Cite as 5 WTD 369 (1988)

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

In the Matter of the Petition For Correction of Assessment of)	D E T E R M I N A T I O N
)	No. 88-197
. . .)	Registration No. . . .
)	Tax Assessment No. . . .

[1] **RULE 138, RULE 224, RCW 82.04.030, RCW 82.04.140, RCW 82.04.150, AND RCW 82.04.220:** B&O TAX -- SERVICE -- PYRAMIDING OF -- GOLF COURSE -- MANAGEMENT OF -- DOUBLE TAXATION. Where the independent manager/operator of a city-owned golf course receives a percentage of greens fees for its services, such commission is service B&O taxable to the operator notwithstanding the fact that the city also owes Retailing B&O on the same fees.

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: April 30, 1986

NATURE OF ACTION:

Golf course operator protests the B&O taxation of the income it received for managing a golf course.

FACTS AND ISSUES:

Dressel, A.L.J. -- . . . (taxpayer) is engaged in the business of operating and managing public golf courses and driving ranges. The matter under consideration in this Determination has to do with the taxpayer's operation of the . . . Golf Course which is owned by the City of . . . . Relative to that operation, the taxpayer's books and records were examined by the Department of Revenue (Department) for the period April 1, 1981 through June 30, 1985. As a result the above-captioned tax assessment was issued for excise tax and

interest totaling $ . . . . All or part of that amount remains outstanding at this writing.

During the above-cited audit period the taxpayer and the city of . . . had entered into a contract titled, "Concession Agreement-. . . Golf Course." Under the terms thereof, the taxpayer was appointed to "manage and operate" the . . . Golf Course. Among other things the contract called for the taxpayer to collect green fees, maintain a pro shop, maintain a restaurant, provide golf lessons, rent carts, etc. The responsibility for maintaining the greens and fairways remained with the City. As payment for its services, the taxpayer received twenty-four percent (24%) of the monthly gross receipts from greens fees, annual ticket sales, reservation fees, and locker fees. After collecting those amounts, the taxpayer would deposit all into a City bank account. After the City's Parks and Recreation Department received a monthly accounting from the taxpayer, the City would then disperse the 24% fee to the taxpayer. It is claimed that the City of . . . paid Retailing business and occupation (B&O) and retail sales tax on 100% of these receipts. In this assessment the Department has attempted to tax the 24% of green fees, etc., that is remitted back to the taxpayer from the City as payment for the taxpayer's services in managing and operating the golf course.

It is the taxation of this amount to which the taxpayer objects. It argues that all appropriate taxes have been paid on the green fees by the City of . . . . The Department's assessment results in "double taxation" in that the 24% is subject to B&O tax a second time. The taxpayer contends that its agreement with the City is really a "profit sharing split" or a "partnership agreement" rather than a "Concession Agreement." The taxpayer takes the position that it does not really manage the golf course because the Parks and Recreation Department establishes the ground rules and tells the taxpayer what to do. The taxpayer points out that its contract with the City of . . . was negotiated with the understanding that the taxpayer would not be required to pay B&O tax. If the taxpayer is forced to pay B&O tax, its profits from the golf course operation would be seriously undermined. It is not fair that business and occupation tax be paid twice on the same receipts. The contract says that the City is to pay all taxes.

Whether the 24% portion of the greens and other fees inuring to the taxpayer create B&O liability for the taxpayer is the issue to be decided.

DISCUSSION:

The business and occupation tax is imposed according to the following authority:

> **RCW 82.04.220 Business and occupation tax imposed.** There is levied and shall be collected from every person

> a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.

"'Business' includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly." RCW 82.04.140. "'Engaging in business' means commencing, conducting, or continuing in business . . . ." RCW 82.04.150. The words "persons" and "company" are used interchangeably in RCW 82 and include any individual, company, municipal corporation, or political subdivision of the state of Washington, among others. RCW 82.04.030.

[1] In this case we have two entities engaged in business, the taxpayer and the City of . . . . The City owns and receives revenue from a golf course. The taxpayer is the entity hired by the City to oversee many of the golf course operations. It also derives revenue from this business in the form of the 24% figure at issue here. RCW 82.04.220 says that, "There is levied and shall be collected from *every* person a tax for the act or privilege of engaging in business activities. . . ." (Italics ours.) Both the City and the taxpayer are so engaged, so both are liable for the B&O tax. The proper category for the City is Retailing based on the definition of "retail sale" and RCW 82.04.050, which definition includes certain participatory sporting activities such as golf. The proper category for the taxpayer is "Service and Other Business Activities" because it is providing the service of managing and operating the golf course pursuant to the contract that it has with the City. See WAC 458-20-138. Because such income is not otherwise specially categorized for tax purposes in RCW 82.04, it falls into the Service B&O classification of RCW 82.04.290. See also WAC 458-20-224.

It is true that the greens fees paid by golfers are, in effect, being twice subjected to the B&O tax. That is because the tax is being imposed upon two different business activities being engaged in by two different persons. This pyramiding of the business and occupation tax, which is a tax on *gross receipts,* is fully intended. Thus, in this case, the owner of the golfing facility is subjected to Retailing B&O tax on the golfing revenues, and the taxpayer is subject to Service B&O tax on its gross receipts for its rendition of services to the owner.

It is worthy of mention here that while a golfer's greens fees are effectively taxed twice for B&O purposes, the taxpayer per se is not subject to "double taxation" because it pays such tax only on the 24% commission amounts it is paid by the City. The other portion of B&O tax which is effectively exacted from a golfer's greens fees is paid by the City, not the taxpayer. Neither the taxpayer nor the City, then, is subjected to double taxation. Each

entity pays only one B&O tax on the revenue generated from the golfing activity. Furthermore, even if that were not the case, there is no constitutional prohibition either of this state or the United States against double taxation as applied to excise taxes. *Klickitat County v. Jenner,* 15 Wn.2d 373 (1942).

Finally, we reject the taxpayer's theory that the taxpayer does not have a "service contract" with the City of . . . , nor do we see a basis for a "profit sharing split" or partnership agreement. The first page of the Concession Agreement between the parties states, "The City hereby grants to the Concessionaire for the term and upon the conditions and provisions herein, the exclusive concession, right and privilege to manage and operate at the . . . Golf Course the facility and services . . . ." From this and other portions of the agreement, we conclude that the taxpayer was clearly hired as an independent contractor to provide managerial services. Also, (not that the parties could escape their state tax obligation by contracting with each other to do so) contrary to the taxpayer's statement at the hearing, the taxpayer agreed on page 30 of the Concession Agreement to "pay all license fees and State and City excise taxes and occupation taxes . . . ."

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 20th day of April 1988.