

Cite as Det. No. 03-0362R, 26 WTD 78 (2007)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Correction of )		<u>D E T E R M I N A T I O N</u>
Assessment and Refund of )		
	)	No. 03-0362R
	)	
. . .	)	Registration No. . . .
	)	Document No. . . .
	)	Audit No. . . .
	)	Docket No. . . .
	)	

- [1] RULE 168; RCW 82.04.4289: B&O TAX – MUNICIPAL CORPORATION – NURSING HOME – PUBLIC HOSPITAL DISTRICT– RELIGIOUS OR CHARITABLE ORGANIZATION. A public hospital district is a municipal corporation and not a religious or charitable organization, and nursing home revenue received by the public hospital district is therefore not exempt under RCW 82.04.4289. The fact that the public hospital district has been designated a 501(c)(3) corporation by the Internal Revenue Service is immaterial.
- [2] RULE 100; RCW 82.32A.020(2): B&O TAX – WRITTEN INSTRUCTIONS – RELIANCE. B&O tax on nursing home revenue received by a public hospital district will be waived where the Department previously issued a written opinion of future tax liability to the district advising in error that revenue from nursing homes purchased by the district and operated as nonprofit corporations was exempt from B&O 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.

Rosenbloom, A.L.J. – Taxpayer petitions for reconsideration of Determination No. 03-0362, in which we held that the exemption provided in RCW 82.04.4289 does not apply to nursing home revenue received by a public hospital district. We affirm our ruling that the exemption does not apply, but waive the tax during the audit period under review because the Department of Revenue (Department) issued a written opinion of future tax liability erroneously advising the taxpayer that its nursing home revenue was exempt.<sup>1</sup>

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

## ISSUES

1. Is nursing home revenue received by a public hospital district exempt under RCW 82.04.4289 where the public hospital district has been designated a 501(c)(3) corporation by the Internal Revenue Service?
2. Should B&O tax on nursing home revenue received by a public hospital district be waived where the Department issued a written opinion of future tax liability to the public hospital district advising that its nursing home revenue was exempt from tax under WAC 458-20-168(4)(c)?

## FINDINGS OF FACT

. . . (Taxpayer) operates a public hospital, several clinics, and a skilled nursing home. The Department's Audit Division (Audit) examined Taxpayer's books and records for the period January 1, 1997 through December 31, 2000 and issued an assessment for additional taxes and interest. Taxpayer paid the assessment and petitioned for correction of the assessment and for a refund. In Determination No. 03-0362, we denied Taxpayer's petition for correction of assessment and refund.

Taxpayer filed a timely petition for reconsideration alleging that Determination No. 03-0362 failed to address the fact that Taxpayer is a 501(c)(3) corporation when the Determination concluded that Taxpayer's nursing home revenue is not exempt under RCW 82.04.4289.

Taxpayer provided a ruling from the Internal Revenue Service dated . . . , 1996, which provides in part:

[W]e have determined you are exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in 501(c)(3).

At the hearing on reconsideration, Taxpayer provided, for the first time, a copy of a . . . 1998 letter from the Department's Taxpayer Information and Education Section (TI&E) advising Taxpayer that its nursing home revenue is not subject to tax.<sup>2</sup>

The letter was in response to a ruling request by Taxpayer. The letter was written on behalf of [Health Care Services, a name different from Taxpayer's], however, the letter included a copy of Taxpayer's bylaws and a purchase agreement stating that Taxpayer intended to apply for a license to operate the nursing home.

TI&E responded with a letter providing in part:

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<sup>2</sup> The letter, which was addressed to a supervisory accountant who is no longer employed by the Taxpayer, was discovered during preparation for the hearing on this Petition for Reconsideration.

You explain that [Taxpayer] has purchased two nursing homes and is operating them as nonprofit corporations. You want to know if the provisions of WAC 458-20-168(4)(c) applies [sic] to the income of the nursing homes. The administrative rule provides in pertinent part:

. . . nonprofit nursing homes are exempt from B&O on the services [sic] they provide [sic] to patients or from sales of prescription drugs . . .

Your understanding that the income of the nursing homes is exempt from the business and occupation tax is correct. The exemption contained in the administrative rule is applicable.

Late in 1997, Taxpayer entered into an agreement to purchase the nursing home from its prior owner, with closing to occur on . . . , 1997. [Before the closing date] Taxpayer filed a UBI Master Application for [Health Care Services] for purposes of reporting its nursing home revenue.<sup>3</sup> After receiving the TI&E letter, Taxpayer discontinued paying B&O tax on nursing home revenue and applied for a refund of B&O taxes previously paid on this revenue. [Health Care Services] account was closed . . . , 2000.

### ANALYSIS

Taxpayer argues that its nursing home revenue is exempt from B&O tax under RCW 82.04.4289, which provides:

This chapter does not apply to amounts derived as compensation for services rendered to patients or from sales of prescription drugs as defined in RCW 82.08.0281 furnished as an integral part of services rendered to patients by . . . nursing homes . . . operated as religious or charitable organizations . . . .

