

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

In the Matter of the Petition) D E T E R M I N A T I O N
For Refund of)
) No. 89-234
)
) Registration No. . . .
) (Temporary)
)
)
)

[1] **RULE 169:** RCW 82.04.365 -- RETAILING B&O TAX --
RETAIL SALES TAX -- EXEMPTION -- NONPROFIT
ORGANIZATION -- FUND RAISING DRIVE -- DURATION --
GROSS INCOME. The gross receipts of a fund raising
activity conducted by a nonprofit organization is
not exempt from the B&O tax and sales tax liability
where the activity extends over a period of more
than two days and/or the gross income exceeds one
thousand dollars.

[2] **RULE 228 AND RCW 82.32.140:** RCW 82.32.090 --
PENALTY -- LATE PAYMENT OF TAXES DUE -- TEMPORARY
CERTIFICATE OF REGISTRATION -- WHEN TAX IS DUE.
Where taxpayer, operating a concession at a fair for
four days under a Temporary Certificate of
Registration, quits or otherwise disposes of its
business, the taxpayer is required to file a tax
return with payment of tax due within ten days
thereafter. Late payment of taxes incurs penalty
provisions of RCW 82.32.090.

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: . . .

NATURE OF ACTION:

Petition for refund of Retailing business and occupation (B&O) tax paid and retail sales taxes collected and remitted on the basis of claimed exemption for retail sales by a nonprofit organization operating a concession booth at a county fair.

FACTS AND ISSUES:

Krebs, A.L.J. -- . . . (taxpayer) is a nonprofit organization incorporated and licensed to do business in Washington. Each year as its main fund raising activity, the taxpayer operates a concession booth at the . . . County Fair. In 1986, this occurred during the period of August 13 to 17. The taxpayer made retail sales of mostly soda pop and ice cream as well as some prepared food in the gross amount of \$5,386.04. A Washington State Revenue Officer required the taxpayer to obtain a temporary registration certificate and complete a Combined Excise Tax Return. The Revenue Officer assessed Retailing business and occupation (B&O) tax in the amount of \$. . . , and state and local sales tax liability in the amount of \$. . . for a total sum of \$. . . which was paid in full on October 23, 1986. An assessed ten percent late payment penalty in the amount of \$. . . was paid by the taxpayer on April 20, 1987. The taxpayer petitions for refund of all amounts paid to the Department of Revenue.

The taxpayer asserts that "state law and the regulations thereunder provide exemptions from tax for certain activities" of nonprofit organizations and points to WAC 458-20-169 (Rule 169) as providing in pertinent part that:

Similarly, when such [nonprofit] organizations make retail sales in the course of annual fund raising drives, or make such sales through concessions operated intermittently and for short periods of time for the support of various benevolent, athletic, recreational, or cultural programs, the retail sales tax and business and occupation tax need not be accounted for. (Bracketed word and emphasis added by taxpayer.)

Thus, the taxpayer asserts that its income during the August 13 - 17, 1986 period qualifies for tax exemption because the income was used for various benevolent programs throughout the year.

The issue is whether the taxpayer's retail sales in the course of an annual fund raising drive which grossed over \$5,000 in a

four day period through operating a concession at a county fair are exempt from excise taxation where the income is used for various benevolent purposes.

DISCUSSION:

In general, there is no Washington State B&O tax exemption of any amounts received merely because of the nonprofit nature of the organization. This is often misunderstood because of the availability of federal tax exemptions. With the exception of the special circumstances covered by RCW 82.04.365 and Rule 169, nonprofit organizations which sell tangible personal property at retail must pay Retailing B&O tax on the gross proceeds of sales, and collect, report and remit the retail sales tax.

[1] RCW 82.04.365 provides an exemption from the B&O tax and in its entirety states:

(1) This chapter does not apply to amounts derived by a nonprofit organization as a result of conducting or participating in a bazaar or rummage sale if:

(a) The organization does not conduct or participate in more than two bazaars or rummage sales per year; and

(b) Each bazaar or rummage sale does not extend over a period of more than two days; and

(c) The gross income received by each organization from each bazaar or rummage sale does not exceed one thousand dollars.

(2) For purposes of this section, "nonprofit organization" means an organization that meets all of the following criteria:

(a) The members, stockholders, officers, directors, or trustees of the organization do not receive any part of the organization's gross income, except as payment for services rendered;

(b) The compensation received by any person for services rendered to the organization does not exceed an amount reasonable under the circumstances; and

(c) The activities of the organization do not include a substantial amount of political activity, including but not limited to influencing legislation and participation in any campaign on behalf of any candidate for political office. (Emphasis supplied.)

Rule 169, effective December 31, 1985 and published March 6, 1986 and published again on February 18, 1987 (the taxpayer has a copy of the latter) is the administrative regulation in effect for the time period in question of August 13 to 17, 1986. The rule implements RCW 82.04.365 and has the same force and effect as the law itself. RCW 82.32.300. The rule in pertinent part provides:

. . . and nonprofit service organizations are subject to the excise taxes imposed by the Revenue Act of 1935 with the following exceptions only:

. . . and nonprofit service organizations conducting bazaars or rummage sales who are not generally engaged in the business of making sales at retail are not required to collect the retail sales tax nor pay the business and occupation tax where such bazaars or rummage sales are conducted no more than twice per year and do not extend over a period of more than two days each, if the gross receipts from each such bazaar or rummage sale is \$1,000 or less. Similarly, when such organizations make retail sales in the course of annual fund raising drives, or make such sales through concessions operated intermittently and for short periods of time for the support of various benevolent, . . . the retail sales tax need not be accounted for. (Emphasis supplied.)

Since Rule 169 provides for exemption, it must be strictly construed. Note that the last sentence of the above excerpt from Rule 169 through the use of the word "similarly" limits other retail sales activity to the same basic limitations placed upon bazaars and rummage sales of "two day periods" and "\$1,000 or less gross receipts".

In this case, the taxpayer's sales activity was for a period of four days and its gross receipts were \$5,386. Consequently, the taxpayer was required to collect and remit sales tax and pay B&O tax.

The term "bazaar" is not statutorily defined. Words in a statute are given their ordinary meaning absent a contrary statutory definition. Resort to dictionaries may be had to ascertain the ordinary meaning of words. Sellen Construction v. Dept. of Revenue, 87 Wn.2d 878 (1976). The American Heritage Dictionary, New College Edition, has as one of its meanings for the word "bazaar" the following:

A fair at which miscellaneous articles are sold, usually for charitable purposes. (Emphasis supplied.)

Thus, the taxpayer's sales through a concession operated at a county fair falls within the ambit of RCW 82.04.365 and Rule 169 and their limitations of the exemption to "two day periods" and "\$1,000 or less gross receipts." The taxpayer's operation exceeded these two limitations and therefore the exemption is not available to it.

[2] With respect to the taxpayer's untimely payment of the taxes due which generated the assessment of a ten percent late payment penalty, RCW 82.32.140 in pertinent part provides:

Whenever any taxpayer quits business,. . . or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable, and such taxpayer shall, within ten days thereafter, make a return and pay the tax due. . . (Emphasis supplied.)

In this case, the taxpayer quit business on August 17, 1986. Thus, the tax return and payment were due by August 27, 1986. However, the taxpayer filed the tax return and made payment of the taxes due on October 23, 1986. Consequently, the late payment penalty provisions of RCW 82.32.090 applied; specifically, the ten percent of the amount of the tax because "tax was not received within thirty days after the due date".

For the facts, reasons and applicable law stated, we conclude that the assessed tax and penalty were proper.

DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied.

DATED this 25th day of April 1989.