

Cite as 11 WTD 257 (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</u>
<u>N</u>	)	
For Ruling on Tax Liability of	)	
	)	No. 91-233
	)	
. . .	)	Registration No. . . .
	)	
	)	
	)	
	)	

[1] RCW 82.04.431 -- B&O TAX -- HEALTH OR SOCIAL WELFARE SERVICES -- 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's structure and activities meet the statutory requirements. Regional community action council established by law to plan for and coordinate emergency medical and trauma services may deduct income received from state, federal, and local sources. ACCORD: Det. No. 91-090, 11 WTD \_\_\_\_ (1991), 86-302A, 4 WTD 39 (1987).

[2] RULE 114 and RCW 82.04.4282: B&O TAX -- DEDUCTIONS -- CONTRIBUTIONS AND GRANTS. Donations, contributions, and grants are entitled to deduction from B&O-taxable income if the amounts are not received in return for any goods, services or business benefits. ACCORD: Det. No. 91-090, 11 WTD \_\_\_\_ (1991).

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 ruling on tax liability of regional planning council.

## FACTS AND ISSUES:

Adler, A.L.J. -- Taxpayer is a nonprofit corporation, which registered with the Secretary of State [in March of 1991]. Under the state Uniform Business Identifier (UBI) system, taxpayer was automatically issued a UBI number. This number is used by several state agencies to reference the taxpayer and replaces the former system in which each agency issued its separate numbers to its registrants. Following registration with the Secretary of State, the taxpayer received the routine UBI registration mailing from the Department of Revenue. The mailing advised taxpayer that it would be required to file quarterly tax returns. Taxpayer seeks a ruling on whether it must file such returns and on whether its income is subject to B&O or excise taxes.

In 1990, the legislature enacted the "State-Wide Emergency Medical Services and Trauma Care System Act." Chapter 269, Laws of 1990. One purpose of the Act was to establish regional planning councils to coordinate efficient and comprehensive emergency medical services and trauma care to all parts of the state. The Department of Health (DOH), assisted by an emergency medical services and trauma care steering committee, is required to set minimum standards for delivery of services. It is empowered to create emergency medical services and trauma care planning and service regions covering the whole state. The Act provided for creation by DOH of one emergency medical services and trauma care council per region. DOH appoints members to the councils, including representatives from hospitals and other emergency medical-services providers, local elected and law-enforcement officials, citizens, and local government agencies involved in providing such care. Taxpayer is one of these regional councils.

The regional councils receive, review, and evaluate recommendations from their constituents and local councils in formulating a plan for comprehensive care for the region. Taxpayer's bylaws call for the council to develop a regional emergency medical services and trauma care plan for the four-county area, assessing available facilities, needs, personnel, and other factors; submit the plan to DOH; advise DOH on

implementation and other related matters; provide data to assist DOH in assessing effectiveness and future needs.

Councils receive disbursements from DOH for the development, implementation, and enhancement of the system. Those funds are to be awarded as "matching funds" for grants to qualified service providers. Where DOH determines that local matching funds are not available to fund qualifying services, it can choose to fully fund them instead of requiring matching funds.

Qualifying uses of grants include establishment, development, expansion, and improvement of emergency and trauma services; equipment purchases; training and education; and research and development activities.

Taxpayer's council has no members. It is governed by a board of "not more than twenty-four." All regional DOH appointees are automatically appointed to the board, and the number of directors may be increased if DOH decides to appoint more people to the regional council. Officers and directors may be compensated, but only for services rendered. The council has no authority to issue stock, and no net earnings may benefit its members. All property or assets remaining on dissolution are to be used for charitable purposes and are not to be distributed to the officers or directors for services.

#### DISCUSSION:

[1] Unlike federal law, Washington's Revenue Act contains no general exemption from taxation for non-profit organizations. The Washington legislature has included nonprofit organizations within the definition of "persons" under RCW 82.04.030.

Persons engaging in business are required to register with the Department of Revenue, whether their activities generate an actual tax liability or not. RCW 82.32.030.

The legislature has broadly defined "business" in RCW 82.04.140 to include

all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly. (Emphasis supplied.)

"Engaging in business is also broadly defined under RCW 82.04.150:

commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business. (Emphasis supplied.)

As a result, taxpayer is required to file regular returns. RCW 82.32.100 assesses penalties for failure to file returns. Unless a specific deduction or exemption applies, state business and excise taxes apply to taxpayer's activities.

RCW 82.04.4297 permits the following deduction:

In computing tax there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization or by a municipal corporation or political subdivision . . . . (Emphasis supplied.)

There is no question that the taxpayer is a "health and welfare service organization." RCW 82.04.431 expressly includes "any community action council" as such an organization. The taxpayer qualifies as such an organization by its very nature and purpose. Det. No. 86-302A, 4 WTD 39 (1987). According to the Department of Health, virtually all of taxpayer's funding is provided by DOH.

Moreover, taxpayer's activities clearly qualify as health and social services under RCW 82.04.431. For this purpose, a health or social welfare organization is a nonprofit Washington corporation which meets the following criteria:

(1) is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization;

(2) is not a corporation providing professional services as authorized in chapter 18.100 RCW;

(3) no part of its income is 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;

(4) the salary or compensation paid to its officers and executives is only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the public service of the state;

(5) the assets of the corporation are irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, will not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the deduction;

(6) is duly licensed or certified where licensing or certification is required by law or regulation;

(7) the amounts received qualifying for exemption are used for the activities for which the exemption is granted; and

(8) services are made available regardless of race, color, national origin, or ancestry.

RCW 82.04.431.

Based upon a review of the taxpayer's articles of incorporation and bylaws, the State-wide Emergency Medical Services and Trauma Care Act, information from Department of Health, and the representations of fact contained within the taxpayer's petition, we have concluded that the taxpayer is entitled to the deduction granted by RCW 82.04.4297.

#### DECISION AND DISPOSITION:

RCW 82.04.4297 provides a plenary business and occupation tax deduction for all amounts received from the Federal or State governments in support of such organizations' service activities. Any amount received which does not come from one of these sources, or is not otherwise deductible or exempt, is subject to tax. Additionally, these nondeductible amounts would have to exceed the minimum quarterly income before taxpayer would owe B&O tax. Further, in addition to claiming a deduction for the above-mentioned amounts, taxpayer is entitled to deduct amounts received as contributions, donations and grants if they are received as outright gifts and are not in return for any goods, services or business

benefits. RCW 82.04.4282 and WAC 458-20-114 (Rule 114; . . . .)

Finally, taxpayer's purchases of supplies, furniture and other retail items acquired for use in its operations would be subject to sales tax at the time of acquisition. If tax is paid at the time of acquisition, taxpayer is required only to retain proof of sales tax payment. RCW 82.32.070. Invoices including a separately-stated sales tax amount and corresponding proofs of payment, such as receipts or cancelled checks, are sufficient to meet this burden. If tax is not paid at the time of acquisition, taxpayer must report and pay the proper amount of use tax on its next regular return.

DATED this 26th day of August 1991.