

Cite as Det. No. 00-087, 19 WTD 1043 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 00-087
)	
...)	Registration No. ...

RULE 169; RCW 82.04.4297; RCW 82.04.431: B&O TAX – EXEMPTIONS – HEALTH OR SOCIAL ORGANIZATIONS – PRIVATE PAYORS. RCW 82.04.4297 provides an exemption from B&O tax for payments that qualifying health or social organizations receive from governmental agencies. In the absence of a provision that exempts payments that a qualifying health or social organization receives from private individuals, such payments are subject to B&O tax.

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

Mahan, A.L.J. – Foster home protests a letter ruling that it must pay business and occupation (B&O) tax on income from private placements and seeks a refund of taxes paid in response to this ruling.¹

ISSUE

When a foster home receives income from private placements, as opposed to income from governmental entities, is that income subject to B&O tax?

FACTS

The taxpayer is a nonprofit corporation, which is tax-exempt for federal tax purposes under section 501(c)(3) of the Internal Revenue Code, 11 U.S.C § 501(c)(3). It is governed by an eight-member board of directors and has been in business for 27 years. It provides residential

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

treatment for children from ages 6 to 18 who have behavioral or emotional problems. Its homes are licensed with the Department of Social and Health Services for foster care services. State or federal agencies pay for the care of most of the children in the taxpayer's care. In 1991 it began taking some children whose care was paid for by private individuals (referred to as "private placements").

Because of this change in its business, the taxpayer requested a ruling from the Department of Revenue's (Department) Taxpayer Information and Education Section. By letter dated April 13, 1994, the Department informed the taxpayer that income from private placements was subject to B&O tax. Subsequently, at a meeting of similarly situated taxpayers operating in the same area, the taxpayer learned that other providers were not paying B&O tax on income from private placements. The taxpayer then filed an appeal of the 1994 letter ruling, seeking a refund of B&O taxes that it had paid on income from the private placements.

ANALYSIS

RCW 82.04.220 levies a B&O tax "for the act or privilege of engaging in business activities" in Washington. Business activities subject to tax include "all activities engaged in with the object of gain, benefit, or advantage . . . directly or indirectly." RCW 82.04.140. The courts of this state have recognized that "[t]he legislative purpose behind the B&O tax scheme is to tax virtually all business activity in the state." *Impecoven v. Department of Rev.*, 120 Wn.2d 357, 363, 841 P.2d 752 (1992). As a general proposition, "[t]axation is the rule and exemption is the exception." *O'Leary v. Department of Rev.*, 105 Wn.2d 679, 682, 717 P.2d 273 (1986), quoting *Budget Rent-A-Car of Washington-Oregon, Inc. v. Department of Rev.*, 81 Wn.2d 171, 174, 500 P.2d 764 (1972).

RCW 82.04.4297 does provide an exemption from B&O tax for payments from governmental agencies to health or social organizations. In relevant part it provides:

In computing tax there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization or by a municipal corporation or political subdivision, except deductions are not allowed under this section for amounts that are received under an employee benefit plan.

RCW 82.04.431(1) defines the term "health or social welfare organization" to include:

- (1) For the purposes of RCW 82.04.4297, the term "health or social welfare organization" means an organization, including any community action council, which renders health or social welfare services as defined in subsection (2) of this section, which is a not-for-profit corporation under chapter 24.03 RCW and which is managed by a governing board of not less than eight individuals none of whom is

a paid employee of the organization or which is a corporation sole under chapter 24.12 RCW.

. . .

- (2) The term "health or social welfare services" includes and is limited to:
 - (a) Mental health, drug, or alcoholism counseling or treatment;
 - (b) Family counseling;
 - (c) Health care services;
 - (d) Therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, or physically, developmentally, or emotionally-disabled individuals;
 - (e) Activities which are for the purpose of preventing or ameliorating juvenile delinquency or child abuse, including recreational activities for those purposes;
 - (f) Care of orphans or foster children; . . .

See also WAC 458-20-169; Det. No. 95-124, 15 WTD 145 (1996). It is undisputed that the taxpayer qualifies as a health or social welfare organization and the income it receives from governmental entities is not subject to B&O tax.

Specific exemptions also exist for adult family homes, RCW 82.04.327, for day care provided by churches, RCW 82.04.339, for sheltered workshops, RCW 82.04.385, and for child care resource and referral services, RCW 82.04.3395. However, no specific exemption is provided for residential treatment of children under private placement. Absent a specific exemption, the income from private placements is subject to B&O tax in Washington.² Accordingly, we affirm the Department's previous ruling in this matter.

DECISION AND DISPOSITION:

The taxpayer's petition for a refund is denied.

Dated this 16th day of May, 2000.

² To the extent applicable, the taxpayer may still be able to utilize the small business tax credit. *See* WAC 458-20-104.