

Cite as Det. No. 04-0156, 23 WTD 377 (2004)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Correction of	)	<u>D E T E R M I N A T I O N</u>
Letter Ruling of	)	
	)	No. 04-0156
	)	
...	)	Registration No. . . .
	)	Appeal of TI&E Letter Ruling
	)	Dated August 22, 2003
	)	Docket No. . . .

RULE 169; RCW 82.04.3651: RETAIL SALES TAX -- FUNDRAISING  
ACTIVITIES – NONPROFITS. A nonprofit high school’s sale of course books  
to students is not a fundraising activity.

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:

Chartoff, A.L.J. -- A nonprofit high school (taxpayer) protests the Taxpayer Information and  
Education Division’s (TI&E) finding that its sale of textbooks to students does not qualify as a  
“fundraising activity” for purposes of RCW 82.04.3651. We conclude that the taxpayer’s book  
sales do not qualify as fundraising activities and deny the taxpayer’s petition for correction of  
TI&E’s letter ruling.<sup>1</sup>

ISSUE:

Where a nonprofit high school sells required textbooks to students, does the activity qualify for  
the “fundraising” exemption?

FINDINGS OF FACT:

. . . (taxpayer) is a nonprofit high school that is tax exempt under Section 501(c)(3) of the  
Internal Revenue Code. The taxpayer requested a letter ruling from the Department with regard  
to the taxability of its sale of books and supplies to students.

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<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

Each year, during summer vacation while the campus is closed, the taxpayer holds a book sale in the Student Activity Center. This event is limited to . . . days, and . . . hours on each day. Parent volunteers and students primarily run the event. The taxpayer considers this annual book sale event to be a fundraising activity because all proceeds of the book sale are used to further the educational goals of the organization. Students are free to purchase books from other sources.

At the book sale, the taxpayer sells new and used course textbooks and a limited number of course specific items such as locker locks and calculators. The taxpayer obtains the used textbooks for the sale by buying the books back from the students at the end of the preceding year. The taxpayer represents that students prefer to purchase the used books and that they sell out quickly. The taxpayer represents that it purchases the new textbooks and course specific items from suppliers for resale to the students. Any new textbooks or supplies that are not sold during the book sale may be returned to the supplier for a refund. Taxpayer further represents that it does not make sales to students as an agent of the suppliers.

In addition to the annual book sale, the taxpayer also sells books to students during the school year. A designated school employee makes these sales from a school office. These sales are infrequent and amount to approximately 2-3% of the total books sold each year. The Taxpayer does not consider these sales to qualify for the “fundraising activities” exemption because it makes these sales from a regular physical place of business during regular hours.

. . . [T]he taxpayer decided to request a formal ruling from the Department’s TI&E division regarding its book sales activities. On July 31, 2003, the taxpayer wrote to TI&E requesting the following rulings:

1. The annual summer book sale is a fundraising activity and qualifies for exemptions for both the retail sales tax and the business and occupations tax.
2. The costs of books that are purchased to be sold during the annual . . . day book sale event are not subject to the retail sales tax.
3. The costs of merchant fees/shipping fees paid to obtain books to be sold during the annual . . . day book sale event are not subject to the retail sales tax.
4. Proceeds from sales of books during the annual . . . day book sale event are not subject to either the retail sales tax or the business and occupation tax.
5. The costs of books that are purchased back from students at the end of the school year are not subject to the retail sales tax.
6. Proceeds from sales of books occurring outside the annual . . . day book sale event are subject to both the retail sales tax and the business and occupation tax.

TI&E, in a letter issued August 22, 2003, ruled that the book sales do not qualify for the “fundraising” exemption from tax but did not articulate the reason. Taxpayer timely appealed this ruling.

**ANALYSIS:**

Generally, persons who make sales of tangible personal property to consumers are liable for the retailing Business and Occupations (B&O) tax on the gross proceeds of sales and must collect retail sales tax on the sales. RCW 82.04.250; RCW 82.08.020(1). In the present case, the taxpayer sells text books and supplies to students. Generally, educational institutions owe retailing B&O tax on sales of books and supplies to students, when these materials are not supplied as part of the tuition charge, and must collect retail sales tax on the sales. WAC 458-20-167(3)(b), (4)(a).

RCW 82.04.3651 provides an exemption to the B&O tax for amounts received by a nonprofit organization for fund-raising activities. RCW 82.08.02573 provides that sales exempt per RCW 82.04.3651 are likewise exempt from retail sales tax. The taxpayer is a nonprofit education institution exempt from tax under 501(c)(3) of the federal internal revenue code (26 U.S.C. Sec. 501(c)(3)). The taxpayer is therefore a qualifying nonprofit organization under the statute. RCW 82.04.3651(2)(a). At issue is whether the taxpayer’s book sales are “fundraising” activities within the meaning of the exemption statute.

