Cite as 1 WTD 99

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

In the Matter of the Petition For Correction and Refund of	)	D E T E R M I N A T I O N
	)	No. 86-233
. . .	)	Registration No. . . .

RCW 82.04.080, RULES 193D, 195 and 227: B&O TAX -- DEDUCTIONS -- SATELLITE FEES, COPYRIGHT FEES & FRANCHISE/UTILITY TAXES -- CABLE TELEVISION CO. Satellite and copyright fees passed on to Washington subscribers by Washington cable company are fully B&O taxable. Taxpayer's activity is entirely intrastate, thus commerce clause violation. Franchise tax not deductible because not collected by taxpayer as agent for taxing authority.

This headnote is provided as a convenience for the reader and is 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: . . ., General Manager
. . ., Office Manager

NATURE OF ACTION:

Petition for refund of B&O tax based on cable television satellite fees, copyright fees, and local franchise/utility tax.

FACTS AND ISSUES:

David L. Dressel, Administrative Law Judge -- The petition of taxpayer reads in substantial part as follows:

> Please accept this as our formal request to have our satellite television fees and television copyright fees excluded from state B&O tax on the basis that these are interstate sales items. Also, the 3% to 5% local franchise/utility tax imbedded in our rates should also be exempt on the basis that it is the collection of a direct local tax.
>
> We also hereby request a refund for prior years up to the statutory time limit. A detailed accounting of these amounts will be forwarded as soon as we can assemble the information.

The satellite and copyright fees will be considered together as issue no. 1. The "local franchise/utility tax" will be addressed as issue no. 2.

DISCUSSION:

1. The copyright and satellite fees presumably are paid by the taxpayer for the right to retransmit copyrighted works and satellite transmissions to its subscribers. The business and occupation tax paid by this service- providing taxpayer is measured by the "gross income of the business." RCW 82.04.220. That term is defined by RCW 82.04.080 to mean:

> . . . the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all <u>without any deduction on account</u> of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or <u>any other expense whatsoever paid</u> or accrued and without any deduction on account of losses. (Underscoring ours.)

The satellite and copyright fees are an expense of the taxpayer which is not deductible according to the above quoted statute. Furthermore, the B&O tax on such fees is not unconstitutional as placing an impermissible burden on interstate commerce. See WAC 458-20-193D. These fees are received by the taxpayer for a totally intrastate activity. It is true that the taxpayer was able to provide these

services to its subscribers because it received signals which were transmitted to it from outside of this state. However, the taxpayer's activities took place entirely in Washington. It received the signals through its antennas in Washington and retransmitted them over cable to its subscribers in Washington.

The taxpayer's position is analogous to that of a Washington retailer who purchases goods from an out-of-state manufacturer and resells them to Washington customers. The sale from the manufacturer to the retailer involves shipping goods across state lines and may be exempt for that reason. When the retailer resells those same goods in Washington the transaction occurs entirely within this state and is taxable. Here the taxpayer receives signals from out of state and then retransmits them to Washington customers. When the taxpayer resells those signals to customers in Washington, the activity is entirely local and subject to tax.

The taxpayer's petition is denied on this item.

2. WAC 458-20-195 is the Department of Revenue's duly adopted rule governing the deductibility of taxes. By virtue of RCW 82.32.300 this rule has the same force and effect as the law. It states in part:

> The amount of taxes collected by a taxpayer, as agent for the state of Washington or its political subdivisions, or for the federal government, may be deducted from the gross amount reported. Such taxes are deductible under each tax classification of the Revenue Act under which the gross amount from such sales or services must be reported.
>
> This deduction applies only where the amount of such taxes is received by the taxpayer as collecting agent and is paid by the agent directly to the state, its political subdivisions, or to the federal government. When the taxpayer is the person upon whom a tax is primarily imposed, no deduction or exclusion is allowed, since in such case the tax is a part of the cost of doing business. The mere fact that the amount of tax is added by the taxpayer as a separate item to the price of goods he sells, or to the charge for services he renders, does not in itself, make such taxpayer a collecting agent for the purpose of this deduction. (Emphasis ours.)

The tax at issue here has been described as a franchise/utility tax. Although we were not provided with any details or a copy of the authority for this tax, we are assuming that it is a tax paid by the cable television company to a city or county for the exclusive TV cable rights in a prescribed territory. Such a tariff is levied on the taxpayer for the privilege or right of engaging in business in this geographic area. The tax was not imposed on the taxpayer's subscribers even if the taxpayer separately stated the tax amount in its billings to subscribers. The taxpayer was not acting in an agency capacity as a collector like a seller does in collecting state sales tax, because the taxes were the direct obligation of the taxpayer. The taxes were part of its cost of doing business. Under the rule it was not entitled to deduct the taxes from the measure of the business and occupation tax.

The taxpayer's petition is denied on this item.

DECISION AND DISPOSITION:

The petition is denied in its entirety.

DATED this 27th day of August 1986.