

Cite as Det. No. 91-187, 11 WTD 379 (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. 91-187
)
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)

[1] RCW 82.04.431 -- HEALTH OR SOCIAL WELFARE ORGANIZATION
-- OFFICERS -- PAID EMPLOYEES. A nonprofit
corporation with a governing board of eight
individuals, five of whom are officers indirectly paid
through another entity 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, also a 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's president, executive director, secretary/treasurer, and two vice presidents are paid employees of P. All salaries of these

individuals are paid by P. Their services are provided to H under a management contract between H and P. The management fee paid by H to P is used by P to cover personnel costs as well as overhead and administrative expenses. The taxpayer stipulates that P not H has pervasive control of the employees so that P is their employer under RPM 90-1.

H has a board of directors (it calls "trustees") consisting of eight individuals, five of whom are the officers listed above. None of the directors is compensated for serving on the board as a director.

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" which provides:

(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.

(Emphasis added.)

The critical matter for interpretation is whether the underlined phrase prevents the five officers described above from participating on H's governing board.

The taxpayer argues that the presence of the described individuals should not prevent H from qualifying as a health or social welfare organizations" because they are not H's employees. They are employees of P performing management services for H pursuant to a contract between H and P. The taxpayer argues that H does not have the degree of control over those individuals which is required to establish an employer-employee relationship.

We disagree with these taxpayer assertions. Officers are designated by statute¹ and controlled by the board of directors. That control cannot be contracted away. We believe that they are employees of H for the purpose of RCW 82.04.431. Further, under subsection (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;

By paying the management fee to P, it is indirectly paying the five directors part of its income, failing that requirement. It is our opinion that under the facts described above, that H is not a "health or social welfare organization" within the meaning of 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 it of any future changes in our position, this ruling may not be effective for future application by them and will not necessarily be binding on the Department should the position of the Department change.

DATED this 15th day of July 1991

¹ See RCW 24.03.125