

Cite as 9 WTD 067 (1990)

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 Ruling of                         )  
  )               No. 90-32  
  )  
  )  
. . .                                     )               Registration No. . . .  
)  
  )  
  )

[1] RULE 128: & RCW 82.04.255 -- B&O TAX -- REAL ESTATE  
BROKERAGE COMMISSIONS -- NON-PYRAMIDING --  
CORPORATION. The non-pyramiding provision in RCW  
82.04.255 applies equally to an incorporated  
"associate real estate broker" and to an  
unincorporated "associate real estate broker."

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:

An attorney requests a tax ruling on behalf of its undisclosed  
client.

FACTS AND ISSUES:

Okimoto, A.L.J. -- The taxpayer describes its legal issue in  
its petition as follows:

Our client is an associate real estate broker. Her  
brokerage office pays B&O tax of 1.5% on commissions  
earned by the office and by our client, pursuant to  
RCW 82.04.255 and WAC 458-20-128. Our client does  
not pay B&O tax on the commission she receives,  
pursuant to the same statute and regulation.

Our client is considering incorporating in order to  
take advantage of pension plan options not available

to her as an individual. The corporation would obtain a brokerage license, pursuant to RCW 18.85.120, designating our client as the individual entitled to engage in real estate sales and brokerage activities, pursuant to RCW 18.85.170(1), although it may from time to time employ other individuals as salesmen. For purposes of this inquiry, we will assume that the new corporation will continue to affiliate with our client's present brokerage office.

Our question is how the B&O tax should be reported and paid for commissions earned by our client's corporation. As we interpret RCW 82.04.255 and WAC 458-20-128, the brokerage office should pay the tax on the commission payable to our client's corporation, just as it presently pays the tax on commissions earned by the client. Since corporations as well as natural persons may be brokers, the reference to "associate broker" and RCW [8]2.04.255 and WAC 458-20-128 must encompass both individuals and corporations acting under the auspices of a brokerage office.

Alternatively, our client's corporation may be considered a "cooperating brokerage office" under RCW 82.04.255 and WAC 458-20-128, in which case the corporation will pay B&O tax on commissions received. The client's "originating brokerage office" would then pay B&O tax only on commissions it retains, and not on the commissions earned by our client's corporation.

#### ISSUE:

Does the non-pyramiding provision in RCW 82.04.255 regarding real estate commissions earned by associate real estate brokers in a real estate brokerage office apply to incorporated associate real estate brokers?

#### DISCUSSION:

[1] RCW 82.04.255 states in part:

The measure of the tax on real estate commissions earned by the real estate broker shall be the gross commission earned by the particular real estate brokerage office including that portion of the

commission paid to salesmen or associate brokers in the same office on a particular transaction: ... AND PROVIDED FURTHER, 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.

WAC 458-20-128 (Rule 128) states:

The terms "real estate broker" and real estate salesman" mean, respectively, a person licensed as such under the provisions of chapter 18.85 RCW.

RCW 18.85.010(1) defines "real estate broker" as:

a person, while acting for another for commissions or other compensation... who:

(a) sells or offers for sale ...real estate ... for others;

RCW 18.85.010(3) defines "associate real estate broker" as:

a person who has qualified as a "real estate broker" who works with a broker and whose license states that he or she is associated with a broker.

RCW 18.85.010(4) specifically includes a corporation within the definition of a "person". Therefore, we believe that for purposes of RCW 82.04.255 an incorporated "associate real estate broker" is entitled to the same non-pyramiding provision in respect to B&O taxes as an unincorporated "associate real estate broker."

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(18) and is based upon only the facts that were disclosed by the taxpayer. In this regard, the department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed are actually true. This legal opinion shall bind this taxpayer and the department to these facts. However, it shall not be binding if there are relevant facts which are in existence but have not been disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently change and

no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future; however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 24th day of January 1990.