STATE OF WASHINGTON.
Board of Tax Appeals.

SIMPSON TIMBER COMPANY, SIMPSON EXPORT SALES COMPANY, and SIMPSON PROPERTIES, INC. Appellants vs. STATE OF WASHINGTON, DEPARTMENT OF REVENUE Respondent	Docket No. 30192 A, B, C Re: Excise Tax Appeal O R D E R FINAL DECISION

[1] B&O Tax - Reimbursements. Where a corporation received from its subsidiaries payments which were in part accumulated in a fund to cover uninsured losses of the subsidiaries and in part applied to pay premiums on insurance policies purchased to cover subsidiary losses the receipts were taxable to the corporation pursuant to RCW 82.04.080 and 82.04.220. WAC 458-20-111 pertaining to tax free reimbursements does not apply because the corporation was primarily or secondarily liable for payment of the premiums and had not acted solely as an agent for its subsidiaries.

[2] B&O Tax - Interest on Loans To Related Corporations. A company which conceded that service B&O tax was due on interest income from regular loans to subsidiaries and affiliates was engaged in a financial business and therefore could not separate for exemption under RCW 82.04.4281 loans made to two Canadian affiliates on a one time basis.

[3] Public Utility Tax - Railcar Switching By Taxpayer For Itself. A corporate which received income from a railroad for switching railroad cars loading its products with its own engine on its own siding was taxable under the service B&O classification of RCW 82.04.290 and was not taxable as a public utility.

[4] B&O Tax - Income From Vendor's Interest In Real Estate Contract Where Realty is Out Of State - Apportionment. A corporation receiving interest from a vendor's interest in a real estate contract respecting property located outside the state of Washington realized income taxable in Washington because the vendors interest was intangible property taxable at the domicile of the owner which is the state of Washington; and the interest income was not subject to apportionment under RCW 82.04.460.

[5] B&O Tax - DISC Commissions - Apportionment. Commissions allocated to DISC subsidiary by its parent in accordance with federal tax law constituted taxable gross income within the meaning of RCW 82.04.460 by reason of export sales from California because the DISC maintained no place of business outside of Washington.

This matter came before the Board of Tax Appeals for informal hearing on June 17, 1986. The Appellant was represented by Daniel J. Warmels, Tax Manager and Keith Grim, Attorney. The respondent was represented by Dave Dressel, Administrative Law Judge. All parties were duly sworn.

The Board, having heard testimony in support of the appellant's appeal and of the respondent's answer and having heard and considered the arguments made on behalf of both parties, now makes its order as follows.

FACTUAL MATTERS.

Simpson Timber Company (STC) is a Washington corporation with timber holdings and manufacturing facilities located in this and other states. Simpson Timber Company is the parent of the Simpson Export Sales Company and Simpson Properties, Inc. Unless otherwise required, each corporation will be referred to as "Appellant".

Simpson Export Sales Company is a Washington corporation and a wholly-owned subsidiary of Simpson Timber Company. Appellant was organized to operate pursuant to Sections 991 through 997 of the Internal Revenue Code ("IRC") (Public Law 92-178, 85 Stat. 497, 26 U.S.C. §§ 991-997)).

A corporation organized under these statutory provisions is described as a "domestic international sales corporation" or a "DISC". Appellant has no employees, no payroll, no inventory of goods, no warehouses and no office. Its only functions are bookkeeping entries and filing of Federal tax

returns all of which are performed on its behalf by employees of its parent.

Appellant acted as a DISC for its parent and for subsidiaries of its parent who conducted export and other business in the states of Oregon and California.

Simpson Properties, Inc. is a wholly owned subsidiary of Simpson Timber Company. Properties owns real estate situated in Washington, Oregon and California. Generally this is property which is not suitable for timber production or needed in Simpson Timber Company's manufacturing operations.

Properties does not have any employees. It does not own or rent an office anywhere. Every activity conducted by it occurs through the efforts of employees of Simpson Timber Company.

