Cite as Det. No. 91-319, 11 WTD 511 (1992).

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

In the Matter of the Petition For Determination of Tax Liability of	)	D E T E R M I N A T I O N
	)	No. 91-319
. . .	)	Registration No. . . .

[1] B&O TAX -- GROSS INCOME. Gross income will not be imputed solely based on adjustments under section 482 of the Internal Revenue Code for federal tax purposes when there is no consideration proceeding or accruing to the taxpayer.

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:

The taxpayer petitions for the prior ruling of tax liability regarding adjustments to income under Section 482 of the Internal Revenue Code.

FACTS AND ISSUES:

Pree, A.L.J. -- Under Internal Revenue Code Section 482, the IRS is authorized to distribute, apportion, or allocate gross income between two or more related entities to prevent evasion or to clearly reflect income of the businesses. The taxpayer asserts that any such adjustment is merely reflected as a difference between book income and taxable income on the federal tax return. According to the taxpayer the fact that any such adjustment has been made does not result in any form of legal asset or liability between the related entities, nor does any such adjustment adjust the retained earnings of either entity.

In this case, the petition states:

> The taxpayer is concerned that any such adjustments reflected on the tax return (but not on the taxpayer's books) may be considered by a tax examiner as income which is subject to the state B&O tax. The item of primary concern results from intercompany management fees which result in a book/tax difference between a parent and its subsidiary. The parent company's [federal] tax return reflects such adjustments as other income in accordance with the provisions of Section 482. The subsidiary's return reflects the adjustment as other deductions. For financial reporting purposes, there is no management fee charged by the parent to its subsidiary for management services performed for the subsidiary by the parent. Nor is there any intention by the parent to hold the subsidiary internally accountable for its share of cost incurred at the parent's level. The only reason for imputing a Section 482 intercompany charge is to "clearly reflect the income" of related companies on the federal tax return. This is accomplished by reflecting a fair and reasonable charge on schedule M of the parent's and subsidiary's return to shift federal taxable income from the subsidiary to the parent.

The issue is whether the Section 482 management fee adjustment on the federal tax return of the parent results in "services" performed subject to business and occupation taxes.

DISCUSSION:

Management fees which a parent corporation charges its affiliates constitute taxable transactions.[1] In this case, no fees are charged. RCW 82.04.220 imposes business and occupation tax on the act or privilege of engaging in business activities. The tax is measured by:

> . . . the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.

Each of those measures is defined by statute. RCW 82.04.070 defines "Gross proceeds of sales" as:

> . . . the value proceeding or accruing from the sale of tangible personal property and/or for services

[1] ETB 50.04.203 (. . .). See also ETB 90.04.203 (. . .).

> 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. (emphasis supplied)

RCW 82.04.080 provides in part:

> "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services . . . (emphasis supplied)

Finally, RCW 82.04.090 defines "value proceeding or accruing" as:

> . . . the consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. . .

There is no value proceeding or accruing to the parent here. No consideration is actually received or accrued by the parent as a result of the adjustment to the federal return. There is no corresponding adjustment to the books or consideration flowing between the entities. Therefore, since there are no charges, no tax can be imposed on the taxpayer solely based on a Section 482 adjustment.

In Weyerhaeuser Company v. Department of Rev., 106 Wn.2d 557, 723 P.2d 1141 (1986), the Washington Supreme Court held that where an installment contract for the sale of timber did not provide for interest, the Department of Revenue could not impute such interest without statutory or regulatory authority. There is no authority for imposition of tax under the ordinary rules of statutory construction without consideration received or accrued. Any doubts as to the meaning of a statute under which a tax is sought to be imposed will be construed against the taxing power. Duwamish Warehouse Co. v. Hoppe, 102 Wn.2d 249, 254, 684 P.2d 703 (1984); Mac Amusement Co. v. Department of Rev., 95 Wn.2d 963, 966, 633 P.2d 68 (1981).

DECISION:

No tax will be imposed solely based on an adjustment under Internal Revenue Code Section 482 when there is no consideration proceeding or accruing to the taxpayer. There is a caveat,

however. That is, it appears likely that something else may be occurring to cause the IRS to make an adjustment under section 482 of the Internal Revenue Code to prevent evasion or to clearly reflect income. For instance, if charges (accruals) are reflected in the books, there is taxable income.

The reason for the 482 adjustment, but not the adjustment alone, could warrant inclusion in income. The explanation to other states where an income tax deduction as an expense of doing business is claimed, should be the same reason given to the State of Washington regarding the substance of the transaction.
Taxpayers are entitled request a ruling pursuant to WAC 458-20-100(9). Normally, a taxpayer would be permitted to rely upon the ruling for reporting purposes and as support of the reporting method in the event of an audit. The identity of the taxpayer, if other than [the representative], has not been disclosed in this request for a ruling, and the ruling is based upon only the facts that were disclosed by [the representative]. Since we will not be able to inform the taxpayer of any future changes in our position, this ruling may not be effective for future application by the taxpayer and will not be necessarily be binding on the Department should the position of the Department change. It also shall not be binding if there are any relevant facts which are in existence but not disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes.

DATED this 25th day of November 1991.