

BEFORE THE INTERPRETATION AND APPEALS SECTION
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 Ruling of Tax Liability of)	
)	No. 88-173
)	
. . .)	Registration No. . . .
)	
)	

[1] **RULE 169, RCW 82.04.385:** SHELTERED WORKSHOPS --
JANITORIAL SERVICES.

Income of a non-profit corporation whose handicapped workers provide janitorial services is exempt under the sheltered workshop statute, so long as the taxpayer complies with all other requirements of that statute, RCW 82.04.385.

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.

INTRODUCTION:

The taxpayer seeks to be recognized as a sheltered workshop, entitled to exemption from business and occupation (B&O) taxes and requests a determination of tax liability, pursuant to Washington Administrative Code 458-20-100(18).

FACTS:

Normoyle, A.L.J. -- Paraphrased, the taxpayer's letter states that a non-profit corporation was formed to provide employment for handicapped persons certified as such by the state of Washington. The corporation provides employment for individuals who otherwise could not find or keep jobs. The corporation contracts with businesses and agencies to provide janitorial and grounds keeping services. The corporation has been recognized as a sheltered workshop by the Washington State Department of General Administration, and by the United States Department of Labor. However, it has been advised by the Department of Revenue that it does not qualify as a sheltered workshop for purposes of B&O tax exemption; the basis being that the services performed don't constitute "handiwork."

ISSUE:

Does the taxpayer qualify as a sheltered workshop as defined in RCW 82.04.385? Specifically, the question is this: Are janitorial and grounds keeping services "handiwork" under that statute? We conclude that they are.

DISCUSSION:

The version of RCW 82.04.385 in effect at the time in question provided an exemption from B&O taxes for sheltered workshop income. The statute reads as follows:¹

This chapter shall not apply to income received from the Department of social and health services for the cost of care, maintenance, support, and training of mentally retarded persons at nonprofit group training homes as defined by RCW 82.33.800(2) or to the gross sales or gross income received by nonprofit organizations from the operation of "sheltered workshops". For the purposes of this section, "sheltered workshops" means rehabilitation facilities, or that part of rehabilitation facilities, where any manufacture or handiwork is carried on and which is operated for the purpose of (1) providing gainful employment or rehabilitation services to the handicapped as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or (2) providing evaluation and work adjustment services for handicapped individuals.

"Handiwork" is not defined. When words in a statute are not defined, they are given their ordinary and common meaning. John H. Sellen Const. v. Revenue, 87 Wn.2d 878 (1976). Dictionaries are often used to ascertain the common meaning of statutory language, as are opinions from other jurisdictions. Adopting the definition from Webster's New International Dictionary (2d Ed.), the Michigan Supreme Court, in Fritz v. Christian Reformed Church, 275 N.W. 499, at 500 (1937), defined handiwork as "work done by the hands; hence any work personally applied -- either to the labor or to its result."

Janitorial or grounds keeping work is work done by the hands, and would be handiwork under this definition.

In addition to the above, there is another compelling reason why we hold that the activities of this taxpayer qualify it for the B&O exemption. That is that the Legislature has specifically recognized that a service can be handiwork. RCW 43.19.520 and .530

¹ An administrative rule, Washington Administrative Code 458-20-169, contains the same language as the statute.

encourage and authorize state agencies to contract for "services . . . provided by sheltered workshops." The definition of sheltered workshops contained in RCW 82.04.385 is adopted by RCW 43.19.525. In RCW 43.19.532, one of the types of service that state agencies are authorized to contract for with sheltered workshops is copying services. If photocopying is considered by the Legislature to be handiwork, then janitorial service would also fall within the definition of that word.²

We also note that this taxpayer has been designated a sheltered workshop by the state Department of General Administration and has been deemed eligible to contract with state agencies for janitorial services. While that Department's interpretation of a revenue statute is not binding on this Department, it is understandably incongruous to this taxpayer that it is considered a workshop by one state agency but not the other.³ We resolve this incongruity by finding that the taxpayer does qualify for the B&O exemption, as a sheltered workshop.

We emphasize that this Determination is based on the facts as presented by the taxpayer concerning its activities. The corporation must comply with the other requirements of RCW 82.04.385 to qualify as a sheltered workshop. That is, the taxpayer's corporation must be nonprofit; and must, as its "primary purpose," provide "gainful employment or rehabilitation services to the handicapped."

Finally, the business and occupation tax exemption does not carry with it an exemption from the duty to collect retail sales tax under RCW Chapter 82.08, for those services which are retail sales under that chapter.

CONCLUSION:

Based on the facts presented by the taxpayer, we find that it qualifies as a sheltered workshop and shall be entitled to the B&O tax exemption contained in RCW 82.04.385.⁴

² See also, RCW 84.36.350, which provides a property tax exemption for sheltered workshops. That statute also uses the word "services".

³ We find less helpful the fact that the corporation has been certified by the U.S. Department of Labor as a sheltered workshop. A federal agency interpretation of a federal statute has little or no bearing on questions involving state statutes.

⁴ We are aware that Governor Gardner has signed House Bill 1401, which amends RCW 82.04.385. The new law goes into effect on June 9, 1988. A copy of the bill is attached, as Appendix A. We view the amendment as legislative clarification of existing law, and

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DATED this 30th day of March 1988.

do not see it as being inconsistent with the holding herein,
concerning the meaning of the word "handiwork."