

Cite as Det No. 11-0068, 31 WTD 19 (2012)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

RCW 82.04.4297 -- B&O TAX -- COMPENSATION FROM PUBLIC ENTITIES FOR HEALTH OR SOCIAL WELFARE SERVICES. A health or social welfare organization, as defined in RCW 82.04.431, may deduct amounts received from public entities for health or social welfare services if the organization's structure and activities meet the statutory requirements. Local community action council established by law to oversee and manage emergency medical and trauma services, as well as to train emergency medical and trauma personnel, may deduct income received from state, federal, and local government sources. ACCORD: Det. No. 91-323, 11 WTD 257 (1991).

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.

Sohng, A.L.J. – A nonprofit corporation that provides emergency rescue coordination, support services, training, and education for the licensing and certification of emergency rescue personnel for local fire departments and hospitals petitions for a refund of B&O tax on the grounds that it is exempt as a “health or social welfare organization.” The petition is granted.¹

ISSUE

Is Taxpayer a “health or social welfare organization” entitled to the deduction allowed in RCW 82.04.4297 for funds received from the state of Washington or political subdivisions thereof?

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

FINDINGS OF FACT

[Taxpayer] is a Washington nonprofit corporation that is exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code. Taxpayer filed its Articles of Incorporation with the Secretary of State The Articles of Incorporation provide that Taxpayer is organized for the following purposes:

1. To conduct a continuing study of the emergency medical services situation in . . . County;
2. To make appropriate recommendations to the [an] Emergency Medical Services Council and to the Washington State Department of Social and Health Services; and
3. To procure and disburse federal and private foundation funds for emergency medical services.

The Articles further provide that in the event of dissolution, the net assets will be distributed to . . .

..

The State-Wide Emergency Medical Services and Trauma Care System Act (the “Act”) was enacted in 1990 and codified in RCW 70.168 *et seq.* Substitute Senate Bill No. 6191, Laws of 1990, Chapter 269. One purpose of the Act was to “establish an efficient and well-coordinated statewide emergency medical services and trauma care system to reduce costs and incidence of inappropriate and inadequate trauma care and emergency medical service and minimize the human suffering and costs associated with preventable mortality and morbidity.” RCW 70.168.010. The Act provides for the creation of regional and local emergency medical services and trauma care councils. RCW 70.168.100, 120.

There are seven regional councils throughout the state. Every regional council is comprised of local councils that represent each county within the region. Each local council, in turn, is comprised of member organizations that are the local providers of emergency medical and trauma services within the county, such as fire districts, hospitals, and ambulance providers. Taxpayer is [a] local council Taxpayer is comprised of twelve member organizations

Taxpayer’s Board of Directors is comprised of the twelve Members Among the Members, [three] are privately-owned for-profit companies. [One] is a not-for-profit Washington corporation. The remaining Members are political subdivisions of federal, state, or local governments. Taxpayer’s sources of financial support include contributions from its Members, grants . . . , and fees for educational and training courses. Member contributions provide [most of] of Taxpayer’s funding on an annual basis, while fees charged for educational classes provide [a small amount of Taxpayer’s funding].

. . . Taxpayer’s activities in pursuit of [their stated] mission include the following:

1. Developing, implementing, and maintaining pre-hospital policies and procedures, including protocols for basic and advanced life support. These policies and procedures establish county-wide continuity in pre-hospital care provided by paramedics and emergency medical technicians (“EMTs”);

2. Providing comprehensive quality assurance reviews of the extent and quality of emergency medical services provided in . . . County.
3. Providing substantive testing standards and initial certification of prospective emergency medical personnel in . . . County by posting vacancy announcements, establishing eligibility criteria for the vacancies, and maintaining rosters of eligible candidates; and
4. Providing initial and ongoing training and certification classes for paramedics and EMTs in compliance with Department of Health guidelines.

The Department's Audit Division audited Taxpayer for the period January 1, 2006 through March 31, 2010 and issued an assessment in the amount of \$. . . on July 8, 2010, including service and other activities B&O tax, penalties, and interest. Taxpayer appealed the assessment on July 8, 2010. On August 9, 2010, Taxpayer paid the assessment in full.

ANALYSIS

Washington's Revenue Act contains no general exemption from taxation for non-profit organizations. The Washington B&O tax is a gross receipts tax that is levied against "every person" for the privilege of engaging in business in this state. RCW 82.04.220. Nonprofit corporations are expressly included in the definition of "person" under RCW 82.04.030. Unless a specific deduction or exemption applies, state business and excise taxes apply to Taxpayer's activities.

