Cite as Det. No. 20-0158, 41 WTD 149 (2022)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 20-0158
. . .	)	Registration No. . . .

[1] RCW 82.04.050; WAC 458-20-119: RETAIL SALES TAX – PREPARED MEALS SALES TO INDEPENDENT SENIOR RESIDENTS. Sales of prepared meals to independent senior residents are subject to retail sales tax and retailing B&O tax, even if sold in a facility that also provides prepared meals to nursing home residents.

[2] RCW 82.04.050; WAC 458-20-166: RETAIL SALES TAX – SALES OF LODGING TO GUESTS OF RESIDENTS. Sales of lodging to guests of senior living residents is subject to retail sales tax and retailing B&O tax, despite the fact that the guests must be related to the senior living residents.

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.

Fisher, T.R.O. – An operator of a retirement community protests the imposition of retail sales tax on its sales of prepared meals to independent senior residents and on its sales of spare rooms to guests of its residents. The petition is denied.[1]

ISSUES

1. Whether sales of prepared meals to independent senior residents are subject to retail sales tax under RCW 82.04.050 and WAC 458-20-119.

2. Whether sales of spare rooms to guests of members for less than 30 days are subject to retail sales tax under RCW 82.04.050 and WAC 458-20-166.

FINDINGS OF FACT

. . . ("Taxpayer") operates a retirement community in . . . , Washington, consisting of both independent living and assisted living residents. Taxpayer has a management company, . . . , which

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

operates as a property manager for the retirement community. It manages the day-to-day operations of the retirement community and performs back-office services. The persons working at the retirement community are employees of Taxpayer, not [property management company].

Taxpayer is a for-profit business. Taxpayer's business model involves attracting older residents to live at the retirement community while they are still able to live independently, and then transitioning them to assisted living as those residents grow older and need additional care. Residents pay a monthly rent, which includes meal service, the use of common areas and facilities, weekly housekeeping, and utilities. . . .

Assisted living residents receive 3 meals a day, while independent senior residents receive 1 meal a day included in rent. The meals are served in the same dining room. Independent senior residents are not required to participate in the meal. Taxpayer did not report [on its excise tax returns] the monthly rent it received from the independent senior living residents or the assisted living residents.

Taxpayer also provided short-term room rentals for residents' family members at the retirement community. Taxpayer reported this income under the "Assisted Living" business and occupation ("B&O") tax classification.

The Department of Revenue ("Department") examined Taxpayer's books and records for the period of January 1, 2014, through December 31, 2017 ("Audit Period") to ensure Taxpayer was properly reporting its revenue on its excise tax returns. The Department determined that Taxpayer should have been charging retail sales tax on the meals provided to its independent senior residents, should have been charging retail sales tax on the short-term room rentals for residents' family members, and reporting both streams of income under the retailing B&O tax classification. The Department ultimately assessed Taxpayer $ . . . in retail sales tax, $ . . . in retailing B&O tax, $ . . . in service and other [activities] B&O tax, $ . . . in use tax, $ . . . in a reseller permit misuse penalty, $ . . . in delinquent payment penalties, $ . . . in interest, and a credit of $ . . . in assisted living facilities B&O tax.

Taxpayer timely petitioned for administrative review, challenging the assessment of retail sales tax and retailing B&O tax on the meals provided to its independent senior residents and on the short-term room rentals to guests at the retirement community. In its petition, Taxpayer asserted it "is licensed for board and domiciliary care of 80 adults, which includes both independent and assisted living residents." Taxpayer Petition for Review at 3. Taxpayer also noted that its short-term overnight rooms were provided on a space available basis, and were only available to [guests] of [residents]. According to Taxpayer, the rooms were not advertised or made available to the public as a place where sleeping accommodations could be obtained. *Id.* at 4.

