Cite as Det. No. 88-186, 5 WTD 319 (1988)

**THIS DETERMINATION HAS BEEN OVERRULED OR MODIFIED IN WHOLE OR PART BY DET. NO. 93-269ER, 14 WTD 153 (1995).**

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

| | | |
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| 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. 88-186 |
| . . . | ) | Registration No. . . . |
| | ) | Tax Assessment No. . . . |

[1] **RULE 163**: RCW 82.04.320 -- RCW 48.14.080 -- B&O TAX -- PREMIUM TAX -- INSURANCE BUSINESS -- EXEMPTION -- ETB 380.08.163. The exemption provided by RCW 82.04.320 does not apply to any business engaged in by an insurance company other than its insurance business. The premium tax established by Chapter 48 is in lieu of all other taxes on insurance premiums, but not in lieu of B&O taxes on income from other business activities engaged in by an insurance company.

[2] **RULE 136, RULE 143 AND RULE 193A:** B&O TAX -- PRINTING AND PUBLISHING -- IN-HOUSE PRINTING -- INSURANCE COMPANY. An insurance company that prints and publishes items for its own use is subject to B&O tax on the costs for materials, labor, and overhead.

[3] **RULE 109 AND RULE 163:** RCW 82.04.320 -- B&O TAX -- INTEREST -- LOANS TO AFFILIATES -- INSURANCE COMPANY. Interest received by an insurance company from loans to affiliates is not income received from the insurance business; thus the assessment of B&O tax on the interest income is not prohibited by RCW 48.14.080 or RCW 82.04.320.

[4] **RULE 109 AND RCW 82.04.4281:** ETB 368 -- ETB 505 -- B&O TAX -- DEDUCTION -- INTEREST -- LOANS TO AFFILIATES -- FINANCIAL BUSINESS. Interest earned from loans to subsidiaries is not deductible under RCW 82.04.4281 where the loans are a regular and normal part of the taxpayer's business activities; activity which is in competition with a financial business constitutes a financial business.

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: July 14, 1987

NATURE OF ACTION:

The taxpayer, an insurance company, protests the assessment of B&O tax on its in-house print shop and on interest received from loans to affiliated companies.

FACTS AND ISSUES:

Frankel, A.L.J. -- The taxpayer's records were examined for the period January 1, 1982 through June 30, 1986. The audit disclosed taxes and interest owing in the amount of $ . . . . Tax Assessment No. . . . in that amount was issued on December 2, 1986. A post audit adjustment was made reducing the assessment to $ . . . .

The taxpayer protests the assessment of B&O tax on its in-house print shop and on interest received from loans to affiliated companies. The auditor assessed tax on the printing based on 100% of the costs for materials, labor, and overhead. ( . . . ). Credit was allowed for the printing revenue reported by the taxpayer on its instate sales. No deduction was made for printed materials shipped to points outside this state. The auditor relied on WAC 458-20-193A (Rule 193A).

The auditor assessed Service B&O on the interest received by the taxpayer from loans to affiliates ( . . . ). The auditor relied on WAC 458-20-109 (Rule 109). Copies of Rules 193A and 109 were provided to the taxpayer.

The taxpayer's primary argument is that RCW 48.14.080 exempts an insurance company from the B&O taxes at issue. Additional or alternative grounds for appeal are based on RCW 82.04.320 and RCW 82.04.4281.

DISCUSSION:

[1] The first issue is whether the taxpayer, as an insurer, is exempt from all excise taxes except those on the sale, purchase or use of property.

WAC 458-20-163 (Rule 163) is the administrative rule which states the B&O tax exemption for insurance companies provided by RCW 82.04.320. The rule and statutory provision provide a B&O tax exemption for "any person in respect to insurance business upon which a tax based on

gross premiums is paid to the state." Rule 163 adds that "the exemption does not apply to any business engaged in by an insurance company other than its insurance business."

The issue as to the tax status of insurance companies with respect to their tax liability was reviewed by the Department in 1982. At that time, a letter was sent to all insurance companies registered in the state. The letter addressed the question whether all business engaged in by insurance companies was exempt from the B&O tax.

The letter stated:

> On the basis of numerous judicial precedents the Department has concluded that the exemption contained in RCW 82.04.320 must be strictly interpreted. Insurance companies involved in activities in addition to the actual sales of insurance policies are subject to the business and occupation tax. For example, Excise Tax Bulletin 380.08.163 was revised on June 4, 1982 advising the insurance industry that the business tax applies to sales of salvage.
>
> The purpose of this letter is to advise you that you may also be engaged in other activities which are taxable. In reviewing a number of insurance company files I have noted that some companies sell forms to affiliates, operate cafeterias for the benefit of employees, provide management services to affiliates, print forms for their own use with their own printing facilities, etc. All of these activities are subject to the business and occupation tax. If you wish, you may ask for a specific ruling on other activities you are engaged in.
>
> The effective date for the business tax applying to sales of salvage is June 4, 1982. Because insurance companies have relied on earlier opinions from the Department stating the activities mentioned above were not taxable, we are setting October 1, 1982 as the effective date for these other activities.
>
> It is our opinion that income from the investment of premiums, and receipt of interest, including interest received on loans against life insurance policies, and closely related activities continue to not be subject to the business tax. These activities are considered to be so closely related to the sale of policies to not be taxable for the business and occupation tax.
> (letter from Chief of Audit, September 1982.)

