

Cite as Det. No. 94-062, 14 WTD 225 (1995).

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

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Interpretation)	
)	No. 94-062
)	
. . .)	Registration No. . . .
)	

- [1] RULE 166; RCW 82.04.050: RETAIL SALES TAX -- LODGING -- MEMBERS AND GUESTS. In general, transient lodging and meals provided to the members and guests of an organization are subject to retail sales tax. Under most circumstances, lodges provided for the use by the members and guests of a nonprofit organization do not qualify as private lodging houses or summer camps and similar organizations under Rule 166.
- [2] RULE 114; RCW 82.04.4282: B&O TAX -- DUES -- NEWSLETTERS: The portion of an organization's dues used to provide a general interest newsletter for its members comes within the statutory deduction. This deduction is not affected by the size of the newsletter so long as the purpose of the newsletter is to inform members of common membership interests and concerns. Similarly, the deduction is not affected by members being informed that a portion of their dues provides a subscription to the newsletter.
- [3] RULE 114; RCW 82.04.4282: B&O TAX -- DUES -- MEMBER DISCOUNTS: Where members are separately charged for the full cost of goods and services, the statutory deduction is not affected even though nonmembers pay higher charges for such goods and services.

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.

NATURE OF ACTION:

Nonprofit conservation and outdoor recreation corporation appeals instructions for future reporting purposes that it must pay tax on

a portion of the dues charged to members and must charge retailing business and occupation (B&O) and retail sales tax on lodging and meals provided to members and guests.¹

FACTS:

Mahan, A.L.J. -- Taxpayer is a nonprofit corporation founded in 1906 to "explore, study, preserve and enjoy" the natural beauty of the Northwest. It has nearly 15,000 members. The members pay dues which entitle them to take part in various skiing, climbing, hiking, kayaking, and other outdoor activities sponsored by the organization, to receive monthly and biannual publications, and to receive discounts on books published by the organization. The membership form indicates that a certain portion of the dues pays for a subscription to the magazine. The organization has only an insignificant number of nonmember subscribers. The organization also owns four ski lodges. Members and their guests may use the lodges for a daily fee which usually includes meals.

Guests are charged a higher price at the lodges than are members. All guests must be sponsored by a member who is present at the lodge during the stay. A member may sponsor a group of nonmembers. During the ski season, group use is limited to Friday nights. The organization does not advertise to nonmembers. The monthly publication sent to members identifies the policy with respect to guests and groups of guests. With respect to groups, it states that "some of our Friday night users are elementary school classes, high school classes, scout troops, church groups, and sports organizations."

The lodging is in dormitories and members and guests must bring their own sleeping bags. Members and guests must also take part in chores at the lodge, including helping with meal preparation. At times slide shows, dancing, and other activities are arranged at the lodges. Two of the lodges provide rope tows for use by members and their guests. Skiing or climbing instructions are sometimes also offered for a separate charge.

Guests can only take part in activities sponsored by the organization, including staying at the lodge, two times in one year. In this manner, guests are introduced to the benefits of membership, but usage is primarily limited to members.

The taxpayer was audited by the Department of Revenue (Department) and an agreement reached on an assessment for additional taxes.

¹Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

The taxpayer, however, takes exception with certain instruction for future reporting. These exceptions deal with taxes on lodging and taxes on a portion of the dues paid by members. With respect to lodging, the taxpayer had been paying service B&O tax on income from the rental of the lodge by members and retail sales and retailing B&O tax on its income from nonmember rental of the lodge. The Department instructed the taxpayer to begin charging retail sales and retailing B&O tax on all rentals. The taxpayer contends that because its lodges are not held out to the public for rental, its should only pay service B&O tax on the income. Alternatively, the taxpayer believes it should pay only service B&O tax as a summer or winter camp.

