

Cite as 6 WTD 51 (1988)

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
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. 88-228
)	
. . . )	Unregistered
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)	
)	

[1] **RULE 169 AND RCW 82.04.385:** B&O TAX -- EXEMPTION -- SHELTERED WORKSHOPS. Income of a non-profit corporation is exempt from B&O tax liability if manufacturing or handiwork is carried on at the rehabilitation facility and if the facility is operated for the purpose of providing gainful employment or services to the handicapped or is providing evaluation and work adjustment services for handicapped individuals. <sup>1</sup>

. . .

[2] **RCW 82.32.050:** PENALTIES -- INTEREST -- LIMITATIONS -- DEFICIENT AND DELINQUENT PAYMENTS: Where a taxpayer voluntarily discloses a tax liability and no fraud or misrepresentation is present, assessment of tax will be made for no more than four taxable years plus the current year.

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<sup>1</sup>We are aware that Governor Gardner has signed House Bill 1401, which amends RCW 82.04.385 effective June 9, 1988 and which will exempt all income from business activities of sheltered workshops, whether it is earned on or off the premises, if the activities are performed for the current required primary purposes.

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:

Taxpayer seeks exemption from business and occupation (B & O) taxes on income from its twice-weekly, off-premises bingo and pull-tab games, conducted under the supervision of the State Gambling Commission, and requests a determination of tax liability, pursuant to Washington Administrative Code 458-20-100(18).

#### FACTS:

Johnson, A.L.J. -- The taxpayer states that it is a non-profit corporation formed for the purpose of providing employment, counseling, training and job placement for handicapped individuals. It receives support from the State as well as revenues from a thrift store and from a twice-weekly, off-premises gambling operation. A routine audit by its accountant raised, for the first time, the question of whether the bingo proceeds or the thrift-store proceeds were subject to B & O or retail sales tax. The organization's director voluntarily contacted an agent of the Department of Revenue for assistance. The revenue agent's opinion was that the retail sales would not be subject to B & O or sales tax, because the commissions received from the contracted-out operation of the store were reported by the consignee. His opinion on the gambling revenues was that they might be exempt under the current Rule 169, because the proceeds are used solely for the exempt purpose, supporting the services rendered to handicapped client employees.

#### ISSUE:

Are revenues normally subject to the B & O tax rendered exempt by the non-profit nature of the sponsoring organization? Under current law, we conclude that they are not. Under the revision to RCW 82.04.385, to become effective on June 9, 1988, we conclude that they will be.

#### DISCUSSION:

[1] Certain organizations are exempted from taxation by virtue of their status as charitable or nonprofit service organizations if the activities are of limited frequency and

duration and if they generate less than \$1,000 per occasion. WAC 458-20-169. Additionally, Rule 169 permits exemption of income if the organization qualifies as a "sheltered workshop:" one whose activities are conducted on its premises for the purpose of providing employment and rehabilitation services for the handicapped or for providing evaluation and work adjustment services to such persons.

This organization is conducting a twice-weekly, off-premises bingo and pull-tab gambling operation for the purposes of generating additional income for its rehabilitation center. The activity has been conducted under the supervision of the State Gambling Commission and with the knowledge of the Department of Social and Health Services, which provides the center with a portion of its funding. Under current law, the organization is subject to B & O tax liability on the income generated by this activity, net of costs and payouts pursuant to WAC 458.20.131.

We are aware of the revision to RCW 82.04.385, to become effective June 9, 1988, which will permit generation of income from other activities, including off-premises ones such as these. However, under existing law, effective through June 8, 1988, the activity is and has been taxable. Washington has a self-assessing taxation system, and it is the responsibility of each person or organization to investigate potential tax liability arising from its various activities. Because all taxpayers are charged with this responsibility, the possible hardship caused by this organization's failure to discover its tax liability cannot affect the determination in this case.

[2] Where an unregistered person or organization voluntarily and in good faith attempts to report all taxes due, the taxpayer will be liable for taxes and interest for a period not to exceed four years plus the current taxable year; additionally, if there is no evidence of intent to evade tax, the Department will not assess penalties for the late payment of the tax. Although the income from the organization's bingo operation will be tax-exempt after June 8, 1988 due to the revision to RCW 82.04.385, the income received during the four prior taxable years and the current taxable year up to the effective date of the revision is taxable.

#### DECISION AND DISPOSITION:

Based on the facts presented by the organization, we find that its status as a sheltered workshop does not exempt its gambling revenue from tax liability and that the organization

is liable for taxes owing on the revenues generated from this activity during the four taxable years and the portion of its current taxable year preceding June 9, 1988, when a revision in the applicable law will render such revenues tax-exempt.

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(18) and is based upon only the facts that were disclosed by the taxpayer. In this regard, the department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed are actually true. This legal opinion shall bind this taxpayer and the department upon these facts. However, it shall not be binding if there are relevant facts which are in existence but have not been disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently changes and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 31st day of May 1988.