RCW 82.04.4297 permits the following deduction from the B&O tax:

In computing tax there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization....

(Emphasis added.) As previously stated, Taxpayer receives the majority of its funding from its Members, most of whom are political subdivisions of the state of Washington or of municipal corporations. Thus, Taxpayer will be entitled to the deduction only if it qualifies as a "health or social welfare organization," which is defined in RCW 82.04.431 as:

[A]n organization, including any community action council, which renders health or social welfare services as defined in subsection (2) of this section, which is a not-for-profit corporation under chapter 24.03 RCW and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or which is a corporation sole under chapter 24.12 RCW.

(Emphasis added.) In Determination 91-233, 11 WTD 257 (1991), the taxpayer was a nonprofit regional emergency medical services and trauma care council established under the State-Wide Emergency Medical Services and Trauma Care System Act. The taxpayer developed an emergency medical services and trauma care plan for the four counties in the region, submitted the plan to the Washington Department of Health ("DOH"), advised DOH on implementation of

the plan, and provided data to assist DOH in assessing the plan's effectiveness. The Department stated:

There is no question that the taxpayer is a "health and welfare service organization."² RCW 82.04.431 expressly includes "any community action council" as such an organization. The taxpayer qualifies as such an organization by its very nature and purpose. Det. No. 86-302A, 4 WTD 39 (1987) . . . Moreover, taxpayer's activities clearly qualify as health and social services under RCW 82.04.431.

Here, Taxpayer provides services analogous to those provided by the taxpayer in Determination 91-233. Like the taxpayer in that determination, Taxpayer was established under the same legislation and performs equivalent services in furtherance of improving local emergency medical services. Taxpayer essentially oversees and manages the entire emergency medical and trauma care system in . . . County and develops protocols regarding patient care that all emergency medical responders in the county must follow. Thus, under the holding of Determination No. 91-233, Taxpayer is also a "community action council" and qualifies as a "health or social welfare organization" to the extent it meets the formal requirements for such organizations, described below.

Taxpayer must meet additional operational and organizational requirements in order to be considered a "health or social welfare organization" under the statute. For this purpose, Taxpayer must be a Washington nonprofit corporation that meets the following criteria:

- 1) is managed by a governing board of not less than eight individuals, none of whom is a paid employee of the organization;
- 2) is not a corporation providing professional services as authorized in RCW chapter 18.100;
- 3) no part of its income is paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;
- 4) the salary or compensation paid to its officers and executives is only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the public service of the state;
- 5) the assets of the corporation are irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, will not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the deduction;

² The actual term contained in RCW 82.04.431 is "health or social welfare organization."

- 6) is duly licensed or certified where licensing or certification is required by law or regulation;
- 7) the amounts received qualifying for exemption are used for the activities for which the exemption is granted; and
- 8) services are made available regardless of race, color, national origin, or ancestry.

RCW 82.04.431(1); WAC 458-20-169(6).

Based upon a review of the taxpayer's Articles of Incorporation, Bylaws, Annual Report, and the representations of fact made in Taxpayer's petition or stated during the hearing, we have concluded that Taxpayer satisfies each of the criteria enumerated above. Taxpayer is a Washington nonprofit corporation. It is governed by a board of directors comprised of twelve individuals, none of whom are employees. It does not provide any "professional services" authorized in RCW 18.100. No part of Taxpayer's income is paid directly or indirectly to members, stockholders, officers, directors, or trustees. The salaries paid to its officers and executives are for actual services rendered and are comparable to (if not lower than) the compensation of like positions within the public sector. Taxpayer's assets are irrevocably dedicated to the activities for which its exemption is granted, and upon dissolution, the net assets are to be distributed to . . . another "health or social welfare organization" that would be entitled to the deduction provided in RCW 82.04.4297. Taxpayer is not required to be licensed or certified. Amounts Taxpayer receives that qualify for the exemption are used for activities for which its exemption is granted. And finally, Taxpayer's services are made available regardless of race, color, national origin, or ancestry. Therefore, Taxpayer is a "health or social welfare organization" as defined in RCW 82.04.431 and entitled to the deduction allowed in RCW 82.04.4297, only to the extent that it receives funding from federal or state government agencies (or political subdivisions thereof) in support of Taxpayer's exempt purpose. Any amount received that does not come from one of these sources, or is not otherwise deductible or exempt, is subject to B&O tax.

DECISION AND DISPOSITION

Taxpayer's petition is granted. Taxpayer's file shall be remanded to the Audit Division for the proper adjustments consistent with this determination.

Dated this 28th day of February 2011.