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

In the Matter of the Petition For Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 86-230
. . .	)	Registration No. . .
)		

RULE 241; RCW 82.04.280(6): BUSINESS & OCCUPATIONS TAX -- DEDUCTIONS -- ADVERTISING -- BROADCASTERS -- SPONSOR. The sponsor of an advertisement is the business that pays the broadcaster for advertising its business. If the business is located only in Washington and provides goods and services only in this state, it is a local advertiser. Because a manufacturer provided the funds to the business to pay for the advertisement does not mean the manufacturer is the "sponsor" of the advertising.

These 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: June 18, 1986

NATURE OF ACTION:

The taxpayer operates an independent television station. Its business activities were audited for the period January 1, 1981 through March 31, 1985. The examination disclosed taxes and interest owing in the amount of $. . . Tax Assessment No. . . . in that amount was issued on August 20, 1985. The taxpayer seeks a correction of that assessment to allow

deductions for amounts received from what it believes to be regional advertising. The taxpayer also seeks clarification of the meaning of a "sponsor" as used in the definition section of WAC 458-20-241.

FACTS AND ISSUES:

Anne Frankel, Administrative Law Judge -- During the examination at issue, the auditor concluded that the taxpayer was incorrectly distinguishing between regional and local advertising. The auditor noted that in some cases the taxpayer treated local advertisers as regional because the advertiser had an agent located out of state and in other cases regional advertisers were treated as local because they engaged a local advertising agent.

Prior to the audit, the taxpayer stated it had assumed that the sponsor of an advertisement was the advertising agency from whom it received payment for the ad. Thus if payment was received from a Washington advertising agency, it concluded the funds were from "local advertising," even if the ad was for a business which provides goods and services on a regional or national basis. Similarly, if a local business used an out-of-state advertising agency to place an ad for it, the taxpayer concluded the payments were deductible as regional advertising.

The auditor first believed these offsetting errors resulted in the taxpayer's over-reporting of its tax liability. The taxpayer was informed it might be entitled to a credit if it wished to schedule out the actual deductions to which it was entitled and include those amounts which it had omitted in error.

The taxpayer then re-computed its tax liability on the understanding the originating source of revenue was the main factor in determining who sponsored an ad. If the originating source of the advertising dollar came from a company which supplied goods or services on a regional basis over two or more states, the taxpayer excluded that income.

After recalculating its taxable income, the taxpayer determined it was entitled to a substantial credit. At that point the taxpayer stated it was informed by the auditor that ". . . In determining what advertisers are local as opposed to regional the Department looks to who actually engaged the services and from whom the revenue was received, not from where it originated."

The taxpayer contends that the Department has not been consistent in distinguishing between local and regional advertising. It believes the auditors have inconsistently changed their definitions depending on which position would result in a higher assessment. It seeks a determination from the Department as to the meaning of "sponsor" as used in Rule 241. Its position is that a sponsor of an ad is the originating source of the advertising revenue. Primarily, it would like the issue resolved so that it can report its tax liability correctly the first time. It notes it has historically shown good faith by paying taxes on time and by "eagerly and openly" cooperating with past audits.

DISCUSSION:

Radio and television broadcasters may exclude certain amounts derived from "network, national and regional" advertising from their business tax liability. RCW 82.04.280(6); WAC 458-20-241 (Rule 241). Rule 241 contains the following definitions of local, national, network and regional advertising:

> "Local advertising" means all broadcast advertising other than national, network, or regional advertising as herein defined.
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> "National advertising" means broadcast advertising paid for by sponsors which supply goods or services on a national or international basis.
>
> "Network advertising" means broadcast advertising originated by national or regional broadcast networks from outside the state of Washington, the broadcast advertising being supplied by national or regional network broadcasting companies.
>
> "Regional advertising" means broadcast advertising paid for by sponsors which supply goods or services on a regional basis over two or more state(s).

The controversy in the case arises over the determination of who is the "sponsor" of an ad when a Washington business pays the advertising agency for an ad with funds provided by the manufacturer of the product being advertised. For example, a camera manufacturer might want to promote the sales of its cameras. It would agree to provide the funds for local retail stores to purchase advertising featuring its cameras. In such a case, the taxpayer concluded the manufacturer was the

sponsor of the ads because it was the source that generated the funds to pay for the ads. If the manufacturer supplied goods on a regional or national basis, the taxpayer concluded amounts derived from such advertising was deductible from its business tax liability.

The auditor, however, concluded that the sponsor was the Washington business that was billed for the ad. Some of the advertising at issue was commercials for a local car dealer. The auditor found the dealer was the sponsor of an advertisement that it purchased, even though the vehicles it sells are sold on a regional or national basis and the manufacturer provided the funds for it to use to pay for the advertising.

We believe the auditor was correct in determining that the "sponsor" is the business that pays the broadcaster or an advertising agency for advertising its business. The fact that the business may hire an advertising agency to produce the advertisement and that the agency makes the payment to the broadcaster does not make the advertising agency the sponsor of the ad. Nor does the fact that a manufacturer may directly provide the funds to the business to pay for advertising make the manufacturer the sponsor of the ads.

The Department's former position was that "regional advertising" did not include amounts billed by a broadcaster to an office within Washington. Rule 241 was revised to delete that provision. Instead, the Department looks to the nature of the services which are the subject of the tax. The deduction for regional advertising, as for example a national food franchise, will not be denied for the sole reason that the broadcaster billed an advertising agent's office located in this state. The taxpayer apparently relied on the Department's former position when it first computed its tax liability.

We believe that many, if not most, businesses today sell goods that are also sold in other states. Many businesses could argue that the source of the funds for advertising was from the manufacturers of the products they sell. In some cases the funds would be specifically earmarked for advertising and in other cases provided indirectly. If the business purchasing the ad is located only in this state and provides goods and services only in this state, however, it is not a regional advertiser. This is so even though its broadcast advertisement may reach other states. That is what the definitions of Rule 241 attempt to clarify. The business is

the subject of the taxation "[I]f the receipts of local broadcasting are from local people and the business obtained from such advertising is local; then the business is intrastate." Albuquerque Broadcasting Co. v. Bureau of Revenue, 51 N.M 332, 184 P.2d 416, 430 (1947).

We uphold the auditor's position in this case, therefore, even though we recognize that manufacturers' co-operative advertising funds provide the dollars for some of the more expensive advertising. We also recognize that both the manufacturer and the local business are using the advertising media to strengthen and increase public awareness and acceptance of their products or services.

We do not find that the auditors have inconsistently changed their definitions of a sponsor depending on which position would result in a higher assessment. We are sorry that it appeared this way to the taxpayer. This Determination will provide guidance for future reporting periods.

DECISION AND DISPOSITION:

Tax Assessment No. . . . shall be due by September 4, 1986. Because the delay in issuing this Determination was not the result of any action by the taxpayer, but was for the convenience of the Department, interest on the unpaid balance shall be waived from May 1, 1986 through the new due date. If the taxpayer believes it is still entitled to a credit after including the income from local advertisement after including the income from local advertisement as defined herein, it may present that evidence to the auditor.

The evidence should be presented prior to the due date of the assessment if it wishes a correction of the assessment or within the statutory time limit imposed by RCW 82.32.060 (four years) if it wishes to petition for a refund.

DATED this 15th day of August 1986.