

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 Correction of Assessment)	
of)	No. 90-173
)	
. . .)	Registration No. . . .
)	. . . /Audit No. . . .
)	

[1] RULE 128 and RCW 82.04.255: B&O TAX -- DEDUCTION --
REAL ESTATE BROKERS -- COMMISSIONS. Commissions
earned by real estate brokers which are shared with
parties who are not real estate brokers are not
deductible from the measure of the broker's B&O tax.

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: January 27, 1988

NATURE OF ACTION:

Real estate broker seeks to exclude commission paid to builder
from the measure of its B&O tax.

FACTS AND ISSUES:

Dressel, A.L.J. -- [The Taxpayer] is a real estate broker.
Its books and records were examined by the Department of
Revenue (Department) for the period . . . through As
a result a tax assessment, identified by the above-captioned
numbers, was issued for \$ The taxpayer appeals a part
of that assessment.

On its state excise tax return, the taxpayer took deductions for commissions paid to persons outside of its organization. The commissions were disallowed by the Department's auditor. In its appeal petition the taxpayer focuses on its relationship with [A] Corporation. [A] is a builder of homes. During the telephone conference in this matter, a taxpayer representative stated he thought [A] was also a licensed real estate broker. He stated he would send a copy of their broker's license. We have not received it. In any event [A] hired the taxpayer to list and sell the homes it built. Their agreement called for the taxpayer to rebate to [A] 20% of the sales commissions it earned for selling [A] homes. In consideration of that, [A] agreed to pay for all advertising costs associated with the sales of its homes. The taxpayer claims that this 20% was not revenue to it and that the only reason it appears in the taxpayer's records is because such an arrangement was more convenient from a bookkeeping point of view.

The taxpayer claimed that there were commissions paid to brokers other than [A] which were improperly disallowed as well. In most of these cases the other brokers obtained the customer and the taxpayer helped the customer buy or sell property in the taxpayer's area. Generally, there was a telephonic agreement only with these other brokers to pay them a portion of the taxpayer's commission. A taxpayer representative voiced the opinion that the auditor thought that for outside commissions to be deductible the outside broker had to be directly involved rather than just be a source of client referral. The taxpayer did not make it clear if it was protesting all of the non-[A] disallowed transactions or just some of them.

The issues are: 1) whether a real estate broker may deduct commissions paid to its client/builder and 2) whether a real estate broker may deduct commissions paid to a referring broker.

DISCUSSION:

[1] A real estate commission split between an originating brokerage office and a cooperating brokerage office may also be split for the purpose of the B&O tax obligation of each party. In other words each broker need only pay tax on its share of the total commission. RCW 82.04.255. WAC 458-20-128 (Rule 128). Before that may be done, it must be established that each party is a real estate broker. That has not been

Other than Acme, disposal of which is made in the discussion of the first issue.

demonstrated in this case. A taxpayer representative stated he thought [A] Corporation was a licensed broker. He offered to supply documentation to prove that. He failed to do so. Tax exemptions are strictly construed in favor of application of the tax. Yakima Fruit Growers Association v. Henneford, 187 Wash. 252. We decline to grant the one requested here. The evidence presented that [A] is an originating or cooperating broker is inadequate. Otherwise, the contested amount, paid in part for advertising, is gross income of the business and a non-deductible cost of doing business. See RCW 82.04.080.

As to the first issue, the deductibility of the partial commission paid to the taxpayer's client/builder, we deny the taxpayer's petition.

The taxpayer loses the second issue on evidentiary grounds as well. At the telephone conference in this matter, the taxpayer provided the name of only one payee¹, the Estate of [B], whose commission it sought to deduct. "Estate of [B]" doesn't sound like the name of a real estate broker. The other names whose "commissions" were disallowed on Schedule III of the audit are: We see a stockbroker or two in that group, but nobody who is immediately recognizable as a real estate broker. Indeed, the auditor stated that the exceptions listed on Schedule III were determined to be commissions paid to others for referrals rather than to participating brokers. Nothing has been submitted to us which disturbs that judgment. Inasmuch as the deduction or exemption for outside commissions is limited to real estate brokers, it was properly disallowed by the auditor.

Incidentally, with respect to split commissions, the operative statute, RCW 82.04.255, refers to "originating brokerage office" and "cooperating brokerage office." Inasmuch as the topic covered in and the title of the statute is "Tax on real estate brokers," we conclude that the terms "originating brokerage office" and "cooperating brokerage office" mean originating and cooperating real estate brokerage offices. Stock or other brokerage offices do not qualify for the deduction available in RCW 82.04.255 and Rule 128.

¹Other than [A], disposal of which is made in the discussion of the first issue.

Other than Acme, disposal of which is made in the discussion of the first issue.

As to the second issue, commissions paid to parties other than [A], we deny the taxpayer's petition.

DECISION AND DISPOSITION:

We deny the taxpayer's petition.

DATED this the 25th day of April 1990.

Other than Acme, disposal of which is made in the discussion of the first issue.