

Cite as Det. No. 15-0246, 35 WTD 209 (2016)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Refund of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 15-0246
	)	
...	)	Registration No. ...
	)	

[1] WAC 458-20-167; RCW 82.04.170; RCW 82.04.4282: B&O TAX – DEDUCTION – TUITION FEES – VOCATIONAL SCHOOL. A private vocational school registered with the Workforce Training and Education Coordinating Board that is also accredited and authorized under Chapter 28B.85 RCW to offer associates degrees in specific vocations is excluded from the definition of “educational institution” under RCW 82.04.170 and WAC 458-20-167, and is ineligible for the deduction of tuition fees pursuant to RCW 82.04.4282.

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.

Margolis, A.L.J. – A business that operates a vocational school in Washington (Taxpayer) petitions for refund of business and occupation (B&O) tax on grounds that it qualifies for the tuition fees deduction in RCW 82.04.4282. Taxpayer’s petition is denied.<sup>1</sup>

ISSUE

Does Taxpayer operate an educational institution [as defined in] RCW 82.04.170 that qualifies for the tuition fee deduction under RCW 82.04.4282?

FINDINGS OF FACT

[Taxpayer], part of the [Education Group], operates a private vocational school in . . . , Washington. . . . Taxpayer offers “. . . ,” and explains its philosophy and mission as follows (in pertinent part):

...

*Id.* at Page 3.

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

Taxpayer's catalog describes its Washington Licenses and Approvals as follows (in pertinent part):

...

*Id.* at Page 9.

On July 17, 2014, Taxpayer applied for a refund or credit of B&O tax in the amount of \$ . . . for the period January 1, 2010 through June 30, 2014, explaining that it qualifies for the deduction because it is an accredited degree granting institution that offers general education courses as required under WAC 458-20-167.<sup>2</sup> In support of this application, Taxpayer provided a Letter of Authorization from the Washington Student Achievement Council, Certificates of Authorization from the State of Washington Higher Education Coordinating Board (HECB), a Certificate of Accreditation from the Accrediting Council for Independent Colleges and Schools (ACICS), the 2013-2014 Academic Catalog, a summary spreadsheet to calculate the refund claim, and copies of Combined Excise Tax Returns.

Taxpayer's certificates of authorization from HECB, issued "pursuant to the Degree-Granting Institutions Act (RCW 28B.85)," authorize Taxpayer to offer at its . . . campus an Associate of Occupational Studies in Medical Office Management and an Associate of Occupational Studies in Medical Radiography. Students seeking degrees in these programs are required to take some courses that are considered general in nature, such as English Composition and College Mathematics. . . .

The Department's Taxpayer Account Administration Division (TAA) denied Taxpayer's refund request, and Taxpayer appealed this denial to the Appeals Division.

#### ANALYSIS

Washington imposes a B&O tax for the act or privilege of engaging in business in the state of Washington. RCW 82.04.220. Business activities other than, or in addition to, those that are specifically enumerated elsewhere in chapter 82.04 RCW or RCW 82.04.290(1), are taxed under the service and other activities B&O tax classification. RCW 82.04.290(2). There are a number of statutory exceptions, exemptions, and deductions set out in chapter 82.04 RCW. These tax benefits are narrowly construed, and the party claiming the deduction has the burden of showing that it qualifies for the deduction. *See, e.g., Budget Rent-A-Car, Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 174-175, 500 P.2d 764 (1972).

Pursuant to RCW 82.04.4282, a deduction from the measure of tax is permitted for amounts derived from bona fide tuition fees. RCW 82.04.170 defines "tuition fee" as including certain charges by an "educational institution," which is defined as follows (in pertinent part):

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<sup>2</sup> On December 16, 2014, Taxpayer filed a supplemental refund request, explaining that it recently discovered payment of an additional \$ . . . in B&O taxes on September 23, 2010, for periods covering September 2008 to July 2010. The combined refund claim is for \$ . . . .

[T]hose institutions created or generally accredited as such by the state . . . or defined as a degree-granting institution under RCW 28B.85.010(3) and accredited by an accrediting association recognized by the United States secretary of education, and offering to students an educational program of general academic nature, . . . but not including specialty schools, business colleges, other trade schools, or similar institutions.

