

Cite as Det. No. 87-340A, 5 WTD 251 (1988)

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

In the Matter of the Petition)	<u>S U P P L E M E N T A L</u>
For Correction of Assessment)	<u>D E T E R M I N A T I O N</u>
of)	
)	No. 87-340A ¹
)	
...)	Registration No. . . .
)	Tax Assessment No. . . .
)	

[1] **RULE 102, RULE 151, RULE 18801, AND RCW 82.04.0281:** B&O TAX -- PHYSICIANS -- DRUGS. The sale and administration of drugs by a physician to a patient is exempt of retail sales tax because of the prescription drug exemption, but it is subject to Service B&O tax rather than Retailing B&O because it is part of the medical services rendered by the physician. Department of Rev. v. Deaconess Hospital, No. 6098-I-II, Division Two, January 5, 1984.

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: February 11, 1987

NATURE OF ACTION:

See Determination 87-340.

FACTS AND ISSUES:

Dressel, A.L.J. -- See Determination 87-340.

DISCUSSION:

The following text from page five of Determination 87-340 is hereby deleted:

¹ The original determination, Det. No. 87-340, is published at 4 WTD 221 (1987).

Our disposition of this sales tax issue has business and occupation tax ramifications as well. Because the taxpayer has been found to have sold tangible personal property to a consumer, its sales of drugs, as discussed above, are retail sales. RCW 82.04.250 states:

Tax on retailers. Upon every person except persons taxable under RCW 82.04.260(8) engaging within this state in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of forty-four one-hundredths of one percent.

This is the statute that establishes the Retailing business and occupation tax classification. The taxpayer's sales of antigen drugs are reportable for B&O purposes under this category. The taxpayer's B&O classification for other sources of income, however, is primarily Service and Other Business Activities which is levied at a higher rate. It is our understanding that all taxpayer income including that specifically attributable to drug sales has been reported under the Service category. Inasmuch as properly itemized drug sales should have been reported under Retailing, the taxpayer has overpaid its B&O obligation. The Department's Audit Section will calculate the extent of that overpayment and will issue an amended assessment in which credit for same is given.

. . . An adjustment of its B&O obligation will be made as well, based on the immediately preceding paragraph. (Footnotes omitted.)

Pursuant to the Court of Appeal's unpublished decision in Dept. of Rev. v. Deaconess Hospital, No. 6098-I-II, Division Two, January 5, 1984, . . . , the taxpayer is directed to report income from antigen drug sales, the administration of such drugs, and office call charges related thereto all under the Service and Other Activities classification of the business and occupation tax. The original instruction in Determination 87-340 to report income from antigen drug sales under the Retailing B&O category, though logical, conflicts with the cited Court of Appeals case, so that aspect only of Determination 87-340 is hereby reversed retroactively. The taxpayer is instructed to amend past state excise tax returns accordingly.

DATED this 23rd day of March 1988.