

Cite as Det. No. 14-0197, 33 WTD 551 (2014)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for)	<u>D E T E R M I N A T I O N</u>
Correction of Assessment of)	
)	No. 14-0179
. . . .)	
)	Registration No. . . .
)	
)	

[1] RCW 82.32A.020(2); WAC 458-20-228(9)(a)(iii)(E): TAX ADVICE – RELIANCE ON THIRD PARTY TAX ADVICE. Taxpayer’s reliance on tax advice from a third party that it does not owe Washington taxes is not a basis for waiving the tax or penalties.

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.

Munger, A.L.J. – Taxpayer, a federal records management contractor, protests the assessment of Business & Occupation (B&O) tax on income earned in Washington State where the work was performed by a subcontractor. Because the advice that it did not owe tax came from the subcontractor and a federal agency, and not the Department of Revenue, the Taxpayer owes the taxes as assessed.¹

ISSUE

Whether taxes can be waived where the Taxpayer relied on advice given by anyone other than the Washington State Department of Revenue?

FINDINGS OF FACT

The Taxpayer, . . . headquartered [out of state], provides environmental consulting in the form of environmental studies, hazardous substance investigations, environmental impact assessments, air monitoring, and records management. These services are provided primarily as a contractor for the [federal agency] (the Agency).

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

The Taxpayer had during the audit . . . reported and paid Service & Other Activities (Service) B&O Tax on most of its [Washington] gross income. The Washington State Department of Revenue (Department) audited the Taxpayer for the period of January 1, 2009 through January 31, 2012. During this audit period the Taxpayer deducted from its gross Washington State income, payments received from the Agency for one specific records management contract. The Taxpayer paid [the Subcontractor] . . . [to perform the work required by this contract]. This contract was completed in January 2012.

. . . [The Department disallowed the deduction of amounts received from the Agency that the Taxpayer used to pay the Subcontractor for work performed under the contract.] This resulted in the assessment of \$. . . , consisting of \$. . . in Service B&O Tax, \$. . . in interest, and \$. . . for the 5% assessment penalty. The Taxpayer timely appealed.

The Taxpayer explains that before and after the audit period, the Subcontractor was doing this records management work for the Agency. The Taxpayer is a woman-owned small business, and the Agency awarded it this contract on the basis that it would subcontract the work out to the Subcontractor, a much bigger company with experience in this type of contract. The Taxpayer states that it did not mark up its invoices to the Agency for the work done by the Subcontractor in Washington. The Taxpayer also states that the Subcontractor and the Agency assured the Taxpayer that performing the contract in this manner would not cause it to incur any Washington tax liability. It also states that it is a small business that it cannot afford to pay the taxes assessed. As a result of the audit, the Taxpayer now recognizes that it should have paid Service B&O tax on amounts received from Agency to pay Subcontractor.²

ANALYSIS

The taxpayer requests relief because it received incorrect tax advice from the Subcontractor and the Agency. That is, it was unaware of its tax liability regarding this contract. To ensure consistent application of the revenue laws, taxpayers have certain responsibilities under the tax code, including, but not limited to, the responsibility to:

- (2) Know their tax reporting obligations, and when they are uncertain about their obligations, seek instructions from the department of revenue;

² The measure of the B&O tax includes the “gross income of the business”. RCW 82.04.220. RCW 82.04.080 further defines the gross income of a business as: “the value proceeding or accruing by reason of the transaction of the business engaged in and includes . . . compensation for the rendition of services, . . . all without any deduction on account of the cost of . . . labor costs, . . . or any other expense whatsoever paid or accrued...”. Under this broad definition, a taxpayer is generally not allowed to deduct from its gross income any of its own costs of doing business. *Rho Co. v. Dep’t of Revenue*, 113 Wn.2d 561, 566-67, 782 P.2d 986, 989 (1989). This includes the costs of subcontractors. “A business that employs an independent contractor does not thereby become exempt from B&O tax liability for any income derived in whole or in part because of the work the independent contractor does for the taxpayer.” *Washington Imaging Services, LLC v. Dep’t of Revenue*, 171 Wn.2d 548, 558 (2011).

RCW 82.32A.030(2). This statute codifies, for tax law purposes, the well-known common law principle that all persons are charged with knowledge of the laws of the state in which they do business. Our Supreme Court has stated: "Ignorance of the law excuses no one." *Leschner v. Dep't of Labor & Indus*, 27 Wn.2d 911, 185 P.2d 113 (1947). The Department has followed this rule for many years.

Thus, the burden is placed on taxpayers to ascertain their correct state tax obligations. RCW 82.32A.020(2) of the Taxpayer's Rights and Responsibilities Act further states that taxpayers have:

- (2) The right to rely on specific, official written advice and written tax reporting instructions from the department of revenue to that taxpayer, and to have interest, penalties, and in some instances, tax deficiency assessments waived where the taxpayer has so relied to their proven detriment;

RCW 82.32A.020(2) only provides authority to waive tax based upon reliance on written advice or written reporting instructions [to that taxpayer] from the Department of Revenue. Det. No. 02-0039, 21 WTD 318 (2002). There is, however, no authority to waive tax, penalties, or interest based on incorrect advice from anyone outside the Department. Although we recognize that Taxpayer's failure to pay the B&O tax on this contract was not intentional wrongdoing, and that it relied in good faith on its other parties advice, the Department has no authority to waive lawfully owed taxes for those reasons. *See also* Det. No. 03-0078, 22 WTD 223 (2003); WAC 458-20-228(9)(a)(iii)(E). Therefore, we deny the Taxpayer's petition.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 5th day of June 2014.