The taxpayer relies on RCW 48.14.080 which provides: "As to insurers other than title insurers, the taxes imposed by this title shall be in lieu of all other taxes, except taxes on real and tangible personal property and excise taxes on the sale, purchase or use of such property." The taxpayer contends the B&O tax is not a tax on the "sale, purchase or use of real or tangible personal property," but rather is a tax on the privilege of engaging in business activities. Accordingly, the taxpayer argues the premium tax imposed under Chapter 48 is imposed in lieu of the B&O tax and any assessment of B&O tax is improper.

Legislative intent is determined from the statutory text as a whole, considering the general object and purpose of the legislation. Statutes pertaining to the same subject matter must be harmonized, if possible. PUD V. Broadview Television, 91 Wn.2d 3, 8 (1978). If a justifiable doubt exists as to the meaning of an exemption statute that doubt shall be construed in favor of the power to tax. Spokane County v. Spokane, 169 Wash. 355 (1932).

In this case we have two statutes pertaining to the taxation of income from an insurance business. In order to harmonize the two statutes, we read the in lieu of provision to mean that the premium tax established by Chapter 48 is in lieu of all other taxes on insurance premiums. We do not read RCW 48.14.080 so broadly as to exempt taxes on the income from other businesses engaged in by an insurer. We believe this interpretation considers the general object and purpose of the legislation.

Title 48 constitutes the insurance code which took effect in October of 1947 governing all insurance and insurance transactions in this state. The insurance code contains the following definitions:

> 1) Insurance is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies; (RCW 48.01.040)
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> 2) "Insurance transaction" includes any:
>
> > (1) Solicitation.
> >
> > (2) Negotiations preliminary and execution.
> >
> > (3) Execution of an insurance contract.
> >
> > (4) Transaction of matters subsequent to execution of the contract and arising out of it.
> >
> > (5) Insuring; (RCW 48.01.060)
>
> 3) "Premium" as used in [the insurance] code means all sums charged, received, or deposited as consideration for an insurance contract or the continuance thereof. Any assessment, or any "membership," "policy," "survey," "inspection," "service" or similar fee or charge made by the insurer in consideration for an insurance contract is deemed part of the premium. (RCW 48.18.170).

RCW 48.18.180 adds that the "premium stated in the policy shall be inclusive of all fees, charges, premiums, or other consideration charged for the insurance or for the procurement thereof."

Chapter 48.14 establishes a tax on insurance premiums. RCW 48.14.020. The chapter requires insurers to file with the commissioner a statement of premiums collected or received. RCW 48.14.030. A penalty is imposed on an insurer who fails to file its tax statement and to pay the specified tax or prepayment of the tax on premiums by the due date. RCW 48.14.060. (Emphasis

added.) Clearly the intent of Chapter 48.14 is that the premium tax is to be the only tax on insurance premiums.

Chapter 82.04 deals with the Business and Occupation tax. RCW 82.04.320 contains the exemption for the "insurance business." The statute does not provide an exemption for the gross receipts of an insurer. (Cf, e.g., 82.04.315 (B&O tax does not apply to the gross receipts of an international banking facility). Instead, the legislation dealing specifically with the B&O tax exemption states the B&O tax does not apply "to any person in respect to insurance business upon which a tax based on gross premiums is paid to the state." We find this language clearly supports the Department's interpretation that the premium tax established by Chapter 48 is only in lieu of the B&O tax on insurance premiums, and not in lieu of tax on any business engaged in by an insurance company other than its insurance business. Insurance companies were informed of the Department's position by the 1982 letter quoted above.

Furthermore, the Department's position is clearly stated in Rule 163. Rule 163 is consistent with a narrow interpretation of the B&O exemption statute. As the rule was duly adopted by the Department, is consistent with the statute, and has not been declared invalid by a court of record, it has the same force and effect as if specifically included in the Revenue Act. RCW 82.32.300.

[2] In the present case, the B&O tax was not assessed on the insurance premiums received, but on the taxpayer's in-house printing. The fact the taxpayer was printing forms for its own use and not for sale does not prohibit the application of the B&O tax. Group Health Cooperative of Puget Sound v. Department of Rev., 406 Wn.2d 391 (1986). See also 2 WTD 219 (1986) (Retailer liable for manufacturing B&O tax on activity of producing signs and display materials for its own use).

Rule 143 states that persons who both print and publish items are taxable under the printing and publishing classification. Rule 193A states that no deduction is permitted for articles that are printed and published in this state, even though delivered to persons outside the state. The value subject to tax is the total of the costs for materials, labor and overhead (See WAC 458-209-112 for value of products).

