Cite as Det. No. 88-246, 6 WTD 89 (1988)

THIS DETERMINATION HAS BEEN OVERRULED OR MODIFIED IN WHOLE OR PART BY DET. NO. 93-269ER, 14 WTD 153 (1995).

BEFORE THE DIRECTOR
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition	)	F I N A L
For Refund of	)	D E T E R M I N A T I O N
	)	
	)	No. 88-246
	)	
. . .	)	Registration No. . . .
	)	
	)	

[1] **RULE 109 AND RCW 82.04.4281:** B&O TAX -- DEDUCTION -- INTEREST INCOME -- LOANS -- LOAN BUSINESS. Interest income derived from regular and recurrent loans of surplus funds is not deductible for b&o tax purposes under RCW 82.04.4281. Persons who make such income producing loans on a regular basis are engaged in the loan business and are expressly excluded from taking the statutory deduction.

[2] **RULE 109 AND RCW 82.04.4281:** B&O TAX -- DEDUCTION -- LOANS -- INTEREST -- SURPLUS FUNDS -- THIRD PARTY LOANS -- PARENT COMPANY AS CONDUIT. Loans procured by parent companies for their subsidiary companies from third party lending sources on a straight pass through basis do not derive taxable interest income to the parent company on interest amounts paid over by the parent to third party lenders (which is distinguishable from regularly made loans by parent companies of their own surplus funds to subsidiaries which derive interest income retained by the parent company, not entitled to the b&o tax deduction of RCW 82.04.4281).

[3] **RULE 100:** ADMINISTRATIVE RULINGS -- OBITER DICTUM -- PARENT LOANS TO SUBSIDIARY COMPANYS -- "BUT FOR" ASSUMPTION. An incidental opinion expressed in an administrative determination is not a binding rule of the case and is not the basis for challenging the dispositive findings and

conclusions of the determination. The assumption that, but for its borrowing money from a parent company a subsidiary would borrow from a financial institution is obiter dictum.

[4] **RULE 109 AND RCW 82.04.4281:** B&O TAX -- DEDUCTION -- INTEREST -- MONEY MANAGEMENT -- BRIGHT LINE TEST -- OBJECTIVE STANDARDS. The bright line test criteria to determine if a claimed money management system through which a parent company funds the operation of its subsidiary companies constitutes the mere "use of money as such" entitled to b&o tax deduction under RCW 82.04.4281 are fourfold:

1) Company funds are moved back and forth between entities or accounts within the internal business structure on a daily basis;

2) The subsidiary or affiliated entities whose daily operations are funded in this manner are majority owned and controlled by the same parent or its owners;

3) There are no written evidences of indebtedness memorializing the funding activity and creating any creditor-debtor relationship between the parties, on either a demand or term payment basis;

4) The functions performed to accomplish the money movement between entities or accounts are the same as those performed by banks and other financial institutions, utilizing a daily targeted minimum or zero account balance method.

[5] **RCW 82.04.4281:** B&O TAX -- DEDUCTION -- INTEREST INCOME -- MONEY MANAGEMENT -- EVIDENCES OF INDEBTEDNESS -- GRID NOTES. The third prong of the test to determine if a parent company's funding of its subsidiary company's daily operations constitutes a tax deductible "money management system" requires that there be no written evidence of indebtedness between the parties. Where grid notes are used to create an enforceable creditor-debtor relationship, the arrangement is not a money management system entitled to the deduction of RCW 82.04.4281 for amounts received as interest income by the parent.

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.

TAXPAYER REPRESENTED BY: . . .
. . .
. . .
. . .

DEPARTMENT REPRESENTED BY DIRECTOR'S DESIGNEES:

Sandi Swarthout, Assistant Director
Garry Fujita, Assistant Director
Edward L. Faker, Sr. Administrative Law Judge

DATE OF HEARING: June 18, 1987
Supplemental Hearing: March 9, 1988

NATURE OF ACTION:

Petition for refund of Service B&O tax paid upon amounts derived as interest income from financing subsidiary companies, and request for prospective ruling upon the taxability of such amounts in connection with inter-corporate cash management systems.

