Cite as Det. No. 93-269ER, 14 WTD 153 (1995).

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

In the Matter of the Petition For Executive Reconsideration of	)	F I N A L D E T E R M I N A T I O N
	)	No. 93-269ER
. . .	)	Registration No. . . .
	)	FY. . ./Audit No. . . .
	)	FY. . ./Audit No. . . .

[1] RULE 109; RCW 82.04.4281: B&O TAX -- DEDUCTION -- OTHER FINANCIAL BUSINESS -- TWO PART INQUIRY. A two-part inquiry is required to determine whether a taxpayer is a "financial business" and therefore ineligible for RCW 82.04.4281 deduction. Sellen and Rainier Bancorporation, cited.

[2] RULE 109; RCW 82.04.4281: B&O TAX -- DEDUCTION -- OTHER FINANCIAL BUSINESS -- FIRST INQUIRY. The first inquiry for determining when a taxpayer's activities constitute a "financial business" involves whether the "primary purpose and objective [of the taxpayer's financial activities] is to earn income through the utilization of significant cash outlays", or whether these activities are merely "incidental" to the taxpayer's other nonfinancial business activities.

[3] RULE 109; RCW 82.04.4281: B&O TAX -- DEDUCTION -- OTHER FINANCIAL BUSINESS -- FIRST PART OF INQUIRY -- PERCENTAGE TEST. Although the Court did not adopt a percentage test in either Sellen or Rainier, the Department of Revenue, as an administrative agency, will consider financial income of five percent or less of a taxpayer's annual gross income to be "incidental" and the taxpayer not to be a financial business.

[4] RULE 109; RCW 82.04.4281: B&O TAX -- DEDUCTION-- OTHER FINANCIAL BUSINESS -- FIRST INQUIRY -- PERCENTAGE TEST

- CALCULATION. To determine whether a taxpayer's financial income is incidental, the percentage of financial income will be computed by including all calendar or fiscal year financial income from "loans and investments or the use of money as such" in the numerator, whether taxable, exempt, or deductible, and including all calendar or fiscal year revenues as normally measured by the B&O tax, including all revenues otherwise exempt or deductible, in the denominator.

[5] RULE 109; RCW 82.04.4281: B&O TAX -- DEDUCTION -- OTHER FINANCIAL BUSINESS -- SECOND INQUIRY -- EJUSDEM GENERIS -- SIMILAR OR COMPARABLE. The second inquiry for determining when a taxpayer's activities constitute a "financial business" involves whether, under the rule of ejusdem generis rule of statutory construction, the taxpayer's activities are similar to, or comparable to, those of "banking, loan, [or] security businesses", even though the taxpayer might not technically fall within one of those three categories.

[6] RULE 109; RCW 82.04.4281: B&O TAX -- DEDUCTION -- OTHER FINANCIAL BUSINESS -- SECOND INQUIRY -- EJUSDEM GENERIS -- SIMILAR/COMPARABLE TO -- INDICIA. For a business activity to be considered "similar" and "comparable" to "banking, loan, [or] security" businesses, the activity must be regular and recurrent. Indicia of regular and recurrent activities "similar or comparable" to those of a "banking, loan [or] security business" include, but are not limited to: (1) For a bank and loan business: the making of loans. (2) For a securities business: (a) a diversified portfolio, (b) a need for expertise, whether from an internal or external source, in the selection and management of investments; and (c) trading activities.

[7] RULE 109; RCW 82.04.4281: B&O TAX -- DEDUCTION -- OTHER FINANCIAL BUSINESS -- INVESTMENT V. LENDING ACTIVITY. "Investments or the use of money as such" encompasses not only investment activity, but also lending activity, or a combination of both lending and investment activities.

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.

NATURE OF ACTION:

Petition concerning whether a holding company was taxable on interest from investment and lending activity.[1]

FACTS:

Bauer, A.L.J. -- Determination No. 93-269, issued on September 30, 1993, held the taxpayer to be a financial business and thus not qualified for the RCW 82.04.4281 interest income deduction. The taxpayer objected to this conclusion and requested executive level reconsideration of the issue. This request has been granted.

The taxpayer is a holding company . . . . The taxpayer, in turn, wholly acquires and owns other corporations. The taxpayer characterizes itself as a "management company" which provides the following services to its subsidiaries: operational management, corporate strategic advice, accounting and tax services, and financial management.

Throughout the audit period, the taxpayer received interest income from recurrent loans to its subsidiaries. The taxpayer did not have a cash management system.

