

Cite as Det. No. 95-029, 19 WTD 739 (2000)

BEFORE THE 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 Correction of Assessment of	)	
	)	No. 95-029
	)	
...	)	Registration No. . . .
	)	FY . . . /Audit No. . . .

- [1] RULE 164; RCW 48.18A; RCW 82.04.290: LIFE INSURANCE AGENTS -- SALES OF VARIABLE ANNUITIES – FINANCIAL BUSINESS. Only if the death benefits are more than incidental will sales of variable annuities be subject to the insurance laws. Because the usual variable annuity is primarily a securities product, sales of such annuities are taxed as sales of securities under the financial business rate.
  
- [2] RULE 164; RCW 48.17; RCW 48.23; RCW 82.04.260: LIFE INSURANCE AGENTS -- SALES OF NON-VARIABLE ANNUTITIES. The sale of annuities providing for a fixed amount per period over the lifetime of an annuitant are included in the licensed activities of insurance agents. Where the taxpayer is licensed under chapter 48.17 RCW and meets the requirements of the statute for the insurance agent's rate, sales of non-variable annuities are taxed under the insurance agent's rate.
  
- [3] RCW 82.04.290: SALES OF INVESTMENT ADVISORY SERVICES – FINANCIAL BUSINESS. The provision of investment advisory services with sales of security products are taxed under the financial businesses classification.

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:

. . . (Taxpayer) petitions for a correction of assessment because he alleges that income has been improperly classified for business & occupation (B&O) tax purposes.<sup>1</sup>

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

## FACTS:

Norton, A.L.J.-- Taxpayer is a Certified Financial Planner and sells insurance products, securities, fixed annuities and variable annuities. Taxpayer was audited for the period of January 1, 1990 through December 31, 1993 with an assessment issued of \$. . . .

The Department classified income earned from the sale of securities, fixed and variable annuities under the service and other activities classification. Insurance products commissions were taxed at the insurance agent rate.

As additional information Taxpayer has provided the amount of commissions earned from the sales of fixed annuities. These are as follows:

1990	\$. . .
1991	\$. . .
1992	\$. . .
1993	\$. . .

## ISSUE:

What are the proper B&O classifications for Taxpayer's business activities?

## DISCUSSION:

RCW 82.04.260(14) provides:

Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such person, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 1.1 percent.

RCW 82.04.290(2) provides in part:

Upon every person engaging with this state in banking, loan, security, investment management, investment advisory, or other financial businesses; as to such persons, the amount of the tax with respect to such business shall be equal to the gross income of the business multiplied by the rate of 2.5 percent.

The above section is effective July 1, 1993.

If Taxpayer's activities do not fall within the above classifications, they are taxed as service and other business activities during the entire period.

[1] Variable annuities are covered by chapter 48.18A RCW and require that persons selling such products must be licensed both as life insurance agents and security salesman/broker. Variable annuities have some aspects of insurance products. However, RCW 48.18A.030 provides that only

if the death benefits are more than incidental will the product be subject to the insurance laws. Therefore, the usual variable annuity is primarily a securities product and the person selling should be taxed for B&O tax purposes as selling securities. A similar result has been reached in Det. No. 90-406, 10 WTD 359 (1990), a copy of which has already been provided you by the Department.

[2] On the other hand, non-variable annuities are covered by chapter 48.23 RCW as part of the Insurance Code of Washington. Many sections in that chapter state the requirements for annuities to be sold in the state. WAC 458-20-164(4) discusses full-time life insurance salespersons as including those who sell life insurance and/or annuities contracts. Therefore, we conclude that the selling of annuities providing for a fixed amount per period over the lifetime of an annuitant are included in the licensed activities of insurance agents. Taxpayer is licensed under chapter 48.17 RCW. Taxpayer meets the requirements of the statute for the insurance agent's rate. The same result is reached in Det. No. 92-289, 12 WTD 251 (1992).

Taxpayer has provided us with the breakout of the amount of income on sales of fixed annuities and that income will be taxed under the insurance rate.

[3] The legislature added a new classification for financial businesses [RCW 82.04.290(2)] effective July 1, 1993. Taxpayer is a Certified Financial Planner and provides investment advisory services along with the sale of investment and security products. He is a registered representative with Washington State and Federal regulatory agencies.

We conclude that the activities of Taxpayer providing investment advisory services with sales of security products are taxed under this new classification of financial businesses for the period beginning July 1, 1993.

#### DECISION AND DISPOSITION:

The petition is granted in part and denied in part. The assessment is remanded to Taxpayer Accountant Administration for correction in accordance with this determination. The fixed annuity income shall be taxed at the insurance agents rates for B&O tax purposes for the entire period. After the effective date of the new classification, July 1, 1993, securities and variable annuity income shall be taxed at the financial business rate for B&O tax purposes.

DATED this 22nd day of February, 1995.