

Cite as Det. No. 93-078, 12 WTD 599 (1993).

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

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| In the Matter of the Petition |) | <u>D E T E R M I N A T I O N</u> |
| For Correction of Assessment of |) | |
| |) | No. 93-078 |
| |) | |
| . . . |) | Registration No. . . . |
| |) | . . ./Audit No. . . . |
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| |) | |

[1] RCW 82.04.080, RCW 82.04.090, RCW 82.04.220 -- B&O TAX -- GROSS INCOME OF BUSINESS -- INDUCEMENTS. The gross income of a business includes payments from an electric power company to a builder for incorporating energy saving efficiencies into a building's construction.

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 TELEPHONE CONFERENCE: . . .

NATURE OF ACTION:

The taxpayers petition for correction of audit assessments that assessed service business and occupation (B&O) tax on payments received from an electric power company for incorporating energy saving measures into its building construction methods.

FACTS:

Lewis, A.L.J. -- The business records of [taxpayer 1] were audited by the Department of Revenue (Department) for the period January 1, 1988 through June 30, 1991. The business records of its successor, [taxpayer 2], were audited by the Department of Revenue for the period July 1, 1991 through March 31, 1992. Both

taxpayers are general contractors who build commercial and multi-family buildings. The taxpayers received payments, under a written contract, from [client] for constructing buildings that are energy efficient. The Department's Audit Division determined that both taxpayers had not reported and paid B&O tax [on the payments from client]. [In September 1992] the [taxpayer 1] audit assessment (Document No. . . . /Audit Assessment No. . . .) was issued for . . . tax and interest. [In September 1992] the [taxpayer 2] audit assessment (Document No. . . . /Audit Assessment No. . . .) was issued for . . . tax and interest. Timely petitions were filed [September 1992] requesting correction of [the] audit assessments

ISSUES:

Two issues are presented for consideration:

1) Are payments received from [client] subject to service B&O tax?

[THE SECOND ISSUE IS NOT BEING PUBLISHED BECAUSE IT IS NOT PRECIDENTIAL]

DISCUSSION:

[1] RCW 82.04.220 provides in part:

There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the applicable rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.

RCW 82.04.080 provides in part:

"Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales.

RCW 82.04.090 provides in part:

"Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued.

Thus, in broad terms, the B&O tax is a tax on the privilege of engaging in business activities. The measure of the tax is the

"gross income of the business", which includes the consideration received, whether money, credits or rights.

In this case, the taxpayer received payments from [client] for constructing energy efficient buildings that met standards set by [client]. The purpose of the payment is to reward a builder for constructing a building that will save energy.

The [payment] is really not a rebate. Generally, a rebate is thought of as "a deduction from an amount to be paid or a return of a part of an amount given in payment." William Morris, editor, American Heritage Dictionary, (Boston: Houghton Mifflin Company, 1980), p. 1086. In this instance, the electric utility, [client], makes a payment to the builder as an inducement to construct an energy efficient building.

[Client] sells the energy (electricity), it does not sell building materials. Thus, it is not returning part of the purchase price of building materials it sold, but rather it is making a money inducement to take certain action. It is not a gift, because the contract requires that the taxpayer must construct the structure to certain standards set by the electric company. The electric company, in essence, is making a payment to help defray the builder's increased costs of using more expensive, but energy saving materials i.e., thicker insulation, double pane windows, etc.

Under the very broad definitions of "Gross income of the business" and "Value proceeding or accruing" the income received whether it be in money, credits, or rights must be considered gross income of the business and subject to the B&O tax. Furthermore, the income is subject to the service B&O tax under the provisions of RCW 82.04.290.

. . . .

DECISION:

The taxpayer's petition is denied.

Dated this 25th day of February 1993.