Cite as Det. No. 16-0158, 36 WTD 038 (2017)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 16-0158
. . .	)	Registration No. . . .

RCW 82.04.220: SERVICE AND OTHER B&O TAX- INTERCOMPANY CHARGES. Payments for providing services are B&O taxable even if the companies are related.

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.

Lewis, A.L.J. – Taxpayer . . . appeals the taxation of intercompany charges. Taxpayer's petition is denied.[1]

ISSUES

. . .

Under the provisions of RCW 82.04.220, did the [Department of Revenue (Department)] correctly tax intercompany charges made to an affiliated company?

FINDINGS OF FACT

Taxpayer underwrites title insurance policies for [Related Entity]. Taxpayer also earned management fee income for providing corporate and financial services for [Related Entity].

. . .

On April 12, 2015, the Department issued a $ . . . [business and occupation (B&O)] tax assessment.[2] The assessment covered the period July 1, 2011 through December 31, 2013.[3] On

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.
[2] The $ . . . assessment consisted of $ . . . retailing B&O and service and other B&O tax, $ . . . interest, $ . . . late-payment penalty, and $ . . . assessment penalty.
[3] . . .

April 13, 2015, the Department issued a second assessment, which consisted of use tax, interest, and penalties.[4]

Taxpayer disagreed with the B&O tax assessment. On May 4, 2015, Taxpayer filed an appeal requesting correction of the assessment. Specifically, Taxpayer requested cancellation of penalties and the tax assessed on intercompany charges.

. . . Taxpayer protested the assessment of B&O tax on intercompany charges based on a claim that charges were really intra company charges and not intercompany charges.

ANALYSIS

. . .

Taxpayer appealed the service and other activities B&O tax assessed on the monthly payments it received from [Related Entity] for providing "corporate and financial services."

RCW 82.04.080 defines the "gross income of the business" as:

> the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

RCW 82.04.090 defines the term "value proceeding or accruing" as:

> [T]he consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued.

RCW 82.04.220 imposes the B&O tax itself, and the measure of the tax is the gross proceeds of sales or the gross income of the business:

> There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.

The B&O tax, then, is plainly imposed on gross receipts, and the legislative intent plainly was to include all income and not to allow any deductions for any expenses.

[4] The $ . . . assessment covered the period July 1, 2011 through December 31, 2013 and consisted of $ . . . use tax, $ . . . interest, $ . . . late-payment penalty, and $ . . . assessment penalty.

The question of whether transactions between related entities are taxable is not new. As Excise Tax Advisory ("ETA") 3134.2009 states:

> The Department has addressed the question of transactions between related entities on many occasions. In an effort to simplify the information available to taxpayers, the Department has consolidated these excise tax advisories into a single document.
>
> WAC 458-20-203 (Rule 203) states:
>
> > Each separately organized corporation is a "person" within the meaning of the law, notwithstanding its affiliation with or relation to any other corporation through stock ownership by a parent corporation by the same group of individuals.
> >
> > Each corporation shall file a separate return and include therein the tax liability accruing to such corporation. This applies to each corporation in an affiliated group, as the law makes no provision for filing of consolidated returns by affiliated corporations or for the elimination of intercompany transactions from the measure of tax.
> >
> > Each unincorporated association organized under the Massachusetts Trust Act of 1959 (chapter 23.90 RCW) is likewise taxable in the same way as are separate corporations.
>
> The principles of Rule 203 apply to all business organizations including, but not limited to, limited liability companies (LLC), limited partnerships, and joint ventures. See also WAC 458-20-170(2)(f).
>
> While intra-company transactions are not taxable (See WAC 458-20-201), business transactions between different persons are subject to taxation unless there is a specific deduction or exemption. The fact that entities are related does not change the fact that they are separate persons for tax purposes. Rule 203. *Washington Sav-Mor Oil Co. v. Tax Comm.*, 58 Wn.2d 518 (1961).

[*See also* ETA 3194.2015 ("Compensation for services is subject to B&O tax regardless of whether the services are provided by an affiliate or by an unrelated person.").]

Taxpayer maintained that it is unfair that it must pay B&O tax on transactions between it and an affiliated company when other similarly situated companies avoid the tax by not recording the transactions. ETA 3134 is clear that transactions between related companies are taxable. . . .

The state [B&O] tax makes no provision for consolidating returns of affiliated corporations or eliminating inter-company transactions from taxation. Det. No. 86-309, 2 WTD 83 (1986). Salaries and related administrative costs attributable to employees provided to affiliated companies and allocated between such companies are properly included within the service B&O tax measure. Dets. No. 85-308A & 86-20A, 1 WTD 415 (1986). A business must bear the tax

consequences that come with its choice of form. *American Sign & Indicator v. State*, 93 Wn.2d 427, 610 P.2d 353 (1980); *Sav-Mor Oil v. State Tax Commission*, 58 Wn.2d 518, 364 P.2d 440 (1961); Det. No. 89-447, 8 WTD 175 (1989). Thus, transactions between separate, but affiliated entities are taxable. Accordingly, we sustain the service and other B&O tax assessed on the payments Taxpayer receives for providing professional services to an affiliated company.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 27th day of April, 2016.