Washington laws and state court rulings are clear that tax exemptions are to narrowly construed. As stated in *Budget Rent-A-Car, Inc. v. Department of Rev.*, 81 Wn.2d 171, 174-75, 500 P.2d 764 (1972):

Exemptions to the tax law must be narrowly construed. Taxation is the rule and exemption is the exception. Anyone claiming a benefit or deduction from a taxable category has the burden of showing that he qualifies for it.

*See also Group Health Coop. of Puget Sound, Inc. v. Department of Rev.*, 106 Wn.2d 391, 401-02, 722 P.2d 787 (1986); Det. No. 00-099, 20 WTD 53 (2000).

A “fundraising activity” is defined in RCW 82.04.3651, which provides, in part:

The term "fund-raising activity" means soliciting or accepting contributions of money or other property or activities involving the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited, for the purpose of furthering the goals of the nonprofit organization. "Fund-raising activity" does not include the operation of a regular place of business in which sales are made during regular hours such as a bookstore, thrift shop, restaurant, or similar business ...

WAC 458-20-169 (Rule 169) further explains: “A regular place of business and the regular hours of that business depend on the type of business being conducted.”

Rule 169(4)(f)(iv) lists four examples of activities that do not qualify as “fundraising” because they involve the operation of a regular place of business from which sales are made during regular hours:

- A nonprofit broadcaster’s sale of airtime does not qualify as fundraising. Broadcasting is part of its business activity performed from a regular place of business during regular hours.
- A nonprofit organization that makes catalog sales throughout the year with a 24-hour phone line does not qualify as fundraising. The phone line is a regular place of business with regular hours, where sales orders are processed.
- A community playhouse sells concessions at a leased theatre during performances for a total of six weeks a year. The playhouse has a regular place of business (leased theatre) with regular hours for that type of business. The concessions are done at that regular place of business during regular hours.
- A nonprofit student group sets up an espresso stand that is open for two hours every morning during the school year. The espresso stand is a regular place of business with regular hours for that type of business.

Applying the above principles to the case under review, we conclude that the taxpayer’s book sale activity amounts to a bookstore. The taxpayer sells textbooks to students throughout the school year from its campus. The taxpayer’s campus is a regular place of business with regular hours. The book sales take place at this regular place of business during regular hours. Most of the books are sold during an annual . . . day event in the summer, during which students purchase the books they need for the school year. During the school year, students can purchase books from a designated school employee. At the end of the school year, the taxpayer repurchases the books for the purpose of reselling the books to students the following summer.

Admittedly, the taxpayer’s activities do not amount to a formal bookstore. However, the finding of a regular place of business depends on the nature of the activity being conducted. In this case, the activity is selling to students books that are required for class. Because students generally purchase textbooks on an annual basis, this activity can be conducted in one . . . day sale, supplemented with special orders throughout the school year. Therefore, we do not find the lack of a formal bookstore to be controlling.

The taxpayer argues that the annual summer book sale is a fund-raising event separate from the books sales during the school year. The summer sale is limited to . . . days, and is held when the school campus is closed. Parent volunteers, with the assistance of students, primarily run the event. Finally, the taxpayer notes that the students are not required to purchase the books from the school. These factors are relevant. However, we are not persuaded that taxpayer’s sales to students of books required for class is a fundraising activity. We are not dealing with a sale of

donated books, books of general interest, or a sale open to the public as would be typical of a fund raising event. Rather, we are dealing with a school's sale of required class text books to students for the upcoming year. Ultimately, Rule 167's directive that "sales of books and supplies to students where those materials are not supplied as part of the tuition charge" are subject to retail sales tax controls.

In conclusion, we find that the taxpayer's sales of required class books do not qualify for the fundraising exemption from B&O and sales tax. Accordingly, we instruct the taxpayer as follows:

- The taxpayer owes B&O tax under the retailing classification on the gross proceeds from the sale of books. RCW 82.04.250.
- The taxpayer must collect retail sales tax with respect to its sale of books. RCW 82.08.020.
- The new books sold are purchased from the suppliers "for resale" (RCW 82.04.050(1)(a)). The taxpayer does not owe retail sales tax to the supplier on the cost of books, including merchant and shipping fees. The taxpayer must provide a resale certificate to the seller stating the books are purchased for resale.
- The used books sold at the annual book sale are purchased from the students "for resale." The taxpayer does not owe retail sales tax or use tax on the cost of these books.<sup>2</sup>

#### DECISION AND DISPOSITION:

The taxpayer's petition for correction of TI&E's letter ruling is denied. We find that the taxpayer's book sales do not qualify for the fundraising exemption provided in RCW 82.04.3651 and RCW 82.08.02573.

Dated this 12<sup>th</sup> day of June 2004.

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<sup>2</sup> The students do not have an obligation to collect retail sales tax because they are presumably not in the business of making sales of books. RCW 82.08.0251. Therefore, a resale certificate is not required.