

Cite as 9 WTD 241 (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 Refund of)	
)	No. 90-114
)	
. . .)	Registration No. . . .
)	
)	Notices of Balance Due
)	

[1] RULE 224: SERVICE B&O TAX -- DEDUCTIONS -- RENTAL ADJUSTMENT -- COMMISSIONS EARNED. Where taxpayer earns commissions on sales of gasoline, the gross commissions are subject to the B&O tax without any deduction for the amount of commissions paid over to the landlord/payer of the commissions as a rental adjustment of the rent owed by the taxpayer on another premises rented from the same landlord.

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 27, 1986

NATURE OF ACTION:

Petition for allowance of a deduction of commissions earned on the basis that the commissions earned served to lower the rent owed to the payer of the commission.

FACTS AND ISSUES:

Krebs, A.L.J. -- [The taxpayer] operates a grocery/deli and self service gasoline station.

On June 12, 1985, the Department of Revenue (Department) issued a Notice of Balance Due in the amount of \$. . . which has been paid in full. The taxpayer conceded the liability but petitions for an offset of a claimed credit in the amount of \$. . . for taxes paid as Service Business and Occupation (B&O) tax on amounts reported as commissions on the sale of gasoline. The taxpayer's petition is being deemed a petition for refund of taxes incorrectly paid. The taxpayer claims that those amounts reported were not commissions but amounts received as "rental adjustments." The background for the "rental adjustments" is as follows.

On April 28, 1983, the taxpayer entered into two separate but related agreements with . . . Co. (. . .) involving a store building for the operation of the grocery/deli and an adjoining gas station. . . . is the owner of the real property and leased the grocery/deli store building to the taxpayer but not the adjoining gas station. With respect to the gas station, the taxpayer entered into a "commission agreement" under which the taxpayer would operate and take care of the gas station, and receive 1.6 cents (commission) for each gallon of gas sold. The taxpayer was to pay for the utility costs of the gas station out of the commissions received. . . . designated the selling price for the gasoline. The "commission agreement" stated that the receipts from gas sales remained the sole property of . . . without any deduction or offset of any kind.

The taxpayer deposited all amounts from the sale of gasoline into a special account in the name of At the end of the month, the total number of gallons sold were computed based on the sales receipts. The taxpayer then computed the amount of commissions earned based on the number of gallons sold. The taxpayer then deducted the commissions from the rent which was owed on the lease of the grocery/deli store. These deductions are claimed by the taxpayer to be "rental adjustments" instead of commissions and that tax should not have been paid on those amounts.

The issue is whether the "rental adjustments" based on commissions earned are not subject to tax.

DISCUSSION:

[1] The B&O tax is imposed on the act or privilege of engaging in business activities measured by the gross income of business. RCW 82.04.220. Gross income of business includes compensation for the rendition of services without

any deduction for any expense whatsoever paid or accrued. RCW 82.04.080.

In this case, the taxpayer earned commissions on the sales of gasoline at a station which it did not rent but operated for The taxpayer had rented a grocery/deli store adjoining the gas station from The mere fact that the taxpayer used the commissions to decrease the rent which it paid for the grocery/deli does not mean that it earned nontaxable credits against the rent. What is subject to tax is the compensation for the rendition of services, that is, the commissions earned from a business activity; and the law does not allow any deduction from the gross income for rent expense even if the taxpayer perceives the income earned, when it owes rent to the payer of the commissions, as a rental adjustment.

DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied.

DATED this 14th day of March 1990.