

Cite as Det. No. 91-282, 11 WTD 473 (1992).

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 Refund of)	
)	No. 91-282
)	
. . .)	Registration No. . . .
)	Audit No. . . .
)	
)	

[1] Rule 168: B&O TAX -- SERVICE -- NURSING HOME CARE -- BEAUTY SHOP INCOME. Income from services of nursing home-owned beauty shop operated for residents only by nursing home employees does not qualify for deduction from B&O taxable income, because it is not an "integral part of the services" rendered by a nursing home.

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:

Taxpayer petitions for additional refund following audit.

FACTS AND ISSUES:

Adler, A.L.J. -- Taxpayer is engaged in the business of operating a nursing home. Its most recent audit covered the years 1987-1990, inclusive; and it resulted in a net credit for the taxpayer. Activities deemed taxable included taxpayer's operation of its coin-operated laundry, beauty shop, gift shop, and vending machines. The auditor found that the taxpayer had incorrectly deducted income from these activities. In its petition, taxpayer protests only the disallowance of the deduction for income from its beauty shop.

Taxpayer states:

It is our position that hair care and beauty shop services for our nursing home residents are an integral part of the regulatory requirements that the nursing facility provide appropriate grooming for residents to promote the resident's self respect. Many of our residents are sufficiently handicapped or confined to wheelchairs, making visits to local beauty or barber shops particularly difficult on a regular basis. State WACs related to Title XIX Medicaid rules as to allowable Patient Trust charges have permitted personal trust funds to be used for hair care/barber-beauty services. Virtually all nursing facilities either have arrangements to provide beauty shop services directly, or in the facility under contract with a licensed beautician.

It should be noted that [taxpayer] provides space to operate a beauty/barber shop, and we have chosen to employ our own licensed beauticians to ensure more hours of available services for the large resident population . . . we serve. Of particular importance to our petition are the following factors:

1. Our beauty shop serves our nursing home residents exclusively. We do not advertise or provide services to the general public, our staff or volunteers.
2. By operating our own beauty shop, I have control over operating costs and the rates charged. Our rate schedule is significantly below community beauty shop rates since our objective is to pay for our operating overhead. This is not our primary business.
3. We do not compete with the privately owned and operated beauty shops in the community.
4. Residents are NOT required to utilize our beauty shop services, but most do so due to the favorable rates, convenient operating hours, and handicapped accessibility.

DISCUSSION:

[1] RCW 82.04.4289 provides, in pertinent part:

In computing tax there may be deducted from the measure of tax amounts derived as compensation for services rendered to patients . . . by . . . nursing homes . . .

WAC 458-20-168 (Rule 168), amplifies the statute, explaining that the deduction is limited to amounts derived as compensation for

medical services to patients and sales of prescription drugs and medical supplies furnished as an integral part of such services.

Taxpayer believes its operation of a beauty shop on the premises is an integral part of the services rendered to its residents. Because of the physical and economic accessibility of this service, the residents are able to purchase better or more complete services than the quality or level of hygiene services required by nursing home and Medicaid standards. Access to beauty shop services assists patients both physically and emotionally, by permitting them to engage in an activity enjoyed by the general population and by helping them to feel good about themselves. Both goals, encouraging self-sufficiency and preserving dignity, are stated goals of Medicaid and nursing home laws. See, e.g., Chapter 74.42 RCW, WAC 248-14-247, WAC 388-88-050.

Taxpayer also argues that beauty shop services are among the allowable costs for which patient trust funds may be used under Medicaid regulations. RCW 74.46.190. Further, taxpayer states its rates are below comparable community rates, which complies with RCW 74.46.190. Finally, taxpayer argues the shop does not and is not intended to compete with a privately-operated salon, it is not operated for profit, and use of the services is strictly limited to residents.

We agree that Chapter 74.46 RCW, regulating use of public assistance funds, may permit payment for beauty shop services from such funds. However, this fact cannot be presumed to control or influence a decision on whether taxpayer's operation of a beauty shop on the premises of its nursing home is a taxable enterprise.

Under RCW 82.04.4289 and Rule 168, amounts derived as compensation for services rendered to residents may be deducted from the measure of a nursing home's business and occupation tax. However, the deduction does not apply to every service, regardless of the fact that it might be desirable for the patients' welfare. WAC 388-88-050(1)(b)(ii) requires that the facility provide

Baths, shampoos, routine nail care, shaves, oral care,
and skin care

WAC 388-88-050(2)(e) requires, further, that the facility supply

Soaps, lotions, shampoos, toothpaste, mouthwash, and
powder

Nowhere do the statutes require operation of a beauty shop. Clean hair, of course, is a part of good personal hygiene, but the regular staff is required to provide such services and supplies to carry out the requirement.

Operation of a full-service beauty salon is in addition to this statutory requirement and cannot be deemed to be an "integral part" of medical services, despite the fact that its presence may have an effect on residents' mental attitudes and quality of life.

As a result, taxpayer's argument that the beauty shop provides an "integral part" of the services required under the nursing home regulations must fail.

Under state law, exemptions to a tax are narrowly construed; taxation is the rule and exemption is the exception. Budget Rent-a-Car vs. Dept. of Rev., 81 Wn.2d 171, 174 (1972).

The Department of Revenue is required to interpret a statute in such a way as to avoid an absurd result. Yakima First Baptist Homes v. Gray, 82 Wn.2d 295 (1973). To permit taxpayer an exemption for its beauty shop income would create the absurd result of granting this beauty shop operator a complete tax exemption while other operators of identical businesses not located on nursing home premises are required to pay tax. The facts that taxpayer does not intend to compete with other beauty salons and that it limits its clientele strictly to residents do not alter the fact that it is operating a beauty salon in addition to operating a nursing home.

DECISION AND DISPOSITION:

Taxpayer's petition for refund is denied.

DATED this 27th day of September, 1991.