

Cite as Det. No. 90-84A, 9 WTD 287 (1990)

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

In the Matter of the Petition)	<u>S U P P L E M E N T A L</u>
For Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 90-84A ¹
)	
...)	Registration No. ...
)	

[1] RULE 197, RCW 82.04.080, AND RCW 82.04.090: B&O TAX --GROSS INCOME -- VALUE PROCEEDING OR ACCRUING -- PENSION TRUST FUND -- INVESTMENT ADVISOR -- FEE. Where a taxpayer manages a pension plan trust, hires an expert to advise how the funds therein ought to be invested, and the expert withdraws its own fee directly from the trust fund, the amount of such fee is not "value proceeding or accruing" to the taxpayer if the taxpayer itself is not legally entitled to receive the fee.

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: ...

DATE OF HEARING: August 25, 1988

NATURE OF ACTION:

Petition for partial refund of B&O tax on fees earned for management of a pension plan trust account.

FACTS AND ISSUES:

Dressel, A.L.J. -- See Determination 90-84, ...

¹ The original determination, Det. No. 90-084, is published at 9 WTD 157 (1990).

DISCUSSION:

[1] The denial of the requested refund in the original Determination was premised on a finding that the taxpayer was, itself, legally entitled to fees paid to another investment advisor(s). We concluded that such fees accrued to the taxpayer even though it did not actually receive them and that, consequently, they constituted B&O taxable income to the taxpayer.

The taxpayer has petitioned for reconsideration of the original Determination and has supplied additional evidence regarding the fee arrangement it had with its third party investment advisors and with its clients. This evidence establishes that the taxpayer's fee to its client is a percentage of the amount in the trust fund the taxpayer manages reduced by the amount of any investment management, administration, trustee or advisory fees charged against the fund. Thus, it is clear that the taxpayer was not legally entitled to the amounts taken as fees from the trust fund by third party investment advisors. Therefore, such amounts were not "value proceeding or accruing" to the taxpayer's account which means that they were also not part of the gross income of the taxpayer's business which means they are not subject to B&O tax. See RCW 82.04.080, RCW 82.04.090, and RCW 82.04.220.

In a previous case where we were called upon to determine which part of a gross commission amount was B&O taxable, we said that the taxable gross income "is the value which actually proceeds or accrues to the taxpayer's benefit. The full 5% commission is never received by the taxpayer, nor is the taxpayer entitled to it when one considers the structure of these transaction." Determination 88-202, 5 WTD 379, 381 (1988). The same is true here. The taxpayer was never entitled to receive the full 1% fee rate which was used as an example in the original Determination. The 1% figure was doubtless used by the taxpayer in its original petition for refund to simplify the illustration of its fee structure. The crucial missing detail has been supplied in the taxpayer's request for reconsideration.

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 21st day of May 1990.