

Cite as 11 WTD 81 (1990).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Refund of)	
)	No. 90-340
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	
)	

- [1] RCW 82.16.020, RULE 179: PUBLIC UTILITY TAX -- WATER DISTRIBUTION. A water district's revenue is taxable gross income when received as monthly payments from customers for water distribution services rendered. Accord: Kennewick v. State, 67 Wn.2d 589 (1965), Seattle v. State, 12 Wn.App. 91 (1974), Det. No. 87-63, 2 WTD 285 (1987).
- [2] MISCELLANEOUS: PRIOR AUDIT -- FAILURE TO TAX -- EFFECT -- ESTOPPEL. The Department is not estopped from assessing tax despite prior audits by the state Auditor's office which failed to advise the taxpayer/water district of the need to collect and remit the public utility tax. Accord: Kitsap-Mason Dairymen v. Tax Comm'n, 77 Wn.2d 812 (1970), Det. No. 87-299, 4 WTD 97 (1987).
- [3] MISCELLANEOUS: TAXES -- INTEREST AND PENALTIES -- WAIVER -- LACK OF KNOWLEDGE -- HARDSHIP -- BURDEN TO INFORM. Hardship or lack of knowledge of a tax obligation is not identified by statute or rule as grounds for waiver of taxes, interest or penalties. The burden is on the taxpayer to determine if it has an obligation to pay taxes. Accord: Det. No 87-348, 4 WTD 281 (1987), Det. No. 86-226, 1 WTD 67 (1986), Det. No. 86-178, 1 WTD 287 (1986).

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.

TAXPAYERS REPRESENTED BY: . . .

DATE OF TELEPHONE CONFERENCE: . . .

NATURE OF ACTION

A water district petitions for refund of public utility taxes which were assessed following an audit.

FACTS

De Luca, A.L.J. -- The taxpayer is a non-profit public water district which supplies and distributes water to its customers. The Department of Revenue audited the taxpayer for the period January 1, 1985 through December 31, 1988. The taxpayer was assessed \$. . . in public utility taxes plus \$. . . in interest for a total of \$ The auditor allowed statutory deductions for capital construction costs including installation of mains, meters, pipes and fittings installed for new service areas and the renting of equipment to install them.

TAXPAYER'S EXCEPTIONS

The taxpayer provides two reasons for its refund petition. The first one is the State Auditor's office has regularly inspected the taxpayer's financial records to insure compliance with state law. According to the taxpayer, the State Auditor's office at no time in the past ever advised it to pay the public utility tax. The second reason is the assessment imposed a "severe financial hardship" on the district because it was unaware of the necessity to pay the tax. The taxpayer did not consider the amount of taxes in establishing the district's customer billing formulas and therefore did not collect the tax from previous customer billings.

ISSUES

May the Department of Revenue be estopped from assessing the taxes because the State Auditor had not notified the taxpayer during previous audits to report and pay the public utility tax?

Is financial hardship a reason to grant the taxpayer relief from its tax obligations?

DISCUSSION

The governing statute is RCW 82.16. The rule implementing the tax is WAC 458-20-179 (Rule 179). Under the statute a "water distribution business means the business of operating a plant or system for the distribution of water for hire or sale." RCW 82.16.010(4). The statute imposes the tax on the gross income of water distribution businesses. See RCW 82.16.020(1)(f).

"Gross income" is defined in RCW 82.16.010(12) as:

"Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

WAC 458-20-179(2) states "[p]ersons engaged in certain public businesses are taxable under the public utility tax...." The rule continues:

Persons who are taxable under the public utility tax, which is applied to gross income, are those engaged in the following businesses: Railroad, express, railroad car, water distribution, sewerage collection, refuse collection, light and power, telegraph, gas distribution, urban transportation and common carrier vessels under 65 feet in length, motor transportation, tugboat businesses, and all public service businesses other than those heretofore mentioned. [underling added]

[1] The courts have affirmed the public utility tax imposed against public water systems. The Washington Supreme Court in Kennewick v. State, 67 Wn.2d 589, 592 (1965), declared: "[i]n the present case, the operation of the water system by the city is clearly within the purview of the public utility tax", citing RCW 82.16.020.

The court continued: "[t]he legislature has directed the tax commission to levy a public utility tax upon the gross income of the municipality's utility" and then the court quoted the definitions of "water distribution business" and "gross income" as found in RCW 82.16.010(4) and (12), cited above. The court then held: "[t]he act is clear and unambiguous. The tax is predicated upon the gross income received from the customers for the utility service rendered."

See also Seattle v. State, 12 Wn.App. 91, 96-97 (1974) which discusses Kennewick v. State and affirms that revenue received as a result of monthly payments from customers for water services rendered is taxable gross income of the utility.

[2] The next question is whether the Department is estopped from enforcing the tax because prior audits by the state Auditor's office did not address the public utility tax obligation. The answer is no.

First, the state Auditor's office is a separate agency from the Department of Revenue. Furthermore, the agencies perform different functions. The Director of Revenue "shall: (1) [a]ssess and collect all taxes and administer all programs relating to taxes...". RCW 82.01.060. Accordingly, the Department of Revenue's auditors conduct audits of taxpayers to ensure compliance with the state's tax laws. By contrast, the State Auditor is the auditor of public accounts. RCW 43.09.020. The State Auditor's duties include auditing "... the accounts of all collectors of the revenue and other holders of public money required by law to pay the same into the treasury." RCW 43.09.050(1).

The actions and duties of the auditors of another state agency do not estop the Department of Revenue from enforcing the tax laws. Even omissions by the Department's own auditors will not prevent the state from collecting the taxes. See Kitsap-Mason Dairymen v. Tax Comm'n, 77 Wn.2d 812, 818 (1970), where the taxpayer consistently reported its taxes in an erroneous manner for years which included prior audits by the Department of Revenue. The Washington Supreme Court stated:

This is not a case in which auditors changed their interpretation of a statute or rule. It is one in which they overlooked through ignorance, neglect, or inadvertence Kitsap's error in computing the tax. The fact that the oversight only recently has been discovered does not relieve Kitsap of its liability

for the correct tax during the audit period now under consideration.

The doctrine of estoppel will not be lightly invoked against the state to deprive it of the power to collect taxes. The state cannot be estopped by unauthorized acts, admissions or conduct of its officers. [citations].

See also Det. No. 87-299, 4 WTD 97 (1987).

[3] The Department of Revenue does try to provide accessible taxpayer information. There are 15 regional offices around the state to assist taxpayers and answer questions without charge. The state also maintains a Taxpayer Services Division. The ultimate responsibility for registering with the Department and properly reporting taxes, however, rests on persons in business. The Department is not required to make sure that every business or utility knows its tax obligations before it can assess taxes, interest or penalties. With over 275,000 registered taxpayers in Washington, the burden must be on the taxpayer to determine if it has an obligation to pay taxes. Det. 86-226, 1 WTD 67 (1986), Det. 86-278, 1 WTD 287 (1986).

Our decision to deny relief does not mean that the Department does not recognize the hardship the imposition of the tax, interest and penalties places on the taxpayer. In most cases, when a non-profit business as the taxpayer has been underreporting its tax liability because of a lack of knowledge or good faith belief that its activity was not taxable, the taxpayer protests the assessments because the assessment poses a substantial hardship. Hardship or lack of knowledge of a tax obligation, however, is not identified by statute or rule as grounds for waiver of taxes, interest, or penalties. Det. No. 87-348, 4 WTD 281 (1987).

DECISION

The taxpayer's petition for refund is denied.

DATED this the 24th of August 1990.