The taxpayer received substantial dividend income based on its ownership of 100% of the preferred nonvoting stock in Corporation Z. The taxpayer's parent corporation owned 100% of the common voting shares of Corporation Z.

During the audit period (January 1, 1987 through October 31, 1991), the taxpayer's total income was as follows:

Nature of Income	Audit Period Amounts
AMOUNTS CONCEDED TO BE TAXABLE:	
Sales Commissions	11,283,57
Intercompany Management Fees	91,775.83
Furniture Rentals	5,920.21
Timber Royalties	5,177,855.15
NONTAXABLE FINANCIAL INCOME CONCEDED BY THE DEPARTMENT:	

[1]Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

Dividends from Subsidiaries	0.00
Interest - State and Municipal Bonds	99,895.56

INVESTMENT INCOME ASSERTED BY TAXPAYER TO BE NONTAXABLE:

Dividends from Unrelated Entities	1,474,087.14
Preferred Stock Dividends ("Corp Z")	17,410,000.00
Interest Income - Bank Deposits, CDs, etc	0.00
Interest Income - Corporate Bonds	3,326,347.00
Net Gains - Sales of Securities	946,162.72

INTEREST INCOME FROM LOANS ASSERTED BY TAXPAYER TO BE NONTAXABLE:

Interest - Intercompany Loans	1,349,433.06

During the audit period, the percentages of nonfinancial income and financial income[2] to the taxpayer's gross receipts were as follows:

Audit Period						
Type of Income	1987	1988	1989	1990	1991	%
Nonfinancial Income	0.0	0.0	17.8	15.6	53.7	17.7
Investment Income	99.0	98.4	78.4	73.2	41.0	77.8
Interest Income - Loans	1.0	1.6	3.9	11.2	5.3	4.5
Percentages of Total Financial Income:	100.0	100.0	82.3	84.4	46.3	82.3

TAXPAYER'S EXCEPTIONS:

The taxpayer argues that Det. No. 93-269 contains the following errors:

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[2] Within this determination, the term "financial income" includes only those "amounts derived from investments or the use of money as such" (RCW 82.04.4281), which amounts include interest earned on loans, interest and dividends earned on securities, interest earned on bonds, interest earned on bank accounts, and gains earned on the sales of securities. The term "investment" does not include income from the use of property, such as rents, because this is the use of property, not money. "Amounts derived from investments or the use of money as such" likewise does not include amounts derived from payments where no money has been advanced by the taxpayer, e.g., extending credit by accepting deferred payments on the sale of property or services. See Clifford v. State of Washington, 78 Wn.2d 4, 469 P.2d 549 (1970); O'Leary v. Department of Rev., 105 Wn.2d 679, 717 P.2d 273 (1986).

a. The finding of fact (Det. No. 93-269, at 4) that the taxpayer seeks out promising new . . . business opportunities.

b. The finding of fact (Det. No. 93-269, at 4) that the taxpayer's "primary purpose and objective [was] to earn income through the handling and expenditure of significant amount of funds." The taxpayer asserts that it was initially formed by its parent . . . corporation . . . . Its "job" was to invest the money in order to build an asset base -- not to earn income or expend (or spend) money.

c. The finding of fact (Det. No. 93-269, at 5) that the taxpayer's "activities are essentially in competition with financial businesses" and that the taxpayer's "investing and lending activities put it in competition with other investors/businesses who provide financial backing for financial gain to promising new businesses." The taxpayer asserts that the only activity in competition with other financial businesses was its intercompany lending activity, not its investment activities, which were handled separately.

d. The Administrative Law Judge's (ALJ's) conclusion that the taxpayer was a "financial business" because

> The taxpayer's primary purpose is to earn income" . . . [and] . . . Presumably, the assessment of the risks and profit potential of the potential investment opportunities is undertaken for the purpose of determining whether to make an investment which will not only preserve capital, but also earn income." (Det. No. 93-269, at 4).