FACTS AND ISSUES:

Faker, Sr. A.L.J. -- This case represents an ongoing disputed issue which has resulted in prior hearings and Determinations relating to respective audits of the taxpayer's records since January 1, 1977. The previously issued Determinations are Nos. 83-338, 86-237, 86-237A, and 86-237B. The Department has agreed to reconsider the substantive issue in light of new evidence and testimony relating to the operation of money/cash management systems. The issue in controversy raises the currently active tax refund request in the amount of $ . . ., plus statutory interest, attributable to taxes paid for the period from February 1, through April 30, 1987. The taxpayer also seeks a prospective ruling covering the same, single issue for all periods after January 30, 1987, the effective date of its Determination No. 86-237A. As that Determination concluded, "(t)he Department will consider a petition for reconsideration of this decision." The taxpayer timely petitioned the Director for such reconsideration.

In the interim, between January 29, 1987, when Determination 86-237B was issued, and the present, the Department issued Determination 86-309A on appeal of a different taxpayer, but involving the taxability of interest income from money management systems. In its argument for reconsideration the taxpayer here has likened its interest income to that ruled upon in Determination 86-309A as being deductible from b&o taxation.

The taxpayer engages in the manufacture and sale of . . . equipment, ... The taxpayer has independent subsidiary companies, separately incorporated, which are involved in the taxpayer's general business enterprises. The facts which are pertinent here, relating to the interest income issue, are succinctly stated in the taxpayer's petition as follows:

> The taxpayer does not specialize in the handling of investment funds. As a means of reducing the overall costs incurred by the taxpayer and its subsidiaries, the taxpayer invested its surplus funds in three of its subsidiaries in the form of loans at an interest rate equal to the taxpayer's average yield on its other short term investments of surplus cash (6.985% during the first four months of calendar year 1987).

> Resulting business efficiencies include reducing reliance on outside money sources, improvement of borrowing rates by aggregating collateral and other security affecting rates, economizing by centralizing and avoiding overlapping effort.
>
> <u>Relation of interest income to total income</u>.
>
> During the period in issue, February 1 through April 30, 1987, the ratio of interest from the loans to subsidiaries, as compared to the taxpayer's gross revenues from all sources, was infinitesimal:
>
> | Interest from Subsidiaries | Gross Revenues From All Sources | Ratio |
> |---|---|---|
> | $ . . . | $ . . . | .000192 |
>
> (In a prior period of 1981-85, the ratio was less than 1/2 of 1%; and in 1986, an even lower percentage.)
>
> The taxpayer does not hold itself out to the public or the business community as a source of loan funds. It is not licensed or qualified to do business as a bank or loan company and is not subject to the regulations governing such financial businesses.

The single issue for our reconsideration here is whether the taxpayer's interest income is entitled to the statutory deduction of RCW 82.04.4281. This statute, in pertinent part, provides a b&o tax deduction for, ". . . amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such. . . ."

TAXPAYER'S EXCEPTIONS:

The taxpayer argues from two alternative lines of reasoning. First, the taxpayer reasserts its position that interest income from its financial undertakings with subsidiary companies is entitled to deduction under the statute, without regard to the Department's position on money management systems, but in line with the Department's previous, though allegedly inconsistent rulings administering the statutory deduction.

Secondly, in view of the Department's ruling in Final Determination 86-309A, the taxpayer asserts that it operates an internal money management system which entails the tax deductible, "use of money as such," as ruled in the referenced Final Determination. Though not precisely identical to the money management system covered by Final Determination 86-309A, the taxpayer asserts that its method of funding its subsidiary companies on a routine basis is not significantly distinguishable. The taxpayer relies upon the rationale of Final Determination 86-309A, and seeks a refinement of that ruling to include "cash management systems" which have the same purpose and strategy as those ruled upon by the Department.

Returning to its first argument, the taxpayer reargues, albeit more forcefully, all of the positions asserted in its previous petitions to the Department throughout the years with regard to its claimed deduction for interest from subsidiary loans. Those arguments, which we have now again considered in detail, can be synopsized and itemized as follows:

1) The Department's previous Determinations are inconsistent to the extent that the taxpayer's request should be treated as a matter of first impression;

2) The taxpayer is not a "financial business" nor is it engaged in "financial business" by virtue of loaning money to subsidiaries, within the meaning of RCW 82.04.4281 as construed by the Supreme Court in John H. Sellen Construction Co. v. Dept. of Revenue, 87 Wn.2d 878 (1976). The taxpayer's ratio between interest income from loans to subsidiaries and its gross income from all sources is lower than that of any of the appellants in Sellen.

3) The taxpayer's investment via loans to subsidiaries are merely "incidental" investments under the Court's rulings in Howard S. Wright Construction co. et al. v. Dept. of Revenue, Thurston County Superior Court Docket No. 79-2-01310-0 (1981).

