

Cite as 1 WTD 111 (1986)

August 29, 1986

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

D E T E R M I N A T I O N

No. 86-236

Re: . . .
Registration No. . . .
Tax Liability Ruling

[1] **WAC 458-20-114:** RETAIL SALES TAX -- SERVICE BUSINESS TAX --BONA FIDE DUES -- CLUB MEMBERSHIP -- CONTRIBUTIONS -- EMERGENCY ASSESSMENTS. A one-time emergency assessment levied upon members in order to maintain an athletic club's solvency held to be deductible from its gross income under RCW 82.04.4282.

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.

Dear Mr. . . . :

We have carefully considered the taxpayer's petition for an excise tax liability ruling pursuant to WAC 458-20-100(18) relative to an one-time hardship club membership assessment. The purpose of this Determination is to formalize our telephonic instruction issued on or about October 25, 1985.

The taxpayer had requested that the Department of Revenue perform an audit of its business activities for the purpose of determining its sales tax liability under Revised Rules WAC 458-20-114 (membership dues) and WAC 458-20-183 (amusement and recreation activities). As a result of the audit (January 1, 1981 through June 30, 1985), the taxpayer's members were found entitled to a refund of over-collected retail sales taxes, and

the taxpayer incurred a substantial increase in its business and occupation tax liability on a retroactive basis because of the reclassification of a substantial portion of the initiation fees and dues from the retail sales classification to the Service classification. This result left the taxpayer in dire financial straits.

The taxpayer's petition states in pertinent part:

. . .In order to keep the Club from closing, it will be necessary to charge the members a one-time assessment in order to reimburse the Club for state taxes it will now have to bear and to reimburse the Club for the substantial legal and accounting fees incurred in resolving this matter. Our client has agreed with Mr. . . . that the statements to the members will show the sales tax refund as a separate line item and that it will show the assessment as a separate line item.

The remaining question which Mr. . . . suggested that we raise directly with you is to what extent, if any, Washington state sales taxes and/or business and occupation taxes will be due with respect to the Club's receipt of members' payments of this one time assessment. It is our feeling that this assessment relates solely to maintaining the Club's ability to continue in existence and to maintain an organizational structure which will allow members to continue to socialize. . . .

We are cognizant that it can be argued that this one time assessment should be taxed in the same manner as initiation fees and dues. That is in part as being subject to sales tax, in part being subject to the service business and occupation tax, and in part as being tax exempt "bona fide membership" payments. RCW 82.04.4282 provides the following deduction.

In computing tax there may be deducted from the measure of tax amounts derived from bona fide initiation fees, dues, contributions, donations, tuition fees, charges made for operation of privately operated kindergartens, and endowment funds. This paragraph shall not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge is made to members or others. . . .

[1] Under the factual situation presented, we conclude that the emergency assessment here at issue shall be construed as a bona fide contribution or donation rather than an initiation fee or as dues upon which tax may be due. The taxpayer's club members are presumably paying dues and have paid an initiation fee, all of which have been subjected to the appropriate taxes. This is a case of whether the members make a contribution to maintain the club's solvency or else to cease being a member.

Consequently, we find that in this instance the taxpayer's club members are merely making payments for the purpose of being able to continue to belong to the club. This decision is applicable only to this particular assessment as each and every special club assessment must be considered upon its own merits.

The taxpayer may thus deduct proceeds received from its emergency assessment from its gross income in reporting its excise tax liability.

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.