

Cite as Det. No. 01-104, 22 WTD 157 (2003)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 01-104 ¹
)	
...)	Registration No. . . .
)	Docket No. . . .
)	Petition for Refund
)	

RULE 249; RCW 82.04.4327, RCW 82.04.4328, RCW 82.08.031, RCW 82.12.031: B&O TAX & RETAIL SALES TAX & USE TAX -- DEDUCTIONS & EXEMPTIONS -- ARTISTIC AND CULTURAL ORGANIZATION -- PUBLIC ESTATE GARDEN. A non-profit corporation that displayed a public estate garden was not entitled to a B&O tax deduction or retail sales tax or use tax exemption because the garden was not the type of exhibits or presentations commonly, usually, or ordinarily displayed in art or history museums.

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:

A nonprofit operator of a public estate garden petitions for a refund of business and occupation taxes (B&O) paid on admission fees and other income.²

FACTS:

Okimoto, A.L.J. – The . . . (Taxpayer) is a non-profit corporation operating a public estate garden [in Washington]. In July of 1999 Taxpayer wrote a letter to the Department of Revenue's (Department) Taxpayer Information and Education (TI&E) section and asked for a ruling on

¹ The reconsideration determination, Det. No. 01-104ER, is published at 22 WTD 163 (2003).

² Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

whether Taxpayer's public estate gardens qualified as "artistic or cultural exhibitions and presentations" within the meaning of RCW 82.04.4328(2) and WAC 458-20-249(2), thus entitling it to a B&O tax deduction and certain use and retail sales tax exemptions.³ If Taxpayer received a favorable ruling, Taxpayer planned to file a petition for refund of overpaid business and occupation taxes paid on admission income received and reported on its state B&O tax returns. By letters dated August 4, 1999 and September 30, 1999 TI&E ruled that Taxpayer did not qualify for the deduction because Taxpayer did not display "works of art or objects of cultural or historical significance." Taxpayer appealed the TI&E ruling to the Appeals Division (Appeals).

Taxpayer states in a supplemental letter:

. . . The [Property] was formerly a private estate [Taxpayer] was created . . . to manage and care for the lands. . . . The [Property] has evolved over the past . . . years to include separate displays of characteristic terrain and fauna . . . and has become a significant showcase for native and exotic plants and wildlife.

On approximately . . . acres of the [Property], the taxpayer has created a series of outdoor "living rooms" of altered landscapes, including various gardens, ponds, and meadows. The plant species have been carefully selected for their color, texture, and size in their particular landscape as elements of natural visual compositions under the artistic supervision of designers knowledgeable about European and Asian landscape traditions. The remaining . . . acres of the [Property] are second growth forest. The facilities on the [Property] include the old manor house where the administrative offices are located, the gatehouse where the visitor first arrives and begins the walking tour of the area, and the many bridges, walkways, and garden house with which the gardens can be accessed and enjoyed.

The [Property] is open to the public for guided or self-guided tours for a general admission charge and with prior reservation. Admission fees are The taxpayer also receives income from a variety of sources, including donations, investment income from a substantial endowment fund, book and video sales, and a minimal amount of rental income.

Taxpayer's Letter dated September 7, 2000, pages 1 & 2.

TAXPAYER'S ARGUMENTS AND CONTENTIONS:

Taxpayer argues that it must only satisfy two separate requirements before it can receive the deduction allowed by RCW 82.04.4327. First, it must satisfy rigid organizational and

³ RCW 82.04.4327 allows a B&O tax deductions for revenue earned by certain qualified non-profit artistic and cultural organizations. RCW 82.08.031 and RCW 82.12.031 provide retail sales tax and use tax exemptions for certain materials purchased by such qualified organizations.

operational requirements. Taxpayer contends that it does and TI&E did not dispute that contention.

Second, Taxpayer must satisfy the requirement that its activities are artistic or cultural activities within the meaning RCW 82.04.4328. In this case TI&E disallowed Taxpayer's claimed deduction because it did not believe that Taxpayer's guided and self-guided tours qualified as "... exhibitions or presentation of works of art or objects of cultural or musical or dramatic performances" TI&E interpreted the deduction to be limited to those types of works of art or objects of cultural or historical significance that were "commonly displayed in art or history museums." Since TI&E did not believe that Taxpayer's activities were of a type commonly displayed in art or history museums, it denied the deduction.

Taxpayer first disputes TI&E's determination that its public estate garden displays are not qualified artistic activities. Taxpayer argues in its September 7, 2000 letter:

While the 'works of art' of the [Property] are in a different medium than a Picasso painting or Frank Lloyd Wright structure, the overall experience of the gardens is expressly artistic in nature. For example, the [Property]'s self published book describes various features on the grounds in terms of works of art:

...

...

...

Next, Taxpayer argues that the [Property] qualifies under RCW 82.04.4328 for its cultural significance. Taxpayer states:

The grounds and structures of the [Property] were designed to reflect numerous different cultures as pointed out in various sections of its book describing the [Property]:

...