Properties has sold numerous parcels of real property both in Washington, Oregon and California. Some of those sales have been by installment contracts with the purchasers paying interest on the contract balances.

The accounts of the above named appellants' were examined for varying periods between January 1, 1977 and December 3, 1983. As a result, additional taxes and interest were assessed by the Department of Revenue. Appellants' timely petitioned for correction of the several assessments. After a hearing was conducted, the Department issued Determination No. 85-71 which partly sustained and partly denied appellants' petition. On May 20, 1985 appellants appealed to the Board of Tax Appeals. The appeals of the three above-captioned taxpayers have been consolidated for a single hearing.

ISSUES.

(Simpson Timber Co.).

1. Are payments collected from subsidiary corporations for self-insurance subject to tax under the Service and Other Activities classification of the business and occupation tax?

2. Is interest income realized by Simpson Timber Co. from loans made to two Canadian subsidiary corporations exempt from B & O tax by virtue of RCW 82.04.4281?

3. Are amounts paid Simpson Timber by a railroad company for switching railroad cars subject to Public Utility tax?

(Simpson Properties, Inc.).

4. Is service B&O tax due on contract interest realized by Simpson Properties, Inc. as vendors of real property located outside the state of Washington?

(Simpson Export Sales Co.).

5. Is commission income attributed to Simpson Export Sales, a domestic international sales corporation (DISC), B&O taxable?

CONTENTION OF PARTIES.

ISSUE 1. Self insurance

Appellant's contention:

> "Appellant receives payments from subsidiary corporations part of which it accumulates as a fund out of which uninsured casualty losses of a subsidiary are partially or fully reimbursed and part of which are applied to pay premiums on insurance policies purchased to cover subsidiary losses. Appellant performs no other function with respect to its subsidiaries' operations under the self-insurance agreements. If any subsidiary sustains a loss that is not covered by third-party insurance contracts, the amount of the loss can be remitted to the subsidiary from the fund held by the parent. The respondent erroneously assessed service business and occupation tax on the payments received by appellant because no taxable activity was engaged in by respondent with respect to such payments."

Respondent's answer:

> "Self-insurance. RCW 82.04.080 reads:
>
> "Gross income of the business". "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.

RCW 82.04.220 states:

Business and occupation tax imposed. 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.

As mentioned in Determination 85-71, there exists no authority under which income of the type at issue may be excluded or deducted. That being the case, it is properly included in the figure for gross income of the business upon which the B&0 tax is calculated. Value has accrued to the Appellant for having rendered the service of insurance coverage to its subsidiaries. The payments for that coverage are therefore subject to B&O tax."

ISSUE 2. Interest Income

Appellant's contentions:

"From surplus corporate funds appellant made a loan to Simpson Timer Company (Saskatchewan), and another loan to Simpson Timber Company (Alberta). The income from the loans in relation to appellant's total income is insignificant and was a separate, distinct and independent activity from loans appellant made to other subsidiaries. With respect to such loans appellant is not in the banking, loan, security or financial business under RCW 81.04.4281. The proceeds from interest obtained on such loans is not subject to the B&O tax."

Respondent's answer:

"The taxpayer concedes Service business tax liability upon interest earned from regular and continuous intercompany financial loan activity; however, it objects to tax being assessed upon loan interest relative to two Canadian-affiliated companies. As we understand the situation, the 1978 loans in question represent one-time-

> only transactions which culminated on or about 1981 and 1982 in a set-off of loan balances against the value of affiliate stock acquired by the taxpayer. Collectively, the amounts loaned totalled $7,688,725.
>
> It is undisputed that the taxpayer makes loans to subsidiaries and affiliates on a regular and recurring basis. It must be recognized that this activity constitutes competition with commercial financial institutions. When this activity is regular and recurring throughout the taxpayer's network of corporations, it is improper to set aside two transactions and exempt the interest income merely because they were single loans. . . . . We, therefore, find that the taxpayer does engage in financial business and is not, under RCW 82.04.4281, exempt from the tax assessed."

