

In the Matter of the Petition) D E T E R M I N A T I O
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For Review, Interpretation, and) No. 88-172
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. . .) Registration No. . . .
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- [1] **RCW 82.04.4291:** RCW 82.04.290 -- B&O TAX -- DEDUCTION -- POLITICAL SUBDIVISION. A B&O tax deduction is allowed for amounts derived by a political subdivision of the state of Washington from another political subdivision of the state for amounts taxable under the Service B&O tax classification.
- [2] **RULE 251:** RCW 82.04.4291 -- SEWER SERVICES -- B&O TAX DEDUCTION -- POLITICAL SUBDIVISION. Since some sewer services remain taxable under the Service B&O tax classification, the B&O tax deduction provided by RCW 82.04.4291 is still applicable.
- [3] **RULE 189:** DEFINITIONS -- STATE DEPARTMENT OR INSTITUTION -- POLITICAL SUBDIVISION. Under the Washington tax laws and other references in state law (see chapter 4.96, 35.31, 36.45, 39.19, and 28B.10 RCW), a state regional university is a department or institution of the state of Washington; it is not a political subdivision of the state.
- [4] **RCW 82.04.4291:** STATE INSTITUTION -- B&O TAX DEDUCTION. Amounts received by a political subdivision (city) from a state department or institution (university) for rendering sewer

services, are not deductible from the B&O tax measure.

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.

NATURE OF ACTION:

The taxpayer protests the denial of credit under RCW 82.04.4291 for a portion of B&O taxes paid on sewer charges billed to a state university.

FACTS AND ISSUES:

Mastrodonato, A.L.J. -- The taxpayer is a municipal corporation providing water, sewer, and refuse collection services. The Department of Revenue examined the taxpayer's business records for the period from January 1, 1984, through September 30, 1987. As a result of this audit, the Department issued Tax Assessment No. . . . on February 11, 1988, which disclosed a credit in the amount of \$

During the recent audit noted above, the taxpayer was apparently told that it was eligible for a deduction from the "Service and Other Activities" business and occupation (B&O) tax for a portion of income received from another political subdivision. The deduction in question is RCW 82.04.4291 and the payments are for sewer charges billed to . . . University. However, the taxpayer has now been informed that this credit has been denied, because . . . University is not a political subdivision of the state of Washington, thereby reducing its credit by \$

By letter dated February 17, 1988, the taxpayer, through Ms. . . . , Accounting Clerk, has requested a review of this decision and an interpretation of the term "political subdivision." The taxpayer is under the understanding that . . . University is a political subdivision of the state of Washington and that it is entitled to the deduction and resulting credit. In the event that the Department determines that . . . University is not a political subdivision, the taxpayer further requests that we include examples of entities that qualify as a political subdivision.

The sole issue for our consideration is whether . . . University is a political subdivision of the state of Washington so that income received from the university for sewer services is deductible in computing B&O tax liability.

This Determination will respond to the taxpayer's request for review and additional credit.

DISCUSSION:

[1] RCW 82.04.4291 provides a B&O tax deduction for compensation received by one political subdivision of the state of Washington from another political subdivision of this state, for services which are taxable under the "Service and Other Activities" classification (RCW 82.04.290) of the B&O tax. This statutory deduction states as follows:

In computing [B&O] tax there may be deducted from the measure of tax amounts derived by a political subdivision of the state of Washington from another political subdivision of the state of Washington as compensation for services which are within the purview of RCW 82.04.290.

Thus, if a political subdivision of the state of Washington (such as the city of . . .) receives compensation from another political subdivision of the state (such as the city of . . .) for services that are taxable under the "service" classification of the B&O tax, the taxpayer (political subdivision) receiving the compensation may deduct that income from the measure of its "service" B&O tax liability.

[2] As a preliminary matter, we make note of the fact that, prior to July 1, 1985, sewer services were taxable in their entirety under the "service" B&O tax classification. However, under the provisions of Chapter 471, Laws of 1985, a portion of the gross receipts for providing sewer services are now taxable under the public utility tax (chapter 82.16 RCW). Nevertheless, a portion of the gross receipts for providing sewer services remains taxable under the "service" B&O classification. See WAC 458-20-251 (Rule 251). Therefore, the provisions of RCW 82.04.4291 still apply, but only to the extent that the gross income or compensation received is taxable under the "service" B&O tax classification.

[3] As previously stated, the issue is whether . . . University is a political subdivision of the state of Washington. It is our opinion that . . . University is not a political subdivision of the state. Instead, we believe that . . . University is a department or institution of the state of Washington. Therefore, the gross income received by the taxpayer from . . . University for sewer services is not deductible under RCW 82.04.4291.

To the best of our knowledge, the term "political subdivision of the state of Washington" is not specifically defined in the Washington statutes. However, there are numerous references in the law to "political subdivision" and "state of Washington" which give meaning to those terms.

