Cite as Det. No. 18-0025, 42 WTD 001 (2023)

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

In the Matter of the Petition for Correction of Assessments of	)))))))	D E T E R M I N A T I O N No. 18-0025 Registration No. . . .
. . .		

RCW 82.04.050(3)(b); RCW 82.04.192(3)(b)(xv); WAC 458-20-15503(202): CREDIT BUREAU SERVICES – DIGITAL AUTOMATED SERVICE. The services of assembling or evaluating information for a third party who uses such information to decide whether to accept a check constitute credit bureau services. The taxpayer's services concern more than extracting the data provided by its clients, but also evaluating the data through algorithms to predict the risks of business loss by accepting the checks from the check holders.

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.

Callahan, T.R.O. – A check risk management services provider ("Taxpayer") protests the Department of Revenue's (the "Department") assessment of retailing business and occupation ("B&O") tax and retail sales tax on Taxpayer's income, arguing that its services provided are data processing services, which are subject to the service and other activities B&O tax. We deny the petition.[1]

ISSUE

Does Taxpayer provide credit bureau services under RCW 82.04.050(3)(b) . . . or data processing services under RCW 82.04.192(3)(b)(xv) and WAC 458-20-15503(202) ("Rule 15503")?

FINDINGS OF FACT

Taxpayer is an out-of-state corporation that provides two types of check risk management services: (1) retail check services and (2) payroll check cashing services. The majority of Taxpayer's services are the retail check services where Taxpayer makes recommendations to its clients (the "Clients") whether to accept checks as a form of payment with the objective to reduce the Clients' risk of business loss.[2] The recommendations are based on data Taxpayer obtains from its Clients. The data that Taxpayer uses includes the customer's driver license or state-issued identification

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

[2] . . . (last visited August 10, 2017).

numbers, recent purchases made by the customer, and Clients' product information. For example, Taxpayer identifies similar purchases a customer has made from multiple retailers in the past few days, and alerts its Clients with a warning such as "unusual shopping pattern indicating potential fraud."[3]

With respect to the payroll check cashing services, some of Taxpayer's Clients provide payroll check cashing services to the check holders for a fee. Taxpayer uses a real-time authorization system, [Authorization System] to provide immediate check acceptance recommendations to its Clients.[4] The [Authorization System] focuses on the potential fraud risk from both the check issuer and the check holder. The recommendation is based on the check holder's driver license information, and the Social Security number of the check holder, which Taxpayer obtains from its Clients. Taxpayer uses the information to detect any dishonored checks that were associated with either the check holder's driver license information or with [their] Social Security number.

On December 20, 2016, Audit issued two assessments against Taxpayer for the assessment period. The first assessment was for the period of January 1, 2010, through December 31, 2013, for $. . . , which consisted of retail sales tax of $. . . , retailing B&O tax of $. . . , a delinquent penalty of $. . . , interest of $. . . , and a 5% assessment penalty of $. . . .

The second assessment was for the period of January 1, 2014, through June 30, 2016, for $. . . , which consisted of retail sales tax of $. . . , retailing B&O tax of $. . . , a delinquent penalty of $. . . , interest of $. . . , and a 5% assessment penalty of $. . . .

Taxpayer did not register with the Department prior to the audit, nor did it file any returns with the Department. For the check risk management services, Audit reviewed the contracts Taxpayer provided and determined that Taxpayer provides credit bureau services to its Clients because Taxpayer verifies, guarantees, and analyzes the business risk of loss for its Clients that choose to accept checks as a form of payment or choose to cash the payroll checks for the check holders. The measure of the assessment was based on Taxpayer's Washington sales reports. Audit sourced Taxpayer's sales to the locations where the customers purchased from Taxpayer's Clients or at the locations where the payroll checks were cashed according to Taxpayer's sales reports. Audit assessed retailing B&O tax and retail sales tax on Taxpayer's unreported income from providing the services to its Clients.[5]

Taxpayer did not pay the assessments and petitioned the Department's Administrative Review and Hearings Division for correction of assessments.

