broadcaster engaged in qualifying broadcasting when it furnished its [traffic] reports to KIRO[,] and PSI's income was subject to the radio and television broadcasting B&O tax rate.

. . .

Taxpayer acknowledges the Department recently issued Excise Tax Advisory, No. 3055.2020 (July 30, 2020), including the following statement of non-acquiescence [addressing the *Puget Sound* decision]: "The Department will not follow the [BTA's] holding that a taxpayer [transmitting[6]] live programming under contract to a radio station, is also considered a broadcaster for [B&O] tax purposes when the frequency transmitted on is available to only a few listeners with specialized receivers."

. . .

Taxpayer asserts that if it does not qualify for the preferential television broadcasting B&O tax rate on all of its gross income under the retransmission consent agreements, Taxpayer should still qualify for the preferential rate on all of its locally-produced content included in the Altered Transmission. Taxpayer asserts the plain language of RCW [82.04.280(1)(f)] does not limit qualifying income to advertising income and that income it received from its locally-produced content under the retransmission consent agreements qualifies for the preferential rate. Taxpayer asserts MVPDs' retransmission of "[Taxpayer]'s locally-produced programming is functionally similar to [Taxpayer's] over-the-air broadcasts, and gross income from related advertising revenues are subject to B&O tax under the Broadcasting Classification." Petition at 5. Taxpayer contends it did not grant MVPDs any "right to use" its locally-produced content[,] and the portion of its gross income received under the retransmission consent agreements from locally-produced content qualifies for the preferential television broadcasting rate.

Taxpayer asserts that even though it derived its gross income from MVPDs under the retransmission consent agreements, the Altered Transmission is comprised of both [Network]-provided content and Taxpayer's locally-produced programming. Taxpayer asserts the two are separable and distinct, and that even if the [Network]-provided content remains subject to royalties

[6] [Det. No. 22-0105 mistakenly quoted Excise Tax Advisory, No. 3055.2020, as including the term "retransmitting," when it should have been "transmitting." That mistake has been corrected here.]

B&O tax, its gross income from its locally-produced programming would still qualify for the preferential television broadcasting B&O tax rate. Taxpayer argues its retransmission consent agreements should be considered as mixed transactions, and its separate and distinct activities under the agreements should be taxed at the applicable B&O tax rate, "so long as [there is] 'a reasonable basis for determining the value of the various activities performed." Petition at 8 (quoting Det. No. 98-194, 19 WTD 9 (1998)[)]. Taxpayer asserts that using "an audience factor of [Taxpayer]'s locally-produced content is the most reasonable basis for attributing gross income among the different B&O tax classifications applicable to the retransmission agreements." *Id.*

As part of this review, we requested Taxpayer provide an example of a copy of a retransmission consent agreement entered into with MVPDs. Taxpayer maintained these are highly protected within the industry and provided pages two through five of what it purports to be a retransmission consent agreement.

ANALYSIS

1. Taxpayer correctly reported its gross income from retransmission consent agreements under the [r]oyalties B&O [t]ax [c]lassification because Taxpayer is not engaged in television broadcasting when it enters into retransmission consent agreements with MVPDs to retransmit Taxpayer's Transmission to a wider audience.

Washington imposes a B&O tax "for the act or privilege of engaging in business" in this state. RCW 82.04.220. The B&O tax "is measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be." *Id.* The B&O tax rate varies according to the nature, or classification, of the business activity. *See generally,* Chapter 82.04 RCW.

Business activities other than those classified elsewhere in Chapter 82.04 RCW fall under the service and other activities B&O tax classification . . . . RCW 82.04.290(2). Income from advertising services, unless otherwise classified or exempt, is subject to service and other activities B&O tax. *See* WAC 458-20-218(2)(b) & (3)(a); Det. No. 13-0250, 33 WTD 363, 366 (2014).

Taxpayers that receive compensation for the use of intangible property are subject to the [r]oyalties B&O [t]ax [c]lassification. RCW 82.04.2907. "Gross income from charges to other broadcasters for granting the right to use intangible property (e.g., the right to use broadcast material) is taxable under the royalties classification." WAC 458-20-241(3)(c).

Radio and television broadcasting B&O tax classification, RCW 82.04.280(1)(f).

