

Cite as Det. No. 00-9859, 22 WTD 1 (2003)

September 8, 2000

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RE: ...
 Registration No. ...
 Reconsideration of Letter Determination

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RCW 82.08.02573, RCW 82.04.3651; ETA 2004: B&O TAX – RETAIL SALES TAX – FUNDRAISING ACTIVITIES – SALES BY NONPROFITS FOR FUNDRAISING ACTIVITIES – SCHOOL DISTRICTS. Although parent-teacher associations, associated student bodies, and associated student body sponsored groups may qualify for the retail sales tax exemption for fund raising activities, school districts, which are political subdivisions, are not entitled to the exemption.

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.

Dear Mr. . . . :¹

You requested a reconsideration of our February 29, 2000 letter determination, which granted in part and denied in part your petition concerning a Department of Revenue (Department) December 15, 1998 letter ruling from its Taxpayer Information and Education (TI&E) section. In that ruling, the Department concluded that [the Taxpayer] had given school districts, associated student bodies (ASB), ASB-sponsored groups, and parent-teacher associations (PTA) incorrect advice regarding the exemption for amounts received by nonprofit organizations for fund raising activities. At issue is whether these organizations are “nonprofit organizations” falling within the scope of the exemptions provided by Senate Bill 6599 (Laws of 1998, ch. 336), codified at RCW 82.04.3651, and RCW 82.08.02573.

In the letter determination, we concluded that the provisions of RCW 82.04.3651 and 82.08.02573 apply to ASB and PTA organizations (subject to the conditions addressed in Excise

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

Tax Advisory 2004.04/08.167 (ETA 2004)), but not to school districts in Washington. In your petition for reconsideration, you request a clarification that the statutes also apply to ASB-sponsored groups and argue that school districts qualify for the exemptions under both subsection (a) and subsection (c) of RCW 82.04.3651(2).

RCW 82.08.02573 provides an exemption from retail sales tax for “nonprofit organizations” that conduct fund raising activities as defined by the statute. RCW 82.04.3651(2) defines the term “nonprofit organizations” to mean:

- (a) An organization exempt from tax under section 501(c) (3), (4), or (10) of the federal internal revenue code (26 U.S.C. Sec. 501(c) (3), (4), or (10));
- (b) A nonprofit organization that would qualify under (a) of this subsection except that it is not organized as a nonprofit corporation; or
- (c) A nonprofit organization that meets all of the following criteria:
 - (i) The members, stockholders, officers, directors, or trustees of the organization do not receive any part of the organization's gross income, except as payment for services rendered;
 - (ii) The compensation received by any person for services rendered to the organization does not exceed an amount reasonable under the circumstances; and
 - (iii) The activities of the organization do not include a substantial amount of political activity, including but not limited to influencing legislation and participation in any campaign on behalf of any candidate for political office.

Subject to certain conditions, ETA 2004 explains that ASB and PTA organizations qualify as nonprofit organizations under RCW 82.04.3651. With respect to your requested clarification regarding ASB-sponsored groups, we assume you are referring only to student groups not engaged in a substantial amount of political activity. As explained in ETA 2004, such ASB-sponsored groups would also qualify for the exemption:

To be considered a nonprofit organization, however, an individual ASB must meet the qualifications in the statute and prove that it and the student groups it sponsors are not engaged in a substantial amount of political activity. The easiest way for an ASB to prove it does not engage in a substantial amount of political activity is for the regulating school district to provide that the ASB cannot engage in a substantial amount of political activity. This includes but is not limited to influencing legislative decisions at federal, state or local levels, or participating in any campaign on behalf of any candidate for political office. If the regulating school district does not provide for a limitation of political activities, the ASB must be able to prove that neither the ASB nor ASB-sponsored groups engage in a substantial amount of political activity.

Thus, ASB groups that are not involved in a substantial amount of political activity will qualify for the fund-raising exemptions.

It is important to understand that exemption from the requirement to collect sales tax is limited to those sales the ASB makes in its own name. The exemption does not apply if an ASB group makes sales as an agent for a third party. For example, sales of class jewelry for which the ASB merely collects the money on behalf of the seller continue to be subject to sales tax. The fund-raising exemption does not extend to sales made on behalf of non-qualifying organizations.

However, ETA 2004 states that school districts do not qualify for the exemption because “school districts are governmental entities which are governed by locally elected legislative boards.”

