

Cite as Det. No. 93-023, 12 WTD 575 (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. 93-023
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	

- [1] RCW 82.04.330 -- MINK RANCHER. Where a taxpayer raises mink for their pelts, slaughters the mink, removes the pelt, and then sells the pelt at wholesale, the taxpayer is entitled to the agricultural exemption from taxation found in RCW 82.04.330.
- [2] RCW 82.04.330 -- SLAUGHTERHOUSE DEFINED. The term slaughterhouse means a place where animals are butchered for food. When the taxpayer kills the mink for its fur, it does not do so for food. Thus, it is not operating a slaughterhouse.
- [3] RULE 106 -- CASUAL AND ISOLATED SALE -- SOLE PROPRIETOR-SHIP -- INTEREST ON REAL ESTATE CONTRACT. When a sole proprietor sells property, the sale is subject to business and occupation taxation unless an exemption or exception applies. When the sale is casual or isolated, the interest income from a real estate contract is not subject to taxation. ACCORD: Det. No. 90-86, 9 WTD 165 (1990).

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:

A mink rancher protests the assessment of business and occupation taxes on his receipt of income from the sale of mink pelts under the classification of breaking and slaughtering as well as his receipt of interest income from real estate contracts under the classification of service and other activities.

FACTS:

Coffman, A.L.J. -- The taxpayer characterizes himself as a mink rancher. His books and records were reviewed by the Department for the period of January 1, 1987 through December 31, 1990. The Department's Audit Division issued a tax assessment showing delinquent taxes . . . plus interest as due and owing. The taxpayer filed a timely notice of appeal raising five issues. The Interpretation and Appeals Division referred three of the issues back to the Audit Division where two of the matters were resolved. The above referenced Post Audit Adjustment (PAA) was issued showing unpaid taxes [and interest]. The taxpayer has made partial payment of the unprotested amount leaving [an unpaid balance on the PAA].

MINK RANCHING ACTIVITIES.

The taxpayer raises mink for the purpose of slaughtering them and selling their pelts. The taxpayer does its own slaughtering in lieu of paying a third party to perform the service. The taxpayer was assessed business and occupation taxes under the classification of slaughtering and breaking on its gross receipts from the sale of the pelts.

The auditor states in his report that the taxpayer slaughters mink and processes their pelts for other mink ranchers. However, the taxpayer denies this. He states that mink ranchers slaughter and skin their own mink because it increases the profit margin. He states that he does not slaughter mink owned by other ranchers, but he will dry pelts for them. He claims that he was assessed business and occupation taxes as a processor for hire on this income.

Further, he states that he does not purchase mink from other ranchers to slaughter them. His only purchases were for breeding stock.

REAL ESTATE CONTRACTS.

The taxpayer is a sole proprietorship. The owner/taxpayer received interest income from two real estate contracts. The taxpayer states that the real property involved was owned for personal investment and recreational purposes only and that he was not in the business of buying and selling real estate. Further, the taxpayer states that the properties were not used in

the conduct of his business. The taxpayer was assessed business and occupation taxes under the service and other activities classification on its receipt of the interest income.

ISSUES:

1. Is the taxpayer's receipt of income from the sale of mink pelts exempt from the business and occupation tax pursuant to RCW 82.04.330?
2. Is the taxpayer's receipt of interest income from real estate contracts exempt from taxation when the taxpayer is a sole proprietor and the real property was not related to the taxpayer's principal business activity?

DISCUSSION:

1. Income from the Sale of Mink Pelts.

The taxpayer relies upon the exemption from taxation found in RCW 82.04.330 which states, in part:

This chapter [business and occupation tax chapter] shall not apply to any person in respect to the business . . . of raising upon the person's own lands . . . any animal, bird, fish, or insect, or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, or in respect to the sale of such products at wholesale by such grower, producer, or raiser thereof.

(Emphasis added.)¹

Exemptions from taxation are the exception and are to be strictly construed. The taxpayer has the burden to show that he qualifies for the claimed exemption. Budget Rent-a-Car of Washington-Oregon, Inc. v. Department of Rev., 81 Wn.2d 171(1972).