WAC 458-20-167 (Rule 167) is the administrative rule regarding educational institutions that interprets and applies the deduction. Rule 167(2)(b) further explains the definition of “educational institutions” and provides that the term means (in pertinent part):

(i) Institutions which are established, operated, and governed by this state or its political subdivisions under Title 28A (Common school provisions), 28B (Higher education), or 28C (Vocational education) RCW....

(iii) Degree-granting institutions offering educational credentials, instruction, or services prerequisite to or indicative of an academic or professional degree or certificate beyond the secondary level, provided the institution is accredited by an accrediting association recognized by the United States Secretary of Education and offers to students an educational program of a general academic nature. Degree-granting institutions should refer to chapter 28B.85 RCW for information about the requirement for authorization by the Washington higher education coordinating board. . . .

(vii) "Educational institutions" does not include any entity defined as a "private vocational school" under RCW 28C.10.020 and/or any entity defined as a "degree-granting private vocational school" under chapters 28C.10 and 28B.85 RCW . . .

(Emphasis added.) RCW 28C.10.020(7) defines “private vocational school” as follows:

[A]ny location where an entity is offering postsecondary education in any form or manner for the purpose of instructing, training, or preparing persons for any vocation or profession.

In any question of statutory construction, we strive to ascertain the intention of the legislature by first examining a statute’s plain meaning. *G-P Gypsum Corp. v. Dep’t of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010). The rules of statutory construction apply to the interpretation of administrative rules and regulations. *Multicare Medical Ctr. v. Dep’t of Social and Health Svcs.*, 114 Wn.2d 572, 790 P.2d 124 (1990) (citing *State v. Burke*, 92 Wn.2d 474, 478, 598 P.2d 395 (1979)); *Musselman v. Dep’t of Social and Health Svcs.*, 132 Wn. App. 841, 846, 134 P.3d 248, 250-51 (2006). Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. *Id.*; *See also* Det. No. 04-0180E, 26 WTD 206 (2007). Courts assess a statute’s meaning “viewing the words of a particular provision in the context of the statute in which they are found, together with related statutory provisions, and the statutory scheme as a whole.” *Burns v. City of Seattle*, 161 Wn.2d 129, 140, 164 P.3d 475 (2007).

Under the plain meaning of RCW 82.04.170 and Rule 167, tuition fees for schools that the state and its political subdivisions operate under [Title] 28C RCW may be deducted from the measure of B&O tax, but private schools that are regulated by Chapter [28C.10] RCW do not qualify for the deduction.

Taxpayer operates a private school registered with the Workforce Training and Education Coordinating Board, which regulates private vocational schools under Chapter 28C.10 RCW. See <http://www.wtb.wa.gov> (last accessed September 2, 2015). It is also accredited and authorized under Chapter 28B.85 RCW to offer associates degrees in specific vocations. Because such schools are explicitly excluded from the definition of “educational institutions,” we conclude that Taxpayer is not an “educational institution” under the Rule [and RCW 82.04.170,] and it does not qualify for the deduction [in RCW 82.04.4282].<sup>3</sup>

#### DECISION AND DISPOSITION

Taxpayer’s petition is denied.

Dated this 4th day of September, 2015.

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<sup>3</sup> Taxpayer argues that it offers programs of a general academic nature that qualifies it for the deduction as an “educational institution.” Taxpayer cites *Deaconess Hospital v. Dep’t of Revenue*, BTA Docket No. 79-26 (1980) (*Deaconess*), *Dominican Health Services v. Dep’t of Revenue*, BTA Docket No. 01-149 (2005) [(Order on Cross Motions for Summary Judgment)] (*Dominican*), and Det. No. 87-297, 4 WTD 75 (1987) in support of this position. In *Deaconess*, the Board looked to former WAC 458-20-114 (Rule 114) rather than the current rule, Rule 167, which uses a different definition of “educational institution.” Because the Board applied a different rule, we find its analysis unhelpful. In *Dominican*, the Board found that taxpayer, a hospital, was an educational institution under RCW 82.04.170 and Rule 167, but provided no explanation for this holding, so we have no basis to extend its holding to this matter. We note that decisions of the BTA are not precedent for the Department. . . . 4 WTD 75 is distinguishable because the taxpayer operated a Bible College, which is materially different from the vocational school operated by Taxpayer that is excluded from the definition of “educational institutions.”