

Cite as Det. No. 92-289, 12 WTD 251 (1993).

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 N</u>
For Correction of Assessment of	)	
	)	No. 92-289
	)	
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .
	)	

RCW 82.04.260(14) INSURANCE AGENTS CLASSIFICATION.  
Commissions received from the sale of single premium  
tax deferred annuities issued by an insurance company  
that required approval by the Insurance Commission and  
could be sold only by licensed insurance agents are  
taxable under insurance agent's B&O tax rate.

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.

DATE OF TELEPHONE CONFERENCE: . . .

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

A petition for a correction of an assessment based on the  
contention that the commission income received by . . .  
(Taxpayer) is subject to the B&O tax for insurance agents.

FACTS AND ISSUE:

Norton, A.L.J. -- Taxpayer was audited for the period  
October 1, 1988 through July 31, 1991 and received an assessment  
. . . . The taxpayer had filed tax returns reporting all of the  
the commission income under the classification of insurance  
agents at the B&O tax rate of .011. The auditor reclassified  
some of that commission income to the classification of other  
business or service activities at the B&O tax rate of .015. The  
commission income that was reclassified was for the sale of

single premium tax deferred annuities issued by [an insurance company].

The taxpayer and its agents are licensed by the Insurance Commissioner of the State of Washington to sell insurance in Washington.

The issue is whether the taxpayer is taxable as an insurance agent on the commission income derived from the sale of these single premium tax deferred annuities.

#### DISCUSSION:

RCW 82.04.260(14) provides:

Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of one percent.

There is an additional tax imposed by RCW 82.04.2904 to make the above rate on insurance agents an effective 1.1 percent.

RCW 82.04.290 provides a B&O tax at 1.5 percent on service or other business activities not specifically covered by other sections. Income derived from the sale of securities and mutual funds are taxed at the service rate.

The taxpayer has submitted a copy of [an insurance company]'s letter of approval from the state of Washington Insurance Commissioner to sell the single premium tax deferred annuity in the state. We have verified with the Insurance Commissioner's office that sellers of this insurance product must be licensed by them as insurance agents.

As to the B&O taxation of commissions on sales of these single premium tax deferred annuities, we hold that the taxpayer meets the classification requirements of RCW 82.04.260(14). The taxpayer and its agents are licensed insurance agents and this single premium tax deferred annuity is an insurance product that must be approved by the Insurance Commissioner. Therefore, both requirements of the statute are met.

#### DECISION AND DISPOSITION:

The taxpayer's petition is granted. The assessment will be canceled.

DATED this 21st day of October 1992.