Taxpayer's petition asserted that, historically, the Department has not imposed sales tax on meals provided to senior living residents. Taxpayer cites a 1982 letter from the Department to the Washington Association of Homes for the Aging ("1982 Letter"), which stated the retirement home members of the Washington Association of Homes for the Aging would [not] be considered by the Department to be engaged in selling meals to its residents or their guests. Taxpayer Petition

for Review at 5.[2] Taxpayer also cites Audit Directive 8168.1, issued by the Department in 1984, which states that retirement homes were not subject to B&O tax on charges to their residents for living quarters. Taxpayer further cites a 1989 letter from the Department to the Washington Association of Homes for the Aging where the Department said the 1982 Letter was still valid. Taxpayer also cites an unpublished determination from 2005, where Taxpayer asserts the Department was still applying Audit Directive 8168.1 in not assessing retail sales tax on meals in 2005.[3]

Taxpayer's petition points out that in 2015 the Department published a Tax Topic entitled "Meals Provided to Senior Residents."[4] The Tax Topic states: "The taxability of meals provided to residents at a senior living or care facility depends on whether the *facility* provides healthcare services . . . . Meals provided by licensed boarding homes, hospitals, nursing homes and assisted living facilities are not subject to sales tax. Generally, the income of these facilities is subject to the B&O tax under the licensed boarding homes or the service and other activities classifications." (Emphasis added.) Taxpayer asserts that although the Tax Topic reflects a change in the Department's position on excise tax treatment of senior living facilities, the Tax Topic states that if a *facility* provides healthcare services to some of its residents then no meals provided by that facility are subject to retail sales tax.

After the hearing, Taxpayer submitted several documents. Taxpayer provided a copy of its Assisted Living Facility License, a copy of its Guest Suite Reservation form, a copy of its Guest Suite Reservation policy, a copy of its policy entitled "Guest and Temporary Stays Processing in . . . ," and a copy of its Guest Suite Rental Agreement.

The Guest Suite Reservation form is a list of questions. Included in the questions are the check-in date, check-out date, and a request for a "guest" signature. The Guest Suite Reservation policy states:

> Each . . . managed community that has a guest suite will ensure guests meet the company's established criteria and will establish effective reservation, check-in and check-out procedures.
>
> The definition of a 'guest' is any person who resides with us 14 days or less and receives no Health and Wellness services.

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[2] Taxpayer also points to a 1989 letter from the Department, which states the 1982 Letter is still valid. Any references in this Determination to the "1982 Letter" also includes the 1989 letter.

[3] As Taxpayer acknowledges, Taxpayer may not rely on an unpublished determination issued to a different taxpayer. According to Taxpayer, the unpublished determination was issued to a different retirement community managed by . . . the same company that manages Taxpayer's taxes and day-to-day operations. Taxpayer argues that the unpublished determination is valid to show the history of the Department's treatment on the issue. The description of the unpublished determination comes exclusively from Taxpayer. The Tax Review Officer and the Administrative Review and Hearings Division may not discuss any aspect of an unpublished case regarding a different taxpayer without authorization from the other taxpayer.

[4] During the audit, the Audit Division agreed to accept Taxpayer's reporting of its meals to independent residents from the beginning of the Audit Period until October 2015, when the Tax Topic was published. The tax treatment of the meals to independent residents from the beginning of the Audit Period to October 2015 are therefore not at issue in this administrative review.

> A 'Respite/Guest Stay with Health and Wellness Services' is any age-qualified person, receiving licensed services for any length of stay. This person is considered a resident by company standards. . . .
>
> Prior to a guests' [sic] arrival the guest suite must be inspected . . . a house keeping schedule will be set up for each guest suite.

Guest Suite Reservation Policy, at 1.

