

Cite as Det. No. 14-0063, 33 WTD 528 (2014)

BEFORE THE APPEALS DIVISION
 DEPARTMENT OF REVENUE
 STATE OF WASHINGTON

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| In the Matter of the Petition for Correction of) | <u>D E T E R M I N A T I O N</u> |
| Assessment of) | |
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[1] WAC 458-20-167; RCW 82.04.170; RCW 82.04.4282: B&O TAX – DEDUCTION – TUITION FEES – SPECIALTY OR TRADE SCHOOL. A cosmetology school that grants certificates establishing that a student has met the requirements required for a license to practice the vocation of cosmetology, and does not offer a program of a general academic nature, is a specialty school, trade school, or similar institution, excluded from the definition of “educational institution” under RCW 82.04.170 and WAC 458-20-167, and is ineligible for the deduction of tuition fee income pursuant to RCW 82.04.4282.

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.

Eckholm, A.L.J. – Cosmetology schools appeal assessments of service and other activities business and occupation (B&O) tax on tuition fee income, contending that the income is deductible from gross income under RCW 82.04.4282 and WAC 458-20-167. The taxpayers’ petitions are denied.¹

ISSUE

Whether a private, for-profit, cosmetology school is an educational institution under RCW 82.04.170, and is entitled to deduct tuition fees from the measure of tax under RCW 82.04.4282 and WAC 458-20-167.

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

FINDINGS OF FACT

[Taxpayers] are affiliated entities that operate private, for-profit, cosmetology school franchises in [Washington]. The taxpayers' schools are licensed by the Washington State Department of Licensing as cosmetology schools under chapter 18.16 RCW, and are accredited by organizations recognized by the United States Department of Education as independent accrediting agencies.² The schools provide instruction and training to students seeking preparation for licensure to practice cosmetology in Washington.³

The Department of Revenue (Department) Audit Division reviewed the taxpayers' records for excise tax purposes and determined that the taxpayers had incorrectly taken deductions from gross income for income from tuition fees, pursuant to RCW 82.04.170.⁴ As a result, assessments were issued against the taxpayers for service and other activities B&O tax, interest, and penalties, in addition to other assessments not protested in this appeal.⁵

The taxpayers appealed the assessments, asserting that they qualify for the tuition fee income deduction under RCW 82.04.4282 and WAC 458-20-167 (Rule 167) because they are "educational institutions," as defined by RCW 82.04.170. The taxpayers provided evidence of accreditation and licensure as cosmetology schools, and cosmetology school curriculum.

At the hearing, the taxpayers were asked to submit additional information addressing whether their schools offer "an educational program of a general academic nature," as required by RCW 82.04.170, and addressed by the Department in Det. No. 87-297, 4 WTD 75 (1987). The taxpayers submitted two textbooks used in the taxpayers' programs, and cited the first six chapters of one of the textbooks, . . . as covering general subjects, such as: Professional Development, Salon Ecology, Anatomy and Physiology, Electricity, Chemistry, and Salon Business. These chapters comprise 155 pages of the 674-page textbook. These subjects are addressed in a basic, overview fashion, and focus on topics related to the practice of cosmetology. For example, the chapter on Salon Ecology is 20 pages and addresses three topics: Microbiology (to recognize bacteria and viruses in relationship to the spread of infection in the salon); Infection Control (to identify precautions for infection control used in schools and salons); and First Aid (simple first-aid applications for minor injuries). The majority of the textbook material focuses on the skills required to practice cosmetology, according to the specified curriculum for licensed cosmetology schools set forth in WAC 308-20-080, *infra*.

² [Taxpayer A] is accredited by the National Accrediting Commission of Career Arts and Sciences (NACCAS), and [Taxpayer B] is accredited by the Accrediting Commission of Career Schools and Colleges (ACCSC).

³ Cosmetologists, barbers, and manicurists are licensed under chapter 18.16 RCW.

⁴ [Taxpayer A]'s records were reviewed for the period April 1, 2010, through June 30, 2012, and [Taxpayer B]'s records were reviewed for the period January 1, 2009, through September 30, 2012.

⁵ Document No. . . ., issued against [Taxpayer A] on February 1, 2013, included assessments of retail sales tax of \$. . ., service and other activities B&O tax of \$. . ., use tax and/or deferred sales tax of \$. . ., interest of \$. . ., and assessment penalty of \$. . ., for a total amount of \$. . . Document No. . . ., issued against [Taxpayer B] on February 1, 2013, included assessments of retail sales tax of \$. . ., retailing B&O tax of \$. . ., service and other activities B&O tax of \$. . ., interest of \$. . ., and assessment penalty of \$. . ., for a total amount of \$. . . The taxpayers do not dispute the assessments unrelated to the tuition fee deduction.

