Cite as 1 WTD 139 (1986)

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. 86-242
	Registration No . . . (City of) Leasehold Excise Tax Assessment No. . . .

[1] RCW 82.29A.030(1) - LEASEHOLD EXCISE TAX - EXEMPTION - NONPROFIT ORGANIZATION - GOLF COURSE. A Golf and Country Club held not to qualify for Leasehold Excise Tax exemption by virtue of its nonprofit status or services to senior citizens and youth.

[2] RCW 82.29A.020(2)(b) - LEASEHOLD EXCISE TAX - MEASURE - "TAXABLE RENT" COMPUTATION BY DEPARTMENT. Calculation of taxable rent based on a ten percent annual return of golf course value as established by Marshall Valuation Service held to be reasonable.

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 17, 1986

NATURE OF ACTION:

An audit of the leases and records of a city resulted in the issuance of a leasehold excise tax assessment to a nonprofit golf course organization.

FACTS AND ISSUES:

BURROUGHS, M.M., Administrative Law Judge--The taxpayer is a nonprofit golf and country club which leases its 41 acre course from the city in which it is located for one dollar per year.

The Department of Revenue conducted a routine leasehold tax audit of the leases and records of the city for the period January 1, 1981 through June 30, 1985. The purpose of the audit was to determine whether the proper leasehold excise tax had been collected and remitted to the state of Washington, Department of Revenue, in accordance with the provisions of Chapter 82.29A Revised Code of Washington (RCW). As a result of this audit, the above-referenced assessment was issued to the taxpayer (. . .) on November 1, 1985 for unpaid taxes in the amount of $. . . and interest in the amount of $. . . , for a total amount of $. . . .

The taxpayer protests this assessment based on the rationale expressed in its petition dated January 23, 1986:

> We believe . . . (the taxpayer) . . . should be relieved of the tax assessment for the following reasons:
>
> 1) This course at one time (including land) was owned by the Elks. They turned it over to the members who gave the land to the city for a 99 year $1 per year lease.
>
> a) The golf course paid over $100,000 plus many hours of volunteer labor to install the present water system.
>
> b) We presently owe over $20,000 to the FHA on that system which was installed in 1969.
>
> 2) We are a non-profit organization which offers one of the few summer activities to . . . (the city) . . . and its outlying communities. Our course is used by:
>
> a) Senior citizen (over 50% of our membership)
> b) Juniors (8 years old - college)
> c) We allow the local high school to use the course for meets free of charge.
>
> 3) Much of the heavy labor is donated by the members.

> 4) The course is run by a Board of Directors who receive no compensation or fringe benefits. All board members must pay their dues like any other member.
>
> 5) The . . . Golf Course offers summer jobs and recreation to help curtail drugs and alcohol among our local youth.
>
> a) Except for golf, baseball (played May and June) and swimming are the only summer activities available for the . . . youth.

At the hearing, the taxpayer reemphasized its argument that, as a nonprofit organization, it should not be subject to the tax. It was further explained that the golf course, which had been originally owned by the Elks, was donated to members of the Golf Club, who in turn donated the land to the City. The City then granted a 99 year lease in exchange for rent payments of $1 per year.

Testimony revealed that the taxpayer has always had difficulty financially, and the most work performed is volunteer labor.

The club is a "private" nine-hole club which is nonetheless open to the public. An FHA loan necessitated the club's being open to the public. It sells lifetime, junior, social, and golf memberships.

Secondly, the taxpayer contends that the true value of the land is much less than that assigned to it by the Department. The taxpayer testified that the course is merely farm land turned into grass with an old and leaking underground water system. In addition, it was argued that the course has no profit value, since the club has shown a profit only one out of every five years. The club receives no subsidies from anyone, but only membership fees and greens fees. Most work to be done is donated by individuals and groups.

The club does hire a pro/manager and some high school students to mow and perform continual maintenance (e.g., raking, picking up pine cones, etc.). All building projects or other improvements are done by the members on a volunteer basis.

It was reiterated that over 50 percent of the members are senior citizens, and that golfing is a good activity for senior citizens and youth. There is no charge for junior

lessons. The club is run by a Board of Directors who receive no fringe benefits or pay. They meet once a month.

DISCUSSION:

RCW 82.29A.030(1) provides in pertinent part as follows:

> There is hereby levied and shall be collected a leasehold excise tax on the act or privilege of occupying or using publicly owned real or personal property through a leasehold interest . . . at a rate of twelve percent of taxable rent . . .

RCW 82.29A.020(1) further provides:

> Leasehold interest shall mean an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, between the public owner of the property and a person who would not be exempt from property taxes if that person owned the property in fee, granting possession and use, to a degree less than fee simple ownership.