The Guest Suite Rental Agreement provides that Taxpayer is agreeing to rent the Guest Suite subject to several conditions. Guest Suite Rental Agreement, at 1. The Rental Agreement provides that there can be 2 guests in each unit; that there will be a regular fee; that the Guest needs to respect the community members by keeping voices, TVs, and radios at low volume; and that the Guest abide by the community rules and exercise proper care and consideration for the property and the premises of the community. *Id.*

Taxpayer further argues that based on the 1982 Letter and the 1984 Audit Directive 8168.1, independent senior residents are renting real estate from senior living communities. Taxpayer argues that the Department changed its position as a result of *Lacey Nursing Ctr. Inc. v. Dep't of Revenue*, 103 Wn. App. 169, 11 P.3d 839 (2000), with respect to nursing home residents receiving care, but that the Department's continued to treat independent senior residents as persons renting real estate from senior living communities. Taxpayer argues that the "primary purpose" test applies to determine the taxation of senior living communities that provide both living quarters and additional amenities.

Taxpayer also refers to a 2019 letter to the industry from the Department's Senior Assistant Director for Tax Policy ("[2019] Letter"). The 2019 Letter was sent after the hearing in this matter. The 2019 Letter points out that since the 1982 Letter was issued, the Department made several rule changes to the rules interpreted by the 1982 Letter:

- 1993: WAC 458-20-119 (Rule 119) was amended to replace "rest homes" with "nursing homes."
- 1994: WAC 458-20-166 (Rule 166) was amended to provide that "[w]hen a lump sum fee is charged to nontransient tenants for providing both lodging and meals, retail sales tax must be collected upon the fair selling price of such meals."
- 2005: Rule 119 was further amended to move the pertinent provision cited in the [1982 Letter] to WAC 458-20-168 (Rule 168). In moving the language, Rule 168 clarified "hospitals, nursing homes, boarding homes, and similar health care facilities are subject to business and occupation (B&O) taxes on their charges as charges for services rather than charges for the rental of real estate. This tax treatment does not apply to senior living facilities that do not provide health care services. This change in Rule 168 was partly in response to the court decision in *Lacey*[, 103 Wn. App. 169].

2019 Letter at 1. The 2019 Letter states that based on these rule changes, the 1982 Letter does not apply, and meals served by independent senior living facilities "should be treated consistent with [WAC 458-20-166] as they serve nontransient tenants." *Id.*

Taxpayer argues that the rule changes cited by the 2019 Letter "did not alter the fundamental primary purpose analysis employed in the 1982 Letter, *Lacey Nursing*, or the Department's determinations." Taxpayer further asserts that the "lump sum" provision was added to WAC 458-20-166 prior to 1994, citing the 1951 version of WAC 458-20-166. Additionally, Taxpayer asserts that WAC 458-20-166 is inapplicable to independent senior living facilities because WAC 458-20-166 is not applicable to apartments or condominiums. Taxpayer argues that independent senior living facilities are analogous to apartment houses in that the operator is primarily renting real estate.

ANALYSIS

Washington imposes a B&O tax "for the act or privilege of engaging in business" in the State of Washington. RCW 82.04.220. The B&O tax measure and rate are determined by the type or nature of the business activity in which a person is engaged. Ch. 82.04 RCW. Washington also levies a retail sales tax on each retail sale in this state. RCW 82.08.020; 82.04.050. Under RCW 82.08.050(3), persons making retail sales are liable for retail sales tax when they fail to charge, collect, and remit the retail sales tax to the Department.

Sales of Prepared Meals to Independent Senior Residents:

Included in the definition of "retail sale" are sales of tangible personal property to consumers, unless otherwise exempt from taxation. RCW 82.04.050(1). Sales of prepared meals to consumers are generally subject to retail sales tax. RCW 82.08.0293; WAC 458-20-119(4). Proceeds from sales of prepared meals to consumers are generally subject to retailing B&O tax. RCW 82.04.250. Taxpayer's prepared meals are tangible personal property, and Taxpayer's sales thereof are subject to retail sales tax unless an exception applies.[5] RCW 82.08.0293; [RCW 82.08.020]. There is no statutory provision exempting the meals at issue from retail sales tax.

