

Cite as Det. No. 99-019E, 19 WTD 34 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>E X E C U T I V E</u>
Interpretation of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 99-019E
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)	
)	Registration No. . . .
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[1] RULE 189; RCW 84.04.030: B&O TAX -- PERSONS SUBJECT TO TAX -- STATE AGENCIES -- BOARDS. A non-corporate state board is treated for B&O tax purposes as other non-corporate state agencies, such as departments and institutions of higher learning. Accordingly, B&O tax is not imposed on the fees a board may charge for the services it provides in accordance with its legislative mandate.

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:

A state board protests a letter ruling that the fees it may receive are subject to the business and occupation (B&O) tax.¹

FACTS:

Mahan, A.L.J. – The . . . (the “Board”) was created in 1993. RCW It has a . . . board of directors, with approximately one-half appointed by the governor and one-half appointed by various city or county related organizations. RCW The express purpose of the legislature in creating the Board was “to establish a state-wide . . . program designed to promote RCW The Board’s rules are promulgated at WAC . . . in accordance with the Administrative Procedures Act (APA), RCW . . .

Currently the Board . . . and receives funding through a line item on the [state department] budget. Although the Board is authorized, under RCW . . . , to establish a reasonable schedule of

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

suggested fees to support and promote . . . , it currently is not collecting such fees. It does not sell items or otherwise engage in transactions subject to retail sales tax.

On August 6, 1997, the Board requested a ruling from the Department of Revenue (Department) regarding the Board's B&O tax liability. The Department's Taxpayer Information and Education Section (TI&E) responded:

Funds that are received from federal, state, and local governments that are not in exchange for services are not subject to tax. Unrestricted grants are also not subject to tax. Fees that are for performance of specific services are subject to tax under the Service and Other Business Activities classification of the business and occupation tax.

The taxpayer appealed the ruling. It contends that it does not engage in taxable activity when it collects a suggested user fee, as allowed by the legislature.

ISSUE:

Whether fees received by a state board for the performance of statutorily created duties are subject to the B&O tax.

DISCUSSION:

[1] RCW 82.04.030 defines a "person" for B&O tax purposes as:

any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

Although municipal corporations, political subdivisions of the state, and state chartered corporations are persons subject to B&O tax, the state itself is not a person subject to B&O tax. Id.; see also Det. No. 88-172, 5 WTD 293 (1988) (holding that a state university was a department or institution of the state and, therefore, not a person for purposes of RCW 82.04.030).

In applying this provision, we first note the taxpayer is a state agency. See, e.g., Pape v. Armstrong, 47 Wn.2d 480, 489, 287 P.2d 1018 (1955) (holding that an action against a university's board of regents is an action against the state), overruled in part on other grounds, Architectural Woods, Inc. v. State, 92 Wn. 2d 521, 598 P.2d 1372 (1979); see also RCW 35.05.010 (defining an "agency" for purposes of the APA as "any state board, commission, department, institution of higher education, or officer authorized by law to make rules . . .").

The fact that the Board is partly made up of county appointees does not, in and of itself, alter its function as a state agency. See State v. Board of Valuation, 72 Wn.2d 66, 70, 431 P.2d 715 (1967); Mochizuki v. King County, 15 Wn. App. 296, 548 P.2d 578 (1976).

With respect to the taxation of the state and its political subdivisions, the Department promulgated WAC 458-20-189 (Rule 189). In relevant part it provides:

The state of Washington, its departments and institutions, as distinct from its corporate agencies or instrumentalities, are not subject to the provisions of the B&O tax. RCW 82.04.030.

The rule does not specifically address the taxability of state boards. Other state agencies (i.e., departments and institutions of higher learning) are specifically identified as not being subject to the B&O tax. In contrast, a distinction is drawn with certain other state agencies, that is, “corporate” agencies, as being subject to the B&O tax. It appears that corporate agencies are subject to B&O tax because RCW 82.04.030 identifies a corporation as a “person” subject to the B&O tax.

In general, rules of statutory construction apply to the interpretation of administrative rules and regulations. Multicare Medical Ctr. v. Department of Soc. and Health Serv., 114 Wn.2d 572, 591, 790 P.2d 124 (1990). The language of a statute must be read in context with the entire statute and construed in a manner consistent with the general purpose of the statute. Graham v. State Bar Ass'n, 86 Wn.2d 624, 627, 548 P.2d 310 (1976).

In construing Rule 189 and the statute from which it was derived, we find no basis to treat a non-corporate state board in a manner inconsistent with other non-corporate state agencies, such as departments and institutions of higher learning. Accordingly, the B&O tax is not imposed on the fees the Board may charge for services provided in accordance with its legislative mandate.

DECISION AND DISPOSITION:

The taxpayer’s petition is granted.

Dated this 29th day of January, 1999.