With respect to dues, the taxpayer contends that the portion of the dues it collects which pay for a monthly and biannual publication, volunteer support, and member discounts should not be taxed. The taxpayer has been paying sales tax on the printing charges for the monthly and biannual publication. The Department has instructed the taxpayer to begin paying printing and publishing B&O tax and retail sales tax on the portion of the dues which support the publications. In addition, the taxpayer was instructed to pay service B&O tax on the portion of its dues related to member discounts and to the overhead and indirect costs associated with assisting volunteers in providing classes and instructions.

ISSUES:

1. Whether a private nonprofit organization which makes its lodges available to members and their guests is furnishing lodging subject to retail sales tax.
2. Whether a lodge which makes available recreation facilities (rope tows) and on occasion skiing instructions for an additional charge can be considered a summer camp or similar establishment.
3. Whether a newsletter/magazine published by a nonprofit organization is an item of significant value which subjects a portion of the members' dues to tax.
4. Whether book discounts provide a tangible item of value which subjects a portion of the members' dues to tax.
5. Whether a portion of dues associated with providing overhead and technical support to members who provide volunteer classes and organize activities is subject to tax.

DISCUSSION:

1. Lodging.

[1] RCW 82.04.050 defines the term "retail sale" to include, inter alia, "the sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, . . .". By its terms, the statute covers a broad range of licenses to use transient accommodations.

By administrative rule the Department has recognized that certain facilities which provide lodging do not fall within the scope of this statute. WAC 458-20-166 (Rule 166) distinguishes establishments such as inns and hotels from certain "private lodging houses, dormitories, bunkhouses, etc." and certain "guest ranches and summer camps."²

With respect to private lodging houses, the rule defines such establishments as ones "operated by or on behalf of business and industrial firms solely for the accommodation of employees of such firms, and which are not held out to the public as a place where sleeping accommodations may be obtained." Later in the rule it is explained that the income from such lodging is subject to service B&O tax. In this latter portion of the rule, the words "solely" and "employees" do not appear but the language is otherwise substantially the same.³ Summer camps, guest ranches, and similar establishments are defined as facilities which make "an unsegregated charge for meals, lodging, instruction and the use of recreation facilities"

The statute and corresponding rule by their terms are not limited to establishments held open to the general public. The rule uses the phrase "held out to the public", only to distinguish lodging subject to retail sales tax from situations where employees stay at bunk houses and similar establishments. The latter situation involves a person's employment, and not merely transient lodging. That is not the case here.

As with many clubs and benevolent organizations, the taxpayer

²Amendments to Rule 166 were adopted on February 2, 1994. Unless otherwise noted, all references are to Rule 166 as amended.

³The language of a statute or rule must be read in context with the entire statute or rule and construed in a manner consistent with the general purpose of the statute. See Graham v. State Bar Ass'n, 86 Wn.2d 624, 627, 548 P.2d 310 (1976). In reading the rule as a whole, we find that the latter reference is limited as set forth in the definition. Otherwise the language used in the definition would be superfluous and meaningless.

provides transient lodging for its members and guests. The members and their guests do not stay at the lodge as employees and are not offered the type of instruction one might expect to find at a summer camp or similar establishment. In this case, the taxpayer does not provide instructions for its members and guests for a sum unsegregated from the cost of lodging and meals. As such the taxpayer does not qualify for an exemption as a private lodge for employees or as a summer camp or guest ranch.⁴

This result is consistent with the general rule that exemptions to the tax law must be narrowly construed.

Taxation is the rule and exemption is the exception. Anyone claiming a benefit or deduction from a taxable category has the burden of showing that he qualifies for it.

⁴Although the taxpayer does not advertise to nonmembers, its advertisement to members about the lodges being available for various nonmember groups appears to have been successful in having various groups rent the lodges. Given the wide use of the lodges by guests and by various nonmember groups sponsored by members, the lodges might well be said to be held out for the use by the public. Although the public/nonmember use is more restricted than one might find at an inn or hotel, its use is still by nonmembers or the public.