4) Because the taxpayer is not a "financial business" or engaged in "financial business," and because its subsidiary loans are merely "incidental" activities rather than the main purpose of its business, therefor under the proper application of the ejusdem generis rule of statutory construction the taxpayer cannot be said to be in competition with the financial businesses referred to in RCW 82.04.4281. Many of the Department's previous Determinations misapply the ejusdem generis rule by imposing a "but for" analogy and conclude that, "but for the parent company's making loans, the subsidiary company would borrow from banks--therefor, the parent company is in competition with banks.

5) The other criteria used by the Department to determine if persons are engaged in "financial business" and are thus not entitled to the statutory deduction are also inappropriate. It is not dispositive that subsidiary loans may be "regular and recurrent." The investment activity of the taxpayers in the Sellen Construction case, supra, were also regular and recurrent but were nonetheless ruled to be deductible by the Court. Even if financial activity is regular and recurrent, the ejusdem generis rule must still be applied. Also, it is immaterial that the source of the funds loaned to subsidiaries is surplus cash of the parent company rather than funding provided by third party banks for which the parent is merely a conduit or convenient "pass-through" vehicle.

6) Parent companies like the taxpayer do not have to compete with banks in order to loan money to their own "captive" subsidiaries. The entire concept of competition is inapplicable to the internal, cost effective cash management within the corporate group.

7) Though it is unnecessary to look beyond the statutory terms themselves, properly construed, it is also sound tax administration policy to allow the deduction as argued for above. Otherwise, the application of tax to interest income of this kind is merely a trap for unwary taxpayers because larger companies which can afford legal representation can employ a number of ways to legally avoid the tax, to wit:

> a) stop booking loan interest as an efficiency measuring tool;
>
> b) plan around the tax by recovering the interest in different forms, such as contributions to capital, dividends, stock purchases and redemptions, and other "equity" means available only to larger businesses;
>
> c) simply move the lending or "cash flow" management activities to an out-of-state office location.

8) Most pointedly, the taxpayer's petition relies squarely upon the decision in Howard S. Wright Construction Co. decision, supra, which it claims to be directly on point and which was not appealed further by the Department. The petition states:

> The case . . . is squarely in point on its facts. The taxpayers were general contractors. They loaned funds to "affiliated companies" which were 10 companies that were majority-owned by the taxpayers' parent or the owners of the parent. The sources of the loaned funds included banks, affiliated companies and the taxpayers' operating funds. The interest rate was prime plus 3/4%. The ratio of the interest earned by the two taxpayers to their total income averaged 1.9% and 2.4% respectively. The primary purpose of the loaning was to make the financial administration of the overall operation more efficient by decreasing costs. Financial administration was made easier by maintaining only two lines of credit instead of twelve. Loans were determined on a daily basis, with members of the corporate family having surpluses providing the funds and those with insufficient funds becoming borrowers.
>
> The taxpayers did not hold themselves out to the public or the business community as a source of loan funds. They were not licensed or qualified to do business as banks or loan companies and were not subject to the regulations governing such financial businesses.
>
> On these facts, indistinguishable from those of the instant case, the court held that the taxpayers were not financial businesses and the interest from the intercompany loans was exempt. Not having been appealed by the Department, Howard S. Wright should be followed.

The taxpayer emphasizes that the issue before us pertains only to interest from loans to subsidiary companies. Loans to employees, customers, suppliers, or shareholders are not involved. The taxpayer seeks to reserve the issue of taxability on interest from such "other" kinds of loans.

The taxpayer's second and alternative argument, though not exclusive of the points argued earlier, is that its method of funding its subsidiary companies constitutes a money management system of the type ruled upon in Final Determination 86-309A to be the tax deductible "use of money as such" under RCW 82.04.4281. The taxpayer has submitted several legal memoranda and has conferred with the Department's appeals staff on several occasions over the preceding year to argue, expand, and reargue its positions. They are most clearly presented in a supplemental memorandum of March 25, 1988, in parts, as follows:

