

Cite as 11 WTD 13 (1989).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In The Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Ruling of Tax Liability)	
of)	
)	No. 89-275
)	
. . .)	Registration No. . . .
)	
)	

- [1] RULE 224: SERVICE AND OTHER -- INCOME OF NONPROFIT ORGANIZATION -- BRING IN NEW BUSINESS -- ARRANGING CONTRACTS BETWEEN A BUYER AND SELLER. A nonprofit organization created to promote business in a certain area, is subject to tax under the service and other category on amounts it receives from public agencies for bringing new business to the area. It is also subject to the tax on the amounts it receives for bringing together a buyer and potential supplier.
- [2] RULE 111: ADVANCEMENTS AND REIMBURSEMENTS -- LUNCHEONS -- SEMINARS -- MEETINGS. Amounts received by a nonprofit organization from its members or other persons for luncheons, seminars, or meetings are not true reimbursements when the organization is liable for payment of the services. The amounts received will be subject to tax under the proper category of the B&O tax.
- [3] RULE 114: RCW 82.04.4282 -- CONTRIBUTIONS -- DONATIONS. Voluntary contributions to a nonprofit organization which are not in exchange for any goods, services, or direct business advantage may be deducted from the measure of tax under the statute providing deduction for bona fide contributions or donations.

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.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

A nonprofit organization requests a ruling of its tax liability for various activities and income.

FACTS AND ISSUES:

Hesselholt, A.L.J. -- Taxpayer is organized under the non-profit laws of Washington. Its Board is composed of members from various municipal authorities and private businesses. Its purpose is to promote business It has several sources of funds. They are:

1. Contracts with public agencies for services rendered by the taxpayer in recruiting new businesses for the . . . area;
2. Donations through contributions from business and from other foundations;
3. "Pass-through" money for meetings, seminars, luncheons, etc., which is paid to the taxpayer, which in turn it pays to the provider of the luncheon, etc.;
4. Income from its "marketplace program." This is a program in which taxpayer, in order to encourage local purchasing, arranges contracts between buyers and potential sellers. For this service, taxpayer receives a percentage of the contract from the seller, which the taxpayer refers to as a commission.

Taxpayer states that "It is our position that the pass through money and the money received from business and foundations by way of contribution is not taxable." It requests a ruling as to the tax liability of the above activities.

DISCUSSION:

[1] The business and occupation tax is imposed on every person in the state for the privilege of engaging in business. RCW 82.04.220. Business includes "all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or another person or class, directly or indirectly." RCW 82.04.140. The measure of the tax is the gross proceeds of sales, value proceeding or accruing, or gross income of the business. RCW 82.04.220. There is no general exemption from the tax for nonprofit entities. There are several specific

categories of B&O tax listed in the statutes, and one "catch-all" category, which states that persons who are not taxable under any other category of the tax are taxable under what is referred to as the "service and other" category of the B&O tax. RCW 82.04.290, WAC 458-20-224 (Rule 224).

Taxpayer's activities of recruiting new business and arranging contracts between buyers and sellers (activities 1 and 4 above) are akin to personal services rendered to others, and similar to services provided by employment agencies. We find that the income from such services is taxable under the "service and other" category of the business and occupation tax.

WAC 458-20-111 (Rule 111) is the administrative rule dealing with advancements and reimbursements. It has the same force and effect as the law itself. RCW 82.32.300. The rule provides, in relevant part, as follows:

The word "reimbursement" as used herein, means money or credits received from a customer or client to repay the taxpayer for money or credits expended by the taxpayer of costs or fees for the client.

The words "advance" and reimbursement" apply only when the customer or client alone is liable for the payment of the fees or costs and when the taxpayer making the payment has no personal liability therefor, either primarily or secondarily, other than as agent for the customer or client.

[2] True reimbursements, under the rule, are not considered part of the gross income of the business and are not therefore subject to B&O tax. Thus, if the taxpayer is not liable for the amounts it paid, the reimbursements are a true reimbursements under the rule and not subject to tax. If, however, the taxpayer was liable for the amounts paid, then the reimbursements are not considered true reimbursements, but are instead part of the gross income of the business.

In this case, taxpayer arranges for luncheons, seminars, meetings, etc. Its members or guests pay it an amount for such luncheons, etc. Taxpayer then pays the provider of the service. Here taxpayer is liable for the costs. Such income is therefore taxable to it. The tax rate and category will depend on the function. The amounts it receives for luncheons will be subject to tax under the retailing B&O tax category and subject to retail sales tax. Amounts it receives for seminars are taxable under the service and other category. Amounts received for meetings, if the amount is to pay for the

room in which the meeting is held, are subject to tax under the service and other category, as such use of a room is considered a license to use real estate. (See WAC 458-20-118).

[3] Voluntary contributions that are not in exchange for any goods, services, or direct business advantage may be deducted from the measure of income of the taxpayer as "amounts derived from bona fide . . . contributions, donations. . . ." RCW 82.04.4282.

RULING:

Taxpayer is subject to tax under the service and other category on its income from seminars, meetings, for arranging contracts between a buyer and seller, and for bringing new business into the area. Taxpayer is subject to retailing business and occupation tax and retail sales tax on its income for luncheons.

DATED this 24th day of May 1989.