

Cite as Det. No. 19-0027, 40 WTD 131 (2021)

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

In the Matter of the Petition for Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 19-0027
)	
...)	Registration No. . . .
)	

[1] WAC 458-20-167; RCW 82.04.170; RCW 82.04.4282: B&O TAX – DEDUCTION – TUITION FEES – VOCATIONAL SCHOOL. Where the evidence shows that Taxpayer’s programs were focused on preparing students for specific vocations and professions rather than general education; Taxpayer was accredited by ACICS in programs designed to educate students for professional, technical, or occupational careers; the choice and selection of general education courses was limited; and, Taxpayer was authorized under RCW 28C.10, regardless of whether it exercised the authorization, we conclude that Taxpayer was a “degree-granting private vocational school” and is disqualified from the deduction.

[2] WAC 458-20-228; RCW 82.32.105: WAIVER OF PENALTIES AND INTEREST. Taxpayer’s assertion that it took deductions in good faith is not grounds for waiver.

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, T.R.O. – A for-profit . . . college protests the assessment of business and occupation tax (B&O) on tuition fees on grounds that the fees were deductible from its gross receipts. We deny the petition.¹

ISSUES

1. Whether Taxpayer operated an “educational institution” as defined in RCW 82.04.170 and qualified for the tuition fee deduction under RCW 82.04.4282.
2. Whether, under RCW 82.32.105, Taxpayer qualifies for waiver of penalties and interest on grounds that it took deductions in good faith.

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

FINDINGS OF FACT

Taxpayer operated a for-profit . . . college with a campus in Washington. The Department of Revenue’s Audit Division (Audit) conducted a limited audit of Taxpayer’s records for the period January 1, 2012, through June 30, 2016, to determine whether Taxpayer properly reported receipts from tuition fees. On December 28, 2017, Audit assessed Taxpayer \$ The assessment is comprised of \$. . . in service and other activities B&O tax, \$. . . in a 29% delinquent penalty, \$. . . in interest, and \$. . . in a 5% assessment penalty.

Taxpayer offered bachelor’s and associate’s degree programs, which included some general education requirement courses required for finishing the degrees, but its programs were very specific and its own stated mission indicates a purpose to prepare persons for specific vocations and professions Taxpayer’s programs were primarily skills-oriented programs that prepare an individual to practice a vocation in a specialty area, such as The limited selection of general education courses appear to be just the amount required to meet the minimum standards for degree-granting institutions, with no ability to select from various course offerings, and the same general education courses are offered for each program.

Taxpayer was accredited by the Accrediting Council for Independent Colleges and Schools (ACICS). The ACICS website lists the scope of accreditation to be for private postsecondary institutions in programs designed to educate students for professional, technical, or occupational careers. *See* www.acis.org/accreditation (last accessed January 29, 2019).²

From April 2014 through April 2015, Taxpayer held a license to offer certificate programs under the provisions of the Private School Act under RCW 28C.10, and was also subject to oversight of the Washington Workforce Training and Education Coordinating Board (WTECB) from March 2015 through April 2015. Taxpayer explains that while it was licensed to offer two certificate programs by WTECB, those programs did not receive accredited status until March 2, 2015, after Taxpayer had decided to close the Washington campus, and Taxpayer never actually offered the programs.

Audit disallowed deductions [under RCW 82.04.4282] that Taxpayer took for tuition fees on grounds that it is a degree granting private vocational school rather than an “educational institution” under RCW 82.04.170. Taxpayer petitioned for correction of the assessment on grounds that it was indeed a qualifying educational institution.

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

² ACICS was a nationally recognized accreditor until its recognition was revoked on December 12, 2016, for failing to comply with the requirements for recognition. On November 21, 2018, Secretary of Education Betsy DeVos reinstated ACICS.

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):

[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 a 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).

Taxpayer argues that while it was, for a time, regulated by Chapter 28C.10, RCW [and thus excluded from the definition], it should nevertheless qualify for the deduction because it is an "educational institution." Further, Taxpayer concludes that "degree granting private vocational school" is limited to schools that grant degrees and are registered with the Higher Education Coordinating Board or Washington Student Achievement Counsel (WSAC), and also provide training classes and are licensed by the WTECB. Brief in Support of . . . Petition, Pages 11-12; WAC 250-61-070 (Degree-granting private vocational schools' programs shall be regulated pursuant to an agreement between WSAC and WTECB. Degree programs shall be regulated by the WSAC, and non-degree programs shall be regulated by the WTECB.). We find no grounds to limit the definition of "degree-granting private vocational school" based on its regulators as Taxpayer suggests. [The evidence shows that (a) Taxpayer's programs were focused on preparing students for specific vocations and professions rather than general education; [b] Taxpayer was accredited by ACICS in programs designed to educate students for professional, technical, or occupational careers; [c] the choice and selection of general education courses was limited; and, [d] Taxpayer was authorized under RCW 28C.10, regardless of whether it exercised the authorization[.] [Accordingly,] we conclude that Taxpayer was a "degree-granting private vocational school" and is disqualified from the deduction under Rule 167(2)(b)(vii).^{3,4}

