Cite as 5 WTD 395 (1988)

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

In the Matter of the Petition For Ruling of Tax Liability of)	D E T E R M I N A T I O N
)	No. 88-206
. . .)	Registration No. . . .

[1] **MISCELLANEOUS:** RCW 82.04.030 -- B&O TAX -- PERSON -- NONPROFIT. For purposes of Washington's B&O tax, a taxable "person" includes a non-profit partnership engaging in business activities.

[2] **RULE 163:** RCW 82.04.320 -- RCW 48.14.080 -- B&O TAX -- INSURANCE AGENTS. 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.

[3] **RULE 163:** RCW 82.04.320 -- RCW 48.14.080 -- B&O TAX -- INSURANCE AGENTS -- INCOME -- SOURCE -- LOSS PREVENTION SERVICE -- INSURANCE BUSINESS DISTINGUISHED. Income received by a partnership of three insurance companies for providing a loss prevention service to its owner companies is subject to B&O tax. Such income is not received for insuring for which a premium is received; therefore the exemption provided for insurance companies is not applicable.

[4] **RCW 82.04.030:** B&O TAX -- PERSON -- PARTNERSHIP -- SEPARATE FROM PARTNERS. A partnership is a "person" separate from its individual partners. A partnership of three insurance companies will be taxed as a partnership even though the partnership may perform the same services in the same manner as its owner companies would otherwise have provided for themselves.

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: September 18, 1987

NATURE OF ACTION:

The taxpayer, a partnership of three insurance companies, seeks a ruling that its income is from insurance business and exempt from B&O tax.

FACTS AND ISSUES:

Frankel, A.L.J. -- In July of 1986, the Department sent the taxpayer a letter advising it that it may be operating a business that should be registered with this state. The taxpayer subsequently registered, but protests the decision that its income is subject to the B&O tax.

The taxpayer is an association owned by three insurance companies [referred to as the System companies] which underwrite property insurance for commercial properties. It has a district office in Washington. The taxpayer stated its sole function is to supply necessary insurance information to the system companies to permit them to evaluate property risks they insure. The taxpayer's loss prevention employees perform various insurance related inspections, including engineering loss prevention inspections and loss claim adjustments, and make recommendations to the System companies for insurance underwriting purposes.

The taxpayer's services are available only to the three insurance companies that own it. It provides its services for the cost of the services and stated it is funded by the System companies in the same manner the companies fund their own units.

The taxpayer explained its funding as follows:

> Each year a cash flow forecast is prepared for the Association [the taxpayer] which indicates the total amount of cash that will be required to carry out the duties assigned to the Association by the companies. This cash requirement includes the Operating budget, capital expenditures and other projects requiring cash outlays. The System companies approve this forecast and remit cash based upon the forecast to the Association on a weekly basis. Monthly operating statements are prepared by the Association, for the System companies, which report the month's activities and the costs associated with carrying out assigned duties with respect

> to each insurance company. These Association expenses are combined with all other System companies' monthly expenses and reported on the companies' published financial statements.

For federal tax purposes, the taxpayer files an IRS Form 1065 Informational Tax Return. The System companies pay Washington's insurance premium tax on 2% of all premiums collected on risks or property located in Washington. The taxpayer framed the issue regarding this appeal as follows:

> Is an association of insurance companies operating in a partnership with the sole purpose of performing necessary insurance activities for the exclusive benefit of the insurance company partners exempt from the Washington B&O tax?

DISCUSSION:

[1] Washington's B&O tax is imposed on every person for the act or privilege of engaging in business activities. RCW 82.04.220. A taxable "person" includes a partnership or "any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise . . . ." RCW 82.04.030.

The Revenue Act defines business activities broadly as "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. The B&O tax is on the gross revenues received in the course of business; whether a profit is realized is immaterial. Budget Rent-A-Car v. Department of Rev., 81 Wn.2d 171, 173 (1972).

[2] The taxpayer contends its purposes and functions are solely related to insurance business upon which premiums have already been paid to this state. The taxpayer argues, therefore, that the imposition of the B&O tax would result in the imposition of an impermissible tax on insurance companies. The taxpayer primarily relies on RCW 82.04.320 and RCW 48.14.080.

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."

RCW 48.14.080 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 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 Washington 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)
>
> 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 in 1982 when the issue as to the tax status of insurance companies with respect to their tax liability was reviewed. 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.)

In support of its position that the B&O tax is not applicable to insurers, the taxpayer cited cases from several other jurisdictions. We do not find those cases controlling.

For example, in Nord v. Connecticut General Life Insurance Co., 71 S.D. 1, N.W.2d 403 (1945), the court did find the company was not subject to South Dakota's income tax because it was subject to the premiums tax. South Dakota's Insurance Code, similar to Washington's, stated the premium tax was "in lieu of" other state taxes. Unlike Washington's Revenue Act, however, South Dakota's income tax law stated an exemption for "(6) Insurance companies which are specifically exempted from taxation, excepting the gross premium tax," SDC 57.2711. As discussed above, by not exempting insurance companies, but only "insurance business upon which a gross premium is paid to the state," we believe the Washington State legislature limited the exemption to premium income only.

The Department's position is 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.

[3] In the present case, the B&O tax was not assessed on premium income, but on the taxpayer's income from providing loss prevention services. The taxpayer stated the services were provided to enable the insurance companies to "efficiently generate, administer and service their insurance policies." (Letter of October 2, 1987). Although related to the insurance business, the taxpayer's business activity is not insuring for which a premium is received. We do not find, therefore, that either RCW 82.04.320 or 48.14.080

precludes the application of the B&O tax on the taxpayer's activities.

[4] As an additional argument, the taxpayer relied on language from Yakima Fruit Growers Assoc. v. Henneford, 182 Wash. 437 (1935). The taxpayer contends that case was one in which the Washington Court interpreted an analogous statutory exemption to the B&O tax to apply to a cost-sharing corporate association. That case, however, was not decided under the present Revenue Act, Chapter 180, Laws of 1935. In a subsequent case, the Court held that the amendment to the B&O tax to add "non-profit" to the definition of a taxable "person" indicated that non-profit cooperative companies were intended to be included in the word "person." The Court stated that the determinative question in the earlier case was "whether the respondents were engaged in business for the purpose of gain, benefit or advantage. Because the Court answered that question in the negative, it had upheld the lower court's decision that the cooperatives were not taxable "persons." 187 Wash. at 257.

The taxpayer stated that it, like the farmer's association in the first Yakima Fruit Growers case, is merely providing services for the System companies which are integral to the insurance business and which they would otherwise provide for themselves. The taxpayer contends it is analogous to a department within one of the member companies and properly should be treated as such.

The fact is, though, the taxpayer is not a department of one of the member companies, but a partnership of three separate corporations. In Higgins v. Smith, 308 U.S. 473, 477 (1939) the Court stated:

> A taxpayer is free to adopt such organization for his affairs as he may choose and having elected to do some business as a corporation, he must accept the tax disadvantages.

We find that language apposite.

DECISION AND DISPOSITION:

The decision that the taxpayer's income is subject to Washington's B&O tax is affirmed.

DATED this 3rd day of May 1988.