ISSUE 3. Public Utility Tax

Appellant's contention:

> "Appellant received income from the Union Pacific Railroad for switching with its own engine on its own siding tracks railroad cars which it is loading at its plant and which, when loaded, are hauled away by the railroad. Respondent's auditor erroneously assessed the income from this activity under the railroad classification of the public utility tax, RCW 82.16.020(1) (a). Appellant is not engaged in the business as defined by RCW 82.16.010. The switching income received by appellant should be taxed under the business and occupation tax, RCW Chapter 82.04."

Respondent's answer:

> "RCW 82.16.010 defines "railroad business" to mean:
>
> . . . the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire.
>
> Railroad companies paid the taxpayer for switching railroad cars in lieu of doing it themselves. If the railroad companies were paid for this activity, there would be no question that they would be subject to public utility tax under this classification. Merely because the taxpayer performed the activity does not change the

taxation of it. The taxpayer owned its own track and engine and was thus operating a railroad. It switched freight cars used in the public conveyance of property for hire. We believe the taxpayer's activities fall squarely within the statutory definition of "railroad business". The audit is sustained on this point."

ISSUE 4. Real Estate Contract Interest

Appellant's contention:

"Appellant does not contest the B&O tax assessed with respect to interest earned on contracts of sale of real property located in the State of washington. Appellant does contend that the tax was erroneously assessed with respect to interest income earned on contracts of sales of real property situated in the states of Oregon and California.

Appellant contends that pursuant to RCW 82.04.460, activity and the income of persons who render services at places of business both within and without this state are to be apportioned in accordance with the provisions of that section as implemented by the Department's rule WAC 458-20194. A correct application of the statute and rule excludes from the tax income earned from the out-of-state real property sale contracts."

Respondent's answer:

"(Simpson Properties, Inc.) It may be that Simpson Timber Co., the parent corporation, or one of the other Simpson subsidiaries have an established place of business in California and/or Oregon where the subject real property is located. One must not lose sight of the fact, however, that Simpson Properties, Inc. per se has no out-of-state office. According to WAC 458-29-203 (Rule 203) every corporation, subsidiary or not, must account for its own taxes. Rule 203 reads:

> Each separately organized corporation is a "person" within the meaning of the law, notwithstanding its affiliation with or relation to any other corporation through stock ownership by a parent corporation by the same group of individuals.
>
> Each corporation shall file a separate return and include therein the tax liability accruing to such

> corporation. This applies to each corporation in an affiliated group, as the law makes no provision for filing of consolidated returns by affiliated corporations or for the elimination of intercompany transactions from the measure of tax. . . .

Because Simpson Properties has no out-of-state office, it may not apportion its out-of-state income per WAC 458-20-194 (Rule 194). Additionally, because it must report its tax liability separately under Rule 203, it may not use the fact that its parent or sister subsidiaries are officed in the states where the real estate is situated, as a basis for apportionment.

On page 7 of Determination 85-71, the Administrative Law Judge has correctly observed that "interest income and the related sales contracts constitute intangible property. " Not only is it intangible property, but also the vendor's interest in a real estate contract is considered personal, as opposed to real, property. The pertinent quote from In re Eilermann's Estate is:

> See, also, In re Denning's Estate, 112 Ore. 621,229 Pac. 912, where it was held that an owner's interest in land is converted into personal property when such owner enters into an executory contract for the sale of the land and places the purchaser in possession, and that "the land should be treated, therefore, as personal property for the purpose of distribution".
>
> We have consistently held that the situs of intangible property is at all times at the domicile of the owner. We have also repeatedly held that a vendor's interest under an executory contract for the sale of land should be treated as personalty for the purpose of administration. . . .