While the taxpayer concedes that both these statements are true, it argues that neither of them is unique to a financial business. In fact, any prudent investor, or anyone engaged in business who wants to stay in business, wants to both earn income and preserve capital.

e. The ALJ's analysis (Det. No. 93-269, at 3) that a "financial business" for purposes of RCW 82.04.4281 is "a business whose primary purpose and objective is to earn income through the handling and investment of a significant amount of funds" without considering the second prong of the test, which requires the activities involved to be in competition with a financial business. The taxpayer asserts that its acquisition and holding of common and/or preferred stock in corporations, its receipt of dividend income, its management services, and its investment of surplus funds are not representative of activities which place the taxpayer in competition with financial businesses.

f. The ALJ's conclusion that the dividend income received on the taxpayer's preferred stock in Corporation Z was investment income which was generated with surplus funds "by the use of money as such"; was not "incidental" under the holding of John H. Sellen Constr. Co. v. Department of Rev., 87 Wn.2d 878, 558 P.2d 1342 (1976) ("Sellen"); and thus was not deductible investment income under RCW 82.04.4281. The taxpayer argues that even if its lending activity is held to be "financial" in nature, this activity should not "taint" the taxpayer's pure investment activity generated with its surplus funds, i.e., its receipt of preferred stock dividends from Corporation Z.

g. The ALJ's failure to recognize that the taxpayer's lending activity, which accounted for only about 4.5% of its gross income for the audit period, was the mere performance of internal fiscal functions held to be nontaxable, citing Det. No. 86-309A, 4 WTD 341 (1987).[3] The taxpayer argues that, when money is loaned to related businesses, these are also internal fiscal functions even though they are separate business entities. The taxpayer asserts that it loaned funds to its subsidiaries because they could not get loans on their own.

h. The ALJ's analysis that the taxpayer was comparable to the taxpayer in Det. No. 90-52, 9 WTD 85 (1990). The taxpayer argues it is distinguishable from that taxpayer because it is not a wholly-owned subsidiary of a savings bank whose only activities were the making and funding of loans. The taxpayer also points out that only 4.5% of its gross revenue from the audit period came from intercompany loans, as opposed to the taxpayer in Det. No. 90-52, whose lending activity generated a majority of its total income.

ISSUES:

Exception "a" is one of fact:

. . .

Exceptions "b", "c", "d", and "e", above, pertain to the central issue in this case:

2. Whether the taxpayer, a holding company whose earnings during the audit period consisted of 17.7% in

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[3] Taxpayer also improperly cited a determination issued in 1992, which we will not further address. Being unpublished, it is not precedential. RCW 82.32A.050(3) and RCW 82.32.410.

nonfinancial income, 77.8% in investment interest, and 4.5% in interest from intercompany loans, was an "other financial business" for purposes of RCW 82.04.4281.

Exception "f" raises the question:

3. Whether the taxpayer's lending activity "taints" its investment activity, rendering both activities taxable?

Exception "g" and "h" pertain to the treatment other taxpayers have received from the Department:

4. Whether the taxpayer should have received the same nontaxable treatment as the taxpayers in Det. No. 86-309A, 4 WTD 341 (1987) because the taxpayer's lending activity, which accounted for only about 4.5% of its gross income during the audit period, constituted the performance of "mere [nontaxable] internal fiscal functions."
5. Whether the taxpayer is distinguishable from the taxpayer in Det. No. 90-52, 9 WTD 85 (1990), which was a subsidiary of a bank whose only activity was the making and funding of real estate loans and investment in real estate projects?

DISCUSSION:

1. Whether the ALJ was correct in his finding of fact . . .

The taxpayer is correct in . . . that the original determination was in error on this point. We find this error harmless.

2. Whether the taxpayer holding company, whose earnings during the audit period consisted of nonfinancial income, 77.8% in investment interest, and 4.5% in interest from intercompany loans, was an "other financial business" for purposes of RCW 82.04.4281.

RCW 82.04.4281 provides a deduction from the B&O tax as follows:

> 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.

In Det. No. 93-269, we held, as we have in many similar cases, that a "financial business," for purposes of RCW 82.04.4281, was defined by the Washington Supreme Court in Sellen, supra, as

> . . . a business whose primary purpose and objective is to earn income through the handling and investment of a significant amount of funds . . . [and which is] . . . essentially in competition with financial businesses.

At the taxpayer's behest, we have carefully reviewed our holding and analysis in this matter. We clarify this position as follows:

Neither Sellen nor Rainier Bancorporation v. Department of Rev., 96 Wn.2d 669, 638 P.2d 575 (1982) ("Rainier"), conclusively defined the term "financial business" for purposes of the RCW 82.04.4281 deduction.

In noting that the Revenue Act does not define "financial business", Sellen looked to the dictionary definition and concluded that:

> . . . the common meaning of the phrase ["financial business"] contemplates a business whose primary purpose and objective is to earn income through the utilization of significant cash outlays. Respondent's investment incomes represent a very small percentage of their gross revenues.