As to valuation, RCW 82.29A.020(2)(b) provides in pertinent part:

> If it shall be determined by the department of revenue, upon examination of a lessee's accounts or those of a lessor of publicly owned property, that a lessee is occupying or using publicly owned property in such a manner as to create a leasehold interest and that such leasehold interest has not been established through competitive bidding, or negotiated in accordance with statutory requirements regarding the rent payable, or negotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor, the department may establish a taxable rent computation for use in determining the tax payable under authority granted in this chapter based upon the following criteria: (i) Consideration shall be given to rental being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; (ii) consideration shall be given to what would be considered a fair rate of return on the market value of the property leased less reasonable deductions

> for any property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

Unfortunately, the taxpayer's first argument for exemption is founded on a mistaken premise. There is no general exemption for nonprofit organizations for purposes of this state's excise taxes. This is so regardless of whether or not they are exempt of federal income tax under section 501 of the Internal Revenue Code. WAC 458-20-169 (Rule 169) begins with the following language:

> Religious, charitable, benevolent, nonprofit service organizations, and sheltered workshops. Religious, charitable, benevolent, and nonprofit service organizations are subject to the excise taxes imposed by Revenue Act of 1935 with the following exemptions only:

The exemptions relate to such things as serving meals for fund raising purpose, bazaars or rummage sales, retail sales in the course of annual fund-raising drives, sheltered workshops, and health or social welfare services.

The law does provide that an organization exempt from property taxes will also be exempt from the leasehold excise tax. RCW 84.36.030 sets forth those organizations which will be exempt.

> The following real and personal property shall be exempt from taxation:
>
> (1) Property owned by nonprofit organizations or associations, organized and conducted for nonsectarian purposes, which shall be used for character-building, benevolent, protective or rehabilitative social services directed at persons of all ages. . . .
>
> . . .
>
> (3) Property, including buildings and improvements required for the maintenance and safeguarding of such property, owned by nonprofit organizations or associations engaged in character building of boys and girls under eighteen years of age, and used for such purposes and uses, provided such purposes and uses are for the general public good . . .
>
> . . .

(6) To be exempt under this section, the property must be used exclusively for the purposes for which exemption is granted . . .

Even if an organization were to fall within the guidelines enumerated above, in order to qualify for exemption application to the Department must be made. The taxpayer's testimony indicates that no such application has been made. Although the question is not within the scope of this appeal, it is our judgement that the taxpayer would not qualify for exemption under RCW 84.36.030 because of the requirement under subsection (6) that "the property must be used exclusively for the purposes for which exemption is granted. . . " Further, the fact accomplished with volunteer labor has no bearing on the tax exempt nature of the organization. Accordingly, the taxpayer's argument as to tax-exempt status must fail.

As to valuation, RCW requires only that the taxable rent computation made by the Department be based upon "rental values of similar property for similar purposes over similar periods of time," giving consideration for a fair rate of return on the market value of the property leased less reasonable deductions for restrictions on use, etc.

We have reviewed the method by which the Department has valued the course. Because there were no similar rentals of golf courses in the area with which to compare, the Department calculated what a fair rate of return would be on the market value of the golf course land. The value of the golf course was determined by using the Marshall Valuation Service, a publication which is commonly employed to establish property values. The Marshall Valuation Service is used throughout the state by county appraisers to establish property valuations. According to the Whitman County assessors office, the value of farmland in the . . . area is $1,500 - $1,700 an acre as opposed to commercial land which is valued from $8,000 - $10,000 an acre. There reportedly have been no sales of golf courses in the area in recent years.

In accordance with the Marshall Valuation Service, par 3 courses of 9 holes on 15-20 acres, 1400 yards long, including irrigation and excluding structures and lighting have a per hole cost from $20,000 to $27,000. The Department has taken the low range figure of $20,000 and further deducted 15 percent ($3,000) from it because there is no underground irrigation on the course. The total cost per hole was

therefore calculated to be $17,000, and the total cost for nine holes was set at $153,000 (9 x $17,000).

Lessors normally expect an annual return on the value of their leased properties ranging from 7 percent to 12 or 13 percent. The auditor therefore used a 10 percent rate of return and determined that a reasonable annual rental base would be $15,300, or $1,275 a month. The leasehold excise tax was based on this figure. We conclude that the measure arrived at by the auditor was reasonable and in accordance with RCW 82.29A.020(2)(b). Accordingly, the taxpayer's petition is denied as to this issue.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of assessment is denied and the assessment sustained.

DATED this 5th day of September 1986.