

Cite as Det. No. 02-0087E, 22 WTD 253 (2003)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Correction of	)	<u>F I N A L</u>
Assessment of	)	<u>E X E C U T I V E   L E V E L</u>
	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 02-0087E
	)	
...	)	Registration No. . . .
	)	FY . . . /Audit No. . . .
	)	Docket No. . . .

RCW 82.04.4282: BONA FIDE DUES AND FEES - AIRPORT LOUNGE -- TAXPAYER RECORDS - REQUIREMENT TO DOCUMENT CLAIM FOR DEDUCTION. Exemptions and deductions are narrowly construed. Consequently, taxpayers claiming a deduction from gross receipts for amounts received as “bona fide dues or fees” must keep business records that substantiate the portion attributable to the privilege of membership in order to claim this deduction.

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.

DIRECTOR’S DESIGNEE: Jacqueline M. Danyo, Policy and Operations Manager

NATURE OF ACTION:

An airline appeals business and occupation tax (B&O) on dues received for the airline’s airport-based travelers’ lounges.<sup>1</sup>

FACTS:

Danyo, Manager, Policy & Operations and Gray, A.L.J. -- The taxpayer is engaged in business as an airline. It provides flights from [Washington] to cities outside of Washington. . . .

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<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

The taxpayer operates passenger lounges (hereinafter, “lounge” or “lounges”) at some airports, including the [Washington airport]. The taxpayer charges membership fees and annual dues for membership in the lounges. The taxpayer provides non-alcoholic beverages and snacks in the lounges at no additional charge to its members. Members may also use telephones, facsimile machines, conference rooms, and televisions in the lounges without additional charge. Members may also obtain boarding passes, make or change reservations, and select their seats in the lounges.

The Audit Division audited the taxpayer for the period January 1, 1994 through December 31, 1998. The Audit Division issued Tax Assessment No. FY . . . on November 19, 1999, which included an assessment for service B&O tax on . . . the taxpayer’s [Washington] dues and membership fees income. The taxpayer appealed . . . the B&O taxes assessed on the taxpayer’s dues and fees it deducted from its gross receipts.

The taxpayer acknowledges it does not have the records it needs to substantiate the portions of the dues and membership fees it contends that are not subject to tax under RCW 82.04.4282. The taxpayer nevertheless asks that the B&O tax assessment on its dues and membership fees be cancelled. . . .

#### ISSUE:

Whether the taxpayer may deduct any part, or all, of the dues and fees for membership in its airport lounges from its gross receipts?

#### DISCUSSION:

The legislature intended to impose the B&O tax on virtually all business activities carried on within the state. Time Oil Co. v. State, 79 Wn.2d 143, 483 P.2d 628 (1971). Exemptions and deductions are narrowly construed. Budget Rent-A-Car of Washington-Oregon, Inc. v. Department of Rev., 81 Wn.2d 171, 500 P.2d 764 (1972). Taxation is the rule; exemption is the exception. Spokane County v. City of Spokane, 169 Wash. 355, 13 P.2d 1084 (1932). The dues and membership fees are part of the taxpayer’s gross receipts and are taxable. RCW 82.04.070 (gross proceeds of sales); RCW 82.04.080 (gross income of the business). With specific exceptions, these statutes prohibit any deductions from the taxpayer’s gross receipts.

The legislature allows a deduction from the B&O tax for “bona fide initiation fees and dues.” RCW 82.04.4282. The applicable portions of the deduction statute provide:<sup>2</sup>

In computing tax there may be deducted from the measure of tax amounts derived from bona fide (1) initiation fees, (2) dues, . . . . This section shall not be construed to exempt any

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<sup>2</sup> The legislature amended RCW 82.04.4282 in 1994. The major change was to move the words “bona fide” outside the enumerated sources of income to make it clear that all fees, dues, tuition, and other charges must be “bona fide.” The statute quoted here is the version currently in effect.

person, association, or society from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge is made to members or others. If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction under this section.

RCW 82.04.4282 does not define “bona fide.”<sup>[3]</sup> The statute states, however, that taxpayers may not avail themselves of this deduction if they provide “any significant amount of goods or services” in return for amounts paid as “dues” or “membership fees.” We are not guided by any administrative rule.<sup>4</sup> *Automobile Club of Washington v. Department of Rev.*, 27 Wn. App. 781, 786, 621 P.2d 760 (1980), said that “[t]he purpose of the dues deduction is to exempt from taxation only revenue exacted for the privilege of membership. See WAC 458-20-114.” Although the Department repealed Rule 114, the language from *Automobile Club* still instructs us as to the purpose of the dues deduction because RCW 82.04.4282 remains largely unchanged from 1980.<sup>5</sup>

The taxpayer’s lounges are not in the nature of a social club,<sup>6</sup> where people assemble to enjoy the pleasure of each other’s company. The lounges provide a haven for air travelers, a place to rest and work before or after flights. It might be that one traveler makes extensive use of the . . . lounge while another traveler simply sits in a chair. However, the State Supreme Court has ruled:

The fact that respondent may choose to call the monthly payments “dues,” or the fact that by the very nature of its operation some members receive more services than others, does not change the underlying fact that the totality of its services to its membership over a given period of time is financially geared to the aggregate of the monthly fees received or anticipated for operational expenses over a given period of time.

*Group Health Cooperative, Inc. v. Washington State Tax Commission*, 72 Wn.2d 422; 434, 433 P.2d 201 (1967). In the taxpayer’s case, the amenities offered in the lounge and the use of the lounge are paid for by each member. What portion is paid for the “privilege of membership” is unstated and cannot be determined by the dues and fees themselves. From the record it appears that the amounts members pay are set to cover the costs of operating the lounges. The taxpayer lacks any business records to support a claim that all or a portion of these amounts are bona fide

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<sup>[3]</sup> The same qualifying term also appears in RCW 82.04.425, RCW 82.04.4294, and RCW 82.08.0265. As used in RCW 82.04.4282 and these other statutes, the term means “authentic,” “genuine,” or “real.” See Black’s Law Dictionary 168, 695 (7th ed. 1999); Webster’s Third New International Dictionary 250, 948 (1971).]

<sup>4</sup> The Department repealed WAC 458-20-114 (Rule 114) (bona fide initiation fees, dues, contributions, tuition fees and endowment funds) effective December 1, 1995. Portions of the former Rule 114 now appear in WAC 458-20-183 (Rule 183); however, Rule 183 is limited in its application to “persons who provide amusement, recreation, and physical fitness services.” The taxpayer does not provide amusement, recreation, or physical fitness services.

<sup>5</sup> In *Automobile Club*, *supra*, RCW 82.04.4282 was codified as RCW 82.04.430(2). The recodification in 1980 did not change the substance of the statute. The other change to RCW 82.04.4282 is noted in footnote 1, *supra*.

<sup>6</sup> The “privilege of membership” discussed in *Automobile Club*, *supra*.

dues and fees that qualify for the deduction. The Audit Division disallowed the deductions for this reason.

Absent records supporting the taxpayer's claim, we must conclude that the dues and fees it received from the . . . Club Members were for providing the facilities and services. We find, therefore, the dues and fees income is not deductible from the taxpayer's gross receipts under RCW 82.04. Our decision does not hinge on how each member uses the [lounges.] ...

DECISION AND DISPOSITION:

The taxpayer's petition is denied as to the single issue discussed.

Dated this 31<sup>st</sup> day of May 2002.