Cite as Det. No. 93-073, 12 WTD 593 (1993).

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

In The Matter of the Petition For Ruling on Tax Liability of	)	D E T E R M I N A T I O N
	)	No. 93-073
. . .	)	Unregistered

[1] RULE 209: B&O TAX -- COMBINE WORK PERFORMED BY A FARMER FOR OTHERS -- CASUAL AND ISOLATED OCCURRENCES vs. ENGAGING IN BUSINESS -- TAXABLE ACTIVITIES. Where a farmer accommodates neighboring farmers by offering his services to operate his farm equipment for their farming use on a regular basis, the farmer is engaging in a taxable business activity in addition to his farming business. The activity is in competition with other renters of farm equipment and services and is subject to B&O tax.

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:

Taxpayers are farmers who were contacted by a tax discovery officer regarding income received for combine, or "custom" work. Taxpayers petitioned, pursuant to WAC 458-20-209 (Rule 209), for a determination that the work was "casual and incidental" and, therefore, exempt from B&O tax.

FACTS:

Adler, A.L.J. -- Taxpayers, a married couple, are owners of nearly 1,500 acres of land. Most of the labor in question and cited herein is performed by the husband. The couple farms most of the land and leases out approximately 26 percent of their acreage.

The Department's Tax Discovery Officer (TDO) noticed that the taxpayers had received income when he was cross-referencing federal 1099 reporting forms. The form he examined was from a neighboring farm. The TDO believed the income was received for hauling activities. Upon request, the taxpayers supplied a letter from the issuer of the 1099, stating that the work performed was custom combining of grain and that no hauling was involved. We will accept the letter from the neighboring farmer as being factual.

The husband estimates he works six days per week for thirteen hours per day for eight months each year; six days per week for fifteen hours per day for one month each year; and five days per week for four hours per day for three months each year, for a total of 3,310 estimated work hours per year. Further, between the farmer and his hired hands, the estimated annual work hours total 16,750. Of this number, 2,200 hours represent custom work in an average year or approximately thirteen percent of the total hours worked.

He charges $28-$30 per acre for the custom work, which equals approximately $130 per hour and includes the labor to drive the equipment from his farm to the work site. He believes a local rental from a renter of comparable equipment would cost approximately $120 for the equipment only, without the labor.

For the years 1988-1991, the taxpayers' federal tax returns showed that the income received for custom farming was slightly more than nine percent of their total farming gross income. . . . .

TAXPAYER'S EXCEPTIONS:

Taxpayers' representative states:

> The farm equipment owned by the [taxpayers] is primarily used for their own farming operation. All custom work which they perform is in [their county]. They perform custom work only after their own crops have been handled. As the farm grows, the amount of time they have to assist neighbors will be reduced.
>
> This farm is considered a classified credit risk and is guaranteed by the Farm Home Administration in order to get financing. The custom work they have done in the past has helped with some of their financial difficulties. Since the federal government guarantees their loans, it seems unfair for the State to tax them on custom farming which is not their primary business.

DISCUSSION:

Unless otherwise exempt, engaging in business in this state results in a business and occupation (B&O) tax liability. RCW 82.04.220.

RCW 82.04.140 provides "business" includes 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.)
RCW 82.04.150 defines "engaging in business" as "commencing, conducting, or continuing in business.

The legislature has granted an exemption from the B&O tax for income from the "business of growing or producing for sale upon the person's own lands or upon land in which the person has a present right of possession, any agricultural or horticultural produce or crop." RCW 82.04.330 (emphasis supplied).

RCW 82.04.290 provides:

> Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and 82.04.280; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.50 percent. This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale."

(Emphasis supplied.)

The measure of tax is the "gross income of the business," defined by RCW 82.04.080 to mean

> 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 . . . .without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever

> paid or accrued and without any deduction on account of losses.

(Emphasis supplied.)

RCW 82.04.300 states the B&O tax does not apply unless income exceeds the equivalent of $1,000 per month. If income is calculated on an annual basis, the B&O tax would not apply unless the gross income from the activity exceeds $12,000 per year.

Clearly, taxpayer's income derived from farming his own land or land he rents is not subject to B&O tax. However, this exemption does not extend to farming or farming-related activities performed for others. WAC 458-20-209 (Rule 209) is the Department's rule implementing the law and has the same force and effect as the law unless overturned by a court. Rule 209 provides:

> Persons engaging in the business of threshing grain, baling hay, cutting or binding hay or grain, tilling the land or performing for hire other services connected with farming activities are taxable under the service and other business activities classification of the business and occupation tax upon the gross income received from the performance of such services.

