

Cite as 9 WTD 091 (1990)

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

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Determination of)	
Tax Liability of)	No. 90-54
)	
. . .)	Registration No. . . .
)	
)	

[1] RULE 189 and RCW 82.04.419: B&O TAXES -- EXEMPTION
-- FIRE DISTRICT -- ENTERPRISE ACTIVITY -- AMBULANCE
SERVICE. An ambulance service operated in
conjunction with a volunteer fire department is not
an exclusively-governmental activity where it is
essentially in competition with private business and
is funded primarily by user fees. ETB 533.04.189.

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 petitions for correction of Department of Revenue
field officer's determination that income from its ambulance-
service activity is subject to Service B&O tax.

FACTS AND ISSUES:

Johnson, A.L.J. -- Taxpayer ambulance service is operated in
conjunction with a fire department. According to its Master
Business Application, its date of first activity was February
of 1987; the fire department was incorporated in 1948.

Taxpayer petitions the department for a finding that income
from its ambulance service is exempt from B&O tax. It
contends RCW 82.04.419 provides that fire district activities,

regardless of how financed, are exempt. Further, it argues that RCW 82.04.419 should apply, because the ambulance service is a branch of and a "natural outgrowth" of the community fire department.

DISCUSSION:

[1] Taxpayer correctly notes that fire district activities, however financed, are not subject to B&O tax.

However, where an exempt entity engages in an "enterprise activity," for which a specific charge is received, the income therefrom is subject to B&O tax. An enterprise activity is defined as one 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 which are over fifty percent funded by user fees. The term does not include activities which are exclusively governmental. WAC 458-20-189. Taxpayer has provided the information that the

basic fee for ambulance services is \$125 plus mileage. This amount does vary based upon the skill levels of the individuals involved, as well as type of supplies utilized. It was estimated that this charge covered approximately 65% of the operating costs of the ambulance system.

Because private businesses can and do operate ambulance services for which fees are received, we are forced to find that the taxpayer's activity is not strictly governmental and is subject to B&O tax in the same manner as is the activity when engaged in by a private business.

Further, Chapter 82.32 RCW requires that persons engaging in taxable activities register with the department and states that taxes are due monthly within twenty-five days after the end of the month in which taxable activities occur. Where registration and payment of taxes do not occur, the statutes require assessment of penalties and interest; and the statute of limitations for an assessment of taxes is up to seven years plus the current year for taxpayers who have not registered as required by RCW 82.32.030, 82.32.045, 82.32.050, and 82.32.100.

Finally, the Department is without authority to waive interest and penalties except in cases where the circumstances causing

the delay are beyond the control of the taxpayer. Persons engaging in taxable activities in this state are presumed to know the tax ramifications of their actions; consequently, knowledge that it is engaging in a taxable activity is not deemed to be a circumstance beyond taxpayer's control. Because no such circumstances exist in this case, we would be unable to entertain a request for cancellation of interest and penalties.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 1st day of February 1990.