Thus, the situation before us does not lend itself to analysis from a real property point of view. The interest which has been taxed is personal property. This is not a case where Washington has imposed a tax on real estate located outside its borders. "

ISSUE 5. DISC Income

Appellant's contention:

"Congress' purpose in enacting the DISC legislation was to establish a procedure by which corporations, who manufacture in the United States and sell their products to foreign customers, could reduce the United States corporate income tax otherwise payable with respect to any profits earned from such exports and thereby be made more competitive with United States corporations that established foreign subsidiaries to manufacture products for foreign markets outside the United States.

Appellant has not engaged in any business activity taxable under the business and occupation tax. Its so-called income is comprised of entries on its books made by employees of its parent company, Simpson Timber Company. In years in which the parent could make no use for corporate income tax purposes of a deduction for commission expense, no commission was credited to appellant.

The commission income allocated to appellant during the audit periods relates to goods exported by Simpson Timber Company from points of origin both in Washington and California. All activities with respect to the manufacture, sale and shipment of these exports were performed by the parent company's employees. The exported products shipped from California were manufactured there and their sales were negotiated, processed and billed by the parent's employees in California. If, arguendo, any of the appellant's income is subject to tax, its income should be apportioned so that the part of it which relates to commissions earned on export sales from California are excluded from the measure of the Washington business and occupation tax.

Under the Internal Revenue Code, one-half or more of any sum transferred to a DISC is "deemed distributed" back to the parent in the year of such transfer. This sum distributed back is included in the parent's income for federal corporate income tax purposes. 26 U.S.C. § 995. Thus the substance of the transaction is that only one-half or less of the so-called commission paid to appellant is retained by appellant. If, arguendo, any of appellant's income is taxable, then only the net amount left on its books is subject to the tax."

Respondent's answer:

"Simpson Export Sales Co. was incorporated in the State of Washington on October 2, 1973 as a Domestic International Sales Corporation (DISC) under the Federal Internal Revenue Code of 1971 by its parent company, Simpson Timber Company. The parent company and its affiliates elected to have this DISC act as a commission agent with respect to its sales to third-party purchasers of designated export products. According to the DISC agreement, the parent and its affiliates will pay to the DISC a commission equal to the maximum amount permitted to be received under the intercompany pricing rules of B 994 of the Internal Revenue Code of 1954. Audit revealed that the DISC was compensated at 50% of net profit from export sales.

Appellant contends the commission this DISC received does not represent income received for the rendition of personal services but, rather, was merely an allocation to the DISC of 50 percent of the parent and affiliates' profits out of export sales in order to receive the benefits of a federal tax shelter provided by the Federal Internal Revenue Code. Appellant further claims the DISC does not have employees and fixed assets and without those it could not have performed any personal services to the parent and affiliated companies. It believes the shifting of profits from one corporation to another does not constitute engaging in business; therefore, such income allocated to the DISC is not gross income of the business subject to Service and Others business tax.

We are of the opinion that appellant has in correctly concluded that in order for a DISC to have a taxable income, actual personal services have to be rendered i.e., a broker agent performing sales on behalf of its principal. RCW 82.04.290 imposes the business and occupation tax under the Service and Other Activities classification and provides that the tax be measured by the "gross income of the business". This term is defined by RCW 82.08.080 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 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. (Emphasis ours)

"Engaging in business" is defined by RCW 82.04.150 to mean:

. . . commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers . . . (Emphasis ours)

Business is defined by RCW 82.04.140 to include:

. . . all activities engaged in with the object of gain, benefit or advantage to the taxpayer or to another person or class directly or indirectly. (Emphasis ours)

We believe the mere "exercise of corporate powers" by this DISC in order to avail the parent and affiliated companies of the federal tax shelter constitutes "engaging in business" pursuant to RCW 84.04.150. We also believe that the business activity conducted was for ". . . object of gain, benefit, or advantage to the taxpayer or to another person . . ." per RCW 82.04.140. This benefit was the federal tax shelter enjoyed by the parent company and its affiliates. See also ETB 448.04.1930.

