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BEFORE THE DIRECTOR
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of)	F I N A L D E T E R M I N A T I O N
)	
)	No. 86-67A
)	
. . .)	Registration No. . . .
)	Tax Assessment No. . . .
)	

[1] **RULE 182:** BUSINESS AND OCCUPATION TAX -- COOPERATIVE MARKETING ASSOCIATION -- WAREHOUSE BUSINESS -- AGENCY -- THIRD PARTY SERVICES -- COSTS. Absent any principal-agent relationship for acquiring third party provided warehouse services, a cooperative marketing association which procures such warehouse space for members may not deduct such costs from its own gross receipts for business and occupation tax purposes.

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:

Appeal from the findings and conclusions of Determination No. 86-67 which was issued on February 19, 1986. Through that Determination the assessment of business and occupation tax was sustained upon amounts derived from grower/members of the taxpayer's fruit growers' coop association and used to acquire cold storage warehousing from third party warehouse operators.

FACTS AND ISSUES:

Faker, Sr. A.L.J. -- The facts are not in dispute. They, together with the details surrounding the audit and tax

assessment are fully and properly reported in Determination 86-67 and are not restated here.

There are three interrelated issues. More precisely, there are three contentions offered in support of the taxpayer's claimed tax deduction for the amounts in question.

1) Is the taxpayer engaged in operating a cold storage warehouse business when it procures third-party owned storage space for members when its own storage warehouse is full?

2) Does the business and occupation tax properly apply to amounts received and paid for third-party provided storage space, at both levels; does the business tax legally have a pyramiding effect?

3) Was the taxpayer merely an agent for grower/members in procuring third-party provided storage space?

TAXPAYER'S EXCEPTIONS:

The taxpayer's petition to the Director states that Determination 86-67 fails to respond to one of the contentions, in respect to the third issue set forth above. The taxpayer insists that it is not, itself, engaging in the cold storage warehouse business with regard to the third-party operated warehouse space which it acquired only as an agent for its grower/members. Moreover, the taxpayer asserts that it derived no gross income from this activity.

The taxpayer's petition includes the following pertinent assertions:

> The Determination brings about double taxation because it taxes both the lessor and lessee for allegedly engaging in the same business activity. Taxpayer, as lessee, is not engaging in the business of operating a cold storage warehouse. Here, the owner of the warehouse is receiving gross income in the form of lease payments from taxpayer. The evidence shows that said owner did in fact pay business and occupation tax on those receipts. Lessor, as one of taxpayers' grower members, is paying business and occupation tax twice on the same product, i.e., bins of fruit stored in the warehouse. Lessor pays as owner and as grower member of taxpayer. The result here is that Lessor and Lessee are being required to pay tax upon the

> same business activity when only Lessor is actually engaged in operating the cold storage warehouse. It also means that tax is being assessed on unearned income. The purpose of the taxing statutes is to tax earned income.
>
> Finally, the Administrative Law Judge is apparently not familiar with the cooperative way of doing business. The taxpayer here is merely an agent on behalf of its members. The only reason taxpayer entered into the lease was because it did not have such facilities to handle its grower members' fruit. It is not engaged in the business of operating this particular cold storage warehouse. It is the conduit for its grower members. When taxpayer is the owner of the cold storage facility, it reports its rental income and pays its share of the business and occupation tax. Here, taxpayer does not have gross receipts. The Administrative Law Judge's attempt to analogize "advances and reimbursement" with the factual pattern in this case is not successful. The third requirement of the Christensen case states that the taxpayer must not be liable for paying the bill, either primarily or secondarily, except as an agent of the client. (emphasis added) That's the only basis upon which the lease was obtained, that is, as agent for its grower members.

No other arguments or support positions were presented.

DISCUSSION:

Determination No. 86-67 does fully and properly respond to all of the taxpayer's arguments, which are simply reiterated in the taxpayer's petition to the Director with greater emphasis upon its claimed agency status. There are no new or different arguments presented and, accordingly, pursuant to the provisions of WAC 458-20-100 (Appeals) the taxpayer's request for a further conference is hereby denied.

Determination 86-67 represents the position of the Department, under the law, as uniformly and consistently applied in such cases for all persons similarly situated. The Determination concludes, as a factual finding, that the taxpayer's standard written agreement with grower/members does not provide for any agency relationship under which the taxpayer is authorized to procure storage space in the name of, or for the benefit of

such members. Moreover, the taxpayer derives income from the sale of the fruit and produce provided by the grower members, from which it withholds amounts sufficient to pay its own operating costs, including the cost of third-party provided storage space. The taxpayer is under contract to provide cold storage warehousing for its members. It operates a cold storage warehouse of its own and procures additional such warehousing when its own facility is full. It has no contractual authority to bind its members for payment to third-party storage space providers or to obligate its members to such third-parties in any other way. The Determination includes the following pertinent reply:

> Additionally, we have reviewed the taxpayer's standard "Grower Marketing Contract" for evidence of any agency agreement between the taxpayer and its member/growers for the purpose of obtaining storage facilities for their fruit. Although the taxpayer is authorized to market all fruit delivered to it by member/growers, there is no indication that the taxpayer is in any way authorized to obligate them, either singularly or collectively, as principals in storage lease contracts. The taxpayer is simply authorized to deduct from those payments made to growers any warehousing and other such costs and expenses which have been incurred.

[1] The third-party provided warehouse costs are the taxpayer's own costs of doing business for which the statutory and regulatory law provide no deduction whatever. (See RCW 82.04.080.) Amounts retained by the taxpayer from the proceeds of sale of its members fruit and produce clearly constitute gross income of the taxpayer by statutory definition.

We emphasize here that had Determination 86-67 found that the amounts retained by the taxpayer to compensate for the third-party storage space were not taxable as cold storage warehousing income, such amounts would have been subject to tax at the even higher Service business tax rate. See WAC 458-20-214(6). Again, there is no deduction of business tax provided for such amounts under the law. The taxpayer has benefited from the lower rated tax classification.

In all other respects the taxpayer's assertions are thoroughly and correctly treated in Determination 86-67. We hereby confirm the findings and sustain the conclusions of that Determination.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 5th day of August 1987.