

Cite as Det No. 11-0249, 32 WTD 103 (2013)

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>
Assessment of)	
)	No. 11-0249
...)	
)	Registration No. . . .
)	Document No. . . . /Audit No. . . .
)	Docket No. . . .
)	

RULE 183; RCW 82.04.4282: B&O TAX – SINGLES ACTIVITIES CLUB MEMBERSHIP FEES AND DUES – DEDUCTABILITY. No deduction is allowed for membership fees and dues paid in exchange for significant services.

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.

Margolis, A.L.J. – A singles activity club (Taxpayer) protests a tax assessment that disallowed a claimed deduction of membership fees and dues from its measure of business and occupation (B&O) tax. We deny the petition.¹

ISSUE

Whether Taxpayer’s fees and dues were in exchange for significant services rendered to its members and are therefore not deductible under RCW 82.04.4282.

FINDINGS OF FACT

Taxpayer is a Washington for-profit corporation Its primary business activity is organizing and conducting social activities for its single members. It provides . . . events . . . which include things like skiing, wine tasting, cultural outings (such as going to shows and concerts), and dancing. Many of these events require members to pay an additional fee for admission to the event or to cover other costs associated with the activity. It is not a traditional dating service, because it does not arrange one-on-one dates for its members. Instead, it arranges social venues

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

restricted to singles . . . , where its members can meet each other, make friends with each other, and arrange their own dates. Taxpayer offers [various] membership plans [which require initiation fees and/or periodic dues]....

[Taxpayer, through its website and informational materials, presents itself as providing the following services: planning of interesting activities; offering a minimum number of activities to their customers; securing favorable rates for the social activities it offers; screening activity participants; and providing staffers who help customers become acquainted with other members.]

... Some events require additional costs to attend.

The Audit Division of the Department of Revenue (Audit) conducted a partial audit of Taxpayer's books and records, limited to a review of income for the period November 1, 2008 through March 31, 2010. On August 2, 2010, Audit issued an assessment consisting of \$. . . in B&O tax . . . , \$. . . in 10% penalty for failure to follow instructions, \$. . . in interest, and \$. . . in 5% assessment penalty, for a total assessment of \$

Taxpayer asserts that members receive nothing in exchange for their fees and dues other than the right to belong to the club which only entitles them to be invited to attend no less than . . . events at a fair market value charge.

ANALYSIS

The legislature intended to impose the B&O tax on virtually all business activities carried on within the state. *Time Oil Co. v. State*, 79 Wn.2d 143, 483 P.2d 628 (1971). The B&O tax is based on the "value of products, gross proceeds of sales, or gross income of the business, as the case may be." RCW 82.04.220. These amounts do not allow for deductions unless specifically authorized. Taxation is the rule; exemption is the exception. *Spokane County v. City of Spokane*, 169 Wash. 355, 13 P.2d 1084 (1932). The fees and dues are part of Taxpayer's gross receipts and are taxable unless specifically exempt. Exemptions and deductions are narrowly construed. *Budget Rent-A-Car, Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 500 P.2d 764 (1972).

RCW 82.04.4282 allows a deduction for bona fide initiation fees and dues. It provides:

In computing tax there may be deducted from the measure of tax amounts derived from **bona fide (1) initiation fees, (2) dues**, . . . This section shall not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge is made to members or others. **If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction under this section.**

(Emphasis added.) Thus, initiation fees and dues may only be deducted from the measure of tax when the initiation fees and dues are bona fide and the dues are not paid in exchange for any significant amount of goods or services.

WAC 458-20-183 (Rule 183), which provides instructions for amusement, recreation, and physical fitness service providers, including those whose income is from initiation fees and dues, defines terms as follows:

"Initiation fees" means those amounts paid solely to initially admit a person as a member to a club or organization. "Bona fide initiation fees" within the context of this rule shall include only those one-time amounts paid which genuinely represent the value of membership in a club or similar organization. It shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership.

"Dues" are those amounts periodically paid by members solely for the purpose of entitling those persons to continued membership in the club or similar organization. It shall not include any amounts paid for goods or services rendered to the member by the club or similar organization.

"Significant amount" relates to the quantity or degree of goods or services rendered and made available to members by the organization. "Significant" is defined as having great value or the state of being important.

Rule 183(4)(a)(i) also provides the following principle applicable to providing amusement, recreation, and physical fitness services when income is in the form of fees and dues. It states:

RCW 82.04.4282 provides for a business and occupation deduction for amounts derived from activities and charges of essentially a nonbusiness nature. The scope of this statutory deduction is limited to situations where no business or proprietary activity (including the rendering of goods or services) is engaged in which directly generates the income claimed for deduction...

The Court of Appeals stated: "The purpose of the dues deduction is to exempt from taxation only revenue exacted for the privilege of membership." *Automobile Club of Washington v. Dep't of Revenue*, 27 Wn. App. 781, 786, 621 P.2d 760 (1980). It held that dues that were related to services provided by the club were not deductible. Thus, if the revenue at issue is not exacted for the privilege of membership and the taxpayer is providing services for the revenue, the deduction does not apply. "[A]mounts which are paid to an organization in return for measurable, compensable goods and services for which persons expect to pay a charge in the marketplace are excluded from the deduction." Det. No. 86-310, 2 WTD 91 (1986). Construing the deduction narrowly, we conclude that the initiation fees and dues that Taxpayer charged were of a business nature, directly generated by business activity engaged in by the taxpayer, and thus were not deductible.

In this matter, marketing materials state [that the taxpayer's staff will screen members and plan social activities]. The membership agreement states that member benefits are comprised of Taxpayer planning and making activities or events available to members. Members paid Taxpayer initiation fees and dues in exchange for these services. The services were not nominal, as these were the very services for which members were paying Taxpayer and were not privileges of membership attendant to joining and belonging to any association or organization. The revenue generated by Taxpayer's professional services of screening members, organizing events, and conducting social activities was for providing significant services. The revenue was not for bona fide fees or dues for nominal membership of a non-business nature. Under RCW 82.04.4282, revenue from providing such services is not subject to deduction.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 10th day of August 2011.