In its Notice of Appeal, Appellant has suggested that the income of Simpson Export Sales be apportioned so that income from "California sales" is excluded from Washington's B&O tax. For the same reasons given in section 5 (the real estate contract issue), supra, that is not possible because Export enjoys a separate corporate existence (Rule 203) and has no established place of business in California (Rule 194). Rule 194 states,

. . . When the business involves a transaction taxable under the classification service and other business activities . . . the tax applies upon the income received for services incidentally rendered to persons outside this state by a person domiciled herein who does not maintain a place of business

within the jurisdiction of the place of domicile of the person to whom the service is rendered.

With respect to the argument that one-half of the commissions earned by a DISC are distributed back to the parent corporation per 26 U.S.C. B 995, we raise the same statute referenced by the Administrative Law Judge in his discussion of DISC income. The Service B&O tax is measured by "gross income of the business" as defined in RCW 82.04.080, supra. Amounts distributed back to the parent or non-deductible costs of doing business under RCW 82.04.080. The B&O tax is calculated on gross, not net income. RCW 82.04.220. Even if half of the commissions are eventually distributed elsewhere, that fact does not detract from their status as gross income in the first instance. Such commissions are still a part of the value proceeding or accruing from engaging in business so are properly included in figuring the gross income of the business upon which the B&O tax is calculated. In addition to fitting the definition of gross income, such distributed amounts are not specifically exempt or deductible under any other statute or administrative rule of which we are aware.

ANALYSIS AND CONCLUSIONS.

The appellant and respondent each have had an opportunity to place their arguments before this Board for consideration.

While the parties may disagree on certain issues, the record is clear as to each of their positions. It would be redundant of this Board to further set forth the individual arguments relating to each issue as entered by the parties inasmuch as each party to this cause has provided the other with the material data upon which they have relied in forming their opinions of value.

This Board has carefully considered all the testimony and the documentary evidence submitted by both parties to support their determinations. Based on this testimony and evidence presented, this Board concludes:

l. Simpson Timber Company is the parent of its subsidiaries, Simpson Export Sales Company and Simpson Properties, Inc.

2. The Supreme Court has stated in Rena- Ware Distrib., Inc. v. State, 77 Wn.2d pages 514-519, Jan. 1970, in pertinent part:

> . . . The appellant contends that this tax is improper since the officers and directors and the sales manager of the three companies are the same. In brief, the appellant would have us "lift the corporate veil" and observe that in fact there is only one corporation.
>
> [4,5] If this case involved a fraud upon third persons, of course, the court would not permit the appellant to escape liability by means of the corporate structures which it employs. But we are not here concerned with such a case. The appellant has chosen to employ these structures for its own reasons, and we assume that it finds them advantageous. For purposes of the taxing statutes, they are separate entities. More common ownership of stock, the same officers, employees, etc., does not justify disregarding the separate corporate identities unless a fraud is being worked upon a third person. . .
>
> In Washington Sav-Mor Oil Co. v. Tax Comm'n, 58 Wn.2d 518, 523, 364 P.2d 440 (1961), the plaintiff sought to avoid business and occupation taxes imposed under RCW 82.04 upon the ground that it was making sales to a wholly-owned subsidiary corporation. We said:
>
> The appellant asks us to disregard its separate existence, not in order to prevent fraud or injustice, but in order to gain an advantage. This we cannot do. The legislature has not seen fit to exclude transactions between affiliated corporations, and we find in the facts of this case nothing which would justify the judicial engrafting of such an exclusion upon the statute. . . . (Emphasis added)

3. This Board holds that the Simpson Timber Company, Simpson Export Sales Company and Simpson Properties, Inc. are three separate corporate entities for purposes of taxing statutes.

Issue I - Self insurance.

