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BEFORE THE INTERPRETATION AND APPEALS SECTION
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 A Written Opinion and Ruling)
of Tax Liability of)
) No. 86-225
)
) Registration No.
) (Closed 1984)
)

TAXPAYER REPRESENTED BY: . . .

DATE OF TELEPHONE CONFERENCE: March 19, 1986

[1] BUSINESS AND OCCUPATION TAX (SERVICE) - BUSINESS - ADULT FAMILY HOME PROVIDERS. Licensed Adult Family Home providers (Chapter 74.15 RCW) are engaging in the business of providing services which are taxable under RCW 84.04.290 measured by "gross income of the business" as defined by RCW 82.04.080.

NATURE OF CASE:

The Department of Revenue has notified the taxpayer that its business of operating an adult family home, under Chapter 74.15 RCW, is subject to registration and tax payment under the Service business tax classification. The taxpayer appeals this notification.

FACTS AND ISSUES:

M. Clark Chandler, Administrative Law Judge---. . . . (taxpayer) are licensed by the state of Washington Department of Social and Health Services (DSHS) as an Adult Family Home provider pursuant to chapter 74.15 RCW and WAC 388-76-040 et. seq. An adult family home is licensed for no more than four adults in need of personal or special care and which are unrelated to the sponsor. WAC 388-76-030 defines an adult as a person eighteen or over who, because of developmental disability, age, or physical or mental infirmity, requires

some degree of supervision or health care beyond the level of board and room only. The state program is administered within DSHS by the Bureau of Aging and Adult Services. Essentially, an Adult Family Home may be thought of as a residential adult foster home.

Although all adult family home providers are licensed, they are free to operate strictly on a private basis charging what the market will bear, on a mixed basis comprising of both private paying and state supported clients, or entirely with clients requiring state subsidization. DSHS chooses the licensed parties with whom it wishes to contract and the adult home provider being willing, issues an "award letter" relative to each client. A case worker decides the amount to be awarded for each home provider client which is basically determined by the degree of care required. This involves consideration of the degree of care relative to nine basic activities, e.g., dressing, bathroom, etc., and nine health related activities. The number of these activities and the degree of care required determine the individual client's payment rate. The awarded rate is a fixed amount currently ranging from an absolute maximum of \$22.52 per day (very few such awards) to an absolute minimum of \$377.11 per month. The fixed rates are established by the legislature supposedly based on case studies. There isn't any break down as to costs awards for various services, e.g., food, lodging, laundry, etc., reflected upon the DSHS warrant received by the adult home provider. An arbitrary amount or factor is built into the fixed rates for respite care--an allowance for the adult home provider to provide for the hiring of persons to be on "duty" when the provider needs a vacation or otherwise be away from the home.

On January 24, 1986, the taxpayer received a letter signed by a Department of Revenue Tax Discovery Officer assigned to the Department's Spokane office which states in pertinent part:

. . . .

If you are unregistered and conducting a taxable business, you must complete the registration requirements, application enclosed, and pay any delinquent taxes and penalties within 15 days of the date of this letter to preclude possible legal action. If this situation applies, contact me immediately for the appropriate reporting forms, assistance and further explanations as you may require.

By letter postmarked February 7, 1986 (attached), the taxpayer stated that it was appealing the Department's letter. The Department of Revenue is responding thereto by considering the taxpayer's letter as a request for a written opinion and ruling of tax liability under WAC 458-20-100(18). Under this section of the appeal procedure administrative rule, a determination in writing shall be furnished to the taxpayer which shall be binding upon the taxpayer and the Department under identified facts, and any future change in such determination shall have prospective application only.

TAXPAYER'S EXCEPTIONS:

The taxpayer contends it is not engaging in business because the DSHS payments it receives, which it considers to be very meager, are insufficient to produce a profit. The taxpayer maintains that it provides a service which is sorely needed and serves to promote the welfare of the state and its citizens. Therefore, due to the extremely close margin between survival and failure to subsist, to tax receipts for adult family home care is to drive willing people out of the business and to create hardships among the people needing the care provided by an adult family home.