> Cash Management In General. The financial "philosophy" of . . ., Inc. and its affiliates is that generally speaking there should be a centralized treasury management system to maximize efficiency in cash utilization for the corporate family. All relevant financial information is concentrated daily into one place, which is the treasurer's office. That office operates a comprehensive and on-going "cash management" system intended to maximize the effectiveness of equity working capital and to minimize the cost of utilizing funds from outside sources. The objective is to use the financial strength of the parent and the entire corporate family to minimize the costs of outside capital to each member of the family group. To that end, the cash management system involves a continuous two-way flow of funds between parent and subsidiaries. . . . currently differs from other companies having cash management systems principally in that it has an unusual amount of cash available. The objective of the cash management system is to use these resources to the fullest extent before any reliance is placed on outside sources. To the extent that a member of the corporate family is advanced operating funds, it is treated as a borrower and, for intercorporate measurement purposes, pays interest. See our February 12, 1988 supplement for additional details including the use of loan documentation. We add here that documentation outside the books of account is a redundancy within a corporate family and in the electronic age is cumbersome and obsolete. (Emphasis supplied.)
>
> Relation of Interest Income To Total Income. During the period in issue, February 1, through April 30, 1987, the ratio of interest income from the loans to subsidiaries, as compared to the taxpayer's gross revenues from all sources, was infinitesimal: . . .
>
> (In a prior period of 1981-85, the ratio was less than 1/2 of 1%; and in 1986, an even lower percentage.)
>
> No Competition With Banks Or Other Financial Institutions. Cash management as practiced by the taxpayer does not compete with banks or other financial institutions for at lease four reasons:
>
> (i) Cash management has entirely different objectives than the banking business. These objectives are: (a) fully utilize the cash resources of the corporate family before resorting to outside financial resources; and (b) minimize the cost of resort to outside financial resources where such resort is necessary. There is no intent to profit by the solicitation of funds from others for the purpose of re-loaning the same to realize a profit margin
>
> (ii) Banks cooperate in the practice of cash management. They offer electronic systems that can "sweep" funds into the concentration or master account from which

members of the corporate family are supplied funds on a daily basis exactly in accordance with their needs. Banks do not regard cash management as competition, but rather as a service that they can render clients who are in need of it.

(iii) There is a reciprocity, or two-way flow of funds, in a cash management system that has no place in banking.

(iv) The taxpayer does not compete with banks by holding itself out as offering the services that banks offer.

(v) The taxpayer does not compete for the customer base that banks compete for.

While the strategies of a cash management system can generally be pursued with intercompany loans that are due on a demand basis, occasionally more flexibility is desirable. A need can arise, for example, to stabilize the interest costs of a subsidiary for a period of time. Stabilization may be necessary for sound business planning. A subsidiary may need to know its costs before making certain commitments that are affected by the cost of funds. Outside financing would achieve the stabilization but interest obligations would result in higher costs. The strategy of utilizing sources suggests that the preferred alternative is to stabilize the subsidiary's interest costs with an internal loan. A term loan serves that purpose.

ISSUE

The situation presented is extremely narrow:

(i) Members of a family of corporations, parent and subsidiaries, invest excess liquid funds in other members of the corporate family in the form of loans in order to improve efficiency and lower the costs of in cash management. Typically, banks actively participate in the pursuit of these objectives by providing the day-to-day services needed to accomplish this money management.

(ii) The corporate family seeks to measure the extent to which each corporate member of the group uses the group's liquid assets and, as a means of measurement, charges interest.

The issue is whether investments of this kind made for such purposes causes a lending member of the corporate family to become a "financial business" comparable to "banking, loan or security businesses."

We emphasize that the issue presented is confined to the use of liquid funds, i.e., of Sellen-type funds, for intercompany investments. (Loans to outsiders -- e.g. loans to customers, suppliers or employees -- are not involved in this issue.)

This memorandum then restates the arguments contained in previously submitted memoranda, which are set forth earlier in this Final Determination. It then concludes:

> Specifically the following conclusions would appear appropriate:
>
> (i) The taxpayer's cash management system qualifies for exemption under RCW 82.04.4281 to the extent that interest is paid on demand obligations. Although the evolution of cash management in the electronic age is rapidly making evidentiary demand notes obsolete, the use of such notes by conscientious corporations who believed it necessary for regulatory or other reasons to "respect the corporate entity" should not disqualify the cash management system for exemption for the dual reasons that: such notes are purely evidentiary and add nothing to the basic legal obligation; and to deny exemption on that ground would merely punish conscientious, but tax-unwary, taxpayers who think they are respecting the corporate entity by maintaining evidence outside the regular books of account.
>
> (ii) An occasional term obligation (on the order of say one per audit period) may also qualify if made in pursuit of cash management objectives; but if such an obligation does not qualify it will not taint with taxability the bulk of the system which operates on a demand basis.