[1] As we said in Determination No. 03-0362, the exemption is limited to nursing homes *operated as religious or charitable organizations*. A public [hospital] district is a municipal corporation authorized under RCW 70.44.007. Municipal corporations are not “religious or charitable organizations” as that term is commonly understood.

The legislature knows how to identify and refer to a “municipal corporation” when that is their intent. See, for example RCW 82.04.4297, which applies to “health or social welfare services rendered by a health or social welfare organization or by a municipal corporation or political

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<sup>3</sup> Though the Department of Revenue’s records refer to [Health Care Services] as an “association,” a copy of the UBI Master Application obtained from the Department of Licensing disclosed that Taxpayer described itself as a “nonprofit municipal corporation” and listed Taxpayer’s superintendent, board chairman, and a commissioner as the “corporate officers.”

subdivision.” (Emphasis supplied.) Deductions and exemptions are strictly construed against taxpayers. *Budget Rent-a-Car, Inc. v. Department of Rev.*, 81 Wn.2d 171, 500 P.2d 764 (1972).

The fact that the Internal Revenue Service has recognized the Taxpayer as a 501(c)(3) corporation is immaterial. Status as a 501(c)(3) corporation has important federal income tax consequences; however, for purposes the B&O tax exemption provided in RCW 82.04.4289 the question is whether Taxpayer is *operated as a religious or charitable organization*.

Though the portion of Rule 168<sup>4</sup> cited in the TI&E letter refers to “nonprofit nursing homes,” the Rule cannot be interpreted in a manner that extends the exemption beyond the scope intended by the legislature. As we said in Det. No. 90-280, 10 WTD 79 (1990):

Administrative rules cannot exceed or conflict with the scope of the statutes they interpret. *Duncan Crane v. Department of Rev.*, 44 Wn. App 684 (1986); *Tacoma v. Smith*, 50 Wn. App 717 (1988); *review denied*, 110 Wn.2d 1032 (1989). As a result, where a rule appears to be in conflict with a statute or to exceed the exclusions contained in a statute, the rule must be read so that it does not conflict with the statute. . . .

We conclude that nursing home revenue received by a public hospital district is not exempt under RCW 82.04.4289, regardless of whether the public hospital district has been designated a 501(c)(3) corporation by the Internal Revenue Service.

[2] Nevertheless, we must excuse the B&O tax assessed for the audit period under consideration. The Taxpayer Bill of Rights provides:

Taxpayers of the state of Washington have . . . the right to rely on specific, official written advice and written tax reporting instructions from the department of revenue to that taxpayer, and to have interest, penalties, and in some instances, tax deficiency assessments waived where the taxpayer has so relied to their proven detriment;

RCW 82.32A.020(2).

WAC 458-20-100 (Rule 100), the Department’s rule on written advice on future tax liability provides in part:

**(9) Rulings of prior determination of tax liability.** Any taxpayer may make a written request to the department for a written opinion of future tax liability. Such a request shall contain all pertinent facts concerning the question presented and may contain a statement of the taxpayer's views concerning the correct application of the law. The department shall advise the taxpayer in writing of its opinion. The opinion shall be binding upon both the taxpayer and the department under the facts presented until the department changes

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<sup>4</sup> [Rule 168 was amended, effective July 31, 2005.]

the opinion by a determination or subsequent opinion issued to the taxpayer, or the legal basis of the opinion has been changed by legislative, court, or WAC rule action. . . .

The statute and rule apply to Taxpayer's situation. Taxpayer sought a prior determination of tax liability when it first acquired the nursing homes. The letter was written on behalf of [Health Care Services] This raises the question whether the written opinion was actually issued to Taxpayer.

However, Taxpayer's ruling request provided a copy of the purchase agreement showing itself as the purchaser and stating that Taxpayer intended to apply for a license to operate the nursing home. The Taxpayer also provided a copy of its own bylaws, which would have no relevance if Taxpayer were not the owner and operator of the nursing home.

Furthermore, there is no evidence that [Health Care Services] was organized as a separate legal entity, rather than simply a separate tax-reporting account. Taxpayer's ruling request and supporting documents clearly represented that Taxpayer, not some other entity, intended to own and operate the nursing home, and that is what in fact occurred.

Based on this representation, the Department advised in error that the nursing home revenue would not be subject to tax. Relying upon that advice, Taxpayer discontinued paying B&O tax on its nursing home revenue and received a refund of B&O tax previously paid. The Department is bound by its erroneous advice. Though the Department may correct the erroneous advice prospectively, we conclude that the Department must waive the tax deficiency and related interest and penalties for periods prior to the correction.

The Department effectively "change[d] the opinion by . . . subsequent opinion issued to the taxpayer" on February 21, 2002, when it issued audit instructions advising that Taxpayer's nursing home revenue is subject to tax. Taxpayer therefore cannot claim reliance upon the TI&E letter for periods after March 1, 2002. Taxpayer is specifically instructed that its nursing home revenue does not qualify for exemption under RCW 82.04.4289. . . .

#### DECISION AND DISPOSITION

The taxpayer's petition for correction of assessment and refund is granted in part and denied in part.

Dated this 1<sup>st</sup> day of December 2004.