Budget Rent-A-Car, Inc. v. Department of Rev., 81 Wn.2d 171, 174, 500 P.2d 764 (1972). Accordingly, for future reporting purposes, the taxpayer must collect and remit retail sales tax on lodge rentals to both its members and their guests.⁵

2. Dues.

[2] RCW 82.04.4282 allows amounts received as dues to be deducted from the measure of tax. However, if dues are in exchange for "any significant amount of goods or services . . . the value of such goods or services shall not be considered as a deduction hereunder." Under this statute, if the services or membership benefits derived from dues payment are both enough and of a kind which are compensated for when purchased by nonmembers in the marketplace, then the portion of dues income attributable to such benefits do not fall within the ambit of the tax deduction. Det. No. 86-310, 2 WTD 91 (1986).

In this regard the Department has held that the portion of dues which are used for publishing a newsletter for members is not the kind of service which is purchased in the marketplace but is intrinsically a privilege of membership.

The expenditure of "bona fide" dues by an organization in furtherance of the free flow of information among members, such as providing newsletters to members and representing general membership interests before legislative bodies, etc., does not render such dues as being less than "bona fide." If common membership interests and concerns could not be shared and freely voiced, there would be no purpose whatever to join together in any organizational undertaking, religious, fraternal, patriotic, or otherwise.

Det. No. 86-310.

Although the newsletter at issue is more substantial than most newsletters of its type, its content and scope is clearly directed to informing members about common membership interests and

⁵In its argument the taxpayer relied on Det. No. 87-297, 4 WTD 75 (1987), which held that income from rental of dormitory space at an educational institution to guests of students was subject to service B&O tax. One of the conclusions reached in that determination--that dormitory rooms do not fall within the category of accommodations subject to retail sales tax--may have been unnecessary and recent amendments to Rule 166 have clarified this issue. Rule 166 now provides that "educational institutions which sell overnight lodging to persons other than students" are subject to retail sales tax.

concerns. The newsletters and biannual publication contain club information, financial information, reviews of books published by the organization, and a listing of available courses and events sponsored by the organization. The size is largely dictated by the large number of events available to club members. The fact that members are informed that a portion of their dues is allocated to a "subscription" for the newsletter does not alter the nature of the publication as one addressing common membership interests and concerns.⁶ Accordingly, for future reporting purposes, no portion of the dues are taxable as a result of the publication of the newsletters and biannual publication. As in the past, the taxpayer should instead pay retail sales tax on the printing of the publications.

[3] Similarly, the taxpayer does not have to pay tax on any portion of the dues as a result of members receiving discounts on books published by the taxpayer or as a result of paying less than nonmembers for lodge rentals. It is undisputed that even with such discounts, the taxpayer is not subsidizing the publications or lodging through the collection of dues. Under RCW 82.04.4282, a portion of the dues is subject to tax if members receive a significant amount of goods or services "without any additional charge to the member" Here, the members paid an additional charge for the full cost of the goods or services and, accordingly, no tax should be assessed against the dues for such goods or services. See Det. No. 86-55A, 2 WTD 353 (1987).

The taxpayer, however, must pay tax on the portion of its dues associated with providing overhead and technical support for the courses and services provided by its members. Under the "cost of production" method of accounting allowed under WAC 458-20-114 (Rule 114), indirect and overhead costs associated with providing goods or services to members must be taken into account. Based on the taxpayer's current expenditures, 10.21% of its dues are utilized in providing the support services, and service B&O tax must be paid on that portion of the dues.

DECISION AND DISPOSITION:

The petition is granted in part and denied in part. The taxpayer in the future must pay retail sales tax and retailing B&O tax on income derived from lodging and meals provided to its members and their guests. It must also pay service B&O tax on the portion of its dues associated with providing support services. It does not have to pay retail sales tax on the portion of the dues associated

⁶The insignificant number of nonmember subscriptions is further evidence that the newsletter addresses only common membership concerns.

with its newsletter and biannual publication. It also does not have to pay tax on a portion of its dues as a result of member discounts where the members are separately charged for the full cost of the goods and services provided by the organization.

DATED this 31st day of March, 1994.