Taxpayer also asks that we cancel the penalties imposed in the assessment. The Department's authority to waive or cancel penalties is restricted to the authority granted by the Legislature. Otherwise, the assessment of penalties is mandatory when the conditions for imposing them are met. RCW 82.32.090; Det. No. 01-193, 21 WTD 264 (2002); Det. No. 99-279, 20 WTD 149 (2001). The Legislature has granted the Department limited authority to waive or cancel penalties pursuant to RCW 82.32.105. RCW 82.32.105(1) provides that the Department is required to waive

³Taxpayer discusses *Deaconess Hospital v. Dep't of Revenue*, BTA Docket No. 79-26 (1980) (*Deaconess*) and *Dominican Health Services v. Dep't of Revenue*, BTA Docket No. 01-149 (2005) (*Dominican*), where the Board allowed the deduction, asserting that Taxpayer is even more clearly a qualifying educational institution. 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. The Legislature intended that only the Department will decide what will be administrative precedent. RCW 82.32.410.

⁴ Taxpayer argues that denying Taxpayer the deduction would be a violation of the uniformity requirement found in Article VII, Section 1 of the Washington Constitution on grounds that the Department has historically allowed the deduction for all institutions licensed under the Degree Granting Institutions Act. The uniformity provision referenced by Taxpayer insures that "the burdens of taxation are uniformly distributed." *See Cosro, Inc. v. Liquor Control Bd.*, 107 Wn.2d 754, 761, 733 P.2d 539 (1987). It applies only to property taxes, not to excise taxes. *Id.* Because excise taxes, not property taxes, are at issue in the present case, this provision is inapplicable.

penalties when it finds that the underlying act giving cause to the assessment of the penalty, i.e., delinquent payment, was due to circumstances beyond the control of the taxpayer.

WAC 458-20-228 (Rule 228) is the administrative rule regarding penalties. Rule 228(9)(a)(ii) defines “circumstances beyond the control of the taxpayer.” It states:

The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay.

Examples of what constitutes such circumstances are provided in Rule 228(9)(a)(ii), none of which apply to the situation here where Taxpayer asserts that penalties should be waived because it acted in good faith.⁵ Rule 228(9)(a)(iii) gives examples of circumstances that are *not* considered to be a basis for waiving penalties.⁶ Specifically, Example (B) [of the latter category] includes “a misunderstanding or lack of knowledge of a tax liability,” and Example (E) includes mistakes on the part of employees. Because the circumstances alleged in this matter are not immediate, unexpected, or in the nature of an emergency, and are unlike those circumstances described in Rule 228(9)(a)(ii), we conclude that the circumstances alleged by Taxpayer are not “beyond the control of the taxpayer” and are not grounds for waiver of penalties.

RCW 82.32.105(3) and Rule 228(10) provide that the Department will waive or cancel interest imposed under chapter 82.32 RCW only where the failure to pay the tax prior to the issuance of the assessment was the direct result of written instructions given the taxpayer by the Department, or the extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the Department. Since we find no evidence of either of these circumstances in the petition or record, we sustain the assessment of interest.

⁵ Examples of circumstances beyond the control of the taxpayer in Rule 228(9)(a)(ii) include:

- (A) The return payment was mailed on time but inadvertently sent to another agency.
- (B) Erroneous written information given to the taxpayer by a department officer or employee caused the delinquency
- (C) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family

⁶ Examples in Rule 228(9)(a)(iii) of circumstances that are generally not beyond the control of the taxpayer and will not qualify for waiver or cancellation of penalty include:

- (A) Financial hardship;
- (B) A misunderstanding or lack of knowledge of a tax liability;
- (C) The failure of the taxpayer to receive a tax return form, EXCEPT where the taxpayer timely requested the form and it was still not furnished in reasonable time to mail the return and payment by the due date, as described in (a)(ii)(G) of this subsection;
- (D) Registration of an account that is not considered a voluntary registration, as described in subsection (5)(a)(iii) and (b) of this section;
- (E) Mistakes or misconduct on the part of employees or other persons contracted with the taxpayer (not including conduct covered in (a)(ii)(F) of this subsection); and
- (F) Reliance upon unpublished, written information from the department that was issued to and specifically addresses the circumstances of some other taxpayer.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 1st day of February 2019.