Cite as 10 WTD 309 (1990).

BEFORE THE INTERPRETATION AND APPEALS DIVISION

DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of	)	F I N A L D E T E R M I N A T I O N
	)	
	)	No. 90-125A
	)	
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .
	)	

[1] RCW 82.04.4289: B&O TAX -- DEDUCTION -- NON-PROFIT HOSPITALS -- STATUTORY CONSTRUCTION. Statute granting B&O tax deduction to non-profit health care providers for amounts received from services to patients cannot be read to grant the deduction to for-profit health care providers. Accord: Group Health Co-op v. Tax Comm'n, 72 Wn.2d 422 (1967), Budget Rent-A-Car v. Dept. of Rev., 81 Wn.2d 171 (1972), Burlington Northern v. Johnston, 89 Wn.2d 321 (1977), Kirk v. Moe, 114 Wn.2d 550 (1990), 82 C.J.S. Statutes § 335 at 673.

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:

The taxpayer appeals to the Director from a determination holding that it is not entitled to a statutory deduction from the Business and Occupation (B&O) tax.

FACTS and ISSUE:

Roys, Sr. A.L.J.[1] -- The taxpayer has not presented any new facts in its appeal. The taxpayer is engaged in business as a for-profit medical clinic.

Determination 90-125 held RCW 82.04.4289 permits deductions 1) only to non-profit hospitals and other types of organizations enumerated in the statute and 2) only for service and retailing activities associated with the rendition of services to patients and 3) only if the hospital building in which the service or retailing activities occur is entitled to a property tax exemption.

In short, Determination 90-125 ruled the taxpayer was not entitled to the deduction because it is a for-profit medical clinic whose property is not exempt from property tax. The determination denied the petition for correction of assessment.

TAXPAYER'S EXCEPTIONS:

The taxpayer contends Determination 90-125 erred in its construction of RCW 82.04.4289 by inserting in its reasoning an "and" in place of the "or" contained in the statute, infra. Consequently, the taxpayer disagrees that all three of the above-referenced conditions must be met in order for it to qualify for the deduction.

Instead, the taxpayer argues RCW 82.04.4289 should be construed to allow the B & O deduction unconditionally to all hospitals or organizations (profit and non-profit) who render services to patients. The taxpayer also contends the statute grants an additional deduction to non-profit hospitals and organizations which sell prescription drugs to patients as a part of those services. In effect, the taxpayer argues that the three conditions listed above apply only to non-profits when they sell prescription drugs furnished as an integral part of services rendered to patients. Furthermore, the taxpayer contends the third condition regarding tax-exempt property only applies to hospitals, not to other persons or organizations.

DISCUSSION:

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[1]Administrative Law Judge David M. De Luca participated in rendering this Final Determination.

The question is one of statutory construction. RCW 82.04.4289 states:

> In computing tax there may be deducted from the measure of tax amounts derived as compensation for services rendered to patients or from sales of prescription drugs as defined in RCW 82.08.0281 furnished as an integral part of services rendered to patients by a hospital, as defined in chapter 70.41 RCW, which is operated as a nonprofit corporation, a kidney dialysis facility operated as a nonprofit corporation, whether or not operated in connection with a hospital, nursing homes and homes for unwed mothers operated as religious or charitable organizations, but only if no part of the net earnings received by such an institution inures directly or indirectly, to any person other than the institution entitled to deduction hereunder. In no event shall any such deduction be allowed, unless the hospital building is entitled to exemption from taxation under the property tax laws of this state. [emphasis ours].
>
> [1981 c 178 §2; 1980 c 37 §10. Formerly RCW 82.04.430(9).]
>
> NOTES:
> Intent--1980 c 37: See note following RCW 82.04.4281.

The note following RCW 82.04.4281 states:

> Intent--1980 c 37: "The separation of sales tax exemption, use tax exemption, and business and occupation deduction sections into shorter sections is intended to improve the readability and facilitate the future amendment of these sections. This separation shall not change the meaning of any of the exemptions or deductions involved." [1980 c 37 §1.] [emphasis ours].

