

Cite as Det. No. 93-322, 14 WTD 077 (1994).

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

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of)	
)	No. 93-322
)	
. . .)	Registration No. . . .
)	FY. . . /Audit No. . . .

[1] RULE 101, RULE 104; RCW 82.04.030, RCW 82.04.300: B&O TAX -- EXEMPTION -- MONTHLY MINIMUM -- MINIMUM TAXABLE AMOUNT -- HUSBAND AND WIFE -- "PERSON" DEFINED -- MARITAL COMMUNITY. A marital community is not defined as a person. If a husband and wife have separate businesses, with separate registration numbers, each business is a separate "person" for purposes of the B&O tax minimum taxable amount exemption.

[2] RULE 228, RULE 230; RCW 82.04.030, RCW 82.04.300, RCW 82.32.050: B&O TAX -- EXEMPTION -- MINIMUM TAXABLE AMOUNT -- "PERSON" DEFINED -- HUSBAND AND WIFE -- REGISTERED TAXPAYER -- UNREGISTERED TAXPAYER. Where one spouse has registered and reported its taxes, that spouse is entitled to have its business treated as a separate "person" provided the other spouse is not actively involved in the registered spouse's business. In that case, the Department will treat the unregistered spouse's activities as a separate business and will assess tax up to seven years prior to the assessment date plus the current year, and will impose penalties. However, where spouses operate separate businesses and one spouse is registered and the other is not, the Department cannot treat them as a single unregistered person for tax assessment purposes. The Department must be consistent in its treatment of taxpayers.

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.

NATURE OF ACTION

Taxpayers, husband and wife, operate two separate businesses and assert that each is entitled to file separately.

FACTS:

Danyo, A.L.J.-- Taxpayers (husband and wife) are each engaged in business in the state of Washington. Taxpayer-wife has been operating a beauty shop at a nursing home for many years. Taxpayer-husband is an insurance agent.

In October 1989, Taxpayer-wife registered a sole proprietorship under the Unified Business Identifier (UBI) system and filed returns for 1982 through 1989. She has also filed annual excise returns for 1990 and 1991. Taxpayer-wife has reported no Business and Occupation (B&O) tax due because the beauty shop's gross receipts for each year has been less than \$12,000.

Taxpayer-husband has been engaged in the insurance business for many years. He never registered with the Department of Revenue (Department) as an individual business because Taxpayer-husband believed he was an employee and did not need to separately register and report his insurance income.

In 1987, Taxpayer-husband formed a corporation for his independent insurance activities and registered it under the UBI system. That account reported no activity until 1990. From 1987 through 1991, however, Taxpayer-husband had received 1099's for non-employee income from various insurance companies. Taxpayer-husband did not report this income under either the corporation's UBI number or the beauty shop's UBI number.

In November 1993, the Department's Taxpayer Accounts Administration (TAA) Division contacted Taxpayer-husband for information regarding his insurance activities. Taxpayer-husband provided the information requested. TAA issued two tax assessments under the beauty shop's UBI Number.

A tax assessment for the period January 1, 1985 through December 31, 1987, imposed B&O plus interest and penalties on Taxpayer-husband's insurance income only. This assessment is not in issue.

A tax assessment was also issued for the period January 1, 1988 through December 31, 1991. A post assessment adjustment assessed B&O tax on both Taxpayer-wife's reported beauty shop income and Taxpayer-husband's unreported insurance income. A penalty was imposed on the B&O tax assessed on Taxpayer-husband's insurance income. Taxpayers petitioned for correction of assessment B&O tax assessed on the beauty shop income plus interest.

Taxpayers argue that the beauty shop and the insurance business are separate businesses and are operated by them as such. Taxpayers assert that the two incomes should be kept separate for B&O tax purposes. Taxpayers provided their federal income tax returns, including Schedule C, in support of their contentions that the beauty shop income has been below the \$12,000 minimum and qualifies for the B&O tax exemption found at RCW 82.04.300.¹

ISSUES:

1. Whether a husband and wife can operate separate businesses and report their incomes separately and avail themselves of the minimum B&O tax exemption.

2. Whether the Department can combine a registered taxpayer's income with an unregistered taxpayer's income to determine their B&O tax liability and at the same time assess tax and penalties beyond the four year statute of limitation against the unregistered taxpayer's income.