[P]ersons engaging in the business of "radio and television broadcasting" are subject to B&O tax at the rate of 0.484 percent of gross income, with a deduction (as provided during the Audit Period) for certain advertising revenue from:

> . . . *network, national and regional advertising computed as a standard deduction* based on the *national average* thereof as annually reported by the *federal communications commission*, *or* in lieu thereof by *itemization by the individual*

> *broadcasting station,* and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to *the station's total audience as measured by the 100 micro-volt signal strength* and delivery by wire, if any; . . . .

Former RCW 82.04.280(1)(f) (emphasis added).

Effective July 28, 2019, RCW 82.04.280(1)(f) was amended to provide for a deduction of:

> . . . revenues from network, national, and regional advertising computed either: (i) As a standard deduction that the department must publish by rule by September 30, 2020, and by September 30th of every fifth year thereafter, based on the national average thereof as reported by the United States census bureau's economic census; or (ii) in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the broadcasting station's total audience as measured by the .5 millivolt/meter signal strength contour for AM radio, the one millivolt/meter or sixty dBu signal strength contour for FM radio, the twenty-eight dBu signal strength contour for television channels two through six, the thirty-six dBu signal strength contour for television channels seven through thirteen, and the forty-one dBu signal strength contour for television channels fourteen through sixty-nine with delivery by wire, satellite, or any other means, if any;

Under both versions of RCW 82.04.280(1)(f), only revenue received from broadcasting local advertisements is subject to B&O tax at the preferential radio and television broadcasting tax rate.

Taxpayers have the burden of showing their entitlement to a particular preferential B&O tax rate, exemption, deduction or other tax benefit. *Group Health Co-op. of Puget Sound, Inc. v. Dep't of Revenue*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967); Det. No. 13-0401, 33 WTD 217 (2014).

The term "radio and television broadcasting" is not defined in RCW 82.04.280. When interpreting statutory language, our goal is to carry out the intent of the Legislature "by applying the statute's plain meaning, considering the relevant statutory text, its context, and the statutory scheme." *Cashmere Valley Bank v. Dep't of Revenue,* 181 Wn.2d 622, 631, 334 P.3d 1100 (2014). The Department's rule explaining tax reporting for the radio and television broadcasting industry, WAC 458-20-241 (Rule 241), defines "broadcast" or "broadcasting" as including "both radio and *television commercial broadcasting stations* unless it clearly appears from the context to refer only to radio or television." Rule 241(2)(a) (emphasis added). This definition of the term "broadcasting" is in accord with the plain language of RCW 82.04.280, which indicates that the "radio and television broadcasting" B&O tax is to be applied to a "broadcasting station." RCW 82.04.280(1)(f).

Federal statute and FCC meanings of technical terms "television broadcasting" and "broadcasting station" in RCW 82.04.280(1)(f) and Rule 241.

The terms "television broadcasting" and "broadcasting station" are not defined in RCW 82.04.280 or Rule 241. Where a statutory term is undefined, courts generally look to the dictionary to

determine the plain meaning of the term. *Bowie v. Dep't of Revenue*, 171 Wn.2d 1, 11, 248 P.3d 504 (2011). However, "television broadcasting" and "broadcasting station" are technical terms[,] and technical language should be given its technical meaning when used in its technical field. *City of Spokane v. Dep't of Revenue*, 145 Wn.2d 445, 452, 38 P.3d 1010 (2002)[7]; *Keeton v. Dep't of Soc. & Health Servs.*, 34 Wn. App. 353, 361, 661 P.2d 982 (1983). A term's technical meaning may be provided by rule promulgated by an agency familiar with the technical meaning. *City of Spokane*, 145 Wn.2d at 454. Washington courts have looked to federal agency interpretations where the Washington statute is similar to the federal statute. *See Black Ball Freight Service, Inc. v. Washington Util. & Transp. Comm'n*, 74 Wn.2d 871, 874, 447 P.2d 597 (1968) (Interstate Commerce Commission interpretations of federal statutes substantially similar to state statute governing carrier route permits constitute cogent authority.).