DISCUSSION:

We fully understand that perhaps a majority of adult home providers show but small gain, if any, from engaging in this particular activity. On the other hand, home providers who cater to "private" clients with an ability to pay are for the most part financially successful. A careful study of the factual situation reveals that adult family home providers do not qualify as boarding houses, charitable or religious oriented nursing homes, rest homes, or social welfare organizations as defined in RCW 82.04.431. Of the three foregoing activities, only qualification for the latter would provide benefit for the adult family home provider. Consequently, the issue to be resolved is whether the taxpayer, as an adult family home provider, is engaging in business and thus subject to the Service classification of the business and occupation tax measured by gross receipts.

RCW 82.04.140 defines business in the following manner:

"Business" includes all activities engaged in with the object of gain, benefit, or advantage to the

taxpayer or to another person or class, directly or indirectly.

Further, RCW 82.04.150 defines engaging in business as follows:

"Engaging in business" means commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

Under these extremely broad definitions it must be concluded that the taxpayer is engaging in the adult home provider business.

RCW 82.04.220 provides that

There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.

The measure of the tax in this instance, "gross income of the business," does not allow for deduction of expenses as can be seen from the definition at RCW 82.04.080:

"Gross income of the business" means 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 without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes or any other expense whatsoever paid or accrued and without any deduction on account of losses.

The taxpayer, as an adult family home provider, is engaged in the business activity of providing services and is therefore subject to the Service business tax imposed by RCW 82.04.290

measured by the value proceeding or accruing by reason of the transaction of the business engaged in.

The taxpayer's attention is called to WAC 458-20-104 (Rule 104), Exemptions-Volume of business, which implements RCW 82.04.300. The administrative rule provides in pertinent part:

BUSINESS AND OCCUPATION TAX

Persons subject to the business and occupation tax are exempt from the payment of this tax for any reporting period in which the taxable amount reported under the combined total of all business and occupation tax classifications does not equal or exceed the minimum taxable amount for the reporting periods assigned to such persons, according to the following schedule.

Monthly reporting basis.....	\$1,000 per month
Quarterly reporting basis.....	\$3,000 per quarter
Annual reporting basis.....	\$12,000 per annum

When the taxable amount for a reporting period equals or exceeds the minimum taxable amount, tax must be paid on the full taxable amount and no deduction or offset is allowed for the amount of the minimum. The deduction for minimum taxable amounts is applicable to taxable amounts for the entire reporting period, regardless of the fact that the business may not have been operated during the entire period.

. . .

It is recognized that on its face this exemption is, unfortunately, unlikely to provide any tax relief for the majority of adult family home providers.

After investigation and considerable conversation with personnel of the Bureau of Aging and Adult Services relative to the factual situation presented, we have reached a decision. In the process of reaching this decision we have attempted to look beyond legal fictions and academic jurisprudence to discover the economic realities of the situation. We must conclude that the reality is that total payment received by an Adult Home provider including amounts

paid by clients themselves, e.g., Social Security, etc., and amounts paid by DSHS constitute value proceeding or accruing by reason of the transaction of the business engaged in. (We note that in many individual instances the clients directly participate in payment of the care extended to them by deliverance of a substantial portion of their financial means to the adult family provider, e.g., Social Security, Railroad Retirement, Disability, or other sources and means that serve to eliminate the client as being completely indigent. Thus, DSHS with state and federal funds, functions to pay for the remaining cost of adult family home care. In cases involving the indigent, DSHS pays the entire cost of care.)

DECISION AND DISPOSITION:

The taxpayer is engaging in a business activity which is taxable under the Service classification of the business and occupation tax measured by gross income. This decision requires that every adult family home provider register with the Department of Revenue and file excise tax returns irrespective of whether tax is actually owed. In the event the Department of Revenue finds that it is necessary to revoke or alter this decision, the revocation or alteration shall be administered prospectively from the effective date thereof.

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(18) and is based upon only the facts that were disclosed by the taxpayer. In this regard, the Department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed are actually true. This legal opinion shall bind this taxpayer and the Department upon these facts. However, it shall not be binding if there are relevant facts which are in existence but have not been disclosed at the time this opinion was issued; if subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently changes and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 30th day of July 1986.