

Cite as Det. No. 90-252, 10 WTD 41 (1991)

THIS DETERMINATION HAS BEEN OVERRULED OR MODIFIED IN WHOLE OR PART BY DET. NO. 04-0022E, 23 WTD 198 (2004) AND DET. NO. 04-0023E, 23 WTD 206 (2004).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	D E T E R M I N A T I O N
For Determination of Tax)	
Liability and Request for)	No. 90-252
Refund of)	
)	
...)	Registration No. ...
)	
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)	

- [1] RULES 118 AND 168: RENTAL OF REAL ESTATE -- PROVIDING CONGREGATE CARE FACILITIES TO MENTALLY ILL ADULTS. Facilities which provide residential care to mentally ill adults are "similar institutions" to nursing and rest homes for purposes of Rule 168. Therefore, revenues attributable to professional services rendered to residents are taxable under the Service and Other classification of the business and occupation tax. Amounts the taxpayer receives from the county for providing lodging are revenues from the rental of real estate exempt from the business and occupation tax.
- [2] RULE 119: FURNISHING MEALS -- RETAIL SALES TAX. Residential care facility which provides food service to residents falls within Rule 119 exemption for sanitariums, rest homes and "similar institutions," and therefore, is not engaged in the business of making retail sales of meals.

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 determination of tax liability pursuant to WAC 458-20-100(18) regarding whether it is entitled to an exemption from the business and occupation tax for amounts received in furnishing lodging and meals to mentally ill adults.

FACTS:

Heller, A.L.J. -- The taxpayer operates a congregate care mental health facility for mentally ill adults. The taxpayer contracts with . . . County to provide room and board to individuals the Department of Social and Health Services ("DSHS") determines to be eligible who are either chronically mentally ill or seriously disturbed within the meaning of WAC 275-56 ("clients"). The taxpayer's major source of revenue is its contract with . . . County. Some clients do not meet DSHS guidelines for financial assistance and must pay all or a portion of the cost of their room and board. The contract provides for payments to the taxpayer on a flat fee per day per client.

The taxpayer is licensed by the state of Washington as a boarding home. Clients are eligible to remain residents of the taxpayer's facility as long as they actively follow a treatment plan. The taxpayer does not furnish acute treatment to the clients, but is required to employ a mental health coordinator to implement the residential portion of the treatment plan. The mental health coordinator ensures that each client is enrolled with a mental health treatment agency and provides periodic status reports to the county. In addition, the coordinator supervises the clients and promotes an environment which is conducive to treatment.

On admission, each client is assigned to either a single or double occupancy room. In the case of double occupancy room, each client is given a great degree of latitude in selecting a potential roommate. The door to each room has a lock to which the occupant has a key. The facility staff also has a key which it may use to enter for housekeeping and emergency purposes.

Each client executes an admission agreement with the taxpayer. Under the agreement the client agrees to abide by certain rules applicable to the program. If a client repeatedly violates these rules, residency can be terminated on thirty days notice. According to the taxpayer, a client's average length of stay is over one year.

The taxpayer also operates a dining facility which provides meals to the clients, their guests, and the taxpayer's staff. The dining facility does not serve the general public.

ISSUES:

1. Are amounts received by the taxpayer for furnishing residential care to its clients subject to the business and occupation tax?
2. Is the taxpayer engaged in the business of making retail sales of meals for which it is taxable under the Retailing classification of the business and occupation tax?

DISCUSSION:

[1] Lodging. According to RCW 82.04.390, the business and occupation tax is not applicable to the sale of real property. WAC 458-20-118 ("Rule 118") is the duly adopted administrative regulation pertaining to the sale of real estate. Rule 118 includes the renting of real estate within the exemption of RCW 82.04.390. Rule 118 provides in pertinent part as follows:

Amounts derived from the sale and rental of real estate are exempt from taxation under the business and occupation tax. However, there is no exemption of amounts derived from engaging in any business wherein a mere license to use or enjoy real property is granted. . . . A lease or rental of real property conveys an estate or interest in a certain designated area of real property with an exclusive right in the lessee of continuous possession against the world, including the owner, and grants to the lessee the absolute right of control and occupancy during the term of the lease or rental agreement. . . . It is presumed that the sale of lodging by a hotel, motel, tourist court, etc., for a continuous period of thirty days or more is a rental of real estate. (Emphasis supplied.)