For example, under the Washington Revenue Act, the word "person" is defined to include a "municipal corporation" and a "political subdivision of the state of Washington." RCW 82.04.030. This statutory definition specifically excludes the state of Washington, and its departments and institutions. Since the express mention of one thing in a statute excludes other things not mentioned, Dominick v. Christensen, 87 Wn.2d 25, 548 P.2d 959 (1976) and Swanson v. White, 83 Wn.2d 175, 517 P.2d 959 (1973), it is clear that the B&O tax does not apply to the state of Washington, and its departments and institutions. See RCW 82.04.220.

However, for purposes of the retail sales tax (chapter 82.08 RCW) and use tax (chapter 82.12 RCW) laws, the words "seller" (RCW 82.08.010(2)) and "buyer" and "consumer" (RCW 82.08.010(3)) are defined to mean "every person, including the state and its departments and institutions" and "municipal corporation, quasi-municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof," respectively.

WAC 458-20-189 (Rule 189) is the Department of Revenue's administrative rule regarding the tax implications of sales to and by (1) the state of Washington and its departments and institutions and (2) counties, cities, school districts, and other municipal subdivisions. Under Rule 189, the Department treats the public colleges and universities as departments or institutions of the state of Washington. Thus, . . . University is considered a part of the state of Washington, either as a department or an institution. On the other hand, counties and cities are treated as municipal corporations or political subdivisions of the state. The city of . . . falls within this latter category.

There are other examples of these classifications and categories. For example, chapter 4.96 RCW applies to actions for damages against political subdivisions, municipal corporations, and quasi-municipal corporations of the state of Washington. Under RCW 4.96.020, the law states that chapter 35.31 RCW applies to claims against cities and towns, and chapter 36.45 RCW applies to claims against counties. Thus, for purposes of liability for damages arising out of the tortious conduct of "political subdivisions, municipal corporations and quasi-municipal corporations of the state"

(RCW 4.96.010), these terms are defined to mean cities, towns, and counties (RCW 4.96.020). Again, . . . University is not within any of these categories.

On the other hand, chapter 39.19 RCW applies to minority and women-owned businesses. The intent of the law is stated in RCW 39.19.010, which provides in pertinent part:

. . . It is the intent of this chapter [of Washington law] to mitigate societal discrimination and other factors in participating in public works and in providing goods and services and to delineate a policy that an increased level of participation by minority and women-owned and controlled businesses is desirable at all levels of state government. The purpose and intent of this chapter are to provide the maximum practicable opportunity for increased participation by minority and women-owned and controlled businesses in participating in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector. (Emphasis and bracketed inclusion supplied.)

The law goes on to state at RCW 39.19.060 as follows:

Each state agency and educational institution shall comply with the annual goals established for that agency or institution under this chapter for public works and procuring goods or services. This chapter applies to all public works and procurement by state agencies and educational institutions, including all contracts and other procurement under chapters 28B.10, 39.04, 39.29, 43.19, and 47.28 RCW. (Emphasis supplied.)

Thus, it is clear that state institutions of higher education are state agencies for purposes of the Minority and Women's Business Enterprises law. It is equally clear that the state universities are not political subdivisions, as that term is used in RCW 82.04.4291.

Finally, Title 28B RCW addresses the subject of higher education. Under RCW 28B.10.016 the terms "state universities," "regional universities," "state colleges," "institutions of higher education" and "postsecondary institutions" are defined as follows:

For the purposes of this title:

(1) "State universities" means the University of Washington and Washington State University.

(2) "Regional universities" means Western Washington University at Bellingham, Central Washington University at Ellensburg, and Eastern Washington University at Cheney.

(3) "State college" means the Evergreen State college in Thurston County.

(4) "Institutions of higher education" or "postsecondary institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges. (Emphasis supplied.)

RCW 28B.10.840 provides some additional definitions as follows:

The term "institution of higher education" whenever used in RCW 28B.10.840 through 28B.10.844, shall be held and construed to mean any public institution of higher education in Washington. The term "educational board" whenever used in RCW 28B.10.840 through 28B.10.844, shall be held and construed to mean the state board for community college education and the higher education coordinating board. (Emphasis supplied.)

Thus, it is abundantly clear that . . . University is, under chapter 28B.04 RCW, a "state regional university," "institution of higher education," or "public institution of higher education," as the case may be.

[4] In any event, . . . University is a "department" or "institution" of the state of Washington, for excise tax purposes. It is not a political subdivision of the state. Therefore, amounts derived by the taxpayer (a political subdivision of the state of Washington) from . . . University (a department or institution of the state of Washington) as compensation for sewer services taxable under RCW 82.04.290, are not deductible, pursuant to RCW 82.04.4291, from the measure of the taxpayer's B&O tax liability.

DECISION AND DISPOSITION:

The taxpayer's petition for additional credit is hereby denied.

DATED this 31st day of March 1988.