

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

In the Matter of the Petition) D E T E R M I N A T I O N
For Refund of)
) No. 90-44
)
) Registration No. . . .
)

RULE 128: SERVICE B&O TAX -- REAL ESTATE COMMISSIONS
--MEASURE OF TAX -- PORTION PAID TO BROKERS IN SAME
OFFICE -- TAX CONSEQUENCES. The measure of the tax
on real estate commissions earned by a real estate
broker who pays a portion to associate brokers in
the same office on a particular transaction is the
gross commission including that portion paid to
associate brokers. Where the real estate broker has
reported the gross commission for tax purposes, the
associate brokers in the same office are not
required to pay B&O tax on the payments received by
them on the same transaction even if they assign the
payments to another person who was not involved in
the transaction.

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.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

Taxpayer seeks refund of taxes alleged to have been
incorrectly paid on amounts received by it as a result of
assignment to it of real estate commissions earned by its two
stockholders who earned the real estate commissions on
particular transactions as associate brokers in the same
office of a real estate broker who paid the B&O tax on the
gross commission.

FACTS AND ISSUES:

Krebs, A.L.J. -- [The taxpayer] is in the business of managing several real estate limited partnerships. [TAP] are the taxpayer's sole shareholders. They are also licensed real estate brokers associated with . . . , Registration No. . . . , a company of which they own 40 percent and with whom they and the taxpayer share offices.

On December 12, 1983, . . . , Inc. entered into a written agreement, copy submitted, titled "Letter of Understanding" with . . . (TAP) for splitting of commissions based upon real estate sales made by TAP where they are directly involved in the sale of the property and where the earnest money agreement calls for the commission to be paid to . . . Inc. The agreement recites that TAP have an agreement with the taxpayer that all commissions earned by TAP will be directed to the taxpayer. . . . , Inc. agreed "as a convenience" to pay all commissions that were due TAP to the taxpayer.

For the years 1984, 1985 and 1986, the taxpayer reported and paid B&O tax on the shared commissions, purportedly \$87,600, earned by and due TAP from . . . , Inc. The taxpayer was unaware of the exclusion contained in RCW 82.04.225.

On June 22, 1987, the taxpayer filed amended returns for nine (9) quarters in the years 1984 through 1986. For each of those quarters, the taxpayer reduced its taxable gross receipts by the amount of funds remitted over to it from . . . , Inc. as directed by TAP.

The taxpayer requested refund of the taxes paid on the approximate \$87,600 of commission income paid to it on the basis that the broker (. . . , Inc.) already paid tax thereon and that under RCW 82.04.255 no further tax from the taxpayer was due.

On October 30, 1987, the taxpayer's request for refund was denied. The denial stated that a corporation receiving earned commissions from a broker did not qualify and was not eligible under RCW 82.04.255 to the credit/exemption otherwise available to a "salesman or associated broker".

The taxpayer argues that it merely received funds assigned to it by its shareholders, TAP, and that no tax consequences occur because of that assignment of funds which consisted only of real estate commissions on which tax had already been paid by . . . , Inc., the licensed real estate brokerage office

involved. The taxpayer stresses that under RCW 82.04.255, no further tax was due from its shareholders/insurance brokers, TAP, and therefore, no further tax from it as assignee.

DISCUSSION:

RCW 82.04.255 provides in pertinent part:

...That where the brokerage office has paid the tax as provided herein, salesmen or associate brokers within the same brokerage office shall not be required to pay a similar tax upon the same transaction.

Application of this statute has been reinforced by the same language in WAC 458-20-128 (Rule 128).

It is clear that the legislature intended that the earned commissions paid to members of a real estate brokerage office are to be taxed only once.

In this case, TAP were licensed brokers with . . . , Inc. As such, they earned a portion of the commissions within the same brokerage office upon the same transactions, and . . . , Inc. allegedly paid the tax upon the gross commissions.

The taxpayer was the assignee of TAP's share of the commissions and so there was constructive payment to TAP when . . . , Inc. paid TAP's commissions to the taxpayer. We believe that the conditions of RCW 82.04.255 for not taxing the same real estate commission income twice have been met in this situation.

Under these circumstances, TAP owe no further tax on such commissions, the tax having already been paid by . . . , Inc. Additionally, the taxpayer owes no tax on the contributions made to it by the shareholders, TAP. Those assigned funds were neither taxable commissions or other recognized taxable business receipts. Accordingly, the taxpayer is entitled to a refund.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. The file on this matter is being referred to the Department's Audit Section for factual verification and computation of the commissions paid by . . . , Inc. to the taxpayer as assigned by TAP, and reported by the taxpayer for tax purposes. The Audit Section

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will then authorize the issuance of the appropriate refund
plus statutory interest.

DATED this 31st day of January 1990.