In Walthew v. Department of Revenue, 103 Wn.2nd, 183, 691 P.2d 559 the court stated, in pertinent part:

> The language in Rule III is consistent with the statute if it is read to reflect the statute's obvious intent to tax only gross income which is "compensation for the rendition of services" (RCW 82.04.080) or "consideration . . . actually received or accrued" (RCW 82.04.090). Rule Ill excludes those reimbursements for advances which are merely pass-thoughs, where the taxpayer liability, if any, to the third party provider is solely agent liability:
>
> The words "advance" and "reimbursement" apply only when the customer or client alone is liable for the payment of the fees or costs and when the taxpayer making the payment has no personal liabilitY therefor, either primarily or secondarily, other than as agent for the customer or client. . . WAC 458-20-111
>
> By excluding agent liability, the rule recognizes pass-through payments of the kind involved here. Reimbursements to attorneys for costs of litigation cannot by rules of this court constitute compensation. Lawyers are bound by the Disciplinary Rules of the Code of Professional Responsibility. DR 5-103 prohibits a lawyer from financing the costs of litigation unless a client remains ultimately liable for those costs. Thus an attorney must because of this rule act solely as agent for the client when financing litigation. Attorneys are unique in this respect. The Department's concern that other professionals will necessarily gain an exemption by our holding is misplaced. Emphasis added.

This Board holds that the Simpson Timber Company was primarily or secondarily personally liable for the payment of the insurance premiums and had not acted solely as an agent for its subsidiaries. This Board finds that Simpson Timber Company provided a service to its subsidiaries and is subject to the provisions of RCW 82.04.080 and 82.04.220.

Issue 2. Interest Income.

Simpson Timber Company makes loans to subsidiaries and affiliates on a regular and recurring basis and the appellant acknowledges that the interest income derived therefrom is

subject to the B&O tax. This Board finds that Simpson Timber Company is engaged in financial business and therefore cannot isolate loans to two subsidiaries for exemption under the provisions of RCW 82.04.4281.

Issue 3. Public Utility Tax.

RCW 82.16.010 defines "railroad business" as follows:.

> means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire.

Simpson Timber Company owns its own railroad cars and railroad line on which it performs switching rail cars activity for a railroad company.

Black's Law Dictionary defines a public utility in pertinent part as follows:

> A business or service which is engaged in regularly supplying the public with some commodity or service which is of public consequence and need, such as electricity, gas, water, transportation, or telephone or telegraph service. Gulf States Utilities Co. v. State, Tex.Civ.App., 46 S.W.2d 1018, 1021.....The test for determining if a concern is a public utility is whether it has held itself out as ready, able and willing to serve the public. Humbird Lumber Co. v. Public Utilities Commission, 39 Idaho, 505, 228 P. 271. The term implies a public use of an article, product, or service, carrying with it the duty of the producer or manufacturer, or one attempting to furnish the service, to serve the public and treat all persons alike, without discrimination. Highland Dairy Farms Co. v. Helvetia Milk Condensing Co. 308 Ill. 294, 139 N.E. 418, 420. It is synonymous with "public use." and refers to Persons or corporations charged with the duty to supply the public with the use of property or facilities owned or furnished by them.. Buder v. first Nat. Bank in St. Louis. C.C.A.Mo.. 16 F.2d 990. 992. To constitute a true "public utility." the devotion to public use must be of such character that the public generally, or that cart of it which has been served and which has accented the service. has the legal right to demand that service shall be conducted. so long as it is continued. with reasonable efficiency under reasonable charges.

> Richardson v. Railroad Commission of California, 191 Cal. 716, 218 P. 418, 420 . . . Emphasis added.

This Board finds that the Simpson Timber Company is not a public utility.

Black's Law Dictionary defines public use as follows, in pertinent part:

> . . . means a use concerning the whole community as distinguished from particular individuals. But each and every member of society need not be equally interested in such use, or be personally and directly affected by it; if the object is to satisfy a great public want or exigency, that is sufficient. . . .

This Board holds that the switching activity that Simpson Timber Company performs is not a public use and does not come under the provisions of RCW 82.16.010. Therefore, this Board finds that the income paid to the Simpson Timber Company for its switching activity should be taxed under the service category of the business and occupation tax under RCW 82.04.290.

Issue 4. Real Estate Contract Interest.

