

Cite as Det. No. 03-0290, 23 WTD 28 (2004)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 03-0290
...)	
)	Registration No. . . .
)	. . . /Audit No. . . .
)	Docket No. . . .

- [1] RULE 183; RCW 82.04.4282; ETA 548: B&O TAX -- VALUE OF GOODS AND SERVICES PROVIDED. For the purposes of determining the portion of dues that are subject to the B&O and retail sales taxes, the taxpayer may use either an allocation of a reasonable charge for the specific goods or services or a market comparison. ETA 548 states how a market comparison will be performed for golf courses.
- [2] RULE 183; RCW 82.04.4282; ETA 548: B&O TAX -- VALUE OF GOODS AND SERVICES PROVIDED. When a golf course is owned by property owners of a development and the property owners pay a monthly fee which is used for maintaining the golf course and other uses unrelated to the golf course and the golf course is equally available to the public for a fee, the a reasonable allocation may be determined by reference to the amounts charged the public and number of rounds played by the public.

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.

Coffman, A.L.J. – The Taxpayer, a golf course operator, protests the calculation of the portion of member dues relating to use of the golf course. The Taxpayer agrees that the portion of member dues relating to use of the golf course is subject to retail sales tax and retailing business and occupation tax, measured by its fair market value. The Taxpayer claims that it arrived at the fair market value by using the average price it charges the public for a round of golf on its course and not by market comparison, as set forth in Excise Tax Advisory 548.04.114. Under the circumstances, we conclude that it was unnecessary to resort to market comparisons and grant the Taxpayer’s petition in this respect.

ISSUE

What is the fair market value of a round of golf at the Taxpayer's course?¹

FINDINGS OF FACT

The Taxpayer is a non-profit property owners association that operates a public golf course. The Taxpayer charges all property owners a monthly fee of \$ This fee entitles the property owners to unlimited play on the golf course. The fees are used to pay for road and sign maintenance, as well as costs associated with the golf course. The golf course is open to the public. The public pays for approximately one third of the total rounds of golf played on the course.

The Department of Revenue (Department) Audit Division reviewed the Taxpayer's books and records for the period January 1, 1998 through December 31, 2001. As a result of that review, the Department issued the above-referenced tax assessment. The Taxpayer's only disagreement with the tax assessment was the value placed on a round of golf the property owners received in exchange for their monthly fees. The Audit Division used the formula found in Excise Tax Advisory 548.04.114 (ETA 548) and selected other golf courses to determine the value of a round of golf. As a result of the application of ETA 548, the Audit Division determined the 1998 fair market value of a round of golf on the Taxpayer's golf course to be \$² The Taxpayer's records show the number of rounds of golf played by the public and the total amount paid by the public. Using this information, the Taxpayer determined that the public paid an average of [\$3 less than the amount computed by the Audit Division] in 1998³ for a round of golf.

In addition, the Taxpayer states that when the public pays for a round of golf, the player usually plays all 18 holes (or 9 holes). However, property owners, because they do not pay an extra fee to play golf, will frequently play three or four holes before dinner and return home. Finally, the Taxpayer alleges that approximately 80% of the property owners who play golf are considered seniors, while the Taxpayer estimates that 10% of the public players are seniors. The Taxpayer, similar to many golf courses, charges a reduced green fee for seniors. We note the Taxpayer does not have any documentation to support its demographic claims.

ANALYSIS

RCW 82.04.4282 provides a deduction from the measure of the business and occupation (B&O) tax for:

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

² The \$. . . was determined by averaging the greens fees at comparable courses (in distance) to the Taxpayer's course. The Taxpayer states that the greens fees used included retail sales tax. This was an error because the purpose of ETA 548 is to determine the measure of the retail sales tax, not the total after tax cost. However, due to the conclusions we reach, it is unnecessary for us to further address this issue.

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. . . bona fide (1) initiation fees, (2) dues, . . . If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction under this section. (Emphasis added.)

[1] The Audit Division and the Taxpayer agree that a portion of the property owner dues is in exchange for significant services, i.e., rounds of golf. The value of a round of golf received by the members is not entitled to the RCW 82.04.4282 deduction. WAC 458-20-183 (Rule 183) addresses dues and provides that a taxpayer receiving dues that are in part deductible and in part for retail services may use actual records of facilities usage to determine the retailing portion. "This method is accomplished by either: The allocation of a reasonable charge for specific goods or services; *or*, the average comparable charges for such goods and services made by other comparable businesses." (Emphasis added.) Rule 183(4)(c)(i)(A). Excise Tax Advisory 548 (ETA 548) sets forth the methodology for determining the retailing portion when market comparisons are made.

The Taxpayer argues that it has established the reasonable charge for a round of golf on its golf course. However, the Audit Division determined the value of a round of golf by a comparable market approach, using ETA 548.

[2] Both Rule 183 and ETA 548 are premised on determining the fair market value of a round of golf on a particular golf course. Fair market value is "the amount of money which a purchaser willing, but not obligated, to buy the [service] would pay an owner willing, but not obligated, to sell it." *Donaldson v. Greenwood*, 40 Wn.2d 238, 252, 242 P.2d 1038 (1952). The use of the market comparison procedure, set forth in ETA 548 and used by the Audit Division, is one of two regulatory methods available to determine the fair market value.⁴ Market comparison is necessary when the golf course is not readily available to the public and thus there is no basis to directly determine the fair market value of a round of golf.

In this appeal, the Taxpayer's golf course is available equally to property owners and the public. Property owners do not receive priority in scheduling tee times. The Taxpayer has kept records of use of the course by both property owners and the public. Further, it has records of income from public use. The Taxpayer's calculations of fair market value of a round of golf fully comply with the definition of fair market value. Under these circumstances, we conclude that the Taxpayer's calculation of fair market value of a round of golf is valid and identifies a

⁴ When a market comparison approach is used, ETA 548 requires a certain methodology to be used.

There has been considerable confusion and differences of opinion as to how the market comparison shall be made. In order to administer this particular section of Rule 114 and to maintain uniformity among this class of taxpayers, the Department has determined that taxpayers who wish to use a market comparison **must** follow the procedure outlined below. [Emphasis added.]

So, only if the taxpayer is using or required to use the "market comparison approach" must it use the procedure outlined.

“reasonable charge for specific goods or services.” The taxpayer was not required to use market comparisons or ETA 548 to establish the retailing portion of its dues.

The Taxpayer also argues that the fair market value should be reduced because of quantity discounts, senior discounts, etc. However, because the Taxpayer has not provided us with any numerical basis to do so, we must accept the fair market values without any discounts.

DECISION AND DISPOSITION

The Taxpayer's petition is granted in part and denied in part.

Dated this 1st day of October 2003