



STATE OF WASHINGTON  
DEPARTMENT OF REVENUE

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C/O SCOTT M EDWARDS  
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1420 5TH AVE  
SEATTLE WA 98101-2375

January 26, 2024  
Letter ID: L0025290639  
Account ID: 600-357-574  
Account Type: Excise Tax

RE: FIDELITY NATIONAL TITLE CO OF WASH  
Registration No. 600-357-574  
Docket No. 4845447

**Enclosed is a copy of the Determination of the Department of Revenue.  
See the Decision and Disposition section for details on next steps.**

**Where do I find the law related to my case?**

WAC 458-20-100 and other references cited in the Determination may be found at the Department's Internet website under "Find a law or rule" <https://dor.wa.gov/find-law-or-rule> or at any Department of Revenue office or law library. Information on our process is on the DOR website <http://dor.wa.gov/reviews>.

**Contact Information**

For a copy of WAC 458-20-100 or for other information please call or write us at:  
Administrative Review and Hearings Division  
Department of Revenue  
PO Box 47460  
Olympia WA 98504-7460  
Phone: (360) 534-1335  
Fax: (360) 534-1340

**Publication of Determination**

The Department publishes some determinations, referred to as Washington Tax Decisions (WTDs). We delete the taxpayer's name, address, registration number, dollar amounts at issue, and any facts which would allow the taxpayer or others mentioned in the determination to be identified. Determinations are not published if the relevant facts might allow a taxpayer or others to be identified.

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P.O. Box 47460 Olympia, WA 98504-7460  
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You may request we consider your determination for publication by contacting us at (360) 534-1335, or email [DORARHAdmin@dor.wa.gov](mailto:DORARHAdmin@dor.wa.gov).

Sincerely,

Cain McCullough  
Administrative Assistant  
Administrative Review and Hearings Division

CC: AIMEE MILLER

## **CERTIFICATE OF MAILING**

I hereby certify that I have this day served Determination No. 24-0020 upon all parties of record in this proceeding by placing in Campus Mail a copy thereof, properly addressed to each of the following:

Via regular first class mail:

VIA EMAIL ONLY:

EDWARDSS@LANEPOWELL.COM

MILLERA@LANEPOWELL.COM

Via email:

AIMEE MILLER

SCOTT EDWARDS

AUDIT DIVISION

DATED this 26th day of January, 2024.

DEPARTMENT OF REVENUE

Cain McCullough  
Administrative Assistant  
Administrative Review and Hearings Division

CC: AIMEE MILLER



examined Taxpayer's records for the period of January 1, 2013, through December 31, 2016, and on December 29, 2022, issued a Notice of Balance Due against Taxpayer for a total of \$264,054.69. This amount is composed of \$46,488.57 in service and other activities B&O tax, \$7,665.21 in retailing B&O tax, \$154,607.75 in retail sales tax, \$26,683.33 in use/deferred sales tax, and \$35,419.94 in interest, minus payment of \$6,810.11.

Audit assessed retailing B&O tax and retail sales tax on sales identified by certain general ledger accounts, less any amounts previously reported, to arrive at an under-reported amount of retail revenue subject to tax. Audit included recording fees, as well as notary fees, inspection fees, and cancellation fees.

Taxpayer provides document recording services as part of its abstract, title insurance, and escrow services. Taxpayer contracts with a third-party recording company, or uses its own account with county courthouses, to file documents that must be recorded in local jurisdictions as part of real property transaction closings. Taxpayer is billed by the third-party recording company and the counties and is liable to pay these bills.

Taxpayer argues that Audit assessed retailing B&O tax and retail sales tax on recording fees, notary fees, inspection fees, and cancellation fees in error because the fees are not subject to retailing B&O tax and retail sales and, in the alternative, the recording fees are deductible on grounds that Taxpayer handles the funds solely as an agent in the performance of its duties as an escrow agent.

