

Cite as 2 WTD 91 (1986)

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

In the Matter of the Petition ) F I N A L  
For Correction of Instructions for ) D E T E R M I N A T I O  
N  
Future Tax Reporting of )  
 ) No. 86-310  
 . . . )  
 ) Registration No. . . .

[1] **RULE 114 and RCW 82.04.4282:** B&O TAX -- DEDUCTION --  
 - DUES -NEWSLETTERS -- LOBBYING --  
 MEETINGS/SEMINARS.

The providing of general interest newsletters and general lobbying for the benefit of all members, as well as providing facilities for business meetings and seminars to the general membership does not make an association's dues from members taxable as non-"bona fide" dues or defeat the statutory deduction for such bona fide 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.

TAXPAYER REPRESENTED BY: . . .  
. . .  
. . .

HEARING CONDUCTED BY: . . .  
. . .  
. . .  
. . .

DATE OF HEARING: October 15, 1986

NATURE OF ACTION:

On September 3, 1986 the Department's Audit Section notified the taxpayer, in writing, of its prospective business and occupation tax liability measured by amounts received as

"dues" from members of the taxpayer association. The taxpayer sought and was granted an informal conference under the provisions of WAC 458-20-100. The conference was conducted on October 15, 1986 and was attended as reported earlier herein. The representatives of other organizations and associations concerned with the common issue in this case were in attendance at the conference at the taxpayer's request.

After full review of the benefits and services provided to its dues paying members by the taxpayer, it was requested and agreed that the questions of prospective taxability should be resolved by this Determination, pursuant to subsection 18, WAC 458-20-100.

#### FACTS AND ISSUES:

Faker, Sr. A.L.J.--The taxpayer is an association of independent business and industry enterprises which provides general business information services and legislative awareness programs for its members. It provides some specific services for a charge, in addition to membership dues, which additional charges have been reported for tax and are not in question here.

The taxpayer's records and business operations were examined by the Department's auditors who concluded that some specific, significant services were rendered for members in return for dues paid. Thus, the business and occupation tax deduction for bona fide dues income, provided by RCW 82.04.4282 and WAC 458-20-114, was denied the taxpayer. In a letter opinion dated September 3, 1986 the taxpayer was instructed to report business and occupation tax, beginning October 1, 1986 and thereafter, upon membership dues income, under the Service and Other Business Activities classification.

#### Issue

Does the taxpayer provide significant amounts of services to its membership in exchange for dues, without additional charges to the members, so that the tax deduction of RCW 82.04.4282 is expressly denied?

#### TAXPAYER'S EXCEPTIONS:

First, the taxpayer stipulates that it does provide certain specific services to members and others for charges, in addition to dues, the taxability of which is not questioned. These services are itemized in the September 3, 1986 letter to

the taxpayer, a copy of which is attached to this Determination as Exhibit No. 1.

The taxpayer asserts that the first item listed in the letter under the heading "Service and Other Activities," constitutes bona fide dues within the scope and intent of RCW 82.04.4282, and represents the bulk of the taxpayer's income. These "dues" are received for the express privilege of belonging as a member of the taxpayer association and only in return for the common and ordinary membership benefits of associating for the general business welfare of the respective members. Such common benefits include, among others,

1. The receipt of newsletters of a general informational nature concerning the economic and business environment of Washington State.
2. Legislative liaison, including nonspecific lobbying activities and legislative watchdog activities.
3. The conduct of business conventions and trade shows for members.
4. The conduct of business meetings and seminars of general and varied commercial and economic interest to members.

It is stressed that the membership benefits itemized above constitute the bulk of services provided. A listing of the general membership benefits available is attached to this Determination as Exhibit No. 2. The taxpayer's emphasis is upon the four itemized areas of activity.

The taxpayer asserts that in earlier meetings with the Department's executive staff and through its attendance at the public hearing at which WAC 458-20-114, dealing with the bona fide dues deduction, was amended, it understood that providing itemized benefits to members would not incur business tax liability. In other words, these activities would be considered as the normal and usual benefits derived from simple membership in an association, and that dues payments which entitled members to these benefits would be "bona fide," tax deductible dues. The September 3, 1986 letter which advises that all dues are taxable represents a marked departure from this understanding.

The taxpayer stresses that Rule 114, as amended, clearly provides that some deduction for bona fide dues income is available for all legitimate organizations and associations

which derive dues income. It stresses that the Department's instructions for future tax reporting in the September 3, 1986 letter deny all such tax deduction treatment.

Regarding its newsletter services the taxpayer stresses that such publications are simply of a general, business informational nature. These letters are regularly provided to all members without additional charge. If nonmembers subscribe to the newsletter, tax is reported and paid on such subscription income.

Concerning lobbying and related legislative services the taxpayer stresses that it performs no such activity for any individual member(s), nor does it undertake bill drafting, lobbying, or specific legislative liaison activities in any commercial sense. Rather, it reports to its membership upon matters being considered during legislative and congressional sessions and sometimes represents the general interests of its entire membership before legislative and other governmental bodies. In short, it provides no specific service which would be compensable in the marketplace.

Concerning the meetings, conventions, and seminar services provided, the taxpayer recognizes that specific charges to persons attending such functions, in addition to regular dues, constitute taxable income. However, the September 3, 1986 letter instructs that even the regular dues payments which entitle members to attend such functions will be taxable.

Stephen Maag, of the Washington Health Care Association, testified that a recent audit examination of his organization's books and records resulted in tax liability being asserted in all of the same activity areas discussed earlier, i.e., members' newsletters, association-wide lobbying and legislative services, and meetings attendance.

