Cite as Det. No. 98-075, 17 WTD 266 (1998)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment and Notices of Balance Due of	)	D E T E R M I N A T I O N
	)	No. 98-075
. . .	)	Registration No. . . .
	)	B. . . ; B. . . ; B. . .;
	)	B . . .; B . . . ; B . . . ;
	)	B . . . , B . . . , B . . .
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	)	B . . . , B . . .
. . .	)	Registration No. . . . .
	)	FY . . . /Audit No. . . .
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RULE 166; RCW 67.28.180: HOTEL/MOTEL TAX -- RECREATIONAL VEHICLE PARK -- MEMBERSHIPS -- OPEN TO THE PUBLIC. Sales of memberships in a recreational vehicle park are subject to the hotel/motel tax. Such sales are charges for the rental of space to transients for parking house trailers, campers, recreational vehicles, mobile homes, tents, etc. Such parks are "open to the public" as that term is used in Rule 166. Charges for lodging are subject to tax even though they may be identified or characterized as membership fees or dues.

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:

Taxpayer who sells memberships in Washington recreational vehicle parks petitions for correction of assessment of hotel/motel tax. [1]

FACTS:

C. Pree, A.L.J. (successor to Rene, A.L.J.) -- The returns of . . . were reviewed for the period of November 1, 1993, through May 31, 1995. That review resulted in the assessment of hotel/motel tax of $ . . . and interest of $ . . . , for a total assessment of $ . . . . Subsequent reviews of the taxpayer's returns for the period of June 1995 through November 1995 resulted in the issuance of the following Balance Due Notices in the following amounts: B . . . , $ . . . ; B . . . , $ . . .; B . . . , $ . . . ; B. . . , $ . . . ; B . . . , $ . . .; and B . . . , $ . . . .

. . . merged into . . . . on December 1, 1995. (. . . . will hereafter be collectively referred to as "the taxpayer.") . . . was issued the Balance Due Notices as set forth in the Decision Section of this Determination.

The Taxpayer Accounts Administration Division (TAA) assessed the special hotel/motel tax with respect to the taxpayer's receipts from its recreational vehicle park located in . . . , effective November 1, 1993. TAA reasoned that the tax applies to the charge for rooms used by transients or charges for the use of camping and recreational vehicle sites.

The taxpayer explained that it is licensed and regulated by the Department of Licensing and the Camping Club Act RCW 19.105 and WAC 308-420. The taxpayer characterized its activity as "market[ing] the right to use memberships at its resorts." The taxpayer explained that its members pay an initiation fee and annual dues to use the resorts. Members do not have the right to use a specific site, and the resorts are not open to the public. Members' stays are generally limited to no more than 15 consecutive days.

The taxpayer argues that the hotel/motel tax applies to recreational vehicle parks which charge for the rental of space to transients. In contrast, the taxpayer argues, it does not charge for the rental of space to transients or the general public. Instead, the taxpayer asserts that its parks are private and for members only. (Although members may invite guests, the guests are required to be accompanied by the members.) Further, the taxpayer argues that it does not actually rent RV spaces. Instead, it simply sells memberships.

The taxpayer's public offering statement provides:

> Membership conveys to the member family the right to use the existing facilities at [the taxpayer] for personal recreational benefit without conveyance of any ownership in the operator, or in its resort, or the right to control further development of operation of the Resort.

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

> Membership privileges are obtained by payment of an initiation fee and annual dues. Usage is on a first-come, first-served basis and does not convey the right to use any specific campsite.

The statement further provides:

> The . . . facilities are open to members of [taxpayer] and related entities, marketed on an exclusive member base use. In accordance with our marketing policy, non-members whom have a [taxpayer] mini-vacation voucher will be able to stay up to two nights and three days. As to the policy of the general public, it will be available on a very limited basis and only in the instance that they are staying overnight for purposes of considering purchasing a membership.

ISSUE:

Whether the taxpayer's receipts from members based on the number of nights they stay in a recreational vehicle park in . . . County are subject to the hotel/motel tax.

DISCUSSION:

RCW 67.28.180 authorizes qualified legislative bodies to impose a special hotel/motel excise tax:

> . . . on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property . . . .

