

Cite as 3 WTD 145 (1987)

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

In the Matter of the Petition )	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Ruling of Tax Liability of)	
)	No. 87-169
)	
. . . )	Registration No. . . .
)	
)	

[1] **RULE 111 AND RCW 82.04.080:** ADVANCES AND REIMBURSEMENTS -- GROSS INCOME OF THE BUSINESS -- PHYSICIANS. Amounts received by a physician for furnishing medicine or drugs as part of his treatment do not qualify as "reimbursements," even when separately charged.

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: . . .

DATE OF HEARING: March 26, 1987

NATURE OF ACTION:

Physician requests an exemption from B&O tax for amounts received as payment for drugs purchased for use in treating patients and separately billed to patients at cost.

FACTS AND ISSUES:

Rosenbloom, A.L.J. -- The taxpayer's letter of January 28, 1987, sets forth the ruling request as follows:

I am requesting an exemption on paying excise tax on patient reimbursement for their chemotherapy drugs.

My cancer patients with insurance other than medicare, purchase their drugs and bring them to my

office for the injection. Medicare will not reimburse patients for cancer drugs unless they are provided by my office.

I currently purchase medicare patients' drugs from a local pharmacy and bill my patients at the exact cost to me. After medicare processes these drug claims and payment is made to my patients, they then pay my bill.

I currently pay excise and B&O taxes on these drug payments from my patients. I am requesting this exemption of paying excise tax on these drug reimbursements. First, because I do not receive any financial compensation for this service to my medicare patients. Second, as drugs have become more costly, these drugs have at times increased my taxable revenue by as much as \$2000.00 per month.

During the hearing, the taxpayer explained that drugs are purchased from a pharmacy in advance of need and kept on hand in the taxpayer's office in order to speed the process. The pharmacy bills the taxpayer at wholesale plus a handling fee. The taxpayer in turn bills the patient in an amount identical to that charged by the pharmacy. The charge for the drugs is shown as a separate item on the patients' billings. The pharmacy has no contact with the patient but looks to the taxpayer for payment.

#### DISCUSSION:

Physicians are subject to the Service and Other Activities B&O tax classification measured by the gross income of the business. RCW 82.04.290 and WAC 458-20-224.

RCW 82.04.080 defines "gross income of the business" as follows:

"Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used,

labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. (Emphasis supplied.)

The taxpayer's petition uses the term "reimbursements" to describe amounts received as compensation for the cost of drugs. WAC 458-20-111 ( . . . ) does allow certain reimbursements to be excluded from the measure of the tax. However, the rule provides that the term "reimbursement" applies only when "the customer or client alone is liable for the payment of the fees or costs and when the taxpayer making the payment has no personal liability therefor, either primarily or secondarily, other than as agent for the customer or client." Id.

In the present case, it is the taxpayer and not the patient that is liable to the pharmacy for payment. Thus, amounts received from patients as compensation for the cost of the drugs are not "reimbursements" within the meaning of WAC 458-20-111.

[1] Moreover, WAC 458-20-111 lists a number of examples of payments which will not be construed as excludable reimbursements, even when separately charged. Included in the list are amounts received by "a doctor for furnishing medicine or drugs as part of his treatment."

We regret that we cannot rule favorably on the taxpayer's request. However, as an administrative agency, we have no authority to grant an exemption where none exists in the law. Only the legislature, through enactment of appropriate legislation, may provide an exemption from the B&O tax.

#### DECISION AND DISPOSITION:

The taxpayer's ruling request is denied.

DATED this 20th day of May 1987.