Taxpayer asserts its sales of prepared meals to its independent senior residents are exempt from retail sales (1) because WAC 458-20-166 does not apply to Taxpayer, (2) the Department historically treated sales of prepared meals to independent senior residents as not being subject to retail sales tax, and (3) because of the 2015 Tax Topic. We address each contention separately.

1. *Regardless of Whether WAC 458-20-166 Applies, Taxpayer's Sales of Meals to Independent Senior Residents Meets The Definition of Retail Sales.*

In assessing retail sales tax on part of Taxpayer's revenue from [providing meals to] its independent senior residents, the Department applied WAC 458-20-166(5)(b)(v), which provides:

> When a lump sum fee is charged to nontransient tenants for providing both lodging and meals, retail sales tax must be collected upon the fair selling price of such meals. Unless accounts are kept showing the fair selling price, the tax will be computed upon double the cost of the meals served. The cost includes the price paid

[5] Taxpayer does not contest that its independent senior residents are the "consumers" of Taxpayer's prepared meals under RCW 82.04.190.

> for food and drinks served, the cost of preparing and serving meals, and all other costs incidental thereto, including an appropriate portion of overhead expenses.

WAC 458-20-166(5)(b)(v).[6] Because Taxpayer did not keep accounts showing the fair selling price on the meals provided to its independent senior residents, the Department computed the tax upon double the cost of meals served.

Taxpayer asserts that WAC 458-20-166 is not applicable because WAC 458-20-166(2)(b)(ii) provides that WAC 458-20-166 does not apply to apartments and condominiums, and that Taxpayer is analogous to an apartment. We reject this argument for several reasons. First, [the rule distinguishes between transient and nontransient tenants.] . . . WAC 458-20-166(2)(b)(ii) . . . merely clarifies that an apartment or condominium where rent is for one month or more is not subject to the same taxation as transient facilities for lodging services. WAC 458-20-166(5)(b)(v), [in contrast,] is targeted at those providing lodging and meals to nontransient residents. Second, WAC 458-20-166(2) doesn't create an exemption from the retail sales tax for sales of prepared meals. *Cf.* WAC 458-20-166(5)(b) ("All fees charged for food, beverages, and entertainment activities are retail sales subject to retail sales tax."). Furthermore, WAC 458-20-166(5)(b) does not create the basis for Taxpayer to be subject to retail sales tax on sales of prepared food – [rather,] it explains how the retail sales tax applies to businesses addressed by the rule.

Nothing in WAC 458-20-166 contradicts the general definition of "retail sale," which includes the sales of tangible personal property to consumers. Furthermore, WAC 458-20-119(4) explicitly provides that sales of prepared meals are subject to retail sales tax, subject to certain exemptions not applicable to Taxpayer.

WAC 458-20-168, [explaining taxation of hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities,] strengthens the conclusion that WAC 458-20-166 is not the exclusive basis for taxation of prepared meals:

> Although **the sale of meals is generally considered to be a retail sale**, hospitals, nursing homes, assisted living facilities, and similar health care facilities that furnish meals to patients or residents as a part of the services provided to those patients or residents are not considered to be making retail sales of meals.

WAC 458-20-168(7)(b) (emphasis added). WAC 458-20-168(7)(b)'s statement that the sale of meals are generally considered to be a retail sale is correct. "Taxation is the rule and exemption is the exception." *TracFone Wireless v. Dep't of Revenue*, 170 Wn.2d 273, 296-7, 242 P.3d 810 (2010). [Exemptions] from taxation must be narrowly construed. *Dep't of Revenue v. Federal Deposit Ins. Co.*, 190 Wn. App. 150, 160, 359 P.3d 913 (2015). Being an apartment would not make Taxpayer exempt from RCW 82.04.050(1)'s definition of retail sale or WAC 458-20-119(4)'s requirement that sales of prepared meals be subject to retail sales tax. Having determined that WAC 458-20-166 does not apply, the Department simply determined that Taxpayer's sales of prepared meals were subject to retail sales tax and used the methodology in WAC 458-20-166(5)(b)(v) as a reasonable method of estimating Taxpayer's tax liability.

