

Cite as 2 WTD 411 (1987)

BEFORE THE INTERPRETATION AND APPEALS SECTION  
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 Correction of Assessment of)	
)	No. 87-93
)	
)	Registration No. . . .
. . . )	Tax Assessment No. . . .
.	
)	
)	

[1] **RULES 170 and 105:** CONSTRUCTION CONTRACT -- JOINT VENTURE -- FACTS INDICATING. The following facts indicated the taxpayer and another party constructed a house as a joint venture rather than as "prime" and "sub" contractors or as an employer and a employee:

- 1) both parties had met with the architect and owner to discuss the plans;
- 2) both of the parties' names were on the contract itself;
- 3) draws from the bank had both of the parties' names on them; and
- 4) the parties split the profit.

[2] **RULE 170:** JOINT VENTURE -- NATURE OF RELATIONSHIP. A joint venture is in the nature of a partnership, and the rights, duties, and liabilities of the parties are generally tested by the same rules. (Barrington v. Murry cited.)

[3] **RULE 170:** JOINT VENTURE -- TAX LIABILITY OF EACH PARTY TO JOINT VENTURE. Joint venturers are jointly and severally liable for everything chargeable to the joint venture.

[4] **RULE 170 and RCW 18.27.065:** CONSTRUCTION CONTRACT -  
- JOINT VENTURE -- REGISTRATION OF CONTRACTORS --  
ETB 46. A joint venture is deemed registered under  
chapter 18.27 RCW if any one of the parties to the  
joint venture is registered.

[5] **RULE 170:** CONSTRUCTION CONTRACT -- JOINT VENTURE --  
TAX CONSEQUENCES OF. The tax consequences  
applicable to joint ventures are proper when:

- 1) the joint venture was specifically formed to perform  
the contract work,
- 2) the formation of the joint venture occurred before  
any of the work required by the contract had been  
undertaken,
- 3) the contract work was in fact performed by the joint  
venture,
- 4) the funds were handled as a joint venture rather than  
as separate funds of any party to the joint venture  
agreement, and
- 5) there is a contribution of money, property and/or  
labor so that any profit or loss incurred by the joint  
venture is proportionately shared by all joint venturers.

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.

TAXPAYER REPRESENTED BY: . . .

DATE OF HEARING: October 28, 1986

#### NATURE OF ACTION:

The taxpayer protests a portion of an assessment of Retailing  
business and occupation (B&O) tax and retail sales tax  
assessed on an unreported contract for the construction of a  
home. The taxpayer contends he was not the prime contractor  
during the period at issue.

#### FACTS AND ISSUES:

Frankel, A.L.J.--The taxpayer's records were examined for the period July 1, 1983 through September 30, 1985. The audit disclosed taxes and interest owing in the amount of \$ . . . . Tax Assessment No. . . . in that amount was issued on May 7, 1986. The taxpayer paid \$ . . . , the amount representing the uncontested portion of the assessment.

At issue is the retail sales tax and Retailing B&O tax assessed on the contract price for a home built for [Mr. B] by the taxpayer and [Mr. H]. The taxpayer explained the underlying facts leading to that construction project as follows: He stated that "a friend of a friend" knew that he was interested in learning construction and told him that [Mr. B] was looking for someone to build his house. The taxpayer knew [Mr. H] had built homes and introduced him to [Mr. B]. The taxpayer stated that [Mr. B] decided to use [Mr. H] to construct his house; the taxpayer agreed "to assist."

Prior to the . . . project [for Mr. B], the taxpayer stated his sole experience in construction was working on his own home. He stated that [Mr. H] had built 30 or more homes and that [Mr. H] had presented his contractor's license to the architect when they discussed the project. The building permit was issued on March 28, 1983 and lists [Mr. H's business] as the contractor. Also, most of the invoices for the project are billed to [Mr. H].

The taxpayer stated that when the work was 80 percent completed, the Department of Labor and Industries "red-flagged" the job, forcing work to stop. It was at that point that the taxpayer learned that [Mr. H] was not a licensed, bonded and insured contractor as he had represented. [Mr. H] had been licensed in 1977, but his license had expired in November of 1982.

The taxpayer then applied for a certificate of registration and a contractor's license. He agrees that after that date, July 14, 1983, he served as prime contractor and will take responsibility for the taxes owing, even though he was not aware of the tax liability at the time.

The taxpayer disputes the assessment for the portion of the taxes owing for the first 80 percent of the project--until July 14, 1983--when he alleges [Mr. H] was the prime contractor. He contends both he and [Mr. H] should have collected and remitted sales tax on their labor. The taxpayer agrees to pay half of the underpayment for this period, but

contends the Department should seek the other half from [Mr. H].

The auditor assessed the taxpayer for the taxes owing, rather than Hartman. The auditor found that the taxpayer had made the payment to the city for the permit, had requested the construction draws, kept the records, and made all of the purchases and payments related to the contract. The auditor did not assess the taxes against [Mr. H], because the taxpayer's records identified the amounts he paid to [Mr. H] as "wages."

#### DISCUSSION:

WAC 458-20-170 (Rule 170) is the administrative rule dealing with the taxation of the construction of new buildings. As used in Rule 170, the term "prime contractor" includes a person who constructs new buildings for consumers. The term "subcontractor" means a person who engages in work similar to that performed by a contractor, but who performs the work for persons other than consumers. Prime contractors are taxable under the retailing classification, and subcontractors under the wholesaling classification, upon the gross contract price. Prime contractors also are required to collect from consumers the retail sales tax measured by the full contract price.

