

Cite as Det. No. 95-124, 15 WTD 145 (1996).

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 Refund of)	
)	No. 95-124
)	
. . .)	Registration No. . . .
)	FY. . ./Audit No. . . .
)	

RCW 82.04.431: B&O TAX -- HEALTH OR SOCIAL WELFARE ORGANIZATION DEFINED. A health or social welfare organization must be a nonprofit entity governed by a board of directors of at least eight individuals none of whom may be an employee. If any director, regardless of the number of members of the board, is an employee, then the entity does not qualify as a health or social welfare organization.

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:

A nonprofit corporation protests the assessment of business and occupation (B&O) tax on its receipts from governmental entities claiming that it is a "health or social welfare organization," as defined in RCW 82.04.431.¹

FACTS:

Coffman, A.L.J. -- The taxpayer is a nonprofit corporation that provides medical services. The taxpayer's books and records were reviewed by the Department of Revenue's (Department) Audit Division for the period December 1, 1990 through December 31, 1993 (audit period). The Department determined that the taxpayer

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

had failed to pay use tax on consumable supplies, paid retail sales tax on items which are exempt, and made other adjustments. The only adjustments which the taxpayer appealed are the findings that: (1) the taxpayer did not qualify as a "health or social welfare organization" and (2) that amounts received under the Railroad Retirement Security Act were amounts received as part of an employee benefit plan.

During the audit period, the taxpayer was managed by a board of directors of nine to eleven members. One of the members of the board was the president of the taxpayer.² The president was a paid employee of the taxpayer. The other members of the board were not employees. The taxpayer's representatives stated several times during the telephone conference that the decisions of the Board of Directors were made by consensus. Therefore, the president never cast the deciding vote on the Board of directors.

ISSUES:

1. Whether a nonprofit corporation qualifies as a "health or social welfare organization" when its governing board has at least eight nonemployee members and one employee member?
2. If the taxpayer is a "health or social welfare organization", is the Railroad Retirement Security Act an employee benefit plan and, therefore, the receipts for services provided to beneficiaries nondeductible?

DISCUSSION:

A business and occupation (B&O) tax deduction is provided by RCW 82.04.4297 for:

amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization or by a municipal corporation or political subdivision, except deductions are not allowed under this section for amounts that are received under an employee benefit plan.

The term "health or social welfare organization" is defined in RCW 82.04.431 as:

an organization, including any community action council, which renders health or social welfare services as defined

² The taxpayer states that the president resigned from the Board of Directors in March of 1994.

in subsection (2) of this section, which is a not-for-profit corporation under chapter 24.03 RCW and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization In addition a corporation in order to be exempt under RCW 82.04.4297 shall satisfy the following conditions: . . .

Deductions and exemptions from taxation are strictly construed against the party claiming the benefit. Automobile Club of Wash. v. Department of Rev., 27 Wn.App. 781, 786, 621 P.2d 760 (1980); Budget Rent-A-Car of Washington-Oregon, Inc. v. Department of Rev., 81 Wn.2d 171, 174, 500 P.2d 764 (1972). RCW 82.04.4297 and .431 are deduction provisions. Therefore, they must be strictly construed against the taxpayer.

The taxpayer claims:

The Department has taken the position that [the taxpayer] does not qualify as a health or social welfare organization because, during the audit period, one of the members of its 11-member governing board was an employee of [the taxpayer]. This interpretation of the statute is incorrect. The correct interpretation is that an organization qualifies for the deduction as long as at least 8 of the members of its governing board are non-employees. Thus, if an organization's governing board has 8 members, each of the directors must be a non-employee. However, if an organization's governing board consists of 9 or more members, at least 8 of the directors, but not all of them, must be non-employees.

Taxpayer's Petition for Review, dated June 15, 1994, page 2.

The taxpayer raises several arguments why the Department should adopt its interpretation of RCW 82.04.431. First, the taxpayer argues that grammatically, the phrase "none of whom" applies only to the eight members of the governing board and not to the governing board as a whole. The taxpayer states that the use of the word "whom" means that only humans are affected by the phrase "none of whom." The taxpayer claims that even though the board of directors is comprised of individuals, the Board of Directors is not human. The taxpayer argues that if the legislature had meant to require all board members to be non-employees, the phrase should have been "none of which."

[1] We have considered the taxpayer's argument and in light of the strict construction required. We find that "whom" modifies the word "individual" and not the adjective "eight." Thus, the statutory requirement is that no member of the governing board may be an employee.

Second, the taxpayer argues that the statute provides that some directors may be compensated for their services citing RCW 82.04.431(1)(a) and (b). We have addressed this claim previously in Det. 91-186, 11 WTD 375 (1991), where we said:

We note, however, that subsection (a) provides for payments to directors, but only in the form of services while subsection (b) which discusses salary or compensation that an employee would receive, does not mention directors. This implies that the legislature did not contemplate directors being paid employees of the organization. We disagree with the taxpayer and believe that the statute was intended to exclude any paid employees from the governing board.

Third, the taxpayer argues that there are policy reasons to allow employees on the governing boards. The taxpayer argues it is common practice in the health care industry to do so. However, we are required to interpret statutes to avoid unreasonable results. State v. Stannard, 109 Wn.2d 29, 742 P.2d 1244 (1987). The interpretation proposed by the taxpayer would allow a nonprofit corporation to have a board of directors the majority of which are employees, if only eight are nonemployees. That result is unreasonable on its face and would make the requirement of a minimum of eight nonemployee members purposeless.

Finally, the taxpayer argues that the Department has an unofficial policy to allow the taxpayer to qualify as a health or social welfare organization. The Department's policy is expressed in its regulations, excise tax bulletins, published determinations, and other written publications. The Department does not maintain unofficial policies. See, chapter 82.32A RCW.

Because we have found that the taxpayer failed to meet the requirements of a health or social welfare organization, it is unnecessary to address the other issue raised by the taxpayer. Accordingly, the amounts received for services under the Railroad Retirement Security Act are not deductible during the audit period.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 23rd day of June, 1995.