Finally, Taxpayer argues that the [Property] qualifies solely on its historical significance. Taxpayer points out that [County] declared the house and its gardens to be a historic building. The Board's resolution states:

...

Taxpayer also states that it frequently presents musical performances, plays and other qualifying presentations in the public estate gardens during the summer months.

ISSUE:

1) Do Taxpayer's displays of public garden estates qualify as "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" within the meaning of RCW 82.04.4328?

DISCUSSION:

RCW 82.04.4327 provides a deduction from B&O taxes for income received by "Artistic or cultural organizations." It provides:

In computing tax there may be deducted from the measure of tax those amounts received by artistic or cultural organizations which represent income derived from business activities conducted by the organization.

RCW 82.04.4328 defines "artistic or cultural organization" for purposes of the deductions as:

. . . an organization which is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (2) of this section, for viewing or attendance by the general public.

. . .

Taxpayer's articles of incorporation make it clear that its purpose is to "manage, operate, develop, improve, expand and financially support for the benefit of the public and students, . . . The [Property]." The [Property] is a public estate garden operated for the benefit of the general public.

Next, we must determine whether Taxpayer's public estate gardens qualify as "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" within the meaning of RCW 82.04.4328.

RCW 82.04.4328 further clarifies that:

(2) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

- (a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;
- (b) A musical or dramatic performance or series of performances; or
- (c) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject.

Taxpayer first contends that its public estate gardens qualify under RCW 82.04.4328 (2)(a) as: "An exhibition or presentation of works of art or objects of cultural or historical significance,

such as those commonly displayed in art or history museums.” Where an ambiguity exists in the statute, courts in Washington frequently utilize the following “ejusdem generis” rule of statutory construction.

General terms appearing in a statute in connection with precise, specific terms, shall be accorded meaning and effect only to the extent that the general terms suggest items or things similar to those designated by the precise or specific terms. In other words, the precise terms modify, influence or restrict the interpretation or application of the general terms where both are used in sequence or collocation in legislative enactments. *John H. Sellen Construction v. Department of Rev.*, 87 Wn.2d 878, 883, 558 P.2d 1342 (1976) quoting *State v. Thompson*, 38 Wn.2d 774, 777, 232 P.2d 87 (1951).

In this case, the more specific words “such as those commonly displayed in art or history museums” modify the more general terms “[a]n exhibition or presentation of works of art or objects of cultural or historical significance . . .” thereby limiting the scope of the deductions. We further note that RCW 82.04.4328 narrowly defines the type of activities which qualify for the beneficial tax treatment. The legislature’s use of the words “exclusively” and “limited to” evidence an intent to confine the scope of the statute to the specific activities listed. Furthermore, where the taxpayer seeks the benefit of a tax exemption, the exemption is to be narrowly construed in favor of imposing the tax. *Budget Rent-a-Car v. Department of Rev.*, 81 Wn.2d 171, 500 P.2d 764 (1972). Consequently, unless Taxpayer is organized exclusively for and operates exclusively to perform the qualifying activities, it is not entitled to either the deduction or exemption.

In Taxpayer’s case, even though Taxpayer’s public estate gardens may be “works of art” or “objects of cultural or historical significance,” we agree with TI&E that they are not the type of exhibits “commonly displayed in art or history museums.” The term “commonly” is not defined in the Revenue Act, so it must be given its “usual and ordinary” meaning, which can be found in dictionaries. *Port of Seattle v. State*, 101 Wn.App. 106, 1 P. 3rd 607 (2000). *Webster’s Third New International Dictionary (Unabridged)* (1993) defines the term “commonly” to mean:

as a general thing; often in the usual course of events; USUALLY, ORDINARILY

We do not dispute that public estate gardens may be considered artwork or that they have significant cultural or historic value. Nor do we dispute that they can be found in some specialized natural history museums. We simply find that public estate gardens are not, in fact, the type of exhibits or presentations commonly, usually or ordinarily displayed in art or history museums. Consequently, we find that public estate gardens are not entitled to the B&O tax exemption conferred by RCW 82.04.4328. Tax exemption statutes are construed strictly against the taxpayer, and the taxpayer has the burden of establishing any exemption. *Port of Seattle v. State*, 101 Wn. App. 106; 1 P.3d 607 (2000).

Next, even though some exhibitions presented by Taxpayer may qualify as being culturally significant or as a historical display, or that Taxpayer provides some qualifying musical

performances in the gardens during the summer months, we find that Taxpayer's operational purpose is not to exclusively display those qualifying exhibitions or performances. Instead, Taxpayer's primary operational purpose is to display a non-qualifying public estate garden. Therefore, we must deny Taxpayer's petition.

DECISION AND DISPOSITION:

Taxpayer's petition for refund is denied.

Dated this 19th day of July 2001.