Sellen, supra at 882, emphasis added.[4]

[1] In determining whether the taxpayers were eligible for the RCW 82.04.4281 deduction, the Washington Supreme Court in both Sellen and Rainier applied a two-part inquiry to determine whether they were "financial businesses."

[2] The first part of the inquiry in determining whether a taxpayer's activities constitute a "financial business" is whether the "primary purpose and objective [of the taxpayer's financial activities] is to earn income through the utilization of significant cash outlays",[5] or whether these activities are merely "incidental" to the taxpayer's other nonfinancial business activities. The Sellen Court reasoned that the Department's

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[4] Followed by Rainier, supra at 672-73.

[5] Sellen, supra at 882. Rainier, supra at 673.

interpretation -- that all taxpayers investing any surplus funds were "other financial business[es]" -- would virtually nullify the RCW 82.04.4281[6] deduction. Sellen, supra at 883.

Rejecting this conclusion, Sellen instead held that taxpayers whose investments of surplus funds were merely "incidental" to their main business activities were not "financial businesses" and were, therefore, entitled to the RCW 82.04.4281 deduction. Sellen, supra at 882-83. In determining whether the taxpayers' investment income was "incidental" to their other nonfinancial business activities, Sellen considered what percentages (as opposed to the mere amounts) of the taxpayers' gross revenues constituted investment income,[7] and determined that the respondents in that case had not "earned income through the utilization of significant cash outlays" because the percentages of their investment incomes did not exceed 4%.

Similarly, Rainier looked to the fact that Rainier's interest income from loans alone[8] constituted 41.1% and 58.1% of its total revenues during the audit periods under appeal, and found Rainier's activities taxable. Rainier, supra at 673. Rainier looked not only to the percentage of the taxpayer's financial income, but also noted that over half of the funds it loaned to its subsidiaries had been borrowed from outside sources.[9] Id.

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[6] Then codified as 82.04.430(1).

[7] The Sellen court could have sustained the trial court by determining that businesses not otherwise "engaged in banking, loan, security, or other financial businesses" could deduct interest earned on the investment of their surplus funds. Had this been the Court's holding, it would have been so stated; the inquiry as to the percentage of income earned from the Sellen parties' investments would not have been necessary.

[8] Not including investment income.

[9] We note that, while this may have been a factor in Rainier, the Court specifically

> . . . ventured no opinion on the question of whether a holding company that makes its loans solely out of its own surplus funds is subject to the B&O tax . . .

Rainier, supra at 674.

[3] Although the Court did not adopt a percentage test in either Sellen or Rainier, the Department of Revenue, as an administrative agency, will deem financial income of five percent or less of a taxpayer's annual gross income to be "incidental." If the amount of financial income is "incidental" (i.e., less than 5%), no further inquiry will be necessary. If the percentage of such financial income exceeds five percent, then the second part of the inquiry will be necessary.

[4] The percentage to determine if the financial income is incidental is computed as follows: The numerator includes all calendar or fiscal year (in accordance with the taxpayer's method of accounting) financial income from "loans and investments or the use of money as such", whether taxable, exempt, or deductible. The denominator includes all calendar or fiscal year revenues as
normally measured by the B&O tax, including all revenues otherwise exempt or deductible.[10]

[5] The second part of the inquiry in determining whether a taxpayer's activities constitute a "financial business" is whether, under the ejusdem generis rule of statutory construction,[11] the taxpayer's activities are similar to, or comparable to, those of "banking, loan, [or] security businesses", even though the taxpayer might not technically fall within one of those three categories.[12]

Justice Dolliver, in his dissent, reasoned that although it is an interesting fact that Rainier had borrowed over one-half of the money it had lent, this was "a distinction without a difference" and, although a fact, not a principle. Rainier, supra at 676-77.

[10] Because the taxpayer operates solely in Washington, we need not address the sourcing of these amounts.

[11] In other words, the generic term "other financial businesses" must be read in conjunction with the terms "banking, loan, and security."

[12] We note that Sellen and Rainier were also important for the conclusions they did not draw. Sellen did not sustain the trial court's holding that because the taxpayers were not one of RCW 82.04.4281's enumerated financial institutions, they were per se entitled to the deduction. Neither Sellen nor Rainier held that a taxpayer's primary activity had to be financial in nature before the deduction would be disallowed.

