

Cite as Det. No. 92-060, 12 WTD 115 (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 Determination of Tax)	
Liability of)	No. 92-060
)	
. . .)	
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[1] RCW 82.04.080: B&O TAX -- GROSS INCOME -- COURT COSTS.
Recovery of costs awarded in court action are not subject to tax, because they are a type of indemnity not included within the definition of gross income of the business.

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:

Taxpayer requests a ruling pursuant to WAC 458-20-100(9) on behalf of an undisclosed client as to whether answer fees awarded under garnishment proceedings are subject to B&O tax.

FACTS AND ISSUES:

Adler, A.L.J. -- The attorney represents a large collection agency. When a writ of garnishment is served on a garnishee pursuant to RCW 6.27.110, the party filing the writ (in this case, the party filing the writ is the collection agency) is required to include a ten-dollar payment ("answer fee") to the garnishee, along with three stamped envelopes addressed respectively to the court, the collection agency, and the garnishment defendant. The collection agency is awarded statutory reimbursement for several types of costs, including the filing, postage, answer, service, and attorney fees.

The attorney believes the answer fees

should be treated the same as the recovery of other statutory costs of suit and execution, i.e. filing fees, service fees and statutory attorney fees, and therefore not includible in gross income of the business for purposes of the business and occupation tax.

DISCUSSION:

[1] The measure of business and occupation tax under the Service and Other Activities classification is the "gross income of such business. RCW 82.04.290. "Gross income of the business" is defined by 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 supplied.)

The issue, therefore, is whether the recovery of answer fees falls within this definition.

Filing fees, fees for service of process, and statutory attorney's fees are awarded to the garnishing party for its expenses in the garnishment action and not as compensation for services. Pursuant to RCW 82.04.080, these amounts are clearly not deductible from the payor's gross income as a business expense when they are first paid. However, such amounts also are not subject to service B&O tax upon recovery. The sums are paid by defendant debtors to the prevailing party to indemnify against losses sustained by having to go to court to recover amounts that were due.

We find that answer fees fall within this category. The plaintiff is required to pay them under RCW 6.27.010. The garnishee is required by RCW 6.27.090 to include them in the amount held, and the garnishment defendant is required to pay them as a part of awarded costs. RCW 6.27.100.

RULING:

Answer fees awarded by a court to the party filing the writ of garnishment in statutory proceedings and received as a part of money paid over by garnishee are not subject to B&O tax.

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(9) and is based upon only the facts that were disclosed by the taxpayer. In this regard the department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed were actually true. This legal opinion shall bind this taxpayer and the department upon those facts. However, it shall not be binding if there are relevant facts which are in existence but not disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 9th day of March 1992.