ANALYSIS

Washington imposes a B&O tax for the act or privilege of engaging in business in the state of Washington. RCW 82.04.220. Business activities other than, or in addition to, those that are specifically enumerated elsewhere in chapter 82.04 RCW or RCW 82.04.290(1), are taxed under the service and other activities B&O tax classification. RCW 82.04.290(2). There are a number of statutory exceptions, exemptions, and deductions set out in chapter 82.04 RCW. These tax benefits are narrowly construed, and the party claiming the deduction has the burden of showing that it qualifies for the deduction. *See, e.g., Budget Rent-A-Car, Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 174-175, 500 P.2d 764 (1972). Pursuant to RCW 82.04.4282, a deduction from the measure of tax is permitted for amounts derived from bona fide tuition fees. RCW 82.04.4282.

RCW 82.04.170 defines “tuition fee” as follows:

[I]ncludes library, laboratory, health service and other special fees, and amounts charged for room and board by an *educational institution* when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution.

RCW 82.04.170 (emphasis added). RCW 82.04.170 defines “educational institution” as:

[T]hose institutions created or generally accredited as such by the state . . . *or* defined as a degree-granting institution under RCW 28B.85.010(3) *and* accredited by an accrediting association recognized by the United States secretary of education, *and* offering to students an educational program of a general academic nature, . . . *but not including* specialty schools, business colleges, other trade schools, or similar institutions.

Id. (emphasis added).

The taxpayers do not assert that they are educational institutions “created or generally accredited as such by the state,” as set forth in the first phrase of the above definition. *Id.* They assert that they meet the alternative requirements set forth in the balance of the statutory definition. The taxpayers have established they are accredited by associations recognized by the United States Secretary of Education. The primary issue presented in applying RCW 82.04.170 in this appeal, is whether the taxpayers offer educational programs of a general academic nature, or whether the taxpayers are specialty schools, trade schools, or similar institutions. Because we conclude that the taxpayers do not offer general academic programs, but rather are specialty or trade schools, we do not reach the issue whether the taxpayers are degree-granting institutions.

In Det. No. 87-297, 4 WTD 75 (1987), the Department examined whether the taxpayer (a Bible College) offered an educational program of a general academic nature in determining whether tuition fees were deductible under RCW 82.04.4282 and RCW 82.04.170. The Department answered this question in the affirmative, stating:

Although its course titles all appear to contain some Biblical or religious reference, we believe that its educational program is of a general academic nature. *The subjects taught*

include the areas of anthropology, communications, language arts, music, drama, education, physical fitness, the Greek language, etc. This is subject matter typical of a liberal arts program of a conventional, non-Biblical college or university which provides educational programs of a general academic nature. Certainly, such courses as Biblical Archaeology, History of Israel, Revelation – Scripture – Apologetics, Contemporary Theology, and Applied Anthropology for Missionaries are more academically than vocationally oriented.

As additional evidence of the general academic nature of the curriculum, the taxpayer provided this statement from. . . . Executive Director of the Northwest Association of Schools and Colleges:

Although “Bible” is included in the name of the college, it is not an institution whose sole purpose is highly specialized instruction in the Bible. Clearly, the associate and baccalaureate degree programs offered require a substantial and coherent program of general education. *The general education program provided by the college introduces students to the content and methodology of the major areas of knowledge--the humanities, the fine arts, the natural sciences, and the social sciences--and helps them to develop the mental skills that will make them more effective learners.*

4 WTD 75, at 80-81 (emphasis added).

Unlike in 4 WTD 75, here, the taxpayers’ curricula do not contain any general education requirements in core subjects, such as mathematics, English, psychology, sociology, and communications. The taxpayers’ cosmetology school curricula reflect the components required for licensure as cosmetology schools pursuant to RCW 18.16.140, that are set forth in WAC 308-20-080, as follows:

