FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DANWOOD DESIGN COMPANY FILE NO. B-89-003

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

Introduction

The appellant, Danwood Design Company, appeals the decision of the Director of the Department Licenses and Consumers Affairs. The decision in question assesses the City's business and occupation (B&O) tax upon the appellant for the period April 1, 1984 through June 30, 1988 in the amount of $4,441.17.

This appeal is exercised pursuant to Seattle Municipal Code Section (SMC) 5.44.230.

The appeal was heard before the Hearing Examiner for the City of Seattle on September 19, 1989. The record remained open at the request of the parties for a period of one week.

Appearing on behalf of appellant was Dan Devlin, president of the Danwood Design Company. The City of Seattle was represented by James Pidduck, assistant city attorney.

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

Findings of Fact

1. This is an appeal by a tax payer from the assessment of $4,441.17 alleged to be unpaid business and occupation tax due to the City of Seattle.

2. Appellant, Danwood Design Company has its principal place of business in Snohomish County Washington. It uses a Woodinville (King County) business address. Appellant manufactures office work station furniture at its Snohomish County place of business. That facility is suitable only for manufacturing purposes and does not contain adequate space for display.

3. In March, 1983, appellant rented a showroom in the Seattle Design Center near the Georgetown Community in South Seattle. Lease payments began in May, 1984. The lease expired in May 1989 and has not been extended or renewed. Appellant had no other place of business within the City of Seattle for those five years and has not had any since May 1989.

4. Appellant operated its Seattle showroom for the purpose of obtaining business from designers and architects who might specify its products.

5. A business license was obtained by appellant which allowed it to transact business in the City of Seattle.

6. The Seattle showroom of appellant was, for the first year, open full time during normal business hours at the Seattle Design Center. An employee of appellant was present when the showroom was open.

7. After the first year of operation of a Seattle showroom a paid employee of appellant was present only three hours per day. Other persons representing appellant for purposes of making sales had keys to the Seattle showroom and would show appellant's products to potential end users.

8. Most orders for appellant's products are provided through third parties authorized by appellant to deal in its products. Appellant is unaware whether any orders were accepted by dealers at the Seattle showroom.

9. Appellant's employees who worked at the Seattle showroom did not generally accept orders. The orders accepted by employees at the showroom likely occurred in the first year of the showroom's operation.

10. Appellant filed quarterly B & O tax returns with the City of Seattle showing no business activity within the City. In September, 1987, a City tax auditor was assigned to make a field audit of Appellant's business.

11. The City Tax Auditor requested from Appellant the dollar volume of business to end-users or dealers located within the City. Appellant provided information in response to the request for each of the various quarters of the calendar year. From these figures the tax auditor applied the B & O tax rate and levied an assessment of $3,769.43 to which was added interest of $668.74. No interest is claimed after January 1, 1988. This assessment was the decision of the Department of Licenses and Consumers Affairs.

Conclusions

1. Jurisdiction of this appeal lies with Hearing Examiner pursuant to Chapter 5.44, Seattle Municipal Code.

2. The determination of the City with respect to a B & O tax assessment is deemed prima facie correct. Seattle Municipal Code Chapter 5.44.230. The decision of the City may be reversed or modified if it "violates the terms of this chapter or is contrary to law".

3. A reviewing court is bound to defer to an agency administering the law. Mall Inc. v. Seattle, 108 Wn. 2d 369 (1987). The deference usually accorded to agency action evaporates if it is wrong or contrary to law. Othello Community Hospital v. Employment Security Department, 52 Wn. App. 592, 596 (1988), SMC 5.44.230. In any event, the legislative scheme under which review is sought must be seen as a whole; the health of an organism cannot accurately be seen only by inspecting a few stray cells.

4. The City B & O tax is imposed upon persons "on account and for the privilege of engaging in business activities...." Seattle Municipal Code Chapter 5.44.030. The term "business" is defined to include "all activities engaged in with the object of gain, benefit or advantage to the tax payer or to another person or class directly or indirectly." Seattle Municipal Code Chapter 5.44.022 (2). Clearly, appellant's showroom was conducted for gain or advantage to it, albeit indirectly; and directly as certainly appellant intended the showroom to benefit directly its distributors. The Seattle showroom is a business activity and subject to taxation.

5. Having determined that a taxable event occurred with respect to sales generated to Seattle end-users and dealers it is next necessary to determine if any other portion of SMC 5.44 permits a different assessment. Appellant draws attention to SMC 5.44.072 (A). The first sentence of that ordinance is inapplicable to Appellant because it refers to businesses having no "office, store or other place of business within this City,...." It is undisputed here that appellant did, in fact, have a showroom within the City during the period of time for which the B & O tax is claimed.

6. The next sentence of SMC 5.44.072 A allows a taxpayer a reduction in the levy if it maintains a place of business within the City and "maintains no equivalent facility elsewhere in Washington...." In that event, the taxpayer may deduct gross proceeds of sales which are used by another Washington city in

levying a license fee or tax and which reflects business activity conducted in the taxing city that is either a determining element in the transaction or a significant factor in making or holding the taxpayer's market there. The showroom maintained by appellant in the City of Seattle was the only such facility maintained by appellant within the State of Washington. The manufacturing facility in Snohomish County was too small adequately to display appellant's products. However, there is no evidence that another taxing city levied a license fee or tax measured by gross receipts.

7. The final sentence of SMC 5.44.072 reads:

> "A person, who engages in the business of making sales at wholesale or retail using an office, store or other outlet within this City and maintains another equivalent facility elsewhere in Washington, may allocate the gross proceeds of sales to the office, store or outlet in Washington where the predominant selling activity occurs."

As noted in the preceding conclusion, appellant maintains a manufacturing facility in Snohomish County. During the period of time Appellant maintained a showroom within the City of Seattle it maintained no other "equivalent facility" elsewhere in Washington State. The showroom had a function separate and apart from that of the manufacturing facility. The showroom was intended to be a place free from manufacturing activity which would allow, in a clean, quiet and decorous atmosphere, potential purchasers to view and inspect Appellant's product.

8. Appellant may sell products to a dealer within the City of Seattle. That transaction is taxable by the City of Seattle. In turn, the dealer within the City of Seattle may sell to another end-user within the city. That transaction, too, is taxable by the City to the account of the dealer. Thus, the same product may have been taxed two different times. However, two different rates may have applied depending upon the classification of the taxpayer. Similarly, the amounts of each transaction may have varied because of wholesale and retail price differences. Further, the dealer serves to enhance the reputation of the manufacturer by providing service, image, advertising and marketing penetration unavailable to the manufacturer but appreciated by the end-user.

9. The action of the department is consistent with the legislative intent expressed in the ordinance and is entitled, in these proceedings, to deference in any event.

Decision

The decision of the Director is affirmed with the requirement, however, that appellant not be charged interest from and after January 1, 1988.

Entered this 11th day of October, 1989.

Kelby Fletcher
Hearing Examiner ~~Pro Tempore~~

CONCERNING FURTHER REVIEW

The decision of the Hearing Examiner in this case is the final administrative determination by the City, and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such a request 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. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104.