Simpson Properties, Inc.'s receives interest income on Contracts of Sale of real property situated outside of the State of Washington. Simpson Properties, Inc. Is incorporated only in Washington and registered with the Washington Department of Revenue.

The court has stated in Rena-Ware Distrib., Inc. v. State, 77 Wn.2d, at 514-519, in pertinent part:

> [2) Taxation--Sales Tax--Sale--What Constitutes-Service Charge. A "sale" does not include, for the purposes of taxation, the granting of the privilege of paying for goods or services over a period of time. A service charge, imposed for the extension of such privilege, is not the proceeds of a sale. . . .
>
> [3) As the respondent points out, the appellant's activities for which the service charge is made are not expressly covered in any section of the taxing act, nor are they expressly excluded. Since it was the intent of the legislature, set forth in RCW

82.04.220, to tax all business activities not expressly excluded, it is reasonable to conclude that the legislature intended to include this activity in the catch-all provision, RCW 82.04.290.

We are of the opinion that the Department of Revenue has correctly construed ROW 82.04.290, which levies a tax on "every person engaging within this state in any business activity . . . [including] the business of rendering any type of service which does not constitute a `sale at retail' . . . The business activity of servicing installment accounts falls naturally within this definition, and it is our conclusion that the legislature intended that this activity should be taxed under this section rather than under ROW 82.04.250, taxing retail sales. This interpretation not only gives effect to the legislative intent evidence in the taxing statutes, but harmonizes them with ROW 62.14.040, which regulates installment sales and requires that service charges be separately stated. The legislative approach to the problems dealt with in that statute indicates an awareness on the part of the members of that body that service charges on installment sales are not in fact a part of the purchase price. . .

[6] The final contention of the appellant is that the activities involved in this case are interstate commerce and therefore not taxable by the state. The evidence shows that all of the activities taxed are done locally, that is, the services are rendered at the home office in Opportunity, Washington. No part of these activities is carried on outside the state, although the recipients of the benefits of the activities may reside outside the state or outside the country.

The appellant cites no authority which sustains its position that the activities in question are not subject to local tax.

A state has the right to tax the privilege of doing local business. B. F. Goodrich Co. v. State, 38 Wn.2d 663, 231 P.2d 325, cert. denied 342 U.S. 876, 96 L. Ed. 659, 72 S. Ct. 167 (1951). The tax in question is applicable to all who engage within this state in the same kind of business activities, and it is only the local activities which are being taxed. Persons engaged in interstate commerce are not required to bear any burden not borne by those engaged solely in local commerce. The appellants are not

being taxed upon activities which might also be taxed in other states. In short, the incidents of taxation occur only within this state and the tax is not discriminatory against persons engaged in interstate commerce. Consequently it does not offend the commerce clause of the United States Constitution. General Motors Corp. v. State, 60 Wn.2d 862, 376 P.2d 843, 377 U.S. 436, 12 L . Ed. 2d 430, 84 S. Ct. 1564, rehearing denied 379 U.S. 875, 13 L. Ed 2d 79, 85 S. Ct. 14 (1964).

This Board affirms its position in Docket No. 2097, Chemithon Corporation v. State of Washington, Department of Revenue, March 31, 1971 and restates the following, in pertinent part.

A definition of intangible property can be found in 51 Am. Jur. Section 466:

> "Intangible property refers to rights not related to physical things - rights which are but relationships between persons, natural or corporate, which the law recognizes by attaching to them certain sanctions enforceable in courts.". .

Domicile for purposes of taxation is defined in 54 Am Jur. Section 447:

> "The domicile of a person for purposes of determining the place at which his personal property is taxable is ordinarily fixed by application of the rule which determines the legal domicile of a person for any other purpose, which is, generally speaking, the place of his fixed permanent home or residence, to which he has whenever absent the intention of returning, and from which he has no present intention of moving."