The Department has consistently looked to the FCC's technical guidance in determining whether a taxpayer's activities fall within the [r]adio and [t]elevision [b]roadcasting B&O [t]ax [c]lassification. RCW 82.04.280 makes specific reference to the FCC [in its pre-2019 form] when discussing the proper application of the radio and television broadcasting B&O tax rate, and the FCC licenses and regulates television broadcast stations. Det. No.13-0250, 33 WTD 363 (2014); Det. No. 05-0115, 25 WTD 102 (2006); Det. No. 01-036, 21 WTD 13 (2001); Det. No. 92-363, 12 WTD 519 (1992). *See* 47 U.S.C. §§ 151, 154, 308-309; 47 C.F.R. § 73, Subpart E. "Broadcasting" is defined in the Communications Act of 1934 as "the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations." 47 U.S.C. § 153(7). In this context, the word "radio" includes both broadcast radio and television. *See* 47 U.S.C. § 153(40).[8] The FCC defines "television broadcast station" as "[a] station in the television broadcast band transmitting simultaneous visual and aural signals intended to be received by the general public." 47 C.F.R. § 73.681.

These federal meanings of "broadcasting" and "television broadcast station" are consistent with the language of RCW 82.04.280 and Rule 241. RCW 82.04.280(1)(f) applies to a "broadcast station" and includes a method for deducting revenue represented by the out-of-state audience as a ratio to the station's total audience "measured by the 100 micro-volt signal strength and delivery by wire . . . ." Rule 241 limits the broadcasting B&O tax rate to "commercial broadcasting stations," and further specifies that the only "broadcasting stations" contemplated by the rule are television stations, standard (AM) radio stations and frequency modulation (FM) radio stations. Rule 241(2)(a), (4)(c). Rule 241 repeats RCW 82.04.280(1)(f)'s method of determining deductible revenue and states the "out-of-state audience may therefore be determined by delivery 'over the air' and by community antenna television systems." Rule 241(4)(c)(ii)(A). The plain meaning of RCW 82.04.280(1)(f) and Rule 241 is that the television broadcasting B&O tax rate is only available to television broadcast stations that are licensed by the FCC to broadcast over air waves.

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[7] . . .

[8] The term "radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission. 47 U.S.C. § 153(40).

Recent legislative action following years of silent acquiescence confirm the use of the technical meanings of "television broadcasting" and "broadcast station" in applying RCW 82.04.280(1)(f) and Rule 241.

In 2019, the Legislature amended RCW 82.04.280(1)(f) to update the method used by in-state broadcasters to calculate the standard deduction for their revenue derived from network, national, and regional advertising, confirming the Department's long-standing interpretation in Rule 241 of certain statutory terms. *See* Laws of 2019, ch. 449, § 1; H.B. Rep. on H.B. 2035, 66th Leg., Reg. Sess., at 2-3 (Wash. 2019). Because the FCC no longer publishes the national averages for advertising, the amendment requires the Department to publish a rule establishing the standard deduction based on the national averages reported by the U.S. Census Bureau's Economic Census.[9] *Id. See* Department of Revenue, Special Notice, "Change to the advertising deduction for radio and television broadcasting," August 9, 2019.[10]

The Legislature retained the application of the rate to "broadcasting stations" and continues to base the deduction by itemization method on a broadcast station's signal strength contours, updating signal strength contours specific only to "AM radio," "FM radio," and "television channels." *Id.* In doing so, the Legislature echoed the terms specific to broadcasting in Rule 241(4)(c)(ii)(A), tying the tax deduction computation to AM, FM, and television broadcast stations. In addition, the amendment emphasizes the rate's application to these signals delivered "by wire, satellite, or any other means," consistent with Rule 241's definition of "broadcasting" and the FCC's definition of "[television][11] broadcast station" in 47 C.F.R. § 73.681. *See* 47 U.S.C. § 153(7) ("broadcasting" defined).[12]

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[9] Prior to September 30, 2020, Rule 241(4)(b) recognized that the FCC no longer publishes the national averages and directed broadcasters may only deduct gross receipts from national, network, and regional advertising on an actual basis:

> The "standard deduction" for gross receipts from national, network, and regional advertising as provided by RCW 82.04.280, represents a percentage based on the national average thereof as annually reported by the Federal Communications Commission. The Federal Communications Commission no longer publishes these figures and henceforth the "standard deduction" is not available. Broadcasters may only deduct gross receipts from national, network, and regional advertising on an actual basis.

[10] The Special Notice explains that, effective July 28, 2019, radio and television broadcasters may choose between a standard deduction (which will be published by September 30, 2020, and updated every five years thereafter) or an itemized deduction that excludes network, national and regional advertising revenue. Stations must also exclude the portion of their revenue from out-of-state audiences, calculated as a ratio to the station's total audience. Until the standard deduction is issued, broadcasters must continue to itemize their deductions. The Special Notice also includes signal strength contours for use in determining a station's audience area.