Determination 90-125 states the taxpayer "note[s] that the statute originally limited its scope to granting nonprofits a B&O tax deduction for compensation received for rendering services to patients." A good example of the limited nature of this long-standing deduction is found in Group Health Co-op v. Tax Comm'n., 72 Wn.2d 422 (1967), which concerned former RCW 82.04.430(9), the predecessor to RCW 82.04.4289. Group Health recognized that the deduction for amounts received as

compensation for services rendered to patients was applicable only to non-profit hospitals or organizations whose property was tax exempt.

Determination 90-125 next noted the taxpayer's argument about the 1980 amendment to RCW 82.04.4289. The amendment added the deduction for sales of prescription drugs by non-profits. The amendment included the above-cited "or." The taxpayer contends the legislature used the "or" to indicate an intent to broaden the statute to benefit all health-care providers, profit or non-profit. However, except for the "or" clause, the statute is virtually identical in wording to the 1961 statute addressed in Group Health.

We agree with Determination 90-125's conclusion that the 1980 amendment's use of the word "or" was only to show that two types of activities became deductible for non-profits. The amendment did not expand the deduction to include income from services rendered to patients by for-profit hospitals and organizations and others who do not meet all the conditions.

Determination 90-125 correctly applied several rules of statutory construction in reaching its decision. First, exemptions and deductions to a tax are narrowly construed against the taxpayer; taxation is the rule and exemption/deduction is the exception. Budget Rent-a-Car v. Dept. of Rev., 81 Wn.2d 171, 174 (1972), Group Health, 72 Wn.2d at 429.

Second, Determination 90-125 properly relied on Burlington Northern v. Johnston, 89 Wn.2d 321, 326 (1977):

> In interpreting a statute, it is the duty of the court to ascertain and give effect to the intent and purpose of the legislature, as expressed in the act. The act must be construed as a whole, and effect should be given to all language used. Also, all the provisions of the act must be considered in their relation to each other and, if possible, harmonized to insure proper construction of each provision.

Determination 90-125 correctly followed that rule. Considering all of its provisions in relation to each other and read as a whole, the statute clearly applies only to non-profits.

By contrast, the taxpayer is merely focusing on the first few words of the statute to claim the deduction. It ignores not only the remaining words, but also the long-standing history of the statute's intent to benefit only non-profit hospitals and organizations. Indeed, the above-quoted note following the amended statute states the revisions "shall not change the meaning of any of the exemptions or deductions involved." This language is proof of the legislature's clear intent not to broaden the deduction to include all hospitals or organizations.

Furthermore, the taxpayer has not cited any cases or other authority to support its contention. The taxpayer's argument relies entirely on the fact that "or" is used in the statute rather than "and." The taxpayer apparently believes that under all circumstances the statute can and must be construed as the taxpayer contends because "...the 'or' separates the deduction grant to all patient services from the restricted retailing activity [accorded non-profits]."

The taxpayer is correct in asserting that usually "or" does not mean "and." However, there are statutory construction rules which allow exceptions.

> Generally the words "and" and "or" as used in statutes are not interchangeable, being strictly of a conjunctive and disjunctive nature, respectively, and their ordinary meaning should be followed if it does not render the sense of the statute dubious. It has been held, however, that such words are not words of technical meaning and they derive their force and meaning from the context and connection of the matter in which they are used. Accordingly, the words "or" and "and" may be construed as interchangeable, when, and only when, necessary to effectuate the obvious intention of the legislature, as where the failure to adopt such construction would render the meaning of the statute ambiguous or result in absurdities; 82 C.J.S. Statutes § 335, at 673 (emphasis added).

Given the context and more than 30 years of history, the ordinary meaning of "or" as advocated by the taxpayer does render the sense of the statute dubious or absurd. "A statute is not to be interpreted in such a way that it produces an absurd result or renders meaningless its enactment." Kirk v. Moe, 114 Wn.2d 550, 554 (1990). The statute intends that the deduction apply only to those non-profit hospitals and

organizations who meet all three of the listed conditions. Determination 90-125 is affirmed.

DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied.

DATED this 5th day of March, 1991.