ANALYSIS

Washington imposes a B&O tax "for the act or privilege of engaging in business" in this state. RCW 82.04.220. Persons engaged in making retail sales are subject to the retailing B&O tax. RCW 82.04.250. Retail sales in Washington are also subject to retail sales tax, RCW 82.08.020. "Credit

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[3] Petition dated March 7, 2017, p.3.
[4] Petition dated March 7, 2017, p. 2.
[5] Audit Schedules 2A & 2B. 1.

bureau services" are specifically included in the definition of "sale at retail" and "retail sale." RCW 82.04.050(3)(c). . . .

RCW 82.04.050(3)(b) does not define "credit bureau services." The Department has, however, previously addressed what these services entail. The Department has issued decisions recently that concerned the taxability of credit bureau services where the taxpayers' services involve business risk evaluations. In Det. No. 14-0276, 35 WTD 97 (2016), we concluded that the taxpayer's services constituted credit bureau services . . . because the taxpayer . . . assembled the data prescribed by taxpayer's clients . . . [and] evaluated the data, through algorithms, in such a way as to predict the creditworthiness of potential borrowers to minimize the clients' business risk of loss.

We concluded in Det. No. 15-0167, 35 WTD 71 (2016) that the taxpayer's "decision services," were credit bureau services where the taxpayer obtained information through various internet platforms, such as new consumer credit and checking accounts, insurance applications, account collection, patient registrations, and apartment rental requests to provide recommendations to the clients' business risks.

In addition to the published decisions, the Department previously issued Excise Tax Advisory ("ETA") 3107 on February 2, 2009,[6] providing guidance on the taxation of credit bureau services:

> Credit bureau services include the assembly or evaluation of information bearing on the credit worthiness of any person for the purpose of furnishing such information to third parties. Credit bureau services are not limited to assembly or evaluation of information provided for the purpose of extending credit. Credit bureau services also include the assembly or evaluation of information provided to third parties who use such information to decide whether to accept a check or other form of payment, enter into a lease transaction, or make any decision where credit worthiness is a consideration. For example, the Department has found check writer verification and tenant screening services to be credit bureau services.

(Emphasis added.) Thus, according to ETA 3107, the services of assembling or evaluating information for a third party who uses such information to decide whether to accept a check constitute credit bureau services.

Applying the Department's precedents and ETA 3107 to the facts here, Taxpayer's services fit squarely under the credit bureau services because Taxpayer analyzes the data such as, the Client's product information, the check holder's Social Security number, and driver's license, obtained from Taxpayer's Clients. Taxpayer makes recommendations to its Clients whether to accept the check as a form of payment to minimize the Clients' business risk of loss. . . .

Taxpayer argues that its services are data processing services under RCW 82.04.192(3)(b)(xv) and Rule 15503(202) [and, therefore, taxable under the service and other activities B&O tax classification]. RCW 82.04.192(3)(b) provides a statutory definition of "data processing services":

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[6] The Department last updated ETA 3107 in 2021, to include credit bureau services that are transferred electronically. The update has no bearing on the analysis in this determination.

> "Digital automated service" does not include: . . . (xv) Data processing services. For purposes of this subsection (3)(b)(xv), "data processing service" means a primarily automated service provided to a business or other organization where the primary object of the service is the systematic performance of operations by the service provider on data supplied in whole or in part by the customer to extract the required information in an appropriate form or to convert the data to usable information. Data processing services include check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities. . . .

(Emphasis added.) We concluded in 35 WTD 97 that services involving more than simply extracting information and converting the data to usable information do not constitute "data processing services" for purposes of RCW 82.04.192(3)(b) because the services involve analyzing the data to evaluate business risk and opportunities. Similar to the taxpayer in 35 WTD 97, Taxpayer's services concern more than extracting the data provided by its Clients, but also evaluating the data through algorithms to predict the risks of business loss by accepting the checks from the check holders.

Taxpayer asserts that it is unlike other consumer reporting agencies because it does not use credit score information in order to provide the check risk management services to its customers. Taxpayer argues that its services are based solely on Taxpayer's check writer database, which do not determine the customer's credit worthiness.

We are not convinced by this argument because the focus is not on whether the recommendations are based on the check holders' credit score. But rather, the focus is on the services Taxpayer provided to its Clients, which are assembling or evaluating information for its Clients who use such information to decide whether to accept the checks presented by the check holders. This process is entirely automated.

Therefore, we conclude that Taxpayer's services are subject to retail sales tax and deny Taxpayer's petition.

DECISION

Taxpayer's petition is denied.

Dated this 24th day of January 2018.