[11] [Det. No. 22-0105 mistakenly identified the referenced term as "commercial broadcast station," when it should have been "television broadcast station." That mistake has been corrected here.]

[12] The Legislature adopted terms consistent with Rule 241 in amending RCW 82.04.280(1)(f) and did not define "broadcasting," highlighting the legislature's 36-year silent acquiescence to the Rule 241 definition promulgated in 1983. *See* Wash. St. Reg. 83-08-026 (Order ET 83-1) (March 30, 1983). In such circumstances, the doctrine of contemporaneous construction "accords 'great weight . . . to the contemporaneous construction placed upon [the statute] by officials charged with its enforcement, particularly where that construction has been accompanied by silent acquiescence of the legislative body over a long period of time.' " *Stroh Brewery Co. v. Dep't of Revenue,* 104 Wn. App. 235, 242, 15 P.3d 692, *review denied,* 144 Wn.2d 1002, 29 P.3d 718 (2001) (alteration in original) (quoting *Newschwander v. Bd. of Trustees of the Wash. State Teachers' Ret. Sys.,* 94 Wn.2d 701, 711, 620 P.2d 88 (1980)). This is true especially where the legislature never provided its own definition for an extended period of time. *North Central Washington Respiratory Care Svcs. v. Dep't of Revenue*, 165 Wn. App. 616, 631, 268 P.3d 972 (2011) (citing

Here, Taxpayer entered into retransmission consent agreements with MVPDs to retransmit its Transmission to MVPDs' customers, under which Taxpayer granted MVPDs license to insert MVPD-selected advertising and retransmit the Altered Transmission to MVPDs' customers. Throughout the review period, Taxpayer reported all of its gross income received from MVPDs under the retransmission consent agreements under the [r]oyalties B&O [t]ax [c]lassification.

After reviewing Taxpayer's books and records, Audit determined that Taxpayer granted MVPDs a right to use the Transmission when it granted MVPDs license to incorporate [their] own advertising into the Transmission, resulting in the Altered Transmission, which MVPDs then transmitted to their customers. [Audit] concluded that Taxpayer correctly reported the income it received from MVPDs under retransmission consent agreements under the [r]oyalties B&O [t]ax [c]lassification.

Taxpayer now petitions for a refund, disputing the Department's determination it reported correctly under the [r]oyalties B&O [t]ax [c]lassification. Taxpayer asserts it overpaid B&O tax because it contends the income it received under the retransmission consent agreements should be subject to the preferential radio and television broadcasting tax rate and not the royalties B&O tax rate. Taxpayer asserts that because MVPDs are geographically limited to retransmit the Altered Transmission to the same regional areas served by Taxpayer's over-the-air broadcasts and the Altered Transmission includes identical programming shown in real-time with its over-the-air broadcasts, Taxpayer's conveyance of the Transmission to MVPDs qualifies as television broadcasting.

However, the preferential radio and television broadcast rate is available only to radio and television broadcast stations on their gross income from the sale of radio or television advertising, subject to the authorized deduction. [RCW 82.04.280(1)(f); WAC 458-20-241(3)(a)[13]]. As explained above, we have consistently relied upon the FCC definitions of "broadcasting" and "television . . . [broadcast] station" in determining the applicability of the preferential radio and television broadcasting B&O tax rate. Thus, the preferential B&O tax rate is limited to television broadcast stations that are licensed by the FCC to broadcast over air waves, which engage in qualifying broadcasting, defined as "the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations." RCW 82.04.280(1)(f); Rule 241; 47 U.S.C. § 153(7) (emphasis added).

Taxpayer is not acting as a "television broadcast station," as defined in 47 C.F.R. § 73.681, and is not engaged in "broadcasting" as defined in 47 U.S.C. § 153(7), when it enters into retransmission consent agreements with MVPDs. Taxpayer conveys the Transmission directly to MVPDs under the retransmission consent agreements, with the understanding MVPDs will disseminate the Altered Transmission to MVPDs' customers. Even though Taxpayer is licensed by the FCC to broadcast over air waves, we do not have information as to Taxpayer's method of conveyance to MVPDs and note Taxpayer has not asserted or provided any records that establish it conveys the Transmission to MVPDs over air waves. While Taxpayer may enter into retransmission consent

Stroh Brewery Co., 104 Wn. App. at 242) (court gave great weight to the Department's definition of "prosthetic devices" under the contemporaneous construction doctrine, finding legislative silent acquiescence where legislature took no action to define the statutory term for 28 years.)