The taxpayer raises the mink on his own land, for their fur, and then sells the fur at auction in wholesale transactions. Thus, the taxpayer's activities fit within the initial portion of the exemption statute. However, the statute continues by stating:

This exemption shall not apply . . . to the sale of any animal or substance obtained therefrom by a person in connection with the person's business of operating a stockyard or a slaughter or packing house . . .

¹ See also, WAC 458-20-210 which explains the deduction.

(Emphasis added.)

The auditor assessed business and occupation taxes solely because he found that the taxpayer was engaged in the business of operating a slaughterhouse. The exception portion of RCW 82.04.330 means that the taxpayer will not be entitled to the benefit of the exemption if the pelts were obtained as a result of the taxpayer's business of operating a slaughterhouse. The taxpayer does not hold himself out to the public as a slaughterhouse. He states that he does not provide slaughtering services to other mink ranchers.

Further, the term "slaughterhouse" is not defined in the statute. Therefore, we rely on the common meaning of the term. King County v. Seattle, 70 Wn.2d 988 (1967). Slaughterhouse means: "A place where animals are butchered for food."² We note that no part of the mink is used as food for human consumption. The fact that the taxpayer kills the mink and then removes the fur does not mean that he is operating a slaughterhouse.

The taxpayer does not kill other mink ranchers' animals nor does he acquire animals for the purpose of killing them and selling their pelts. The statute in question specifically allows the exemption for raising animals for their fur. The only method by which the fur is marketable is to kill the animal and remove the pelt. Thus, the taxpayer is merely harvesting his crop.³

We find that the taxpayer is entitled to the benefit of the exemption found in RCW 82.04.330 on his sale of mink pelts.

2. Interest Income from Real Estate Contracts.

The taxpayer sold two parcels of real property. . . . These properties were not used in the taxpayer's operation of his mink ranch. The Auditor's instructions included with the PAA state on this issue:

This audit was conducted on a sole proprietorship. Consequently, all business activities by the proprietor are subject to review by the auditor. There is no classification of "personal business" activity which is exempt from the taxes of Washington State. WAC 458-20-

² Webster's New Universal Unabridged Dictionary, 2nd Edition, 1983.

³ Fur, being the skin bearing hair, cannot be extracted without first killing the animal; so it must have been the legislature's intent to exclude such farms.

101 states, "Every person who . . . shall engage in any business for which a tax is imposed under the Revenue Act, shall, whether taxable or not, apply for and obtain a certificate of registration from the Department of Revenue . . ." Thus, if the Revenue Act, imposes a tax on the interest income, then the income should be reported and is open for audit review. You were presented copies of 2 WTD 301 (1987), 2 WTD 305 (1987), 4 WTD 211 (1987), 5 WTD 257 (1988), and 7 WTD 257 (1989). These Washington Tax Decisions reveal that interest income from real estate contracts to any person is taxable under the Service and Other Business Activities classification.

The decisions referred to by the auditor fall into three general categories. Specifically, some of the taxpayers in those cases argued that they were entitled to a deduction under RCW 82.04.4281 for income from investments. Others argued that they were entitled to the deduction under RCW 82.04.4292 for amounts derived from interest on investments in nontransient real property. Finally, some argued that they were entitled to the exemption from the business and occupation tax because the transaction was a casual or isolated sale per RCW 82.04.040.

RCW 82.04.140 states:

"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.

The use of the word "activities" in the definition of "business" clearly means that "business" includes both the singular and plural. The term "business" has been interpreted to mean "a broad and virtually all-encompassing commercial activity." Budget Rent-A-Car of Washington-Oregon, Inc. v. The Department of Revenue, supra, see also O'Leary v. Department of Revenue, 105 Wn.2d 679 (1986) and Keys v. Department of Revenue, BTA Docket No. 31630, 2 WTD 305 (1986).

It is possible for one person to be engaged in what appear to be unrelated endeavors and both be considered part of that person's "business." Thus, it is possible for the taxpayer to be engaged in the business of raising mink for their pelts and in the business of selling real estate. It is clear to us that the sale of the real property was accomplished with the object of gain, benefit, or advantage to the taxpayer.

