

Cite as 2 WTD 421 (1987)

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

In the Matter of the Petition )	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Refund of )	
)	No. 87-103
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. . . )	Registration No. . . .
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[1] **RULES 119 and 244:** B&O TAX -- RETAIL SALES TAX -- FOOD SERVICES -- EXECUTIVE DINING ROOM. Receipts from management fees and charges for food, labor and related supplies consumed by a food service contractor in providing a food service for a company's executive dining room are subject to retailing B&O and retail sales tax.

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: . . .

DATE OF HEARING: March 5, 1987

NATURE OF ACTION:

The taxpayer provides a food service. It protests the reclassification of executive dining room receipts from one of its institutional customers from service B&O to retailing and retail sales tax.

FACTS:

Frankel, A.L.J.--The taxpayer's records were examined for the period July 1, 1983 through December 31, 1984. The audit disclosed taxes and interest owing in the amount of \$ . . . . Assessment No. . . . for the total amount due was issued on February 13, 1986. The taxpayer's records were reexamined for that period after additional information was provided. The

taxpayer received a credit for retail sales tax which had been paid by one of its customers, and the tax assessment was reduced to \$ . . . . The taxpayer paid the assessment on April 4, 1986.

At issue in this appeal is the retail sales tax and retailing B&O tax assessed on the amount charged one of the taxpayer's clients, a bank, for management fees and for food, labor, and related supplies consumed by the taxpayer in providing a food service for the bank's executive dining room. The taxpayer had been reporting the executive dining room billings under the Service and Other Activities classification of the B&O tax. The taxpayer seeks a refund of the amounts assessed on this activity and a ruling that the income from this service is subject to Service B&O, as the taxpayer had reported.

The taxpayer stated that the bank's policies and procedures manual specify that the executive dining room was established for the purposes of business development and entertainment--not for the personal use of the bank's employees. The bank's customers are brought to the executive dining room for business purposes and the bank incurs a business development expense. The taxpayer contends it is not selling meals but providing a service to the bank. It distinguishes this activity from the meals it provides and sells in the company cafeterias. In those cases, the taxpayer agrees that it is selling meals and that retailing and retail sales tax are due.

#### ISSUE:

Whether the taxpayer is selling meals or providing a service to the bank when it provides a food service in the bank's executive dining room.

#### DISCUSSION:

The bank contracted with the taxpayer to purchase food and supplies and prepare meals in the bank's cafeterias and in its executive dining room. Because the employees or others who eat in the cafeterias are charged for their meals and the bank pays for the meals served in the executive dining room is not a reason to tax the two activities differently. Nor is the fact that the bank uses the executive dining room for business purposes a reason to distinguish the two types of sales. All persons making sales of meals upon which the retail sales tax applies are required to pay the business and occupation tax under the Retailing classification upon the gross proceeds derived from such sales. WAC 458-20-119 (Rule 119).

RCW 82.04.070 defines the "gross proceeds of sales" as:

. . . the value proceeding or accruing from the sale of tangible personal property and/or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

Accordingly, we uphold the auditor's assessment of retailing B&O on the total receipts from the executive dining room billing.

Although RCW 82.08.0293 and 82.12.0293 exempt certain sales of food products from the retail sales tax and use tax, the B&O tax contains no food products exemption. See WAC 458-20-244 (Rule 244). Rule 244 is the administrative rule which implements the food products exemptions. Rule 244 states that:

. . . sales of food products are subject to retail sales tax when sold by cafes, caterers, restaurants, pizza parlors, food drive-ins, and businesses which are operated in such a way as to invite or permit consumption of the food at or near the premises where the food is sold.

Clearly this is such a case. The taxpayer is functioning similar to a caterer in providing food services for the bank's executive dining room and the charges are subject to retail sales tax.

The measure of the retail sales tax is the "selling price." RCW 82.08.020. The "selling price" means the consideration paid:

. . . 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 expenses whatsoever paid or accrued and without any deduction on account of losses; . . .

The measure of the retail sales tax, therefore, is also the total amount charged the bank for providing the food service in the executive dining room.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 31st day of March 1987.