The supplemental memorandum of February 12, 1988, referred to above included some additional explanation of the taxpayer' method of funding subsidiary companies and additional arguments that this method should be treated as the mere "use of money as such," entitled to deduction in light of Final Determination 86-309A. That petition included the following:

> The following is a brief summary of some of the chief mechanisms of the system.
>
> Centralized Cash Collection Control. Each subsidiary manages its own check-writing activity. Bank disbursement accounts are funded daily as the checks clear in the exact amount and at the exact time required with the intent that cash will not be left idle. When a disbursement clears, funds are immediately provided by wire or other electronic means in the precise amount required. By managing the daily cash collection and disbursement activity in this way, the treasury department acts as a central funds clearinghouse for the corporate family.
>
> "Grid" Notes. A principle legal mechanism intended to reflect the respect shown for the separate corporate entities is the "short-term borrowing note" which is a demand note commonly called a "grid note." The grid note requires payment on demand of the aggregate unpaid principal amount of all outstanding short term advances. Interest is charged monthly on the average outstanding balance at a rate equivalent to the . . . average money market investment earnings rate, i.e., at the opportunity "cost" of funds. The balance will fluctuate daily reflecting the disbursement and collection of funds activity of each subsidiary, thus creating the "grid" of interest accrual. Interest due is booked at the grid rate or paid by check.

> Support For Outside Borrowing By Subsidiaries. Some subsidiaries, notably those concerned with leasing to customers or other customer financing, engaged in regular borrowing from outside sources. A part of . . .'s cash management system is the furnishing of cash to reduce the cost of obtaining cash from outside sources. One mechanism is a temporary advance, reflected through the grid, intended to reduce the peaks of reliance on outside borrowing. Otherwise such borrowing would have to be undertaken for periods beyond those for which the cash is needed with a consequent incurrence of unnecessary costs. Occasionally funds are loaned to subsidiaries on a medium-term basis, typically three years. Balancing the terms of the subsidiaries' liabilities with the terms of its receivables from outside sources accomplishes "matched funding." This improves the subsidiaries' ability to obtain funds from outside sources. As in the case of grid notes, the corporate legal department requires simple documentation reflecting the respect maintained for the separate entities.
>
> With the aid of the foregoing mechanisms the . . . treasurer's office can act as a conduit for the continuous flow of funds to and from subsidiaries with the object of maximizing the effective use of equity funds and minimizing the cost of reliance on outside sources.
>
> The foregoing facts describe a classic cash management system. It is a highly sophisticated and on-going program applied in pursuit of a goal of efficient use of cash resources. In the words of Determination No. 86-309A "(I)t is precisely the kind of marshalling of assets that is contemplated by the statutory language, 'use of money as such.'" Accordingly RCW 82.04.4281 applies.

The taxpayer argued through its petition and orally that a money management system should not lose its character as such (i.e., tax deduction treatment) merely because notes are used to document the advances of money and that actual payments of interest are received.

DISCUSSION:

The Department has consistently refused to expand the decision in Sellen Construction, supra, to cases involving regular and recurrent outright loans from parent companies to subsidiaries or to financial business activities other than the limited kinds of passive investments considered by the Court in Sellen. The kinds of investments involved in Sellen, were the investment of surplus funds in certificates of deposit and other time deposits, commercial paper, discount notes, stocks, bonds, securities, and traditional portfolio investments. The Court ruled that making such investments with personal funds did not make the investor a bank, loan company, securities company, or other similar financial business. No loans to anyone were involved in the Sellen case.

In some previous Determinations, which the taxpayer views as being inconsistent, the Department has ruled that loans, for which the parent company acted merely as a conduit for funds procured from banks and for the interest paid by subsidiaries to banks, did not result in taxable interest income to the parent-conduit. In a few other cases the Department has found isolated loans from parent companies to subsidiaries to be casual, nonrecurrent transactions resulting in minimal interest income in comparison with the total gross receipts of the parent from its primary business operations. The Department has not abandoned or departed from its stated and published position, issued after the Court's decision in Sellen, that no deduction is permitted with respect to regular and recurrent financial activities which are essentially in competition with financial businesses. (ETB 505.04.109). Two party loans of surplus funds which derive interest income are precisely such kinds of activities. A person cannot compete with a loan company any more directly or obviously than by regularly making interest bearing loans as a regular part of its business enterprise.

