

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 Correction of Assessment of)
) No. 89-467
)
) Registration No. . . .
) . . . /Audit No. . . .
)

RULE 233: RCW 82.04.4281 -- B&O TAX -- DEDUCTION --
MEDICAL BUREAU -- FEES PAID TO MEMBER PHYSICIANS --
DEFERRED COMPENSATION. Medical service corporation
permitted to deduct payments to member physicians
and member physicians are obligated to pay B&O tax
on such amounts; deferred compensation benefits not
deductible by medical service corporation when paid
and do not constitute taxable income to the member
physicians when withheld or received. Overrules
Det. 88-205, 5 WTD 387 (1988).

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:

A medical service corporation protests the assessment of
Service B&O tax.

FACTS AND ISSUES:

Roys, Sr. A.L.J. -- . . . (hereinafter referred to as the
taxpayer) is a public service corporation which renders,
through its doctor employees, medical services to individuals.
The taxpayer's records were audited for the period January 1,
1986 through December 31, 1988. As a result, the above

referenced assessment for \$. . . was issued on March 16, 1989.

The auditor compared the amounts recorded in the taxpayer's records with the amounts reported. The taxable differences were stated as "the result of errors in computing gross income and the failure to report deferred compensation."

The taxpayer protested the assessment. The taxpayer's representative contends the auditor's statement that "[t]here is no deduction allowed for corporations for amounts deferred for employees" is an erroneous factual statement. The taxpayer stated the facts are as follows:

Involved here are deferred compensation plans between [Plan] and doctor employees of Taxpayer. There is no deferred compensation plan between Taxpayer and any of its Taxpayer for amounts deferred for employees. Furthermore, the indication in the Auditor's report that

"Dr. . . . believes that the income which remains with the . . . for a retirement plan for employee doctors is exempt from tax as it is not received until some future event."

is not correct. No income remains with [Plan], for a retirement plan for doctor employees of Taxpayer. All amounts Taxpayer will ever receive from [Plan] is received currently as services are rendered, except for some possible amounts held back for a short period of time for reasons unrelated to any deferred compensation plan. Furthermore, the B&O tax has already been paid on all gross income received by Taxpayer for the subject years which it will ever receive from [Plan] for the rendition of professional services by its doctor employees, and Taxpayer will never receive any additional amounts from [Plan] under or for any retirement plan. In other words, Taxpayer has not deferred any amounts due from [Plan] for its doctor employees and no income remains with [Plan] for a retirement plan for the doctor employees of Taxpayer

The facts sustaining the above statements are quite simple. Taxpayer is a public service corporation which renders, through its doctor employees, medical services to individuals who desire such services.

From time to time some of Taxpayer's doctor employees have entered into a deferred compensation plan sponsored by [Plan]. Each time this occurred, Taxpayer and [Plan] entered into an agreement by which fees applicable to the services rendered by such deferred compensation plan participant which would otherwise be paid to Taxpayer were reduced to a specified percentage thereof. Also, the Plan Sponsor entered into an agreement with the deferred compensation participant that if that participant continued to render medical services to the Plan Sponsor's subscribers and fulfilled certain other conditions, the Plan Sponsor would pay the deferred compensation plan participant, or that participant's beneficiary, upon the participant's retirement, disability, death or leaving the area to practice elsewhere, amounts determined by a formula based upon the fees actually paid to Taxpayer for services rendered by that particular deferred compensation participant currently as those services were rendered.

DISCUSSION:

The auditor relied on WAC 458-20-138 which states that doctors are taxable under the Service classification on the gross income from rendering personal services. The issue is whether amounts deferred constitute part of the doctors' gross income in the year that the amounts are earned but deferred. Published Determination, Det. 88-205, 5 WTD 387 (1988) states that the portion of a fee withheld by a retirement fund pursuant to a physician's agreement with a medical bureau is taxable to that physician when withheld. The reasoning was that the physician had "constructively received" that portion of the fee. The Determination found the portion withheld for retirement was deductible to the medical bureau and taxable to the physician.

That Determination was subsequently overruled in Det. 88-205A which allowed the medical service bureau to deduct the amounts that were subsequently paid to the member physicians pursuant to a deferred compensation plan. After that Determination was issued, the Department and the medical bureaus involved entered into an agreement for prospective reporting. The agreement basically follows instructions that were first set forth by the assistant director of Interpretations and Appeals in 1978. The agreed reporting method is as follows:

- (a) all payments for current services by individual deferred compensation participants will be deducted from the gross income of the plan sponsoring medical service corporation in determining its B&O taxes,
- (b) future payments arising from those services (i.e., the deferred compensation benefits) will not be deducted from the gross income of the plan sponsoring medical service corporation in determining its B&O taxes,
- (c) individual plan participants will be obligated to pay the B&O taxes on (a) above, but not (b) above,
- (d) the plan sponsoring medical service corporations will deduct interest (increments) on amounts invested because of the existence of the deferred compensation plan of each such medical service corporation as provided by RCW 82.04.4281, or will not report such investment increment as gross income for B&O tax purposes, which is really the same as reporting such gross income and then deducting the same amounts.

As stated in the assistant director's letter dated March 6, 1978,

In effect, the corporations would be paying business tax now (more or less simultaneously with the rendition of services) on amounts that its doctor members would at some future time be liable for payment. Stated another way, the medical service corporations will pay tax currently in lieu of payments by their member doctors on such amounts in the future . . . this would tend to work in favor of the state because collection of the tax from the doctors at the time they received deferred compensation payments would tend to be uncertain and difficult.

We agree that these instructions should apply to the taxpayer as well. The portion of the assessment at issue which was on amounts that were deferred into the plan sponsored by [Plan] shall be deleted.

DECISION AND DISPOSITION:

Determination (Cont.)
No. 89-467

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Registration No. . . .

The taxpayer's petition is granted. The tax assessed on
deferred compensation shall be deleted.

DATED this 27th day of September 1989.