

Cite as 10 WTD 359 (1990).

APPEALS DIVISION

BEFORE THE INTERPRETATION AND  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

Petition for Refund and	)	<u>D E T E R M I N A T I O N</u>
Determination of Tax Liability	)	
	)	No. 90-406
. . .	)	Registration No. . . .
	)	
	)	

[1] RCW 82.04.260(14): B&O TAX - COMMISSION INCOME - ANNUITY SALES - APPLICABLE RATE. Commission income earned from the sale of annuities is subject to B&O tax at the service rate rather than the insurance agent's rate.

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:

The taxpayer seeks a ruling on the applicable rate for commissions earned on the sale of annuities.

FACTS AND ISSUES:

Roys, Sr. A.L.J.--The taxpayer sells single premium annuity policies to casualty insurers in conjunction with "Structured Settlements". In 1989, the taxpayer wrote the Department regarding the proper business and occupation tax classification applicable to its business. The letter provided the following information for the Department's consideration:

We are licensed life insurance agents, as required by the State of Washington, to sell annuities to insurance companies for the purpose of funding settlements on serious injury cases. In addition we periodically incorporate a life insurance policy into the settlement package along with the

annuities. At any rate, the State of Washington requires us to be licensed insurance agents in the State of Washington and also requires us to maintain continuing education credits in insurance for the State of Washington. Under the circumstances, I do not see how we could be considered anything other than insurance agents and therefore should pay B&O tax at the insurance agents rate.

The Department's Taxpayer Information and Education Section responded to the inquiry. The taxpayer was advised that if the person making annuity sales was required to be licenced under Chapter 48.17 RCW, then the special rate for insurance agents would apply. (letter of [July 1989])

The taxpayer requested a refund of the amount it had "overpaid" at the Service B&O rate. The taxpayer's refund petition was denied by a letter dated [in February 1990] from a Department of Revenue excise tax examiner. The letter stated that the taxpayer was required to pay B&O tax based on the "service rate" of 1.5% rather than the "insurance rate" of 1.1%. The taxpayer was advised that the Department of Revenue Audit Division's policy was to allow the special rate for insurance commissions only on transactions which incur the premium tax governed by the Insurance Commission. Because of the previous advice, the taxpayer's income from [April 1989] to [December 1989] was accepted as reported at the insurance agent's rate.

The taxpayer protested the denial of the refund. That taxpayer's letter stated that it understood that there was no premium tax on the amounts paid for the life insurance or type of annuities that it sells. The taxpayer asked to be advised of the steps that needed to be taken to appeal or, in the alternative, to be referred to the RCW that states that B&O tax is owing at the Service rate rather than the insurance rate.

#### DISCUSSION:

RCW 82.04.260(14) provides for a special tax classification for insurance agents. That statutory section provides:

Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross

income of such business multiplied by the rate of one percent. (Business tax surcharge raises the rate to 1.1%)

RCW 48.17.010 defines an "agent" as "any person appointed by an insurer to solicit applications for insurance on its behalf."

RCW 48.17.020 defines a "broker" as a person who acts on behalf of the insured to procure insurance. An insurance "solicitor" is defined in RCW 48.17.030 as "an individual authorized by an agent or broker to solicit applications for insurance as a representative of such agent or broker and to collect premiums in connection therewith."

The taxpayer is not acting as an insurance agent, broker, or solicitor to procure insurance, but is required to be licensed as a life insurance agent. The licensing requirement is imposed in RCW 48.18A.060 which provides:

No person shall be or act as an agent for the solicitation or sale of variable contracts except while duly appointed and licensed under the insurance code as a life insurance agent with respect to the insurer, and while duly licensed as a security salesman or securities broker under a license issued by the administrator of securities pursuant to the securities act of this state; except that any person who participates only in the sale or offering for sale of variable contracts which fund corporate plans meeting the requirements for qualification under sections 401 or 403 of the United States internal revenue code need not be licensed pursuant to the securities act of this state.

The special B&O classification for insurance agents provided by RCW 82.04.260(14) only applies to persons who are "engaging within this state as an insurance agent, insurance broker, or insurance solicitor." We believe that "such licensed activities" in RCW 82.04.260(14) only includes soliciting applications for insurance.

Although the taxpayer is required to be licensed as a life insurance agent, the taxpayer is not engaged in business as a life insurance agent. RCW 48.01.040 defines insurance "as a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies." Black's Law Dictionary defines life insurance as "the kind of

insurance in which the risk contemplated is the death of a particular person."

If "variable contracts" fell under the definition of insurance in RCW 48.01.040, the licensing requirement in RCW 48.18A.060 would not have been necessary. The taxpayer would have been required to be licensed as an insurance agent by RCW 48.17.060 which provides that no person shall act as an "agent, broker, solicitor, or adjuster" unless licensed by the state.

Also, the income from the sale of variable contracts would be subject to the premium tax. Chapter 48.14 establishes a tax on insurance premiums. "Premium" as used in the insurance code means all sums charged for an insurance contract. RCW 48.18.170.

We conclude that the special "insurance agents" classification is applicable only to income from the sale of insurance contracts which are subject to the insurance premiums tax. Income received from the sale of variable contracts would be subject to tax at the "service" rate as provided by RCW 82.04.290.

#### DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied.

DATED this 24th day of December 1990.