[1] For the foregoing general reasons and the specific reasons, supported by referenced authorities, in Determination 86-237A issued to the taxpayer on January 29, 1987, we must reject the taxpayers position on its petition for reconsideration. Stated most directly and clearly, interest derived from regular and recurrent loans of surplus funds is not deductible for b&o tax purposes under RCW 82.04.4281. Persons who make such interest bearing loans on a regular and recurrent basis are engaged in the loan business and are expressly excluded from the deduction provisions of RCW 82.04.4281. This is and consistently has been the Department's position.

The taxpayer's extensive written petitions and oral arguments have persuaded us only that the taxpayer disagrees with the Department's position. We are not persuaded, however, that this position is not supportable at law or is an improper administrative application of the statutory deduction in question here.

[2] There are, however, two points raised by the taxpayer in addressing its first argument which merit our further response here. First, the taxpayer has repeatedly asserted that the Superior Court ruling in Howard S. Wright Construction, supra, is squarely on point with its own case. That decision resulted from cross motions for summary judgment based upon a mutually agreed stipulation of facts. The Court adjudged that there was no genuine issue of material fact between the parties. Stipulation of fact no. 7 clearly stated that, "(t)he primary source of funds loaned to affiliates is borrowing by Wright and Schuchart from banks." Third party bank loans at the same rate of interest charged to the affiliate by Wright/Schuchart was the first and foremost source of the loan funds. In the taxpayer's case here, there was no borrowing by the parent company in order to provide the operating revenues to its subsidiaries. The taxpayer did not act merely as a conduit or pass-through mechanism so that subsidiaries could receive loan funds from third party sources on the taxpayer's established line of bank credit. In fact, few if any of the stated reasons for Wright/Schuchart funding their construction company affiliates with operating capital the way they did are even remotely similar to the taxpayer's situation here. Conversely, if the taxpayer had acted only as a conduit for procuring third party financing for its subsidiary companies in order to make the maintenance of banking records easier and, "financial administration of the overall operation more efficient," as was stipulated in the Wright/Schuchart case, there would be no issue before us here. As stated earlier, it has been the Department's consistent position that such pass-through arrangements do not incur b&o tax liability upon the parent/conduit on interest it receives from the affiliate borrowers in such cases.

Moreover, with respect to the remaining funds provided by Wright/Schuchart to its affiliates, i.e., the non-bank-source funding, it clearly appears to have been provided through an established money management system on a daily clearing account basis. Stipulation of fact no. 15 so reveals.

The taxpayer's position to the Director has simply been its own observation that it is not impressed with the distinction between the third party, bank loaned source of funds on one hand and the parent company's loaning its own surplus funds on the other. However, this is clearly a meritorious distinction. The financial business activity of making outright interest bearing loans of ones own money and retaining the interest earned is, obviously, not the same as acting as an intermediary between banks or loan companies and third-party borrowers without retaining any interest income. The taxpayer's failure to be impressed with this distinction does not convince us of its invalidity.

[3] The second point reargued strenuously by the taxpayer is that the so-called "but-for" rationale used by the Department in previous Determinations which have sustained Service b&o tax on interest income in cases such as this is invalid, untrue, and constitutes a misapplication of the ejusdem generis rule of statutory construction. We would agree with this position if the "but-for" rationale was the dispositive reason for asserting tax liability in such cases. Clearly, however, it is merely dicta in the Determinations which is included to further explain the Department's conclusions. It seems reasonable to assume that if a parent company did not loan money to an independently incorporated subsidiary company in need of borrowing money, then the subsidiary would borrow elsewhere, possible from a bank or loan company. However, such statements in Determinations have not been used to conclusively establish that parent companies which make any loans are always in competition with banks. No Determination bases its disposition of an appeal case on this premise. Rather, this reasoning seems logically valid to use in explaining the Department's position about a business activity regularly engaged in by a parent company which happens to be precisely and primarily the same business activity engaged in by banks and loan companies. The Department has taken the position, in applying the ejusdem generis rule to the language of RCW 82.04.4281, that a business which regularly makes loans and derives interest income from that activity is engaging in the loan business. Under reconsideration here, that position does not seem unreasonable. Again, the conclusion does not conflict with the decision in Sellen, supra. There was no recurrent loaning activity involved in Sellen.

Except for the two points focused upon above, the taxpayer's arguments in its petition for reconsideration of Determination 86-237A, included at length in the Taxpayer's Exceptions portion above, simply constitute narrative debate. As a matter of administrative ruling, they have all been sufficiently treated in Determination 86-237A and other prior Determinations issued to this taxpayer.