With respect to public school districts, you contend they qualify as IRC § 501(c)(3) organizations and, therefore, qualify as nonprofit organizations under RCW 82.04.3651(2)(a). In support of this proposition, you cite *Green v. Commissioner of Internal Rev.*, 82 T.C. 843 (1983). In our original decision we rejected this argument and reasoned:

Green addressed whether an annuity purchased by the Board of Education of New York was excludable, under IRC § 2039(c)(3), from the decedent’s estate. Section 2039(c)(3) provided for the exclusion of the value of an annuity received by a beneficiary under a retirement annuity contract purchased by an employer that was exempt from taxation under IRC § 501(c)(3). Thus, the exclusion depended on a finding that the employer was exempt from taxation under IRC § 501(c)(3). In holding that the annuity was excludable, the court concluded that the board could qualify as an exempt organization. In so holding, it found the board did not exercise any enforcement or regulatory powers, and it operated as a direct counterpart to similar private exempt educational organizations.

In contrast to the organization in *Green*, public school districts are generally considered to be “political subdivisions” with certain “sovereign powers”, including the ability to levy taxes. *See Texas Learning Technology Group v. Commissioner of Internal Rev.*, 96 T.C. 686 (1991); *see also* Rev. Rul. 60-384 (1960). Schools districts in Washington have the power, *inter alia*, to levy taxes, subject to public vote. RCW 84.52.053. As such, school districts in Washington exercise certain sovereign powers and are not direct counterparts to any private exempt organization in Washington. The *Green* case is distinguishable. Accordingly, we find school districts in Washington could not qualify as exempt organizations under IRC § 501(c)(3) and, thus, do not qualify as “nonprofit organizations” for purposes of RCW 82.04.3651.

No additional authority is presented on reconsideration to alter the conclusion reached in the original decision. The fact that private schools and certain public educational institutions may qualify as exempt organizations under IRC § 501(c)(3) does not support the conclusion that a school district, as a political subdivision exercising sovereign powers, also qualifies. *See also Bliss v. Allentown Public Library*, 534 F. Supp. 356, 358 (E.D. Penn. 1982) (“The scope of § 501(c)(3) encompasses the library. If defendant were, in fact, a political subdivision or a governmental agency, as it now contends [as a school district], it would not have to file the § 501(c)(3) form with the IRS as states and political subdivisions are exempt from federal taxation

and filing requirements so long as they do not occupy positions traditionally filled by private persons.”). Accordingly we do not find a basis to reverse our ruling regarding the application of subsection (a) of RCW 82.04.3651(2).

On reconsideration you also contend that school districts qualify under subsection (c) of RCW 82.04.3651(2). You reason that, because of the limits placed on lobbying activities by public agencies, citing *Telford v. Thurston County Bd. of Commissioners*, 95 Wn. App. 149, 159, 974 P.2d 886, rev. denied, 138 Wn.2d 1143 (1999), school districts qualify under subsection (c) for the exemption. The subsection at issue concerns nonprofit entities that do not engage in “a substantial amount of political activity.” The fact that there may be limitations on lobbying activities by public officials, however, does not provide legal or factual support for a contention that a school district does not engage in a significant amount of political activity as a matter of law. In the absence of any facts to support such a contention, we must deny your claim in this regard.

In addition to the specific reasons discussed above, on a more general basis, school districts appear not to qualify for the exemption. As a general matter, exemption statutes are to be construed narrowly. See, e.g., *Evergreen-Washelli Memorial Park Co. v. Department of Rev.*, 89 Wn.2d 660, 574 P.2d 735 (1978). The exemption statute at issue by its plain language applies only to “nonprofit organizations.” For tax purposes, political subdivisions of the state and nonprofit organizations are distinct entities. See RCW 82.04.030. Absent some indication that the legislature intended to include political subdivisions as qualifying nonprofit organizations, we must narrowly construe the exemption statute not to include such entities, including school districts.

For the specific and general reasons outlined above, we affirm our original decision and the position articulated in ETA 2004. Accordingly, with the exception of clarifying the decision with respect to the application of the exemption to ASB-sponsored organizations, the petition for reconsideration is denied.

This decision constitutes the final action of the Department of Revenue.

Sincerely,

Jeffrey B. Mahan
Administrative Law Judge
Appeals Division