

Cite as 11 WTD 107 (1991).

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 Determination of Tax)	
Liability)	
)	No. 91-090
)	
. . .)	Registration No. . . .
)	

- [1] RULE 169 -- NONPROFIT CORPORATION -- LIABILITY FOR B&O TAX. Washington's Revenue Act contains no general exemption from taxation for nonprofit corporations.

- [2] RCW 84.04.431 -- SERVICE B&O TAX -- HEALTH OR SOCIAL WELFARE SERVICES -- NEIGHBORHOOD REVITALIZATION -- LOW INCOME DEFINED. Health or social welfare services include neighborhood revitalization programs for home buyers who qualify for low-income housing assistance. Low income means income that does not exceed eighty percent of the median income for the area.

- [3] RULE 169 -- RCW 82.04.4297 -- RCW 84.04.431 -- SERVICE B&O TAX -- HEALTH OR SOCIAL WELFARE ORGANIZATION -- DEDUCTION -- COMPENSATION FROM PUBLIC ENTITIES -- CONDITIONS FOR DEDUCTION. A "health or social welfare organization" may deduct amounts received from public entities for health or social welfare services if the organization meets the requirements of RCW 82.04.431. The requirements include having a minimum of eight members on its governing board, none of whom is a paid employee.

- [4] RULE 114 AND RCW 82.04.4282: SERVICE B&O TAX -- DEDUCTIONS -- NONBUSINESS INCOME -- CONTRIBUTIONS AND GRANTS. Contributions, donations and grants are entitled to deduction from B&O taxation pursuant to RCW 82.04.4282 if the amounts are not received in return for any goods, services or business benefits.

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 a determination as to whether or not as a not-for-profit corporation funded by federal block grant funds and grants from non-public entities, the corporation should be liable for Business and Occupation (B&O) tax for services specifically aimed at providing home purchasing opportunities to low-income families.

FACTS PRESENTED:

Roys, Sr. A.L.J. -- . . . (hereinafter referred to as the taxpayer) renovates deteriorated housing for the purpose of neighborhood revitalization in After renovation, the homes are sold. According to the taxpayer's brochure, program participants must be first time home buyers, families with children, and households with income below 80% of [the area's] median income.

The taxpayer's operating income for 1990 included the following:

- (a) \$. . . grant from the City . . . through the Community Development Block Grant Program;
- (b) \$. . . grant from the Local Initiative Support Corporation (an out of state private non-profit corporation); and
- (c) \$. . . Predevelopment Recoverable Grant from Local Initiative Support Corporation (this amount is to be repaid to LISC).

The taxpayer anticipated that its income for 1991 will come from similar sources. The taxpayer stated that none of its operating budget comes from profits or business income.

At inception, the taxpayer's governing board consisted of five members, none of whom received compensation from the corporation, and a separate "advisory management council"

consisting of four individuals including its compensated Executive Director. In an effort to satisfy the requirements for a health or social welfare organization as defined in RCW 82.04.431, the taxpayer discontinued its "advisory management council" and increased the membership on its governing board to eight members. The taxpayer contends that the newly enhanced governing board does not, and will not, include any voting members who are compensated by the corporation.

The taxpayer has been granted an advanced ruling by the Internal Revenue Service (IRS) that it satisfies the requirements for exemption from federal taxation under section 501(a) of the Internal Revenue Code as described in section 501(c)(3). The taxpayer filed a certificate of incorporation in this state as a non-profit corporation [in February 1990].

ISSUES:

The taxpayer requested a ruling on the following issues:

1. As a federally designated 501(c)(3) non-profit corporation, is it exempt from Washington state excise tax?
2. Does it satisfy the requirements for deduction of compensation from public entities pursuant to RCW 82.04.4297 and 82.04.431?
3. Are its funding sources exempt from state tax pursuant to RCW 82.04.4282 and WAC 458-20-114?

DISCUSSION:

[1] Unlike federal law, Washington's Revenue Act contains no general exemption from taxation for non-profit organizations. Unless a specific deduction or exemption applies, B&O and retail sales taxes are due. In Y.M.C.A. v. State, 62 Wn.2d 505 (1963), the court noted that under RCW 82.04.030, which defines taxable "business" for the purpose of the B&O tax, the definition of "person" is broad enough to include a charitable organization. Charitable non-profit organizations which engage in business activities are taxable the same as for-profit businesses.

[2] RCW 82.04.431(2) limits health or social welfare services to specific activities. The only activity which may include the services provided by the taxpayer is subsection (1):

Community services to low-income individuals, families and groups, which are designed to have a measurable and potentially major impact on causes of poverty in communities of the state.

The statute does not define "low-income." To determine whether the taxpayer is rendering services to low-income individuals, we are guided by the definition in RCW 35.21.685. That statute provides the following definition for "low income" to determine which individuals qualify for low-income housing:

As used in this section, "low income" means income that does not exceed eighty percent of the median income for the standard metropolitan statistical area in which the city or town is located.

The taxpayer states it typically targets households with incomes between 60% and 80% of the [area's] median income according to family size. If so, we agree that the taxpayer provides assistance to low-income individuals for purposes of RCW 82.04.431(2)(1).

[3] RCW 82.04.4297 provides a deduction from the B&O tax for amounts received from public entities for health or social welfare services. RCW 82.04.431 sets forth additional criteria for qualifying as a "health or social welfare organization." One of those conditions is that the organization must be managed by a governing board of at least eight individuals. Another condition is that no member of the governing board can be a paid employee of the organization. These requirements are set forth in RCW 82.04.431 as follows:

(1) For the purpose of RCW 82.04.4297, the term "health or social welfare organization" means an organization... which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization. . . . (emphasis added)

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws; (emphasis added)

The taxpayer's original governing structure failed to satisfy those statutory requirements. To comply with RCW 82.04.431,

the taxpayer reorganized its governing board to satisfy the minimum number requirement and made certain that none of the members of the board are compensated. As a result the Executive Director is not a member of the reorganized board.

For purposes of RCW 82.04.4297, the taxpayer can only claim a deduction for a "health or social welfare organization" for periods that it satisfied the criteria set forth in RCW 82.04.431. For those periods, the funds received from public entities would be deductible under RCW 82.04.4297.

[4] In addition to claiming a deduction as a "health or social welfare organization," the petitioner believes that the grants from LISC and the Community Development Block Grant Program constitute deductible contributions pursuant to RCW 82.04.4282 and WA 458-20-114. The taxpayer is correct that contributions, donations and grants are entitled to deduction from the B&O tax if they are received as an outright gift and not in return for any goods, services or business benefits. Also, if the Predevelopment Recoverable Grant is classified as a loan, it is not subject to excise tax.

DECISION:

- 1) The taxpayer is not exempt from Washington State excise tax solely on the basis of being a federally designated 501(C)(3) non-profit corporation.
- 2) Based on the facts presented, the taxpayer satisfies the requirements for deduction of compensation from public entities pursuant to RCW 82.04.4297 and 82.04.431, after its reorganization of its governing board to include a minimum of eight individuals, none of whom are a paid employee of the corporation.
- 3) Contributions are deductible pursuant to RCW 82.04.4282 if they are not in return for services.

This decision is based upon the facts presented by the taxpayer. The taxpayer has the burden of maintaining suitable records to support the deductions and exemptions claimed. RCW 82.32.070.

DATED this 2nd day of April 1991.