The definition of gross income of the business includes the receipt of interest. RCW 82.04.080. The interest income would be subject to the business and occupation tax unless an exception or

deduction were available. As stated above, exemptions to the tax laws are to be strictly construed. Budget Rent-A-Car, supra, and O'Leary, supra.

If the taxpayer had sold the real property outright without receiving an income stream consisting of interest and the purchase price, the taxpayer would not have been subject to the business and occupation tax on his receipts. See: RCW 82.04.390 which exempts amounts received from the sale of real property from the business and occupation tax. However, that exemption specifically does not apply to the receipt of interest resulting from real estate sales.

Some of the taxpayers in the cases cited by the auditor attempted to rely on the exemption found in RCW 82.04.4281 which states:

In computing tax there may be deducted from the measure of tax amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations.

This exemption from taxation requires that the taxpayer not be engaged in a financial business and that the amount in question be derived from an investment or the use of money. It is clear that the taxpayer is not engaged in a financial business, thus the first criteria is met. However, the Court in O'Leary, supra, held that the receipt of interest on a real estate contract is not an amount derived from an investment. Thus, this argument has failed for those who have used it.

Some of the taxpayers relied on RCW 82.04.4292 which exempts the receipt of interest by banks and other financial institutions on certain loans and investments. As stated above the taxpayer is not engaged in a financial business and the interest in question is not from an investment, therefore, this exemption will not apply.

The remaining argument made by the taxpayers in the cases cited by the auditor was that the transaction involved was a casual; or isolated sale. WAC 458-20-106 states:

A casual or isolated sale is defined by RCW 82.04.040 as a sale made by a person who is not engaged in the business of selling the type of property involved. Any sales which are routine and continuous must be considered to be an integral part of the business operation and are not casual or isolated sales.

Furthermore, persons who hold themselves out to the public as making sales at retail or wholesale are deemed to be engaged in the business of selling, and sales made by them of the type of property which they hold themselves out as selling, are not casual or isolated sales even though such sales are not made frequently.

In addition the sale at retail by a manufacturer or wholesaler of an article of merchandise manufactured or wholesaled by him is not a casual or isolated sale, even though he may make but one such retail sale.

BUSINESS AND OCCUPATION TAX

The business and occupation tax does not apply to casual or isolated sales.

(Emphasis added.)

In Determination No. 90-86, 9 WTD 165 (1990), we held that the sale of a hotel by an entity whose business was to build and operate hotels was an isolated sale. Therefore, the interest received on the note received as the purchase price was exempt from the business and occupation tax. In Russell H. Keys v. Department of Rev., BTA Docket No. 31630, 2 WTD 305 (1987), the Board of Tax Appeals found that the taxpayer was not engaged in isolated and casual sales of moorage slips, therefore, the interest received on the contracts of sale was taxable. In Det. No. 88-169, 5 WTD 257 (1988), we held that sales of quarry property and used equipment during the liquidation of a business were not casual and isolated because the business had been engaged in that activity prior to the liquidation.⁴

The cases cited by the auditor all found that the taxpayer was engaged in the business of buying and selling real property.⁵

⁴ The latter two cases were cited by the auditor for the proposition that interest income on real estate contracts is always taxable. However, these cases do not reach that conclusion.

⁵ In Browning v. Department of Rev., 47 Wn.App. 55 (1987) the taxpayer sold 102 houses which had been held for rent thus the sales were not isolated. In Keys, supra, the taxpayer sold 150 moorage slips and again they were not found to be casual or isolated. In Det. No. 87-333, 4 WTD 211 (1987), the taxpayer was engaged in the business of buying and selling apartment buildings. Likewise, in Det. No. 89-146, 7 WTD 257 (1989), the

The taxpayer here is not engaged in the business of selling land. The two pieces of property were unrelated to his mink ranching business, therefore, we find that the sales were isolated and casual and not subject to taxation.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. The file will be returned to the Audit for the issuance of a Post Audit Adjustment consistent with this determination.

DATED this 27th day of January 1993.

taxpayer was engaged in the business of developing and selling land.