Here, individual rooms are provided to clients. Each occupant has the exclusive right to continuous possession of the room against the world. Although a client may be required to share a room in certain cases, the room sharing arrangement is completely consensual between the occupants. The fact that the facility staff has the right to enter the room to do housekeeping or to handle an emergency is comparable to the rights of entry retained by hotel management.

The taxpayer requires the clients to enter into an admission agreement in order to become a resident. In many respects this agreement is comparable to a lease agreement. The admission agreement provides that all residents will be given at least thirty days prior written notice of the termination of residency. This has the effect of granting the client the right to lodging for a period of thirty days or more. According to the taxpayer, the average stay of a resident is over one year. Although the taxpayer does not operate a hotel, a sufficient basis exists to conclude that the presumption afforded in Rule 118 is also applicable under these facts. For these reasons we conclude that the taxpayer engages in the business of renting real property to its clients.

Our analysis does not end here however. The fact that the facility provides services to the clients makes the lodging provided by the taxpayer somewhat different from a traditional rental of real estate. Here, the taxpayer has trained personnel on staff which supervise the clients and provide a somewhat structured environment for the clients to promote treatment. While this may not rise to the level of acute mental health care, it is nevertheless a personal service rendered to the clients. There is little question that a portion of the fee which the taxpayer receives is attributable to these services.

WAC 458-20-168 ("Rule 168") is the administrative rule governing the taxation of hospitals and related medical care facilities. Rule 168 provides as follows:

The gross income derived from personal and professional services of hospitals, nursing homes, convalescent homes, clinics, rest homes, health resorts, and similar health care institutions is subject to business and occupation tax under the service and other activities classification. (Emphasis supplied.)

We believe that a congregate care facility such as the one under consideration is an institution similar to a sanitarium, nursing home or rest home. As such, revenues generated from the furnishing of services are subject to tax under the Service and Other classification.

The primary issue is allocating the amounts received from the county between the lodging and service functions performed by the taxpayer. To the extent the taxpayer is capable of segregating amounts received from the county or clients attributable to the furnishing of lodging, these amounts will fall within the Rule 118 exemption from the business and occupation tax. If these amounts cannot be segregated with reasonable accuracy, all amounts will be treated as received from the performance of services and taxed as such.

[2] Meals. WAC 458-20-119 ("Rule 119") is the administrative regulation which governs the taxability of sales of meals. According to Rule 119, all persons making sales of meals, upon which the retail sales tax applies, are taxable under the Retailing classification of the business and occupation tax. Rule 119 provides the following exemption from the retail sales tax:

The serving of meals by hospitals, rest homes, sanitariums and similar institutions to patients as a part of the service rendered in the conduct of such institutions is not subject to the retail sales tax. In cases where compensation of nurses or attendants employed by hospitals includes the furnishing of meals in addition to the stated cash wage, the same rule applies. (Emphasis supplied.)

As in the case of Rule 168, the taxpayer is considered to be an institution similar to a rest home or sanitarium. Therefore, the taxpayer will not be considered to be engaged in the business of making retail sales of meals to its residents. According to the rule, the furnishing of meals is considered a part of the service provided the residents. Therefore, the amounts received from the client or county with respect to the furnishing of meals will be subject to the business and occupation tax under the Service and Other classification. The taxpayer will not be required to collect the retail sales tax on the meals it furnishes.

DECISION AND DISPOSITION:

Amounts received by the taxpayer for providing lodging to clients are revenues from the rental of real estate to the extent they can be reasonably segregated from other revenues received. As to the furnishing of meals, we find that the taxpayer is subject to the Service and Other classification of the business and occupation tax on amounts received which are attributable to meals.

The file shall be referred to the Audit Section with instructions to review the taxpayer's records in order to determine if the taxpayer's revenues can be reasonably segregated between rentals of real estate and the performance of services. If such an allocation can be made, the taxpayer will be entitled to a refund of taxes paid attributable to the rental of real estate.

DATED this 22nd day of June 1990.