DISCUSSION:

Every person who conducts business in the state of Washington is required to register with the Department of Revenue unless specifically exempt. RCW 82.32.030; WAC 458-20-101 (Rule 101). All registered persons are classified according to the nature of their business activities and are subject to a B&O tax at a rate determined by that classification. RCW 82.04.220. For B&O tax purposes, a "person" is defined at RCW 82.04.030, as:

. . . any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

In the instant matter, the Department combined Taxpayer-wife's beauty shop income with Taxpayer-husband's insurance income to determine their B&O tax liability. Thus, the Department presumed that both businesses were the property of the "marital community" and treated the two individuals as a "person."

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

[1] A marital community is not defined as a person. RCW 82.04.030. In Det. No. 88-159, 5 WTD 217 (1988), we said:

To find that a marital community is one person, for excise tax purposes, we would have to conclude that the two of them are acting as a business, even though they have two totally distinct businesses. . . . If the legislature had intended that a marital community was to be considered "a group of individuals acting as a unit" for tax purposes, it would have specifically included "marital community" among the other 24 listed "persons."

. . . A marital community is not similar to the business forms listed as "persons" in the statute.

Thus, a husband and wife can operate separate businesses and report their incomes separately. In Det. No. 88-159, 5 WTD 217 (1988), we observed that:

The individuals of a marital community may . . . [each] fall within this description of a "person" if in fact the husband and wife actually conduct their different spousal businesses independently of one another.

Taxpayers contend that they are not one business but rather two separate businesses. The evidence supports their contention. Taxpayer-wife registered her business and reported only her income from that business. The businesses do not share offices, addresses or telephone numbers. The federal returns indicate Taxpayers report their individual businesses on separate Schedule C, Profit and Loss statements. Taxpayer-wife requires a special license to cut hair and Taxpayer-husband requires a license to sell insurance. Neither is involved with the management of the other's business.

We agree that the two businesses are separate and are entitled to be treated as such for B&O tax purposes.

In assessing the B&O tax, the Department treated Taxpayer-wife as a registered taxpayer and, therefore, the assessment was limited to four years plus the current year, i.e., 1988 through 1991. No penalties were imposed on the B&O tax assessed on the beauty shop income. This treatment of a registered taxpayer is consistent with the requirements of RCW 82.32.050, WAC 458-20-230 (Rule 230) and WAC 458-20-228 (Rule 228).

On the other hand, Taxpayer-husband's individual business income, was not reported and he was deemed to be unregistered.² An assessment of an unregistered taxpayer may go beyond the four-year limitation imposed by RCW 82.32.050. Penalties are statutorily mandated in such cases. RCW 82.04.300; RCW 82.32.050; RCW 82.32.090; RCW 82.32.100; Rule 101; Rule 228; Rule 230.

[2] In the instant matter, TAA added Taxpayer-husband's income to Taxpayer-wife's income in order to ascertain their B&O tax liability. In so doing, however, TAA ignored the fact that by treating taxpayer-husband and taxpayer-wife as one registered business, they could not issue an assessment that extended beyond four years prior to the current year unless lack of good faith, intent to evade the taxes or defraud the Department is alleged. Rule 101; Rule 228; RPM 89-004. No such allegations are in the record.

Taxpayers' petition is granted. We find that the beauty shop is a separate business owned and operated by Taxpayer-wife. The beauty shop income shall continue to be reported under its UBI number. A taxpayer's reporting frequency and liability for B&O tax purposes is determined by its gross receipts. RCW 82.04.030. If the beauty shop's gross receipts do not exceed \$1,000 a month, or \$3,000 a quarter, or \$12,000 annually, Taxpayer-wife is entitled to the benefits of the exemption found in RCW 82.04.300. We note that Taxpayer-wife has not filed the 1992 Annual Excise Tax Return pending resolution of this appeal. Taxpayer-wife should file the return.

The Department's inclusion of Taxpayer-husband's income under the beauty shop's UBI number is incorrect. Taxpayer-husband shall be assigned a separate UBI number, as is done when unregistered taxpayers are discovered. The \$15 registration fee shall be due upon notification from TAA. The tax assessments covering the audit periods January 1, 1985 through December 31, 1987, and January 1, 1988 through December 31, 1991, should be re-issued against taxpayer-husband under a different UBI number. These assessments are fully sustainable as to the B&O tax, interest, and penalties assessed on the insurance income.

The assessments of both businesses are based on information provided by Taxpayers and are subject to field audit verification.

DECISION AND DISPOSITION:

²We are not concerned with taxpayer-husband's income reported through the corporation. The original assessments were adjusted so that income was deleted from taxpayer-husband's individual income included in the post adjustment assessments.

Taxpayers' petition is granted. The matter is remanded to TAA for correction of the assessments in accordance with the findings of this Determination. The interest shall be adjusted accordingly.

DATED this 29th day of December, 1993.