The power of the state of the domicile to tax intangible personal property is discussed in 51 Am. Jur. Section 465:

> "The rule that the actual situs of personal property having a visible and tangible existence, and not the domicile of its owner, determines the state in which such property may be taxed does not extend to enable a state in which securities evidencing an indebtedness or other intangible interest are located to assert the right to tax the property

> interest represented, merely upon the ground of the presence of the securities, or to exclude the right of the state of the owner's domicile. The power of the domicile of the owner to tax intangible personal property is recognized irrespective of where the evidences thereof are found."

This Board finds that the activity at issue is the interest income generated by the extension of the privilege of paying for real estate over a period of time and that the Contracts of Sale are intangible property.

This Board holds that intangible property is taxable in the domicile of the owner which is the State of Washington, and therefore apportionment is not at issue.

This Board concludes that Simpson Properties, Inc. is the owner of the Contracts of Sale and subject to the B&O on the interest income.

Issue 5. DISC Issue.

The Simpson Export Sales Company is a Domestic International Sales Corporation subsidiary of the Simpson Timber Company. The DISC is a separate corporate entity created to take advantage of reduced corporate federal income taxes on profits generated by exports.

This Board has studied the full text of the court cases referred to by the appellant on this issue.

The Maryland court has stated in Ward. Europa, Inc. V. Comptroller, 503 A 2d 1371 (Md App. 1986) at page 1373.

> The most obvious problem with DISCs is that they were not traditional corporations. When corporations were first beginning to be recognized by courts, the notion that a non-living entity should have an independent legal existence was seen as the dubious product of overly fertile legal imaginations. The wholly fictitious life afforded a DISC required an even more active imagination. DISCs had absolutely nothing that would signify their existence. They were hollow corporations, mere bookkeeping entries, sponsored by the federal government; they owned, leased or used no property, real or personal, and had no employees. See Caterpillar Tractor Company v. United States, 589 F.2d 1040, 1044, 218 Ct.Cl. 517 (1978). It is not surprising that state courts and

> legislatures were unprepared to deal with them. This case is the inevitable result of the Comptroller's attempts to find a place for DISCs in Maryland's taxation scheme.

This Board recognizes that DISCs are a unique creation.

The Department of Revenue has promulgated ETB 448.04.l93C in 1972 which the legislature has not altered with supplementary legislation.

This Board recognizes that the ETB does not control the decision of this Board.

RCW 82.04.290 states the following, in pertinent part:

> Tax on other business or service activities. Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and 82.04.280; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.50 percent. Emphasis added.

RCW 82.04.080 defines gross income of the business, as follows:

> "Gross income of the business". "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 . . . . commissions . . . . all without any deduction on account of the cost of tangible property sold . . . . or any other expense whatsoever paid or accrued and without any deduction on account of losses.

RCW 82.04.140 defines Business as follows, in pertinent part:

> "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.

This Board finds that the DISC engages in the business activity of receiving commissions for export sales which benefits the parent corporation.

This Board holds that the gross commission is taxable as a business activity under the provisions of RCw 82.04.080.

This Board finds that the B&O tax should be applied to the gross commission as clearly set forth in RCW 82.04.080.

RCW 82.04.460 states the following, in pertinent part:

> Business within and without state---Apportionment. (1) Any person rendering services taxable under RCW 82.04.290 and maintaining places of business both within and without this state which contribute to the rendition of such services shall, for the purpose of computing tax liability under RCW 82.04.290, apportion to this state that portion of his gross income which is derived from services rendered within this state.
>
> This Board finds that Simpson Export Sales, Inc. maintains no place of business outside of Washington and apportionment of its income is not warranted under the provisions of RCW 82.04.460.

DECISION.

This Board finds that the Simpson Timber Company is not subject to the Public Utility Tax for its railroad switching activity which should be taxed under the service category of the business and occupation tax under RCW 82.04.290. This Board sustains the decision of the Department of Revenue on the issues designated in this order as I, 2, 4 and 5.

DATED at Olympia, Washington
This 5 day of November, 1986

STATE OF WASHINGTON BOARD OF TAX APPEALS