We specifically note that Sellen did not require the taxpayers to be in competition with "banking, loan, [or] security" businesses, or to hold themselves out to the public as such, although the court favorably quoted Excise Tax Bulletin 368.04.224 ("ETB 368) which concerned just such a taxpayer.[13]

The "similar" or "comparable" to standard was similarly used in Rainier, supra at 674[14], and further discussed as the new standard in Justice Dolliver's dissent at page 676[15]. Justice Dolliver specifically objected to the court's "similar" and "comparable" to test, and would have adopted the "in competition with" standard:

> In fact, the test which had been used by the Department of Revenue and the only one which makes any sense and saves it from its tendentious position in Sellen and this case is whether the activity is one which deals with the public. The single relevant characteristic, unmentioned by the majority, which distinguishes an entity engaged in banking, loans or securities is that it is in the marketplace in a public, competitive business. . . .

Rainier, supra at 677-78.

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[13] ETB 368 held a taxpayer who was making consumer loans, and thus was, in fact "in competition with" banks, taxable. In approving of this holding, the Court merely recognized that persons actually in competition with financial businesses are necessarily engaged in "similar" and "comparable" activities.

[14] > . . . Rainier's activities do not include loaning money to the public at large and are not identical to those of a bank, loan or security business. But, by loaning money to its subsidiaries Rainier's activities are similar and comparable to those of the aforementioned businesses.
>
> . . . This, coupled with the fact that Rainier's activities are similar or comparable to that of a banking, loan or security business, compels us to conclude that Rainier is ineligible for the deduction . . . .

[15] > But since nothing more is offered by the majority, it must be that the real basis for decision is that "Rainier's activities are similar or comparable to" those of a banking, loan, or security business . . .

The Court specifically found that the taxpayer in Rainier was "similar and comparable" to a banking or lending business because it loaned funds on a regular basis to its subsidiaries.[16]

[6] For a business activity to be considered "similar" and "comparable" to "banking, loan, [or] security" businesses, the activity must be regular and recurrent. Indicia of regular and recurrent activities "similar or comparable" to those of a "banking, loan [or] security business" include, but are not limited to: (1) For a bank and loan business: the making of loans. (2) For a securities business: (a) a diversified portfolio, (b) a need for expertise, whether from an internal or external source, in the selection and management of investments; and (c) trading activities. The presence or absence of any of these factors, taken alone, is not determinative.

In applying this two-part inquiry to the facts in this case, we note, as in Rainier, supra at 674, that this taxpayer does not fall within the specific definition of a "banking, loan, [or] security" business and is not so regulated by state or federal law. The taxpayer is, however, granted the authority to loan money to its subsidiaries by virtue of Washington's Corporation Act and did so on a recurring basis.

The taxpayer's total financial income from investments during the audit period, including interest from both loans and investments, was as follows: 100% (1987), 100% (1988), 82.3% (1989), 84.4% (1990), and 46.3% (1991). Although the taxpayer's lending activity for 1987, 1988, 1990, and 1991, standing alone, might be considered "incidental" to its other nonfinancial activities,[17] financial activities are not bifurcated in the computation determining whether financial income is "incidental." Therefore, we find the percentage of the taxpayer's total financial investment income during the course of the audit period, on an annual basis, was considerably more than "incidental."

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[16] Although the "similar" and "comparable to" standard, at first blush, appears to be a lower threshold than that of the "in competition with" test, the Department has never required taxpayers to hold themselves out to the public, even when applying what it termed the "in competition" standard. See Final Det. No. 88-246, 6 WTD 89 (1988).

[17] From 1987 to 1991, respectively, the percentage of interest income from the taxpayer's lending activities was as follows:

1%, 1.6%, 3.9%, 11.2%, and 5.3%.

We note that the taxpayer did not borrow from third parties to fund its lending activity as did the taxpayer in Rainier, and that the percentage of interest earned from its lending activity was significantly less than in Rainier. We, nonetheless, find that the "primary purpose and objective of the taxpayer's financial activity as a whole was to earn income through the utilization of significant cash outlays" as opposed to being merely incidental to its other business activities.

As to the second inquiry -- whether the taxpayer's activities were similar or comparable to those of "banking, loan, [or] security" businesses -- we note that the taxpayer, in addition to its regular and recurrent lending activity, maintained an extensive and diversified portfolio containing a variety of both private and publicly-traded investment vehicles, annual income from which investments constituted 99%, 98.4%, 78.4%, 73.2%, and 41% of income from 1987 to 1991. The taxpayer's net gains from the sale of its securities indicates trading activity, and a substantial amount of the taxpayer's sizeable assets were invested as opposed to being used in the operations of nonfinancial business activities. The selection and management of such a sizeable and complex portfolio would have required experienced activity of an ongoing nature.

