Cite as Det. No. 01-104ER, 22 WTD 163 (2003)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Refund Denial of	)	F I N A L E X E C U T I V E L E V E L D E T E R M I N A T I O N
	)	No. 01-104ER[1]
. . .	)	Registration No. . . . Petition for Refund Docket No. . . .

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.

DIRECTOR'S DESIGNEE: Janis P. Bianchi, Policy & Operations Manager

NATURE OF ACTION:

A nonprofit operator of a public estate garden petitions for reconsideration of Det. No. 01-104. That determination denied Taxpayer's request for exempt status as an artistic or cultural organization pursuant to RCW 82.04.4328. [2]

[1] The original determination, Det. No. 01-104, is published at 22 WTD 157 (2003).
[2] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

FACTS:

Okimoto, A.L.J. – – . . . (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 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] By letters dated August 4, 1999 and September 30, 1999 TI&E ruled that Taxpayer did not qualify for the deductions because Taxpayer did not display "works of art or objects of cultural or historical significance." Notwithstanding that ruling, Taxpayer filed an estimated refund claim on December 22, 1999 with the Department's Taxpayer Account Administration Division (TAA) covering the year 1995 and subsequent years. On January 4, 2000 TAA denied Taxpayer's refund claim, and Taxpayer timely appealed the refund denial to the Appeals Division (Appeals) on February 5, 2000. The Appeals Division held a hearing and issued Det. No. 01-104, denying Taxpayer's appeal. Taxpayer timely filed for executive reconsideration on August 17, 2001 and was granted executive review.

Taxpayer described the history and the activities performed by its public estate garden in a supplemental letter as follows:

> . . . The [Property] was formerly a private estate . . . . The [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.
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> 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

[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.

> 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:

On reconsideration, Taxpayer disputes the finding that its public estate garden presentations are not "commonly displayed in art and history museums," within the meaning of RCW 82.04.4328(2)(a).

First, Taxpayer argues that public estate gardens are museums. Taxpayer states that the federal government recognizes public estate gardens as museums within the common definition of the word. The federal government supports museums through the efforts of the Institute of Museum and Library Services (IMLS). Taxpayer states that the [Property] meets all of the requirements for receiving a grant under the IMLS. In addition, Taxpayer states that the American Association of Museums (AMA) recognizes public estate gardens within the common definition of the word. Taxpayer also states that the Smithsonian Institution and the Washington Museum Association recognize public estate gardens as museums within the common sense of the word.

Second, Taxpayer argues that public estate garden exhibit items are commonly found in natural history or historical museums. Taxpayer specifically disputes the finding in Det. No. 01-104 that Taxpayer's gardens do not contain the type of exhibits commonly displayed in art or history museums. Taxpayer states that its exhibits include plants, flowers, shrubbery, rockery, and buildings and architecture that are illustrative of specific areas of the world or examples of a specific era or style. Objects such as plants, insects, landscape, ecosystems, flora, and fauna are commonly found in natural history museums. Historic buildings and gardens are commonly found in historical museums. Taxpayer exhibits these same types of items that are commonly displayed in natural history or historical museums.

Third, Taxpayer argues that public estate gardens are commonplace. Taxpayer states that there are approximately forty public gardens within Washington, ten arboretums, and approximately ten "indoor" museums of natural history. Taxpayer argues that if the items displayed in an indoor natural history museum would qualify the organization, then the same type of items displayed by the more numerous outdoor museums should also qualify as items commonly displayed.

ISSUE:

Is the operator of a public estate garden an "Artistic or cultural organization" 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.

Consequently, 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;
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> (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 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 to items commonly found in art or history museums.

In Det. No. 01-104, we found that even though Taxpayer's public estate gardens may be considered "works of art" or objects of cultural or historical significance," Taxpayer's exhibits were not the type of exhibits "commonly displayed in art or history museums." Relying on the dictionary definition of the term "commonly" we stated:

> 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.

We have considered Taxpayer's arguments that public estate gardens are considered museums by the federal government's Institute of Museum and Library Services, that public estate garden exhibit items are commonly found in natural history museums, and that public gardens are commonplace. We note, however, that the fact that the federal government may consider a public estate garden to be a museum does not transform such gardens into art or history museums. Similarly, natural history museums are also not art or history museums. Finally, although public gardens may be commonplace, they are not commonly found in art or history museums. We are forced by the language of the statute to focus on objects commonly found in certain kinds of museums, i.e. works of art or representations of history. Taxpayer's public estate gardens do not qualify. Consequently, notwithstanding Taxpayer's arguments, we find that a public estate garden is not entitled to the deductions or exemptions conferred by RCW 82.04.4237, RCW 82.08.031, and RCW 82.12.031.

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 light of the very restrictive language contained in RCW 82.04.4328 evidencing a legislative intent that the definition be narrowly construed, we are unable to adopt Taxpayer's interpretation. 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). Accordingly, Taxpayer's petition for reconsideration is denied.

DECISION AND DISPOSITION:

Taxpayer's petition for refund is denied.

Dated this 30th day of September 2002.