Cite as 10 WTD 368 (1990).

BEFORE THE INTERPRETATION AND APPEALS DIVISION

DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In The Matter of the Petition For Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 91-005
. . .	)	Registration No. . . .

[1] RCW 82.04.4298: RESIDENTIAL PROPERTY OWNERS' ASSOCIATION -- DEFINITION -- COMMONLY-HELD PROPERTY -- DUES FOR MAINTENANCE. Dues received by a residential property owners' association for the maintenance, repair, improvement and/or management of the commonly-held property (tennis courts and swimming pool) are NOT deductible from the B&O tax when not all of the owners of residential property within the area are owners of the property.

[2] RCW 82.04.4298; RULE 114: RESIDENTIAL PROPERTY OWNERS' ASSOCIATION -- DUES -- PARK AREAS -- SIGNIFICANT AMOUNT OF GOODS AND SERVICES. Amounts paid for the maintenance, repair, improvement and/or management of commonly-held park areas that are open to the public for no charge are not paid by the members of the managing organization for "significant amounts of goods and services" as required by Rule 114. Det. 86-55A, 2 WTD 353, (1987).

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: . . .

NATURE OF ACTION:

Taxpayer protests the assessment of tax on dues paid by its members for the maintenance and upkeep of common areas.

FACTS AND ISSUES:

Hesselholt, A.L.J. -- Taxpayer is a non-profit corporation and association of property owners. It holds and maintains certain property for the residents of a development. The property includes a small park, tennis courts and a swimming pool. According to its Articles of Incorporation, if the corporation is dissolved, the net assets are "to be distributed to the certificate holding geographic members at the time of dissolution. . . ." According to the deed gifting the property to the association, the property is to be used "solely for recreational facilities for the benefit of homeowners within the plats of [the development] and shall be owned by a non-profit corporation for said purpose. . . ." The organization itself is voluntary; not all of the owners of property within the division are members of the association. Property owners who are not members do not have an ownership interest in the property.

Taxpayer's books and records were audited by the Department of Revenue for the period January 1, 1984 through September 30, 1988. An assessment was issued in the amount of $ . . . , which included tax and interest. The Department assessed tax on the dues received by taxpayer from its members on the basis that it was engaging in business as an "amusement and recreation business" under RCW 82.04.050(3) and WAC 458-20-183.

Taxpayer protested the assessment, arguing that (1) it is an association of residential property owners under RCW 82.04.4298; (2) RCW 82.04.050(3) does not apply to it; or (3) if the collection of dues is a sale at retail, taxpayer is entitled to deduct 25% of the dues it collects because they are paid for the maintenance of grass and land which is open to the public at large, and therefore does not entitled the payor to receive any goods or services in exchange for the payments under Rule 114.

DISCUSSION:

RCW 82.04.4298 provides as follows:

> (1) In computing tax there may be deducted from the measure of tax amounts used solely for repair, maintenance, replacement, management, or improvement

> of the residential structures and commonly held property, but excluding property where fees or charges are made for use by the public who are not guests accompanied by a member, which are derived by:
>
> (c) An association of owners of residential property from a person who is a member of the association. "Association of owners of residential property" means any organization of all the owners of residential property in a defined area who all hold the same property in common within the area.

Emphasis added.

[1] Here, taxpayer is an association of residential property owners all living within a certain subdivision. The statute requires that to be considered an "association of owners of residential property" the organization must consist of all of the owners of property within the area, and they must all hold the same property in common. Here, membership in the association is voluntary; not all owners of property within the subdivision are members of the association. Ownership rights in the property accrue only to the members of the organization. Exemptions to a tax are narrowly construed; taxation is the rule and exemption is the exception. Budget Rent-a-Car v. Dept. of Rev., 81 Wn.2d 171, 174 (1972). Taxpayer's petition is denied as to this issue.

Taxpayer has also asserted that it is not subject to RCW 82.04.050(3). That subsection provides that:

> (3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal business or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities: (a) Amusement and recreation businesses including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows and others. . . .

Taxpayer is providing tennis courts and a swimming pool to its members for a charge (the dues). Such activities are clearly within the statutory definition of a sale at retail. However, because taxpayer charges its members dues, it is subject to WAC 458-20-114 (Rule 114), which is the Department's duly authorized administrative rule explaining the tax treatment

given to amounts received as dues. The rule provides that any dues that entitle the payor to "any significant amounts of goods or services rendered by the recipient thereof to members without any additional charge to the member" are subject to the tax under the appropriate classification. Taxpayer argues that its maintenance of the grounds and common areas, which are open to all members of the subdivision or the public at large, do not entitle its members to any significant services, because the grounds are available to all.

[2] Rule 114 defines "significant amount" as relating "to the quantity or degree of goods or services rendered and made available to members by the organization"; and "significant" as "having important meaning or the quality of being important." In Det. 86-55A, 2 WTD 353 (1987), the Department explained what a significant amount of goods and services were, as follows:

> It is the position of the Department that significant amounts of goods or services means commercially compensable products or benefits for which any consumer expects to pay, and does pay a charge when they are procured in the commercial marketplace.

The maintenance of a park-like area, freely open to the public at large for no charge, is not a commercially compensable product or benefit for which a consumer expects to pay. Therefore taxpayer's dues for the maintenance of the park areas are not subject to tax.

Taxpayer's dues were all taxed under the retailing classification and subject to the retail sales tax. If taxable under Rule 114, taxpayer has provided information on the cost of production of each asset. Therefore, it is subject to retailing and retail sales tax on the costs attributable to the pool and tennis courts. The amounts attributable to maintenance of the common grounds are not taxable. The general amounts should be apportioned between those two classifications. Furthermore, amounts rebated to members should not be subject to tax. Thus, in 1986, when taxpayer received dues of $13,591, but rebated $2,103 to its members, its taxable income is below the $12,000 statutory minimum and therefore not subject to the B&O tax. (See RCW 82.04.300). However, it will still be subject to retail sales tax on those amounts exempted from the B&O tax.

DECISION AND DISPOSITION:

Taxpayer's petition is denied in part and granted in part.

DATED this 8th day of January, 1991.