Taken together, these additional factors persuade us that the taxpayer's financial activities were similar and comparable to those of "banks, loan, and securities businesses." Therefore, we find that the second inquiry is satisfied, and that the taxpayer is an "other financial business" which is not entitled to the RCW 82.04.4281 deduction.

The taxpayer's petition as to this issue is denied.

To the extent that the following published determinations are inconsistent with the rationale as set forth above, they are hereby overruled: Det. No. 86-237, 1 WTD 115 (1986); Det. No. 86-309, 2 WTD 083 (1986); Det. No. 87-346, 4 WTD 267 (1987); Det. No. 88-169, 5 WTD 257 (1988); Det. No. 88-186, 5 WTD 319 (1988); Final Det. No. 88-246, 6 WTD 089 (1988); Det. No. 89-253, 7 WTD 333 (1986); Det. No. 90-52, 9 WTD 085 (1990); Det. No. 90-124, 9 WTD 259 (1990); Det. No. 90-86, 9 WTD 165 (1990); Det. No. 90-145, 9 WTD 286.7 (1991); Det. No. 91-096, 11 WTD 123 (1991); Det. No. 92-128, 12 WTD 165 (1992).

3. Whether the taxpayer's lending activity "taints" its investment activity, therefore rendering both activities taxable?

[7] RCW 82.04.4281 concerns interest earned from "investments or the use of money as such." This phrase, as demonstrated by the holdings of Sellen and Rainier, encompasses not only investment activity (as in Sellen), but also lending activity, or a combination of both lending and investment activities (as in Rainier). Neither Sellen nor Rainier stand for the proposition that, absent the "taint" of lending activity, pure investment activity would be exempt. Had this been the case, Sellen would have merely stated that pure investment activity by nonfinancial businesses was exempt. Further, the Court in Rainier taxed both investment and loan interest together, even though most of the decision's discussion was directed toward the taxpayer's lending activity.

The taxpayer has offered no legal theory upon which to base an argument that interest from both sources cannot, and should not, be considered together.

The taxpayer's petition as to this issue is denied.

4. Whether the taxpayer should have received the same nontaxable treatment as the taxpayers in Det. No. 86-309A, 4 WTD 341 (1987) because the taxpayer's lending activity, which accounted for only about 4.5% of its gross income for the audit period, constituted the performance of "mere [nontaxable] internal fiscal functions."

Det. No. 86-309A, supra, which concerned a cash management system, looked at a group of corporate affiliates and determined that value accrued neither to the individual entities nor to the group as a whole because no interest was really earned or booked by anyone.

Exempt cash management systems are distinguishable from the taxpayer's activities. The taxpayer has conceded that it chose not to utilize a cash management system.

The taxpayer in this case was performing more than "mere [nontaxable] internal fiscal functions", and, unlike the taxpayer in Det. No. 86-309, earned interest in an economic sense.

The taxpayer's petition as to this issue is therefore denied.

5. Whether the taxpayer was comparable to the taxpayer in Det. No. 90-52, 9 WTD 85 (1990), which was a subsidiary of a bank whose only activity was investing in and lending to real estate projects.

The taxpayer in Det. No. 90-52 was the subsidiary of a bank. Its primary activity was to invest and infuse funding into real estate development projects with developers as a partner or joint venturer. Its only other business activities were occasional funding loans to these entities. That taxpayer was held to be ineligible for the RCW 82.04.4281 deduction.

The taxpayer argues it is distinguishable from the taxpayer in Det. No. 90-52 on two points: First, the taxpayer in Det. No. 90-52 was a wholly-owned subsidiary of a savings bank whose only activities were the making and funding of loans. Second, the taxpayer in Det. No. 90-52 made significant loans, while only 4.5% of the taxpayer's gross revenue from the audit period came from intercompany loans.

We find these distinctions do not merit a different result from that in Det. No. 90-52. The activities of the parent corporation in Det. No. 90-52 were not at issue and were not imputed to the taxpayer in that case. While the taxpayer in Det. No. 90-52 may in fact have earned more in interest on loans than the taxpayer here, the total percentage of financial income -- from both loans and investments -- must properly be considered together. The taxpayer's total financial income was considerably more than "incidental."

The taxpayer's petition as to this issue is denied.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 21st day of December, 1994.