

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

The Corporation for Community Development

FILE NO. B&O-83-002

from a B&O tax determination by the
Department of Licenses and Consumer
Affairs

Introduction

The Corporation for Community Development, appellant, appeals the decision of the Director of the Department of Licenses and Consumer Affairs assessing the City's Business and Occupation (B&O) tax upon it for the period January 1, 1980 through December 31, 1981 and requiring it to pay a Business License Fee for said period.

The appellant exercised its rights to appeal pursuant to Section 5.44.230, Seattle Municipal Code.

Appearing for appellant was Patrick F. Kane, President, Corporation for Community Development, pro se. Appearing for the City of Seattle was Jorgen G. Bader, assistant city attorney.

The matter was heard before the Hearing Examiner on July 18, 1983.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The appellant, Corporation for Community Development (CCD) is a Virginia corporation with a business address of 11484 Washington Plaza West, Reston, Virginia 22090.

2. Said corporation executed a contract with the City of Seattle on June 16, 1980, to survey 230-240 City buildings for structural soundness, access for handicapped, general maintenance needs, etc., in consideration for three hundred fifty thousand dollars (\$350,000.00).

3. CCD obtained said contract with the City by participation in a competitive selection process in Seattle administered by the Department of Administrative Services of the City of Seattle and the contract was signed in Seattle.

4. Seattle Municipal Code Section 5.44.040. Tax on Business with the City, states in part:

"...there is levied upon and there shall be collected from every person... a tax upon the act or privilege of engaging in business activities and transactions with the City involving the purchase of materials, supplies, equipment, improvements and other contractual services. Such tax shall be levied on the privilege of accepting and executing the contract, and shall be collected whether such transactions occur or take place within or without the City and whether or not such person has his office or place of business within or without the City..." (emphasis added)

5. On May 16, 1983 the Director of Licenses and Consumer Affairs issued a Debit Note No. 6063 for the Audit period of January 1, 1980 to December 31, 1981, upon CCD for B&O tax in the amount of \$736.30, plus a business license fee of \$15.00, interest at 10 percent per annum or \$138.49 for a total debit note of \$889.79.

6. CCD performed said contract, surveyed the specified buildings in the City of Seattle, submitted monthly invoices to the City, accepted payment, submitted a final report to the City, and was paid the full \$350,000 consideration by the City.

7. CCD neither obtained a City Business License nor paid any business tax to the City of Seattle.

8. CCD asserts it is merely a pass-through entity to substantive corporations providing the manpower and services for the contract and therefore it should not be subject to the City B&O tax.

9. The contract (Appellant's Exhibit 1) specified in Section 335 in part:

This agreement is personal to each of the parties hereto and neither party may assign or delegate any of its rights or obligations hereunder without first obtaining the written consent of the other party. In the event of any approved assignment or subcontract, the Department shall continue to hold the Consultant responsible for proper performance of obligations under this Agreement.

10. The contract includes an integration clause in Section 385 which states:

This Agreement embodies the agreement, terms and conditions between the City and the Consultant. No verbal agreements or conversation with any officer, agent or employee of the City prior to the execution of this agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon either party.

11. CCD was presented as a consortium of firms able to provide the engineering, architectural, and other professional capabilities to properly survey the specified City buildings and provide evaluations of the condition of said buildings.

12. The City paid CCD warrants on a "time and materials" basis pursuant to the contract Section 200.

13. CCD's president, Mr. Kane, was the responsible individual the City looked to for accountability, including removal of the local project manager, and substitution of an adequate local manager.

Conclusions

1. The Corporation for Community Development contracted with the City to provide services for compensation in the amount of \$350,000 subjecting itself to the City's business and occupation tax section 5.44.040 of the Seattle Municipal Code levying said tax on the privilege of accepting a contract with the City.

2. The City has no duty to select the form of business entity utilized by those doing business with it. Use of the corporate structure by CCD enabled it to receive the contract with the City and having accepted the benefit of such structure it must also accept the burdens, i.e. taxation.

3. The Washington Supreme Court found in Dravo Corp. v. Tacoma 80 Wn.2d 500, 496 P. 2d 504, in a case involving a municipal business and occupation ordinance upon which Seattle's B&O is patterned, that to determine where the taxable event occurs one must look to the indicia of contract making. In this case the competitive process took place in Seattle upon proposals submitted to Seattle's Department of Administrative Services and the contract was signed in Seattle to provide services within Seattle. Dravo at 596.

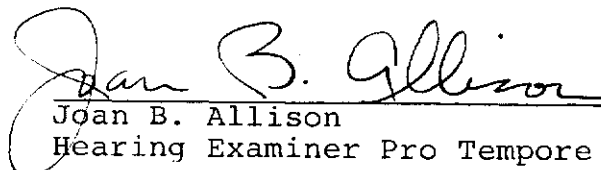
4. The City cannot increase its compensation beyond the contracted for \$350,000 to cover its own B&O tax. The City has paid the full contracted consideration and any increase would be a gift of public funds prohibited by the State Constitution Article II Section 24, and CCD cannot increase its charges to the City beyond the contract. Tacoma v. O'Brien 85 Wn.2d 266, 534 P. 2d 114 (1975).

5. The City correctly levied its B&O tax on "...the privilege of accepting and executing the contract..." (Section 5.44.040) with the City.

Decision

The determination of the Director of the Department of Licenses and Consumer Affairs is hereby affirmed, and the Debit Note for tax, interest and a business license fee, totalling \$889.79 upheld.

Entered this 8th day of August, 1983.


Joan B. Allison
Hearing Examiner Pro Tempore

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.