[6 WAC 458-20-166 explains the taxation of persons operating hotels, motels, bed and breakfast facilities, and similar businesses that provide lodging and related services to transient tenants.]

Accordingly, we reject Taxpayer's argument that WAC 458-20-166 was improperly applied. Regardless of whether WAC 458-20-166 applies to nontransient rentals of real estate, Taxpayer's sales of prepared meals to its independent senior residents meet the definition of a retail sale, no [exemption] applies, and therefore the Department properly assessed Taxpayer retail sales tax and retailing B&O tax.

2. The Department's Historical Tax Treatment is Not a Basis to Grant Relief.

Taxpayer further asserts that the Department's historical treatment of [exempting from retail sales tax the] sales of meals to independent senior residents . . . as incidental to rent means that the Department may only prospectively assess retail sales tax on such meals.

RCW 82.32A.020(2) grants taxpayers the right to rely on specific, official written advice and written instructions from the Department to that taxpayer. The 1982 Letter, the 1984 Audit Directive, and the 23 WTD 206 published determination were not specific written instructions from the Department to Taxpayer. As a result, Taxpayer cannot use these documents to waive the assessment under RCW 82.32A.020(2).

Moreover, each of these items do not stand for the proposition that during the Audit Period the Department's policy was that sales of meals to independent senior residents were not retail sales. Taxpayer asserts that the 1982 Letter controls. However, the 1982 Letter says, regarding meals:

> None of the members of the [Washington Association of Homes for the Aging] will be considered by the [Department] to be engaged in the business of selling meals to residents or their guests. Similarly, the homes will not be deemed to be making sales of meals furnished to their employees, with the exception of any meals for which the employees are required to pay. The foregoing is based on the following provisions in WAC 458-20-119:
>
> > HOSPITALS AND INSTITUTIONS: The serving of meals by hospitals, rest homes, sanitariums, and similar institutions to patients as part of the service rendered in the conduct of such institutions is not subject to retail sales tax. In cases where compensation of nurses or attendants employed by the hospital includes the furnishing of meals in addition to the stated cash wage, the same rule applies. . . .
> >
> > FRATERNITIES AND SORORITIES. Fraternities, Sororities, and other groups of individuals who reside in one place and jointly share the expenses of the household including expense of meals are not considered to be making sales when meals are furnished to members. (Emphasis supplied.)
>
> Those rules will apply to all the members of the [Washington Association of Homes for the Aging], including those retirement homes whose statements to their residents contain a segregated charge for meals (to comply with an H.U.D. rental

> subsidy requirement). We will recognize that those separate charges are, realistically, just an accounting matter.
>
> Thus, all of those homes are "consumers" of all food that they buy to prepare meals for their residents, patients, and guests (and for employees who are not charged for their meals), and should therefore pay the retail sales tax on all such purchases. . . .

1982 Letter, at 3. This excerpt cites language in WAC 458-20-119 that has not existed in WAC 458-20-119 since 2005, nine years before the Audit Period began. Additionally, the 1982 Letter makes clear its reasoning is based on the retirement homes being "consumers" of the meals; Taxpayer here does not assert that it is the consumer of the meals it sells to its independent senior residents. . . . For these reasons, Taxpayer cannot obtain relief based on the 1982 Letter.

Taxpayer also points to the 1984 Audit Directive regarding Retirement Homes, arguing it still controls. The 1984 Audit Directive's use of the phrase "retirement homes" refers to meals sold as a part of assisted living programs, not independent senior programs. The 1984 Audit Directive is unhelpful to Taxpayer.