In a post-hearing letter of October 21, 1986, the taxpayer summarized as follows:

The area which is the greatest concern is the requirement to pay B&O taxes under the service classification on dues received by the [taxpayer] from its member.

In past meetings with the department and rulings made by the department, nonprofit organizations which receive dues, such as the [taxpayer] have not been required to pay taxes on this income. The

[taxpayer] does not provide any direct services to its members as a result of receiving their dues. On services which are provided as a direct benefit to members such as seminars there is no disagreement about paying the appropriate taxes.

If the department of Revenue is now planning to collect taxes on dues, then will the process be uniform? Will labor unions and others be required to report and pay taxes on dues which they receive?

#### DISCUSSION:

We have thoroughly reviewed the activities engaged in by the [taxpayer] and the benefits provided to [taxpayer] dues-paying members, other than those for which separate taxable charges are made. We find that these services merely constitute the privileges of membership attendant to joining and belonging to any association or organization. Rule 114, as amended on March 27, 1984, properly implements the business tax deduction provided by RCW 82.04.4282. The statute provides in pertinent part as follows:

In computing tax there may be deducted from the measure of tax amounts derived from bona fide initiation fees, dues, contributions, donations. . . . If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member . . . the value of such goods or services shall not be considered as a deduction hereunder. (Emphasis ours.)

Rule 114 provides in pertinent part.

Thus, it is only those initiation fees and dues which are paid for the express privilege of belonging as a member of a club, organization, or society, which are deductible.

In short, amounts which are paid to an organization in return for measurable, compensable goods and services for which persons expect to pay a charge in the marketplace are excluded from the deduction. The test is both quantitative and qualitative. If the services or membership benefits derived from dues payment are both enough and of a kind which are compensated for when purchased by nonmembers of organizations in the business marketplace, then the portion of "dues" income

attributable to such benefits do not fall within the ambit of the tax deduction. Rule 114, in its other parts, clearly explains that some so-called "dues" may be taxable, and some may be deductible from the tax measure based upon the criteria explained above. However, it is the clear and intended result of both the statutory provision and the rule statements that some part of "dues" income (that part which is "bona fide") derived by legitimate clubs and organizations, will always be entitled to tax deduction. In the case of [taxpayer], and possibly the [taxpayer], no deduction has been allowed. This is incorrect and will be adjusted.

Concerning the specific benefits available to members of the [taxpayer], other than those for which special charges are made and upon which tax liability is admitted, we find them to be the ordinary and expected privileges which derive from the mere act of joining together and pursuing common interests in a noncommercial sense. Some esoteric benefits, such as the free flow and exchange of information, will always be realized by persons who join together to share their mutual interests, politically, socially, and economically. Herein lies the very purpose and intent of the tax deduction for bona fide dues.

The expenditure of "bona fide" dues by an organization in furtherance of the free flow of information among members, such as providing newsletters to members and representing general membership interests before legislative bodies, etc., does not render such dues as being less than "bona fide." If common membership interests and concerns could not be shared and freely voiced, there would be no purpose whatever to join together in any organizational undertaking, religious, fraternal, patriotic, or otherwise. There would simply be no such thing as "bona fide" dues!

The foregoing understanding of statutory intent and the Department's position through Rule 114 have been uniformly and consistently applied, both before and after the 1984 amendment of the rule. Thus, the Department has never assessed tax measured by the "dues" of labor organizations, educational associations, and the like even though their activities clearly entail the sharing of information through in-house organs or newsletters as well as the representation of common membership interests before legislative and governmental bodies. In the cases of trade associations the tax deduction for "bona fide dues" has been denied only when the dues structure was graduated or otherwise directly proportionate to the amount of goods, services, and commercial benefits

provided to members by the association. See Red Cedar Shingle Bureau v. Revenue, 62 Wn.2d 431 (1963).

Rule 114 must deal with a very broad spectrum of organizations, clubs, associations, and other entities made up of memberships of persons with interests ranging from raising azaleas to protecting zebras. Many such groups simply structure their charges to members on a monthly payment basis and call them "dues," when in reality they are simply charges for goods and services for which nonmembers must pay a taxable charge or fee in the marketplace. In 1979 the Washington State Legislature recognized this fact and the potential for invalidly claiming the statutory deduction for "bona fide dues," when in fact the fee being charged simply constituted the selling price of goods and services provided. Thus, that year RCW 82.04.4282 was amended to add the language emphasized earlier herein regarding, "any significant amount of goods or services . . . without any additional charge to the member." Rule 114 properly restricts the deduction within this statutory intent.

[1] In the instant case, as well as for other, similar associations, the providing of general interest newsletters and legislation-watch or general lobbying for the benefit of all members are simply the privileges of membership which derive "bona fide," tax deductible dues. Also, the providing of meeting places and the presentation of meetings, conventions, and seminars at facilities of the organization are not "significant" benefits which render the membership dues as non-bona fide or nondeductible. Conversely, the providing of such facilities or benefits for individual members on a graduated dues basis or for any additional charge constitutes taxable business activity and such amounts are excluded from the deduction.

The Audit Section of the Department will apply the principles and guidelines set forth herein, and as contemplated by the statute and rule, and will reevaluate the various activities of the taxpayer association for future tax reporting accordingly. The instructions contained in the letter of September 3, 1986 are rescinded. Finally, the Department will issue an Excise Tax Bulletin for general circulation to taxpayer groups similarly situated with the taxpayer here, for prospective application.

DECISION AND DISPOSITION:

The taxpayer's petition is sustained. This decision is for prospective and advisory purposes only, and causes no tax assessment, refund, or tax credit result.

DATED this 10th day of December 1986.