

Cite as Det. No. 91-186, 11 WTD 375 (1992).

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

In the Matter of the Petition) D E T E R M I N A T I O N
For Section 18 Determination)
of) No. 91-186
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[1] RCW 82.04.431 -- HEALTH OR SOCIAL WELFARE ORGANIZATION
-- GOVERNING BOARD -- PAID EMPLOYEES. A nonprofit
corporation with a governing board including any
individual who is a paid employee of the corporation
does not qualify as a health or social welfare
organization.

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: . . .
. . .

DATE OF HEARING: June 18, 1991

NATURE OF ACTION:

The taxpayer petitions for a Tax Ruling.

FACTS AND ISSUES:

Pree, A.L.J. -- The taxpayer, H, was organized as a nonprofit hospital under Chapter 24.03 RCW and section 501(c)(3) of the Internal Revenue Code. H provides medical services and is a hospital under RCW 70.41. It has a single member, P which is another nonprofit organization. P acts as a general administrator overseeing and coordinating H's activities with other organizations as part of a multi-corporate healthcare group.

H has a board of directors it calls "trustees" consisting of eight individuals, one of whom is a paid employee of H. Under the bylaws of H, it is managed by a governing board. H's governing board is made up of 28 individuals consisting of the combined boards of trustees (directors) of H and P. P has 20 members on its board of trustees, one of whom is a paid employee of P.

The issue is whether H qualifies as a "health or social welfare organization" under RCW 82.04.431.

DISCUSSION:

RCW 82.04.4297 provides a business and occupation tax deduction to "health or social welfare organizations" for amounts received from the State, Federal, or local governments as compensation for health or social welfare services. RCW 82.04.431 defines "health or social welfare organizations" and provides in part:

(1) For the purposes of RCW 82.04.4297, the term "health or social welfare organization" means an organization, including any community action council, which renders health or social welfare services as defined in subsection (2) of this section, which is a not-for-profit corporation under chapter 24.03 RCW and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or which is a corporation sole under chapter 24.12 RCW. Health or social welfare organization does not include a corporation providing professional services as authorized in chapter 18.100 RCW. In addition a corporation in order to be exempt under RCW 82.04.4297 shall satisfy the following conditions:

(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;

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

(Emphasis added.)

The taxpayer seeks an interpretation on the meaning of the first underlined phrase, "not less than eight individuals none of whom is a paid employee of the organization". The taxpayer asserts that it means:

Some members of the governing board can be paid employees of the organization as long as there are at least eight members who are not paid;

Rather than:

No member of the governing board can be a paid employee of the employee organization.

Since two of the members of the governing board are paid employees, the stricter interpretation would result in a failure to qualify as a "health and social welfare organization" and no deduction would be available from the measure of business and occupation tax.

The taxpayer points out that RCW 82.04.431(1)(a) allows a health or social service organization to make payments to directors in the form of services that it renders. RCW 82.04.431(1)(b) allows it to pay salaries to officers and executives. The taxpayer argues that, since the statute specifically provides for payments by a health or social welfare organization to its officers, directors, and executives, the legislature did not intend to exclude them from the board.

We note, however, that subsection (a) provides for payments to directors, but only in the form of services while subsection (b) which discusses salary or compensation that an employee would receive, does not mention directors. This implies that the legislature did not contemplate directors being paid employees of the organization. We disagree with the taxpayer and believe that the statute was intended to exclude any paid employees from the governing board. In other words, the statute lists two requirements to qualify:

1. The governing board must have 8 or more members, and
2. No member of the board can be a paid employee of the organization governed by the board.

We also have another concern. RCW 24.03.095 provides that the affairs of the organization shall be managed by a board of directors. The taxpayer calls its board of directors its "board of trustees". The articles of incorporation authorize that board to manage the corporation, but they also allow for bylaws. It is the bylaws that provide the corporation will be managed by the

"board of governors", the combined boards of H and P. We believe that the governing board contemplated in RCW 82.04.431 was the board of directors which was called the board of trustees by the taxpayer. Since a paid employee of the organization is a member of that board consisting of eight individuals, it does not qualify as a health or social service organization under RCW 82.04.431.

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(9) and is based upon only the facts that were disclosed by the taxpayer. In this regard the department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed were actually true. This legal opinion shall bind this taxpayer and the department upon those facts. However, it shall not be binding if there are 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. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

The identity of the taxpayer is not given in this request for a ruling. Since we will not be able to inform them of any future changes in our position, this ruling may not be effective for future application by it and will not necessarily be binding on the Department should the position of the Department change.

DATED this 15th day of July 1991.