The rule further explains:

> The extent to which the above functions are performed for others is determinative of whether or not a person is engaged in a taxable business in respect thereto. In other words, a person is not construed as being engaged in a taxable business when his activities are casual and incidental, such as a farmer owning baling equipment or threshing equipment which is used primarily for baling hay or threshing grain produced by himself but who may occasionally accommodate neighboring farmers by baling small quantities of hay or threshing small quantities of grain produced by them. On the other hand, persons owning baling equipment or threshing outfits whose primary business is baling hay or threshing grain for others are engaged in business and taxable with respect thereto, irrespective of the amount or extent of such business and are required to pay the retail sales tax upon the purchase of materials and equipment used in the performance of such services.

(Emphasis supplied.)

After being contacted by the TDO, the taxpayers followed the instructions in Rule 209 and requested a ruling on whether their activity was subject to B&O tax.

They argue the combining activity is not their primary business; the combining is offered to neighboring farmers as an accommodation and not for profit. This is done in an effort to help recover the cost of owning such equipment. Where it is not needed by the taxpayers to operate their own farm, they can help defray the cost of owning the combine by renting their services to nearby farmers. Conversely, by offering the equipment they own to farmers, who presumably reciprocate in a similar manner, the farmers collectively can have affordable access to equipment at the specific times it is needed without bearing the full cost of ownership.

The taxpayers also argue that the activity is casual and incidental. The representative supports this argument by stating the taxpayers intend to phase back on offering the combine to neighbors as their own land comes fully into production. We do not disbelieve this assertion or that the taxpayers are primarily engaged in business as farmers on their own land; however, the income declared on their federal tax returns has increased every year since the first year submitted, 1988. In fact, the amount declared in 1991 was more than twice the amount that was declared in 1988. While taxpayers may intend to phase back on leasing their equipment, no such cutback occurred during the years for which federal tax returns have been submitted. Further, the income generated by the activity is enough to exceed the minimum requirement for being subject to this state's B&O tax under RCW 82.04.300. As such, the volume of services cannot be considered "casual or incidental".

Here, taxpayer performs combining activities by transporting his equipment to and operating it on the land of others for a fee. He is clearly doing this with the object of benefit or advantage, since it enables him to defray his cost of owning the equipment. He is also doing it for the benefit of others, as it enables them to use the equipment without bearing its full cost. As such, he is "engaging in business" under the statutes. The B&O tax is a "privilege" tax, which is imposed on every person engaging in business.

While the federal tax returns do not support the argument of phaseout, we have no reason to doubt the taxpayers' claim that the farming activities were performed as an accommodation to neighboring farmers or that the cost of doing so may have exceeded the actual charges to the others. However, our discretion does not extend to a consideration of why the transactions are undertaken. The measure of the service B&O tax

is the "gross income of the business," with no deduction permitted for costs incurred through performance of the service provided.

Exemptions to a tax are narrowly construed; taxation is the rule and exemption is the exception. Budget Rent-a-Car vs. Department of Rev., 81 Wn.2d 171, 174 (1972). As such, the exemption granted to persons for income derived from their agriculture activities on their own land cannot be extended to mean it exempts income derived from using their farming equipment regularly on others' land.

Further, the Department of Revenue is required to interpret a statute in such a way as to avoid an absurd result. Yakima First Baptist Homes v. Gray, 82 Wn.2d 295 (1973). To grant an exemption to the taxpayers would result in a business advantage not enjoyed by others providing the same service. Similarly, the fact that the Farm Home Administration guarantees the taxpayers' loans cannot be interpreted to mean the taxpayers are not subject to state business taxes. Extended to its logical end, this would mean any person receiving federal loan guarantees should be exempt from state tax obligations, with the absurd result that all persons receiving Small Business Administration and other types of loan guarantees could enjoy a state tax exemption for their activities as well. The broad language adopted by the legislature clearly does not intend such a result. That the federal government provides loan guarantees is not an indication that it intends to preempt the borrowers' state tax obligations.

DECISION AND DISPOSITION:

Taxpayers' income from providing custom combining equipment, labor and services to others on their land is subject to service B&O tax. The taxpayers' file will be remanded to the Tax Discovery Officer who first contacted them for action consistent with this Determination.

DATED this 25th day of February 1993.