## ANALYSIS

### 1. Retail Sales Tax Imposed on Fees

RCW 82.08.020 imposes retail sales tax on each retail sale in Washington. The retail sales tax is to be collected by the seller. RCW 82.08.050(2). If a seller fails to collect the retail sales tax as required, the seller is "personally liable to the state for the amount of tax." RCW 82.08.050(3). RCW 82.04.050(3) states that the term "retail sale" includes the following:

The sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

- (a) Abstract, title insurance, and escrow services. . . .

Washington also imposes a business and occupation (B&O) tax for the "act or privilege of engaging in business in Washington." RCW 82.04.220(1). Persons making retail sales are subject to retailing B&O tax measured by the gross proceeds of sales under RCW 82.04.250.

WAC 458-20-156 (Rule 156) is the administrative rule regarding abstract, title insurance, and escrow businesses. It states that "[a]bstract, title insurance and escrow business are taxable under the classification retailing on gross receipts from fees or premiums charged to consumers for abstract, title insurance or escrow services."

RCW 82.04.050(3)(a) states that interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in providing abstract, title insurance, and escrow services, are retail sales. Amounts paid to Taxpayer by clients for document recording services, as well as notary fees, inspection fees, and cancellation fees, constitute “amounts designated as . . . fees . . . and other service emoluments however designated” under RCW 82.04.050(3). Thus, because Taxpayer is engaged in providing abstract, title insurance, and escrow services, the amounts at issue are retail sales under RCW 82.04.050(3), and Audit correctly assessed retailing B&O tax and retail sales tax on the charges. Accordingly, we deny Taxpayer’s petition on this issue.

2. Excluding Recording Fees from Measure of Income

RCW 82.04.070 defines “gross proceeds of sales” as follows:

[T]he value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services, and/or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

The term “value proceeding or accruing” is defined as “the consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued.” RCW 82.04.090.

The Legislature “intended to impose the business and occupation tax upon virtually all business activities carried on within the state.” *Simpson Inv. Co. v. Dep’t of Revenue*, 141 Wn.2d 139, 149, 3 P.3d 741 (2000) (quoting *Time Oil Co. v. State*, 79 Wn.2d 143, 146, 483 P.2d 628 (1971)). Further, the B&O tax is not a tax on profit, net gain, capital gain, or sales “but a tax on the total money or money’s worth received in the course of doing business.” *Budget Rent-A-Car of Wash.-Oregon*, 81 Wn.2d 171, 172, 500 P.2d 764 (1972). In short, the B&O tax provisions “leave practically no business and commerce free of the business and occupation tax.” *Id.* at 175. Accordingly, Taxpayer cannot exclude any costs of doing business, unless there is some specific exclusion that applies.

WAC 458-20-111 (Rule 111) recognizes that, in certain instances, amounts received by a taxpayer are not “gross proceeds of sales” or “gross income of the business.” Rule 111 provides that amounts received as “reimbursements” may be “excluded from the measure of tax” where the “money . . . is received by a taxpayer as reimbursement of an advance in accordance with the regular and usual custom of its business . . .” As Rule 111 explains:

The foregoing is limited to cases wherein the taxpayer, as an incident to the business, undertakes, on behalf of the customer . . . the payment of money . . . to a third person, or in procuring a service for the customer which the taxpayer does not or cannot render and for which no liability attaches to the taxpayer . . . .

On the other hand, *no charge which represents an advance payment on the purchase price of an article or a cost of doing or obtaining business, even though such charge is made as a separate item, will be construed as an advance or reimbursement.* Money so received constitutes a part of gross sales or gross income of the business, as the case may be. For example, no exclusion is allowed with respect to amounts received by . . . (4) a manufacturer or contractor for materials purchased in his own name or in the name of his customer if the . . . contractor is obligated to the vendor for the payment of the purchase price, regardless of whether the customer may also be so obligated . . . .

(Emphasis added.)