WAC 458-20-166 (Rule 166) [2] is the lawfully promulgated rule implementing the above statute and has the same force and effect as law. RCW 82.32.300. Rule 166 further defines "trailer camp" and "recreational vehicle park" as facilities that "charge for the rental of space to transients for locating or parking house trailers, campers, recreational vehicles, mobile homes, tents, etc." Rule 166 reiterates that the hotel/motel tax applies to "charges for use of camping and recreational vehicle sites." Thus, based on the above authorities, it is clear that the hotel/motel tax applies to recreational vehicle parks.

The taxpayer argues that its parks are not open to the public. We addressed this issue in Det. No. 94-62, 14 WTD 225 (1994). In that determination, we held that receipts of a nonprofit organization from members and guests who stayed at the organization's ski lodges were subject to the retail sales tax.[3] In reaching this conclusion, we disagreed with the taxpayer's argument that the lodges were

[2] Rule 166 was amended February 2, 1994. However, the amendments are not relevant to this determination.

[3] RCW 82.04.050 defines a retail sale to include the provision of lodging. Because the language in RCW 82.04.050 is virtually identical to the language in RCW 67.28.180, determinations construing that statute are instructive here.

not available to the general public. Members and their guests could use the lodges for a daily fee, but guests were charged a higher price at the lodges than were members and were required to be accompanied by a member during their stay.

We reasoned that RCW 82.04.050, "[b]y its terms . . . covers a broad range of licenses to use transient accommodations." However, we noted that, by administrative rule, the Department has recognized that certain facilities which provide lodging do not fall within the scope of this statute. Specifically, Rule 166 distinguishes establishments such as inns and hotels from certain "private lodging houses, dormitories, bunkhouses, etc." With respect to private lodging houses, the rule defines such establishments as those "operated by or on behalf of business and industrial firms solely for the accommodation of employees of such firms, and which are not held out to the public as a place where sleeping accommodations may be obtained."

Thus, we concluded that the retail sales tax is not limited to establishments held open to the general public. We reasoned that Rule 166 uses the phrase "held out to the public" only to distinguish lodging subject to retail sales tax from situations where employees stay at bunk houses and similar establishments. We noted that the latter situation involves a person's employment, and not merely transient lodging. We concluded that that was not the case in the determination, and that is not the case here.

Finally, we noted that our result was consistent with the general rule that exemptions to the tax law must be narrowly construed.

> Taxation is the rule and exemption is the exception. Anyone claiming a benefit or deduction from a taxable category has the burden of showing that he qualifies for it.

Budget Rent-A-Car, Inc. v. Department of Rev., 81 Wn.2d 171, 174, 500 P.2d 764 (1972).

As such, we must disagree with the taxpayer's argument that it does not provide lodging to the public.

Next, the taxpayer argues that it markets memberships; it does not charge for the rental of space. This argument was recently addressed in Det. No. 97-198, 17 WTD 89 (1998). In that determination, we held that a taxpayer who operated timeshare resorts was subject to the hotel/motel tax. The taxpayer's members purchased "vacation points" to gain the right to use the taxpayer's various facilities. The points represented the value of staying at the taxpayer's various resorts at particular times of the year. Members were not bound to a certain use period or to a particular facility. The Audit Division imposed the hotel/motel tax with respect to the members' redemption of points at certain Washington locations. We upheld the assessment. We reasoned:

> Members obtained an intangible right, points, which could be exchanged for a right to use property. . . .
>
> Generally, a member did not use the property for a continuous period of one month or more. The short periods of use creates a statutory presumption that the taxpayer charged the members for the furnishing of lodging or similar license to use the property rather than a rental or lease of the property. . . .
>
> The value of the points expended to stay at the Washington property constitutes consideration, included in the definition of sale, by which the tax is measured.

Thus, as in Det. No. 97-198, we conclude that the taxpayer's receipts are subject to the hotel/motel tax, regardless of the taxpayer's characterization of these receipts as "dues." We note that this result is consistent with Rule 166. Rule 166 specifically provides, "Charges for lodging . . . are subject to tax even though they may be identified or characterized as membership fees or dues."

DECISION AND DISPOSITION:

The Taxpayer's petition is denied.

Dated this 28th day of April, 1998.