- (a) Theory of the practice of cosmetology including business practices;
- (b) At least 100 hours of skills in the application of manicuring and pedicuring services;
- (c) At least 100 hours of skills in the application of esthetics services;
- (d) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;
- (e) Scalp and hair analysis;
- (f) Hair cutting and trimming including scissors, razor, thinning shears and clippers;
- (g) Hair styling including wet, dry and thermal styling, braiding and styling aids;
- (h) Cutting and trimming of facial hair including beard and mustache design and eyebrow, ear and nose hair trimming;
- (i) Artificial hair;
- (j) Permanent waving including sectioning, wrapping, preperm test curl, solution application, processing test curl, neutralizing and removal of chemicals;
- (k) Chemical relaxing including sectioning, strand test, relaxer application, and removal of chemicals;
- (l) Hair coloring and bleaching including predisposition test and strand test, and

- measurement, mixing, application and removal of chemicals;
- (m) Sanitizing and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;
- (n) Diseases and disorders of the scalp, hair, skin and nails;
- (o) Safety including proper use and storage of chemicals, implements and electrical appliances;
- (p) First aid as it relates to cosmetology; and
- (q) No more than twenty-five percent of skills training using mannequins.

WAC 308-20-080(1).

The general topics highlighted by the taxpayers that are contained in the . . . textbook, referenced above, do not include “the content and methodology of the major areas of knowledge – the humanities, the fine arts, the natural sciences, and the social sciences,” as was stated as characteristic of a general academic program in 4 WTD 75. See 4 WTD 75, at 81. The taxpayers’ schools prepare students for licensure to practice the vocation of cosmetology; their programs are vocationally rather than academically oriented. They do not offer educational programs “of a general academic nature,” and do not meet the general academic nature requirement of RCW 82.04.170.

In 4 WTD 75, the Department also considered whether the taxpayer was a specialty school, trade school, or similar institution, excluded from the definition of “educational institution” in RCW 82.04.170:

[A]s pointed out by the taxpayer, it is probable *that the specialty school exclusion of RCW 82.04.170 was aimed at schools that teach skills rather than academics per se. . . . As a group the emphasis of these schools would seem to be on the cultivation of a trade or skill, be it vocational, artistic or recreational, rather than the pursuit of knowledge through an inquiry into the teachings and questions posed by scholars.* The latter phrase describes the learning approach of a conventional college or university and, we think, more closely parallels the taxpayer’s approach. It is concluded therefore, that the taxpayer provides a program of a sufficiently general academic nature and qualifies as an “educational institution.”

4 WTD 75, at 81-82 (emphasis added).

Again, unlike the taxpayer in 4 WTD 75, the taxpayers do not offer programs aimed at teaching academics. The taxpayers’ programs are skills-oriented programs that prepare an individual to practice the vocation of cosmetology; therefore, the taxpayers schools are specialty or trade schools and are excluded from the definition of “educational institution” set forth in RCW 82.04.170.

The taxpayers assert that they are not excluded from the definition of “educational institution” because they are not excluded as “private vocational schools” pursuant to Rule 167(2)(b)(vii). Rule 167 is the Department’s rule that implements RCW 82.04.170. Rule 167(2)(b)(vii) states that the term “educational institution” does not include, “any entity *defined as* a “private

vocational school” under RCW 28C.10.020 and/or any entity defined as a “degree-granting private vocational school” under chapters 28C.10 and 28B.85 RCW. . .” (Emphasis added.) “Private vocational school” is defined in RCW 28C.10.020(7) as, “any location where an entity is offering postsecondary education in any form or manner for the purpose of instructing, training, or preparing persons for any vocation or profession.”

. . . We do not agree with the taxpayers’ interpretation of Rule 167(2)(b)(vii) [. . .] but even if we were to interpret the rule as the taxpayers suggest, their cosmetology schools remain excluded from the definition of “educational institution” by RCW 82.04.170 because they are specialty schools, trade schools, or similar institutions, whether or not they are subject to the provisions of chapter 28C.10 RCW relating to private vocational schools.

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In summary, the taxpayers grant certificates that establish a student has graduated from an approved cosmetology school meeting the curriculum requirements required for licensing to practice the vocation of cosmetology, under chapter 18.16 RCW. The taxpayers’ schools are not educational institutions offering an educational program of a general academic nature, as required by RCW 82.04.170. Rather, the taxpayers are specialty schools, trade schools, or similar institutions, excluded from the definition of “educational institution” under RCW 82.04.170, and are ineligible for the deduction of tuition fee income pursuant to RCW 82.04.4282. The taxpayers’ petitions are denied.

DECISION AND DISPOSITION

The taxpayers’ petitions are denied.

Dated this 20th day of February 2013.