Taxpayer also cites 23 WTD 206 for the proposition that the Department [considered] receipts from retirement residents [as] exempt from B&O tax as the rental of real estate. This is not what 23 WTD 206 says. In 23 WTD 206, an operator of an assisted living facility protested a letter ruling that the operator was liable on all of its receipts for its assisted living services. 23 WTD at 206. The operator's receipts for its independent senior residents were not at issue; the discussion cited by Taxpayer at 23 WTD at 209 simply recites the letter ruling concluding that the receipts from the independent senior residents were exempt from B&O tax. 23 WTD 206 reviewed the conclusion that receipts from assisted living activities were subject to B&O tax; it did not review the conclusion that receipts from independent senior residents were exempt from B&O tax altogether. While we do not agree, to the extent that Taxpayer assumed the letter ruling at issue in 23 WTD 206 ruled that receipts from sales of meals to independent senior residents was exempt from all B&O tax, "the Department is not required to perpetuate past errors by repeating them with respect to other taxpayers." 23 WTD at 216. 23 WTD 206 is not a basis for relief.

Finally, Taxpayer argues that the 1982 Letter, the Department's published determinations, and *Lacey Nursing* all engage in a "primary purpose" analysis to determine that sales of meals to independent senior residents are not subject to retail sales tax. None of these sources engage in a primary purpose analysis. As noted above, the 1982 Letter . . . bases its analysis on the facilities being the consumer of the meals. 23 WTD 206 engages in a primary purpose analysis to determine the taxability of receipts for assisted living residents, not independent senior residents. *See* 23 WTD at 213 (concluding that "the primary purpose of taxpayer's assisted living facilities is to provide daily living assistance and care to the aged."). Finally, *Lacey Nursing* does not analyze or even mention independent senior resident meals; it is instead focused on the primary purpose of people being in nursing homes. *Lacey*, 103 Wn. App. at 186.

In sum, we conclude that the [Department's] historical treatment of meals to independent senior residents is not a basis to grant Taxpayer relief.

3. Taxpayer Did Not Rely on The 2015 Tax Topic, and the 2015 Tax Topic is Not a Basis to Grant Relief.

Taxpayer also points to the 2015 Tax Topic, which provides:

> **Meals provided to senior residents**
>
> The taxability of meals provided to residents at a senior living or care facility depends on whether the facility provides healthcare services.
>
> This article discusses facilities that provide meals to residents and their visitors (not the general public).
>
> **No healthcare services provided**
>
> Meals provided by an independent senior living residence that is not a licensed boarding home and that does not provide healthcare services, are subject to retail sales tax.
>
> The facility must collect sales tax and pay retailing B&O tax on the fair selling price of such meals, even if the facility does not itemize a separate charge for the meals. Unless records are kept showing the fair selling price, tax will be computed for double the cost of the meals served. The cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other incidental costs, including overhead expenses.
>
> **Where healthcare services are provided**
>
> Meals provided by licensed boarding homes, hospitals, nursing homes and assisted living facilities are not subject to sales tax. Generally, the income of these facilities is subject to the B&O tax under the licensed boarding homes or the service and other activities classifications.

Meals provided to senior residents, https://dor.wa.gov/print/51602 (last accessed April 1, 2020).

Taxpayer asserts that as a licensed assisted living facility, any meals it provides under the Tax Topic are subject to the B&O tax under the licensed boarding homes or the service and other activities classification.

As an initial matter, we note that Taxpayer did not report its income from the sales of prepared meals to its independent senior residents to the Department under any B&O tax classification, so Taxpayer cannot claim any reliance on the Tax Topic.

Second, we reject Taxpayer's narrow reading of the Tax Topic. The Tax Topic is an advisory notice; it cannot cover every tax possibility. It is deliberately general. The Tax Topic does not contemplate a business like Taxpayer that [acts] as both an independent senior living residence

that is not providing healthcare services while, at the same time, acting as a licensed assisted living facility providing healthcare services.

