

Cite as Det. No. 20-0009, 41 WTD 20 (2022)

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

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| In the Matter of the Petition for Refund |) | <u>D E T E R M I N A T I O N</u> |
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| |) | No. 20-0009 |
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| ... |) | Registration No. ... |
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WAC 458-20-105; RCW 82.04.4498: B&O TAX – CREDIT – BUSINESSES THAT HIRE VETERANS. The sole member of an LLC taxpayer for which the taxpayer pays no federal or state employment taxes is not a qualified employee for the purpose of an employer of veterans B&O tax credit.

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.

Peña, T.R.O. – A taxpayer disputes the Department of Revenue’s denial of a . . . business & occupation (B&O) tax credit [for employers of veterans]. We deny the taxpayer’s petition.¹

ISSUE

Is the sole member of a taxpayer limited liability company a qualified employee of the taxpayer for the purposes of the . . . employer [of veterans] B&O tax credit under RCW 82.04.4498 and WAC 458-20-105?

FINDINGS OF FACT

. . . (Taxpayer) provides computer and technical support services to businesses and other organizations. . . . (Member) is the sole member of the limited liability company and there are no employees.

Taxpayer does not pay Member a set amount of money; rather it pays Member an average of \$. . . a month depending on Taxpayer’s expenses. Member does not receive a net amount after deductions for employment taxes. Taxpayer does not pay unemployment payroll taxes to Washington Employment Security Department and does not pay worker’s compensation payroll taxes to Washington Department of Labor and Industries. Taxpayer does not report wages paid to any employees to the Internal Revenue Service. Member states Taxpayer covers all work expenses. Member does not receive vacation time, sick time, insurance, or pension benefits.

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

Taxpayer sought [to use] the . . . B&O tax credit [for employers of veterans], for amounts paid to Member as part of filing its 2018 excise tax return, in the amount of \$ The Department's Taxpayer Account Administration Division denied Taxpayer's request on January 17, 2019, on the grounds Member was not a "qualified employee." Taxpayer then paid the balance due on the 2018 excise tax return prior to the return due date.

On January 17, 2019, Taxpayer submitted a petition for review of the denial. Taxpayer states that Member is a self-employed veteran, and the Department is denying it the benefit of the tax credit. Taxpayer further states that Member was unemployed, so Member created his own job. Taxpayer argues the statute authorizing the tax credit does not restrict business owners from taking advantage of this benefit if they are veterans creating jobs for themselves. Taxpayer states Member owns the business and as the owner, Member hired himself, a veteran, to fulfill contractual obligations. Member states that as a self-employed veteran, he is the owner and the employee. According to Taxpayer, the qualified employee definition does not restrict the business owner from being defined as an employee, there are no restrictions for self-employed veterans, and that the law was not created to punish or discriminate against self-employed veterans.

ANALYSIS

RCW 82.04.4498 allows a business hiring unemployed veterans for full-time employment positions located in Washington to take a tax credit against its B&O tax equal to 20 percent of the wages and benefits the business pays to or on behalf of a qualified employee. RCW 82.04.4498(8) defines the following terms:

- (a)(i) "Qualified employee" means an unemployed veteran who is employed in a permanent full-time position for at least two consecutive full calendar quarters. For seasonal employers, "qualified employee" also includes the equivalent of a full-time employee in work hours for two consecutive full calendar quarters.
- (ii) For purposes of this subsection (8)(a), "full time" means a normal workweek of at least thirty-five hours.
- (b) "Unemployed" means that the veteran was unemployed as defined in RCW 50.04.310 for at least thirty days immediately preceding the date that the veteran was hired by the person claiming credit under this section for hiring the veteran.
- (c) "Veteran" means every person who has received an honorable discharge or received a general discharge under honorable conditions or is currently serving honorably, and who has served as a member in any branch of the armed forces of the United States, including the national guard and armed forces reserves.

In order to address the factors to be considered in determining employment status, the Department adopted WAC 458-20-105. . . . To determine whether Member is an employee of Taxpayer, we look to other provisions of WAC 458-20-105. With respect to the factors indicating that a [person] is an . . . employee, WAC 458-20-105 provides, in relevant part:

. . .

(4) Employees. The following conditions indicate that a person is an employee. If the person:

- (a) Receives compensation, which is fixed at a certain rate per day, week, month or year, or at a certain percentage of business obtained, payable in all events;
- (b) Is employed to perform services in the affairs of another, subject to the other's control or right to control, and includes hired household employees that may cook, clean, provide nanny-care, or grounds maintenance;
- (c) Has no liability for the expenses of maintaining an office or other place of business, or any other overhead expenses or for compensation of employees;
- (d) Has no liability for losses or indebtedness incurred in the conduct of the business;
- (e) Is generally entitled to fringe benefits normally associated with an employer-employee relationship, e.g., paid vacation, sick leave, insurance, and pension benefits;
- (f) Is treated as an employee for federal tax purposes;
- (g) Is paid a net amount after deductions for employment taxes, such as those identified in subsection (3)(h) of this rule.

WAC 458-20-105(3)(h) lists “Federal Insurance Contributions Act, Federal Unemployment Tax Act, and similar state taxes” as examples of employment taxes.

Tax benefits such as deductions, exemptions, and credits, must be strictly construed, though fairly, and in keeping with the ordinary meaning of their language, against the taxpayer. *See, e.g., Budget Rent-a-Car, Inc. v. Dep’t of Revenue*, 81 Wn.2d 171, 500 P.2d 764 (1972); *Group Health Coop. v. Tax Comm’n*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967); Det. No. 07-0034E, 26 WTD 212 (2007). “The burden of showing qualification for the tax benefit afforded . . . rests with the taxpayer.” *Group Health*, 72 Wn.2d at 429. Thus, Taxpayer must prove it is entitled to the . . . employer [of veterans] B&O tax credit.

In this case, the factors that disfavor treating Member as an employee of Taxpayer include: Member does not receive compensation from Taxpayer at a fixed amount or percentage payable in all events. WAC 458-20-105(4)(a). Member is not employed to perform services in the affairs of another, subject to the other’s control or right of control as there is no other; Member is the sole member of Taxpayer. WAC 458-20-105(4)(b). Member is not entitled to any fringe benefits normally associated with an employer-employee relationship such as vacation, sick leave, insurance, or pension benefits. WAC 458-20-105(4)(e). Taxpayer does not report wages paid to any employees to the IRS; therefore, Member is not treated as an employee for federal tax purposes. WAC 458-20-105(4)(f). Member is not paid a net amount after deductions for employment taxes as Taxpayer pays no employment taxes. WAC 458-20-105(4)(g).

The factors that favor treating Member as an employee of Taxpayer include: Member has no liability for overhead expenses or for compensation of employees. WAC 458-20-105(4)(c). Member has no liability for losses or indebtedness incurred in the conduct Taxpayer’s business because Taxpayer is a limited liability company. WAC 458-20-105(4)(d); RCW 25.15.126.

In considering these various factors, on balance, we find that the Member was not an employee of Taxpayer. Notably, and ultimately our deciding factor here, Taxpayer pays no federal or state employment taxes yet seeks a tax credit for hiring a qualified employee. Because Member is not Taxpayer's employee, Member is, therefore, not a qualified employee, and Taxpayer may not claim the . . . employer [of veterans] B&O tax credit for wages paid to Member. RCW 82.04.4498. Taxpayer has not proven it is entitled to the tax credit and we deny Taxpayer's petition.

DECISION AND DISPOSITION

We deny Taxpayer's petition.

Dated this 9th day of January 2020.