[13] [Det. No. 22-0105 originally cited incorrectly to the RCW and WAC. Those citations have been corrected here.]

agreements with MVPDs to disseminate to a wider audience identical programming content as its over-the-air broadcasts, the conveyance to MVPDs is not "the dissemination of radio [or television] communications intended to be received by the public" but is made available at the sole discretion of MVPDs to their customers on a one-to-one basis. RCW 82.04.280(1)(f); Rule 241; 47 U.S.C. § 153(7); *See* 47 C.F.R. § 73.681. We note MVPDs similarly have discretion to not disseminate the Altered Transmission altogether and would still be obligated to pay Taxpayer under the retransmission consent agreements.

As part of this review, we requested Taxpayer provide an example of a copy of a retransmission consent agreement entered into with MVPDs. Taxpayer provided part of what it purports to be a retransmission agreement. Due to the limited content of the submission and our inability to fully consider the content as part of any whole agreement, we are unable to draw any useful conclusions based on Taxpayer's submission.

Taxpayer also asserts it did not grant MVPDs any right to use the Transmission, but merely granted a license to retransmit the Transmission. We disagree. Taxpayer granted MVPDs a right to use the Transmission when it granted MVPDs license to incorporate its own advertising into the Transmission, resulting in the Altered Transmission, which MVPDs then transmitted to their customers.

Taxpayer cites the BTA decision in *Puget Sound Industries, Inc.,* asserting Taxpayer conveys its Transmission to MVPDs in a similar manner as the traffic reports the taxpayer in that matter furnished to a broadcaster. However, the Department is not bound by informal BTA decisions [except with regard to the specific taxpayer and tax period to which the decision applies,] and Excise Tax Advisory, No. 3055.2020 sets out the Department's official position that it will not acquiesce to the *Puget Sound Industries, Inc.* decision.

Thus, because Taxpayer was not acting as a television broadcast station and was not engaged in qualifying broadcasting when it conveyed the Transmission to MVPD[s], Taxpayer does not qualify for the preferential radio and television broadcasting B&O tax rate on the income it received from MVPDs under the retransmission consent agreements and correctly reported the income under the [r]oyalties B&O [t]ax [c]lassification. We deny the petition as to this issue.

2. Taxpayer does not qualify for the preferential television broadcasting B&O tax rate on the portion of its gross income received from its locally-produced content included under retransmission consent agreements with MVPDs because it was not acting as a television broadcast station and was not engaged in qualifying broadcasting.

Taxpayer asserts that if it does not qualify for the preferential television broadcasting B&O tax rate on all of its gross income under the retransmission consent agreements, Taxpayer should still qualify for the preferential rate on all of its locally-produced content included in the Altered Transmission. Taxpayer asserts the preferential rate is not limited to advertising income and that income it received from its locally-produced content included under the retransmission consent agreements qualifies for the preferential rate.

Taxpayer asserts MVPDs' retransmission of "[Taxpayer]'s locally-produced programming is functionally similar to [Taxpayer's] over-the-air broadcasts, and gross income from related advertising revenues are subject to B&O tax under the [b]roadcasting [c]lassification." Petition at 5. Taxpayer contends it is not granting MVPDs any "right to use" its locally-produced content[,] and the portion of its gross income received under the retransmission consent agreements from locally-produced content qualifies for the preferential television broadcasting rate.

The preferential television broadcasting B&O tax rate is limited to television broadcast stations that are engaged in qualifying broadcasts. As explained above, Taxpayer was neither acting as a television broadcast station nor engaged in qualifying broadcasting when it conveyed the Transmission, including both [Network]-provided and Taxpayer's locally-produced content, to MVPDs. Taxpayer granted MVPDs a right to use the Transmission, including Taxpayer's locally-produced content, when it included the locally-produced content in the Transmission and granted MVPDs license to incorporate its own advertising into the Transmission, resulting in the Altered Transmission. Because Taxpayer was not acting as [a] television broadcast station engaged in qualifying broadcasting with regard to either the [Network]-provided or Taxpayer's locally-produced content, it does not qualify for the preferential television broadcasting B&O tax rate on its locally-produced content. We deny the petition as to this issue.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 24th day of June 2022.