Taxpayer argues that the Tax Topic's use of the word "facilities" means that the taxability is determined whether anywhere in the facility healthcare services are provided. This interpretation would conflict with the B&O tax scheme, which is intended to tax activities rather than entire businesses. *See* RCW 82.04.440(1); WAC 458-20-169(4)(a)(i). Rather than accept Taxpayer's narrow reading of the Tax Topic, we instead conclude that the Tax Topic was simply meant to guide businesses that offer fewer services than Taxpayer's.

Accordingly, we conclude the Department properly assessed retailing B&O and retail sales tax on Taxpayer's receipts from sales of meals to its independent senior residents.

Sales of Rooms for Guests of Residents:

Included within the definition of retail sale are "services rendered in respect to . . . the furnishing of lodging . . . and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, ..." RCW 82.04.050(2)(f). The Department concluded that Taxpayer's rental of rooms for guests met the definition of retail sale, and assessed retail sales tax and retailing B&O tax on those receipts.

Taxpayer points to WAC 458-20-166(4)(b), which says "[c]ommissions, amounts derived from accommodations not available to the public, and certain lump sum fees charged for multiple services are taxable under the service and other activities classification of the B&O tax." Taxpayer argues that its rooms are only available to relatives of guests, and are therefore accommodations not available to the public.

In Det. No. 94-062, 14 WTD 225 (1995), the Department reviewed a similar business to Taxpayer. There, a conservation and outdoor recreation corporation protested instructions that it should charge retail sales tax on ski lodges provided to members and guests. 14 WTD at 225-6. Similar to Taxpayer, the organization only rented to nonmembers who were sponsored by a member who was to be present at the lodge during the stay. 14 WTD at 226. The organization also did not advertise to nonmembers. *Id.* In analyzing WAC 458-20-166, we determined that WAC 458-20-166 is not limited to establishments held open to the general public. 14 WTD at 229. In analyzing the phrase "held out to the public," we noted WAC 458-20-166 is distinguishing "lodging subject to retail sales tax from situations where employees stay at bunk houses and similar establishments. The latter situation involves a person's employment, and not merely transient lodging." *Id.*

Here, the same logic applies to the "accommodations not available to the public" language. We must interpret the "accommodations not available to the public" language in context with the entire rule, and construe it in a manner consistent with the general purpose of the rule. *See Graham v. State Bar Ass'n*, 86 Wn.2d 624, 627, 548 P.2d 310 (1976). The purpose behind WAC 458-20-166 is to draw a distinction between employment housing and other housing. 14 WTD at 229. The guests are not staying as employees, and the guests are simply transient lodgers at Taxpayer's facilities for 14 days or less. Accordingly, even though Taxpayer's rooms are not available to everyone, we conclude that the exemption in WAC 458-20-166(4)(b) does not apply to Taxpayer.

Taxpayer attempts to distinguish 14 WTD 225 on the basis that only visiting family members of residents may use the guest suites on a space available basis. Reply to Department Response at 2. Taxpayer also claims that when guests stay in a room, Taxpayer does not provide them a license to use the property similar to that provided by a hotel. *Id.*

We find these distinctions immaterial. Taxpayer's requirement that only family members of residents may use the guest suites is substantially the same as the outdoor recreation corporation's requirement for nonmembers to be sponsored by a member to stay. Furthermore, Taxpayer's claim that its guests are not given a license to use the property is undercut by the provisions of the Guest Suite Rental Agreement. Guests are required to respect their neighbors in the community by not making a lot of noise, to abide by community rules and regulations, and to exercise proper care and consideration for the property and premises of the community. If the guests are not given a license to use the property, the Guest Suite Rental Agreement would not require guests to be quiet, to abide by the rules, and to exercise care and consideration for the community. Instead, the rental agreement would simply prohibit guests from going anywhere except to visit their family member.

Accordingly, we conclude that Taxpayer's rental of rooms to guests of members is properly classified as retail sales, and the Department properly assessed retail sales tax and retailing B&O tax on such income.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 2nd day of June 2020.