[4] We turn now to the taxpayer's second, alternative, and more latent contention, that its financial dealings with subsidiary companies are not loans but result from the operation of an internal money management system. The taxpayer asserts that its method of funding subsidiary companies fits squarely within the Department's ruling in Final Determination 86-309A and the taxpayer seeks a further refinement of that ruling for prospective application.

In Final Determination 86-309A the Department ruled, as a matter of first impression, that established and identifiable money management systems were distinctly different from outright loans. Such money management systems were ruled to be, "the use of money as such," as that statutory language is used in circumscribing the tax deduction of RCW 82.04.4281. The taxpayer has referred to a statement in the Determination that distinguishing between money management activities and taxable financial business transactions is difficult. The taxpayer proposes a "bright line" test for identifying money management systems which, not surprisingly, includes the very features which characterize the taxpayer's own dealings with its subsidiary companies in this case.

The taxpayer's proposal suggests that the Department should look to the purposes which stimulate the daily funding of separate subsidiary companies by their parent company. If those purposes, or "strategies" as the taxpayer calls them, are intended to efficiently utilize the cash resources of the "corporate family" and to minimize the cost of seeking financial assistance from outside the "corporate family," then all of the methodology used to accomplish these goals and objectives should be deemed to be money management. In other words any systematized method of being internally efficient in the outlay of business funds which derives additional income should be viewed as a tax deductible money management activity. The Department should not examine the financial vehicle used but should only consider the purposes for riding it. We must reject this proposal. If the Department were the legislative body, then such business principles and motives as those suggested by the taxpayer may be appropriate for our consideration. However, the Department is simply an administrative agency mandated to apply and administer the provisions of the Revenue Act. We neither have discretion or authority to restrict statutory tax imposing provisions of the law nor expand statutory tax exemptions or deductions beyond their intended scope. See Budget Rent-A-Car v. Dept. of Revenue, [81 Wn.2d 171, 500 P.2d 764 (1972)]. Moreover, we do not believe that the ruling in Final Determination 86-309A exceeds that discretion and authority.

We agree that it is appropriate to provide a bright line test for identifying a money management system through which parent companies provide the daily operational funding of their subsidiary companies which may derive amounts which are b&o tax deductible under RCW 82.04.4281. The test cannot be comprised of such abstract considerations as the "principal objectives and principal strategies" for providing money at interest. All financial transactions, however structured, can be said to somehow meet a company's fiscal goals and objectives. To consider a company's purposes for engaging in financial transactions as a basis for determining their entitlement to statutory tax deduction would lead to esoteric and subjective evaluations which obscure the test line rather than brightening it. We eschew this invitation.

Final Determination 86-309A dealt with an identifiable money management technique with systematized elements. According to the taxpayer's uncontroverted testimony in that case the electronic banking and accounting of funds was done on a daily basis without incurring any legally enforceable rights or obligations between the corporate entities supported by any written evidences of indebtedness. In most instances there was no actual payment of any interest amounts but interest was calculated by the parent company and recorded in its business books for the sole purpose of measuring the operating efficiency of the funded subsidiaries in order to determine the amount of year-end bonuses to be paid. The money management system itself, as a distinct, identifiable program, was represented to be precisely the same kind as marketed by banks who will provide these management functions for a fee. In fact, the Final Determination included pertinent excerpts from one of . . . Bank's marketed programs which . . . Bank's representatives who attended the . . . hearing had submitted as exemplary of such systems and had granted us permission to reprint. This "Automated Target Balance System" has clearly distinguishable features. After careful consideration, we determined that the handling of business funds in this precise manner merely constituted the "use of money as such" within the meaning of RCW 82.04.4281 and that amounts derived therefrom were b&o tax deductible. For all of the reasons stated in that Final Determination, and now further informed as a result of four other appeals wherein tax relief is sought on these grounds, we are satisfied that this was a valid and legally supportable conclusion. We are now requested to go beyond the ruling in that Final Determination and/or to further refine it by establishing the criteria for identifying tax deductible money management systems. The Department is prepared and perhaps obligated to do so.