The legislature has exempted the printing of material by school districts and educational service districts from the B&O tax when the materials are used solely for school district and educational service district purposes. RCW 82.04.395. Also, the tax does not apply to materials printed in the county, city or town printing facilities when the materials are used for county, city or town purposes. RCW 82.04.397. No such exemption exists for printing by insurance companies. The Department's 1982 letter to insurance companies specifically stated that an insurance company's activity of printing forms for its own use was subject to the B&O tax. The assessment in Schedule II is sustained.

[3] Interest from loans to affiliates --

The auditor assessed Service B&O on interest received by the taxpayer from loans to two affiliates ( . . . ). The loans to one of the affiliates were made during 1982, 1983, 1984 and 1985. The loans to the other were made in 1985 and 1986.

The taxpayer objected to the imposition of the B&O tax on the interest for the same reason it objected to the B&O tax on the in-house print shop. The taxpayer contends Chapter 48 exempts insurance companies from the B&O tax. Also, the taxpayer noted that the Insurance Code, Chapter 48.13, regulates permissible investments for domestic insurers. The taxpayer argues the interest income is closely related to the business of insurance and investing premiums is part of the insurance business. The taxpayer notes the Department's letter sent to the insurance companies in 1982 recognized that the income from the investment of premiums, and the receipt of interest, is "considered to be so closely related to the sale of policies to not be taxable for the business and occupation tax."

The auditor concluded this language referred to interest from loans to policy holders, but not to interest from loans to affiliates. This distinction recognized that one of the selling points often made by insurance agents is the ability of the policyholder to borrow against the policy. Although investing premiums may be permissible under the code, we agree that making loans to affiliates is a business engaged in by the taxpayer "other than its insurance business" and is not closely related to the sale of policies. Accordingly, we do not find the exemption provided by RCW 82.04.320 applies.

[4] In the alternative, the taxpayer argues the interest income is deductible under RCW 82.04.4281. That statute provides a deduction for "amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations."

The interest that the taxpayer might receive from investing surplus or reserve funds in passive investments as savings deposits, CDs, commercial paper, stocks, and bonds would be deductible under RCW 82.04.4281. Such income was at issue and found deductible by the Washington Supreme Court in John H. Sellen Constr. Co. v. Department of Rev., 87 Wn.2d 878 (1987).

In Sellen, the court approved the Department's interpretation of the deduction statute as set forth in ETB 368.04.224 (June 1970). Sellen at 884. In that bulletin, the Department noted that not every investment and grant of the use of money is held to be a financial business. But "where the activities involved are essentially in competition with financial businesses and this is a regular part of the taxpayer's normal business practice, the department believes that the activities constitute financial business and are subject to tax."

After Sellen, the Department issued ETB 505.04.109 which discusses Sellen and restates the position set forth in ETB 368:

> The court did not define "investments" in its opinion. However, it noted that enterprises "specializing in the handling and investment of funds" would not be entitled to the statutory deduction but that those "making incidental investment of surplus funds" should receive the deduction.

> Under the holding of the court in Sellen, income from the incidental investment of surplus or excess funds by persons who are not themselves in a security, investment, or financial business is not subject to tax.
>
> However, no deduction is permitted with respect to
>
> . . .
>
> 3. income from activities which are essentially in competition with financial businesses where such activities are a regular part of the taxpayer's normal business practice.

In 1982, when the court again considered the issue in Rainier Bancorporation v. Department of Rev., 96 Wn.2d 669, it upheld the service tax on interest earned by the taxpayer from lending money to its subsidiaries. The court noted Rainier Bancorporation did not fall within the specific definition of a banking, loan, or security business; and that its activities did not include loaning money to the public at large and were not identical to those of a bank, loan, or security business. 96 Wn.2d at 674. The court found, though, that "by loaning money to its subsidiaries Rainier's activities are similar or comparable to those aforementioned businesses." Also, the court said it was "important to remember that tax deductions must be narrowly construed." 96 Wn.2d at 674.

We believe Rainier supports the decision that the tax on income earned from loans to its subsidiaries is valid. This decision is consistent with ETBs 368 and 505 and numerous previous decisions by the Department which have held that interest income from loans to affiliated corporations, where the loans are a regular and normal part of the taxpayer's business activities, is subject to the Service business tax.

In this case the loans were made over a number of years and the amount loaned was substantial. In determining whether the interest income was received from an activity that is a regular part of the taxpayer's normal business practice, the Department considers the number of loan transactions and whether the act of making loans fits into the general scheme of the taxpayer's normal business practice, as well as the percentage of the taxpayer's gross income which the interest represents. When interest is received from loans that are a regular part of a taxpayer's business practice, it is taxable under the Service and Other Business Activities classification. WAC 458-20-109.

In conclusion, we find only the income received by an insurance company from its primary business of insuring, i.e., premiums, is exempt from the B&O tax under RCW 82.04.320. The interest income from loans to affiliates is not exempt under RCW 82.04.320 or deductible under RCW 82.04.4281. Accordingly, the assessment in Schedule III is sustained.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 13th day of April 1988.