Taxpayer argues that it collected amounts from its customers and paid them to the document processing companies or counties as an agent, and therefore these amounts are excludable from its gross income. The Washington Supreme Court addressed the tax implications of being a “collection agent” in *Washington Imaging Services, LLC v. Dep’t of Revenue*, 171 Wn.2d 548, 561-62, 252 P.3d 885 (2011). In that case, a medical imaging company, Washington Imaging, retained a third-party medical image interpreter, Overlake, to provide interpretive reports to accompany Washington Imaging’s medical images. *Id.* at 551. The patients that ordered this service were not specifically made aware of the arrangement between Washington Imaging and Overlake and were not otherwise informed that they had any obligation to pay Overlake for its service component. *Id.* Instead, patients signed “an agreement to be financially responsible to Washington Imaging.” *Id.* The Court considered whether Washington Imaging was a “collection agent” for Overlake, articulating the following:

For Washington Imaging to prevail on the argument that it acted only as a collection agent of Overlake, it must have collected money *owed to Overlake*. But the patients contracted solely with Washington Imaging to pay for medical imaging services and have no separate obligation to Overlake.

*Id.* at 557 (emphasis in original).

Here, with respect to recording fees paid to document processing companies, the facts are similar to those in *Washington Imaging*. Taxpayer’s clients hired it for its title insurance and other real estate closing services. Taxpayer separately arranged for the document processing companies to file the documents necessary to properly record the transactions. Taxpayer’s clients had no pre-existing relationship, contractual or otherwise, with the document processing companies. Taxpayer’s clients are like the patients from *Washington Imaging*, Taxpayer is like Washington Imaging itself, and the document processing companies and counties are like Overlake. Similar to the taxpayer in that case, Taxpayer has not shown that its clients had a separate obligation to the document processing companies. Therefore, Taxpayer has not established that it acted as agent with respect to the filing fees paid to those companies and is not entitled to exclude its income from tax under Rule 111. With respect to recording fees that Taxpayer collected from clients and paid directly to counties, Taxpayer also does not qualify for exclusion under Rule 111 because the

fees are part of its costs of doing business and Taxpayer has failed to establish it is not also liable for the fees.

### DECISION AND DISPOSITION

Taxpayer's petition is denied. Letter No. L0021607822 in the amount of \$269,953.04 is due for payment by February 26, 2024. Additional interest and penalties will be assessed if payment is not received by the due date. RCW 82.32.050 and .090.

Payment may be sent to Department of Revenue, Treasury Management, PO Box 47464, Olympia, WA 98504-7464. Please attach a copy of this decision to your payment so that your account can be properly credited. If this cannot easily be done, note on payment your Registration No. and assessment or balance due number, or other pertinent information.

This decision will become final February 26, 2024, unless you seek reconsideration of the decision. If you decide to ask the Department to reconsider this decision, you must comply with the requirements for reconsideration contained in WAC 458-20-100(6). WAC 458-20-100 and other references cited in the determination may be found at the DOR's Internet website under "Find a law or rule" <https://dor.wa.gov/find-law-or-rule>.

Information on our review process is on the DOR website <http://dor.wa.gov/reviews>. For a copy of WAC 458-20-100 or for other information please call or write the Administrative Review and Hearings Division at:

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PO Box 47460  
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Fax: (360) 534-1340  
Phone: (360) 534-1335  
Email: [DORARHAdmin@dor.wa.gov](mailto:DORARHAdmin@dor.wa.gov)

You may appeal the decision to the Board of Tax Appeals (BTA). The BTA's appeal procedures are set forth in chapter 82.03 RCW, in chapter 456-09 WAC (formal appeals), and in chapter 456-10 WAC (informal appeals). You must comply with the statutory and administrative rule requirements to perfect your appeal to the BTA, which must be filed within 30 days of the date of this letter. You may contact the BTA at (360) 753-5446 or at [bta@bta.wa.gov](mailto:bta@bta.wa.gov). Appeal to the BTA does not stay collection activity by the Department. To obtain a stay of collection, the taxpayer must post a bond. *See* RCW 82.32.200.

Alternatively, if you have paid the amount in dispute, you may sue for a refund in Thurston County Superior Court. You must comply with RCW 82.32.180. The Thurston County Superior Court is the only court in the state that has original jurisdiction to hear excise tax matters.

Dated this 26th day of January 2024.

STATE OF WASHINGTON DEPARTMENT OF REVENUE



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H. Geoffrey Margolis  
Tax Review Officer