Cite as 6 WTD 105 (1988)

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

In the Matter of the Petition for Correction of Assessment and Refund of	)	D E T E R M I N A T I O N
	)	No. 88-247
. . .	)	Registration No. . . .
	)	Tax Assessment No. . . .

[1] **RULE 183:** B&O TAX -- RETAIL SALES TAX -- GOLFING -- GOLF CART PATH USAGE FEES. Fees collected for the privilege of using golf cart paths are taxable under the retailing classification of the business and occupation tax and the retail sales tax, since, under Rule 183, they are "charges for . . . the use of facilities by persons engaged in the . . . recreation activit[y]. . ." of golf.

[2] **RULE 114:** B&O TAX - RETAIL SALES TAX - DUES - CAPITAL EXPENDITURES - METHOD OF COMPUTING. Because the alternative apportionment methods provided by Rule 114 are mutually exclusive, a taxpayer may not, after utilizing one method, further apply a second method to further bifurcate the amount initially determined to be taxable into taxable and nontaxable amounts.

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 HEARINGS: December 11, 1987 and June 10, 1988

NATURE OF ACTION

Petition for correction of assessments relating to golf cart "path usage fees" and refund of retail sales tax assessed and paid on dues allocable to capital improvements of a clubhouse restaurant.

FACTS AND TAXPAYER'S EXCEPTIONS:

Burroughs, A.L.J. -- The taxpayer's business records were audited by the Department of Revenue for the period January 1, 1983 to June 30, 1986. As a result, the above-referenced assessment was issued on April 16, 1987 assessing tax due in the amount of $ . . . , and interest in the amount of $ . . ., for a total of $ . . .. Of this amount, $. . . pertained to "path usage fees," and approximately $ . . . pertained to capital contributions claimed to be allocable to the clubhouse restaurant. The entire assessment has been paid except for that portion representing path usage fees.

"Path usage" charges are paid by golf cart owners for the right to traverse motorized carts on paths located on the fairway property. Amounts so received are booked separately by the taxpayer. The taxpayer contends that

> (1) such charges are not a part of a retail contract and are not by definition retailing;
>
> (2) path usage fees are distinct from the golfing activity and were segregated per invoicing prepared annually; and
>
> (3) the measure of taxable golfing activity is determined pursuant to formula set forth in WAC 458-20-114 and is based upon a monthly dues structure also separately billed the membership.
>
> The Department has long held that segregated invoicing not related to a retail contract will provide the parties with tax treatment befitting the activity so engaged. In this case the separate activity is not a retail sale . . .

The taxpayer additionally protests the assessment of retail sales tax on 52½% of capital contributions made by its golfing members during the audit period, claiming this percentage was properly allocable to the clubhouse restaurant facility.

Overall, the taxpayer selected the "actual records of facilities" usage method to determine taxable and nontaxable portions of dues income. This method is but one of three prescribed by WAC 458-20-114 (Rule 114) to measure the percentage of total dues received which are properly allocable to taxable activities. Under this method, the taxpayer based its calculations on the graduated dues charged different kinds of members, i.e., the difference between social and golfing memberships.

The taxpayer claims that, after its calculation of taxable dues under the "actual records of facilities" method, it should have been able to further employ a second method prescribed by Rule 114 - the "cost of production" method - to even further bifurcate those

dues already calculated to be taxable under the first method into taxable and nontaxable amounts.

The taxpayer has presented, as an example, a hypothetical situation wherein the taxpayer decides to refurbish its restaurant at a cost of one million dollars. Were the "actual usage of facilities" method calculated by using the graduated dues schedule, only those capital contributions made by the golf members in an amount equal to social members' normal capital contributions would be nontaxable, even though golf members would have to presumably contribute the majority of the capital necessary for such a venture.

The taxpayer, in brief, argues that it is not accurate to reflect as taxable 100% of that portion of golf membership capital contributions over and above that amount charged for social memberships under the "actual usage of facilities" method without further applying the "cost of production" method to determine what percentage is actually allocable to golfing.

ISSUES:

The two issues for our resolution are as follows:

1. Whether fees assessed golf cart owners for the use of golf cart paths on a golf course are retail sales taxable.

2. Whether a taxpayer, after utilizing the "actual usage of facilities" method of allocating dues under Rule 114, may further apply the "cost of production" method to further bifurcate the amount initially determined to be taxable into taxable and nontaxable amounts.

DISCUSSION:

[1] RCW 82.04.050 and WAC 458-20-183 (Rule 183) provide that payment for the right to actively participate in the amusement activity of golf is a retail sale, taxable under the retailing classification of the business and occupation tax and the retail sales tax. Rule 183 additionally provides in pertinent part as follows:

> The retail sales tax must be collected upon charges for admissions and the use of facilities by persons engaged in the amusement and recreation activities and businesses involving active participation as described above. [Emphasis added.]

Golf cart paths are one of the facilities used by persons involved in golfing activity. By the very terms of Rule 183, then, fees for such usage, even if separately charged and booked, are taxable

under the retailing classification of the business and occupation tax and the retail sales tax.

[2] Rule 114 provides that

> . . . fees and dues which do not entitle the payor to receive any significant goods or services in return for the payment are not subject to business and occupation tax. . . .
>
> . . . Goods or services rendered" shall include those amusement and recreation activities as defined in RCW 82.04.050 [i.e., golf]. The term shall include the totality or aggregate of goods or services available to members. It is not determinative that some members actually receive more goods or actually enjoy more services than others so long as the totality of the goods or services offered are made available to members in general.
>
> . . . The deduction is limited to business and occupation tax. There is no provision under the law for any deduction from retail sales tax or use tax of amounts designated as initiation fees or dues. Consequently, any club or organization that collects dues or initiation fees from members who in turn receive tangible personal property or retail services as defined in RCW 82.04.050 . . . must collect and report retail sales tax on the value of such goods or services sold. . . .

Thus, amounts which are received in return for golfing privileges are taxable under both the business and occupation tax (retailing classification) and the retail sales tax.

Rule 114 prescribes three basic methods by which taxable and nontaxable portions of dues can be determined, any one of which can be selected and used by a taxpayer. These methods include:

> 1. A standard deduction of 20 percent of gross income (This method is available for use only by not-for-profit organizations); or,
>
> 2. Actual records of facilities usage; or,
>
> 3. Cost of production of facilities and benefits.

The rule goes on to specifically state:

> The alternative apportionment methods <u>are mutually exclusive</u>.

[Emphasis added.]

The taxpayer in this case selected and used the "actual records of facilities" method, presumably because that was the most financially advantageous. The rule makes it clear that a taxpayer may not then, after using one method, apply a second method to the amount found taxable under the first method, thus getting a "second bite of the apple."

As to the taxpayer's example, in which there was a large capital improvement assessment for the refurbishing of the clubhouse restaurant, the taxpayer's interest in such a situation could be protected by the use of an alternate method of calculating the deduction - namely, the standard deduction, the "actual records of facilities usage" method (calculating the value and frequency of golfing rounds instead of using the graduated scale formula), or the "cost of production" method.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of assessment and refund is denied.

DATED this 29th day of June 1988.