

Cite as 9 WTD 286-79

BEFORE THE INTERPRETATION AND 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</u>
<u>N</u>	
For Ruling of Tax Liability of )	
)	No. 90-181
)	
. . . )	Registration No. . . .
)	
)	
)	

**[1] RULE 189:** ENTERPRISE ACTIVITY -- GOVERNMENTAL ACTIVITY -- ANIMAL CONTROL. Animal control activities, which include allowing people to adopt pets and charging a fee, are not enterprise activities but are instead a governmental activity, authorized by RCW 35.24.290. The adoption and/or pet license fees received are not subject to B&O tax.

**[2] RULE 189:** RETAIL SALES TAX -- GOVERNMENTAL ACTIVITY -- ANIMAL CONTROL -- ADOPTION FEES -- LICENSE FEES. Pet adoption fees or license fees are not subject to the retail sales tax. The adoption fee is not charged to purchase the animal, but for the cost of paperwork, licensing, and counseling. This is not a purchase of tangible personal property but a governmental 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.

NATURE OF ACTION:

Taxpayer requests a ruling that its dog and cat adoption fees be considered "non-enterprise" and therefore tax exempt.

FACTS AND ISSUES:

Hesselholt, A.L.J. -- Taxpayer is the animal control office for a Washington city. It charges a \$5.00 adoption fee for a cat and a \$10.00 fee for a dog. The fee is charged for processing the adoption, not as a sales price for the animal. Cat adoptions involve counseling, screening, completion of paperwork and collection of the fee. Dog adoptions involve the same items, and also the sale of a license and explanation of the leash law or dog control zone regulations. Taxpayer has been collecting sales tax on the fees it charges.

Two issues are presented: Is this activity subject to the B&O tax and should taxpayer be collecting sales taxes on the fees?

#### DISCUSSION:

RCW 35.24.290 lists some of the specific powers of a third-class city. It provides, in part, that the city council of a third-class city has the power to

(2) To prevent and regulate the running at large of any or all domestic animals within the city limits or any part thereof and to cause the impounding and sale of any such animals. . . .

WAC 458-20-189 (Rule 189) is the Department of Revenue's administrative rule regarding the taxability of governmental entities. It provides, in relevant part:

Counties, cities, and other municipal subdivisions are not subject to the business and occupation tax upon amounts derived from license and permit fees, inspection fees, fees for copies of public records, reports and studies, processing fees involving fingerprinting and environmental impact statements, and taxes, fines or penalties, and interest thereon.

The rule explains that governmental functions are not subject to tax; only utility or enterprise activities are subject to business and occupation tax on the gross receipts derived from the activity. Enterprise activity is defined as

. . . an activity financed and operated in a manner similar to private business enterprises. The term includes activities which are generally in competition with private business enterprises and are over fifty percent funded by user fees. The

term does not include activities which are exclusively governmental.

Taxpayer has explained that less than 10% of its budget comes from user fees. The rest is government funded. We find that taxpayer is exercising one of its governmental powers by engaging in this activity and not engaging in an enterprise activity. Therefore, it is not subject to the B&O tax when it is charging fees for the adoption and/or licensing of animals.

[2] The second issue presented is whether the fees should be subjected to retail sales tax. Retail sales tax is imposed on the sales of tangible personal property. In Excise Tax Bulletin 533.04.08.189, the Department listed certain enterprise and non-enterprise activities and discussed the tax consequences of each. As the ETB makes clear, even though something is not subject to the B&O tax, it may be subject to the retail sales tax. Thus, the sale of printed public information, while not subject to B&O tax, is subject to the retail sales tax, as the person is purchasing printed materials. In this case, a person is not purchasing an animal, but merely paying a fee to adopt and/or license a pet. We believe that this is akin to receiving gun permits and registration or marriage licenses, and not an actual sale of tangible personal property. We find that the adoption fee is not subject to sales tax.

#### RULING:

Taxpayer's receipts of the fees for the animal adoptions are not subject to the business and occupation tax. Taxpayer's charges for adoptions and/or licenses are not subject to the retail sales tax. Taxpayer is not required to charge tax for such items.

DATED this 26th day of April 1990.