We agree that a bright line test is possible but insist that it must be controlled by objective and standardized characteristics of the money management system itself. Thus, the test will examine how the system functions rather than why the system functions. The criteria for meeting the test to determine if a claimed money or cash management system constitutes the mere "use of money as such" so that amounts derived as interest are tax deductible under RCW 82.04.4281 are these:

> 1) Company funds are moved back and forth between entities or accounts within the internal business structure on a daily basis;
>
> 2) The subsidiary or affiliated entities whose daily operations are funded in this manner are majority owned and controlled by the same parent or its owners;
>
> 3) There are no written evidences of indebtedness memorializing the funding activity and creating any creditor-debtor relationship between the parties, on either a demand or term payment basis;
>
> 4) The functions performed to accomplish the money movement between entities or accounts are the same as those performed by banks and other financial institutions, utilizing a daily targeted minimum or zero account balance method.

It must be stated here that the pertinent statutory law has not changed. There has been no amendment to RCW 82.04.4281 expressly dealing with money management concepts. Neither does this Final Determination or Final Determination 86-309A represent a change in the Department's administration of the statutory deduction. Rather, they represent the application of the Department's understanding of the statutory provisions, consistent with past applications, in the face of new and technologically advanced electronic money management techniques. These rulings, rather than developing arbitrary tests or criteria, seek to apply the statutory language under the rules of statutory construction and in light of stated economic and policy considerations which the Department views as being inherent in the statutory language itself. Again, we recognize that these are specific matters of first impression before the Department. Our ruling in Final Determination 86-309A could be viewed by a Court as an unwarranted liberal construction of a statutory deduction rather than strict construction of tax exclusionary provisions mandated by the rules of construction. See Group Health Coop of Puget Sound, Inc. v. State Tax Comm., 72 Wn.2d 422 (1967). We feel constrained by those rules and case law decisions from broadening the ruling of Final Determination 86-309A to include arm's length financial dealings between closely held, related business entities which do not satisfy the criteria for money management systems which are further refined and itemized in the bright line test above.

[5] Applying the test to the financial activities of the taxpayer in this case, we find that the third criteria is not satisfied. The taxpayer utilizes grid notes, which it explains to be daily demand notes, which provide indelible evidence of its creditor-debtor relationship with its subsidiaries. Furthermore, the taxpayer assures and actually receives payment of the funded obligations by its subsidiaries. These elements of the taxpayer's financial arrangements with its subsidiaries are meaningfully distinguishable from the taxpayer's case treated by Final Determination 86-309A where there were no executed evidences of indebtedness used and, usually, no actual payments of interest received by that taxpayer. In that case the taxpayer testified that the internal accounting of interest was exclusively done for the purpose of maintaining some record of the operating efficiency of the subsidiary companies. Clearly, no notes or legally enforceable evidences of indebtedness between the parties are needed or in any way useful to gauge and control operating efficiency. In the taxpayer's case before us here we are not satisfied with the taxpayer's oral reaction at its hearings that its grid notes are simply utilized for the same, informal, internal accounting controls. Neither are we persuaded that there would be any legally enforceable obligation for repayment by the subsidiaries absent some notes or other hard evidence of debt. No legal support for that position has been cited or referenced. In the absence of some enforceable evidence of indebtedness owing to the taxpayer/parent company, we fail to perceive how such a claimed obligation could be asserted against the subsidiaries or third party creditors of the subsidiaries. This is one of the dispositive reasons that the criteria of nonenforceable indebtedness weighed so heavily in Final Determination 86-309A and has been expressly included as a factor in the bright line test set out above. As stated in the concluding paragraph of discussion in Final Determination 86-309A, "(t)he Department's position with respect to amounts derived from outright, interest bearing loans between parent and subsidiary companies . . . remains unchanged." Without the benefit of legislative action or judicial enlightenment on this question, the Department cannot simply ignore the notes which support the subsidiary companies' obligations to repay the daily funded amounts. To do so would be to so broadly and liberally construe the deduction of RCW 82.04.4281 that any amounts received or accruing to the lender from any kind of loans or other cash outlays would qualify for nontaxability.

It appears to us, as the taxpayer has testified, that the taxpayer may be able to restructure its funding operations in such a manner as to satisfy the bright line test for tax deduction of interest booked in respect to its financial activities with its subsidiary companies. If so, so be it. For past periods, however, the testimony and evidence does not support the taxpayer's entitlement to the statutory deduction or that any tax refund is in order.

DECISION AND DISPOSITION:

The taxpayer's petition for reconsideration of Determination 86-237A and for tax refund for the period from February 1, through October 30, 1987 is denied. The taxpayer's request for a tax ruling covering its prospective tax liability involving its money management system has been satisfied under the guidelines set forth herein.

DATED this 29th day of June 1988.