[1] In the present case, the evidence indicates that the taxpayer and [Mr. H] agreed to construct the . . . home [for Mr. B] as a joint venture rather than as "prime" and "sub" contractors or in an employer, employee relationship. See WAC 458-20-105 (Employees distinguished from persons engaging in business).

Black's Law Dictionary (Rev. 4th Ed. at 73) defines a "joint venture" as:

A commercial or maritime enterprise undertaken by several persons jointly; a limited partnership,--not limited in the statutory sense as to the liability of the partners, but as to its scope and duration. . . . An association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skill, and knowledge. . . . A special combination of two or more persons, where, in some specific adventure, a profit is jointly sought, without any actual partnership or corporate designation. . . .

It is ordinarily, but not necessarily, limited to a single transaction, . . . which serves to distinguish it from a partnership, á.á.á. But the business of conducting it to a successful termination may continue for a number of years. . . . There is no real distinction between a "joint adventure" and what is termed a "partnership for a single transaction." . . . A "joint adventure," while not identical with a partnership, is so similar in its nature and in the relations created thereby that the rights of the parties as between themselves are governed practically by the same rules that govern partnerships. . . . (Citations omitted.)

The taxpayer instigated the project and both the taxpayer and [Mr. H] met with the architect and owner. Furthermore, the contract document, the abbreviated form of Agreement between Owner and Contractor, named both the taxpayer and [Mr. H] as contractor. The taxpayer stated that he and [Mr. H] worked together constructing the home. Although [Mr. H]'s name was stated as the purchaser on most of the invoices, the taxpayer kept the records and made payments for the invoices. In one case, the invoice stated the material was sold to the taxpayer. The draws from the bank were made out to the taxpayer, [Mr. H], and the owner. The taxpayer paid for the materials and labor out of the draws and paid himself and [Mr. H] from anything left over. The taxpayer stated he and [Mr. H] split the balance after expenses during the period at issue. These facts indicate a joint venture. There is no requirement that the joint venture agreement be in writing, if the facts indicate the parties acted as a joint venture in performing the contract. 46 Am.Jur.2d Joint Venture + 1 (1969).

We agree with the taxpayer that simply because his records indicated payments to [Mr. H] were "wages" does not prove [Mr. H] served as his employee. On the other hand, the fact that the taxpayer was not registered or licensed as a contractor until July of 1983, or that he had no previous experience as a contractor, does not prove he functioned as [Mr. H]'s employee during the period at issue.

[2] As stated above, we find the taxpayer and [Mr. H] constructed the home as a joint venture. For tax purposes, a joint venture is a separate "person." See RCW 82.04.030. Although each joint venture should be separately registered with the Department, often one member of a joint venture is already registered and reports the tax liability of the joint

venture. As a joint venture is in the nature of a partnership, the rights, duties, and liabilities of the parties are generally tested by the same rules. See, e.g., Barrington v. Murry, 35 Wn.2d 744 (1950).

[3] All partners are jointly and severally liable for everything chargeable to the partnership. RCW 25.04.150. Similarly, joint venturers are each liable for everything chargeable to the joint venture. As Barrington noted, every member of a partnership does not need to be able and qualified to do every act required for its general purpose. 35 Wn.2d at 752, quoting Paulson v. McMillan, 8 Wn.2d 295 (1941).

[4] The fact that the taxpayer was not licensed or bonded as a contractor during the period at issue is not controlling. The purpose of chapter 18.27 RCW, Registration of Contractors, is to afford protection to the public from "unreliable, fraudulent, financially irresponsible, or incompetent contractors." RCW 18.27.140. The taxpayer stated that [Mr. H] presented his license to the architect and that that taxpayer had no reason to believe [Mr. H]'s license had expired. Because the taxpayer thought [Mr. H] was licensed and bonded, he was not required to be licensed and bonded for the project. A partnership or joint venture is deemed registered under chapter 18.27 RCW, if any one of the general partners or venturers whose name appears in the name under which the partnership or venture does business is registered. RCW 18.27.065. See also ETB 46.04.170, copy attached.

[5] In summary, the tax consequences applicable to joint ventures are proper when: (1) the joint venture was specifically formed to perform the contract work, (2) the formation of the joint venture occurred before any of the work required by the contract had been undertaken, (3) the contract work was in fact performed by the joint venture, (4) the funds were handled as a joint venture rather than as separate funds of any party to the joint venture agreement, and (5) there is a contribution of money, property and/or labor so that any profit or loss incurred by the joint venture is proportionately shared by all joint venturers. In this case, our conclusion that the taxpayer and [Mr. H] acted as a joint venture meets those criteria. Accordingly, the tax assessment is upheld.

As stated above, each joint venturer is liable for everything chargeable to the joint venture. Neither the taxpayer nor [Mr. H] was registered with the Department during the period at issue. The auditor chose to assess the taxes owing by the

joint venture against the taxpayer, primarily because he received the draws and made the payments. Although [Mr. H] may have been overpaid and may be responsible for a portion of the taxes owing, an auditor is not required to decide the proportionate liability of each of the parties to a joint venture.

DECISION AND DISPOSITION:

The taxpayer's petition is denied. Because the delay in the issuance of this Determination was solely for the convenience of the Department, extension interest will be waived from December 23, 1986 through the new due date. The amount remaining owing on Tax Assessment No. . . . of \$ . . . , plus extension interest in the amount of \$ . . . , for a total of \$ . . . , is due by April 16, 1987.

DATED this 27th day of March 1987.