

Cite as Det. No. 93-006, 12 WTD 561 (1993).

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

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Correction of Assessment of)	
)	No. 93-006
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	

[1] RULE 197, RCW 82.04.080, AND RCW 82.04.090: B&O TAX -- GROSS INCOME -- VALUE PROCEEDING OR ACCRUING -- DENTIST -- MEASURE OF TAX. Where an independent contractor dentist, working for another dentist, receives as compensation 30 percent of gross billings attributable to his services, only that figure is B&O taxable to the first dentist. The remaining 70 percent is not "value proceeding or accruing" to the taxpayer dentist because he is not legally entitled to receive that amount.

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: . . .

NATURE OF ACTION:

Protest by dentist of the measure of his B&O tax.

FACTS AND ISSUES:

Dressel, A.L.J. -- [Taxpayer] is a dentist. His books and records were examined by the Department of Revenue (Department) for the period January 1, 1987 through March 31, 1991. As a result a tax assessment, identified by the above-captioned numbers, was issued for \$ That amount was subsequently reduced to \$. . . in a post audit adjustment dated [February 1992]. The taxpayer appeals portions of the adjusted assessment.

During the audit period, the taxpayer practiced dentistry at two Seattle locations. He maintained his own practice . . . and

worked on a contract basis for [another dentist] ([Dr. D.]) It is the income from this latter relationship that is at issue in the present case.

Taxpayer entered into a contract with [Dr. D.] under which the former would care for patients of the latter at [Dr. D.]'s premises. [Dr. D.] provided working space, dental supplies and equipment. [Dr. D.] billed the patients and collected the money. As to work performed by the taxpayer, [Dr. D.] paid to taxpayer 30 percent of the gross amount billed. That was the taxpayer's compensation for the professional services he rendered at [Dr. D.]'s location. That is also the amount on which [taxpayer] believes he should be taxed for purposes of the business and occupation (B&O) tax.

The Department's auditor, however, felt otherwise. In the assessment at issue, he measured the taxpayer's B&O tax by the gross billings generated by [taxpayer]'s work, as opposed to the 30 percent which the taxpayer received for his efforts.

The issue in this case is whether the B&O tax of a contract dentist should be measured by gross billings from work he did or the amount he was contractually entitled to receive.

DISCUSSION:

[1] The business and occupation (B&O) tax is asserted, in this case, against gross income of the business. See RCW 82.04.220. "Gross income of the business" is defined at RCW 82.04.080 as:

. . . 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, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all 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 added.)

The "value proceeding or accruing" is "the consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued." RCW 82.04.090.

At issue here is the 70 percent of taxpayer's gross billings which are not paid to him. Of the payments made by patients, this 70 percent is kept by [Dr. D.] for its expenses and profit. Obviously, it is not "actually received" by the taxpayer. So the

question becomes, is it "accrued" to the taxpayer. It has to be one or the other or both or it is not "value proceeding or accruing". Id.

In Det. No. 88-202, 5 WTD 379 (1988), we decided a similar question of whether a fee (commission) was actually accrued by examining whether the taxpayer was entitled to receive it. Such an approach is consistent with WAC 458-20-197 (Rule 197), "When tax liability arises." This rule reads in part:

(2) ACCRUAL BASIS.

(a) When returns are made upon the accrual basis, value accrues to a taxpayer at the time:

(i) The taxpayer becomes legally entitled to receive the consideration, or,

(ii) In accord with the system of accounting regularly employed, enters as a charge against the purchaser, customer, or client the amount of the consideration agreed upon, whether payable immediately or at a definitely determined future time.

(Emphasis added.)

Not only does this taxpayer not actually receive the disputed 70 percent, but also he is never "legally entitled" to the 70 percent. His contract with [Dr. D.]'s professional service corporation provides that taxpayer will be paid only 30 percent of gross billings. Thus, he is never legally entitled to the disputed 70 percent. It follows, then, as to the taxpayer, that the 70 percent is neither "value proceeding or accruing" nor "gross income of the business". Like a commissioned salesperson would be, the taxpayer dentist is taxable only on gross income actually derived which is the 30 percent he receives from [Dr. D.].¹

[Dr. D.], however, "actually received" 100 percent of the fees generated by the services of taxpayer. 100 percent of those fees, therefore, are B&O taxable to [Dr. D.] notwithstanding the fact that [Dr. D.] later pays 30 percent to taxpayer. Expenses may not be deducted from gross income in determining the measure of one's B&O tax. RCW 82.04.080.

As a result of our conclusion vis-a-vis gross income of the business, whether taxpayer is a subcontractor and whether taxpayer gets paid if a patient doesn't pay [Dr. D.] are irrelevant considerations. Further, the presence of [taxpayer]'s name on the billings sent out by [Dr. D.] is not determinative of the former's tax status. [Dr. D.]'s name was on the billings as well and patients were directed to remit their payments to [Dr. D.].

¹See WAC 458-20-159.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. The Audit Division of the Department will issue an amended assessment, bearing a new due date, if applicable, consistent with this Determination.

DATED this 25th day of January 1993.