

Cite as 5WTD 233 (1988)

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 Correction of Assessment of)	
)	No. 88-162
)	
)	Registration No. . . .
. . .)	Notices of Balance Due
)	

[1] **RULE 101, RULE 104, RCW 82.04.030, RCW 82.04.300:**
B&O EXEMPTION -- MONTHLY MINIMUM -- MINIMUM TAXABLE
AMOUNT -- HUSBAND AND WIFE -- "PERSON" --
DEFINITION. If a husband and wife have separate
businesses, with separate registration numbers, each
business is a separate "person" for purposes of the
B&O minimum exemption. Det. 88-159,
___WTD___(1988).

[2] **RULE 101, RULE 104, RCW 82.04.030, RCW 82.04.300:**
REGISTRATION TO DO BUSINESS -- HUSBAND AND WIFE --
COMMUNITY PROPERTY -- LIABILITY -- TAX DEBT. The
finding that a husband and wife are each entitled to
file returns for separate businesses does not
necessarily require the conclusion that the separate
businesses are also separate property for purposes
of liability for tax debts.

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: . . .

NATURE OF ACTION:

Petition protesting assessments of tax due because of
disallowance of minimum exemption.

FACTS AND ISSUES:

Krebs, A.L.J. -- . . . (taxpayer) is an artist engaged in the selling of her paintings. The taxpayer registered with the Department of Revenue in November 1979 and files her tax returns on a quarterly basis. In 1982, her husband, . . . , was added to her registration. In 1983, the husband registered individually and received Registration No. The husband also files tax returns on a quarterly basis. He is engaged in the retailing of electronic products.

The taxpayer filed a Combined Quarterly Excise Tax Return for the period of April through June 1986 (Q2-86) reporting gross Retailing receipts of \$2,212.22 for tax purposes and claimed the \$3,000 minimum exemption with no business and occupation (B&O) tax due. The husband filed a separate quarterly excise tax return for the same period, Q2-86, reporting gross Retailing receipts of \$55 and also claimed the exemption with no B&O tax due.

On August 15, 1986, the Department issued a Notice of Balance Due which remains unpaid against the taxpayer in the amount of \$10.42 computed as follows:

\$2,212.22 gross receipts x .00471 tax rate equals \$10.42 tax due.

The Notice had the following explanation:

Minimum exemption of business tax is not allowed due to your option of reporting as parent and branch accounts.

The taxpayer filed a Combined Quarterly Tax Return for the period of July through September 1987 (Q3-87) reporting gross Retailing receipts of \$2,221.20 for tax purposes and claimed the \$3,000 minimum exemption with no B&O Tax due. The husband filed a separate quarterly excise tax return for the same period, Q3-87, reporting gross Retailing receipts of \$168.50 and also claimed the exemption with no B&O tax due.

On December 18, 1987, the Department issued a Notice of Balance Due which remains unpaid against the taxpayer in the amount of \$10.46 computed as follows:

\$2,221.20 gross receipts x .00471 tax rate equals \$10.46 tax due.

The Notice had the same explanation as the previous Notice of August 15, 1986.

The taxpayer, in protesting the Notices, points to RCW 82.04.300 and WAC 458-20-104 (Rule 104), . . . , as exempting from B&O tax combined total amounts which do not exceed the minimum taxable amounts for reporting periods, that is, \$3,000 for taxpayers on a quarterly reporting basis. Because the combined gross amount for the quarterly periods involved was under \$3,000 for both the taxpayer and her husband, the taxpayer believes there is no legal basis for denial of the minimum exemption which resulted in the Notices of Balance Due.

The husband, in the petition, further states:

When I started my business, I was told (rightly or wrongly, I do not know), that because Washington is a community property state, my business and my wife's business must be considered as one account. My wife is an active artist, I am engaged in electronic sales and service. The two businesses have nothing in common other than the fact that the two owners happen to be married to each other. While the definition of "person" as defined in RCW 82.04.030 upon which the collective totaling of gross sales in RCW 82.04.300 is based might be stretched to include this situation, I believe a reasonable interpretation of RCW 82.04.030 would conclude these two businesses separate and distinct, and thus individually subject to the \$1000/month exemption.

In any case, the amount of taxes of both businesses combined was under the allowed \$3,000 exemption limit. It would seem that this is a bookkeeping problem, not a statutory regulation. We send our taxes in together to aid in this problem.

The issue is whether the \$3,000 quarterly minimum exemption applies to the quarterly tax returns filed by the taxpayer and her husband.

DISCUSSION:

After discussion with the manager of the Department's Taxpayer Account Control Section, I was informed that the subject Notices of Balance Due were issued in error. The error was

caused by computer programming so as not to allow the quarterly \$3,000 minimum exemption where separate tax returns are filed by one "person," which includes the marital community. The Department's computer program is designed to assess tax without allowing the minimum exemption when a husband and wife engage in separate businesses, even when under separate registration numbers, and the combined measures of tax (combined gross receipts) applicable to such businesses equals or exceeds the minimum taxable amount. In this case, the combined gross receipts did not exceed the minimum taxable amount of \$3,000 for the quarterly period.

[1] & [2] The Department of Revenue recently issued Determination No. 88-159 which reversed the prior Department policy of not treating husband and wife as separate persons for excise tax consequences with respect to minimum taxable amount exemptions. The Department now treats the husband-taxpayer and wife-taxpayer as a separate "person" and each is entitled to the B&O exemption contained in RCW 82.04.300 "if in fact the husband and wife actually conduct their different spousal businesses independently of one another. If, on the other hand, the husband is actively involved in the wife's business and the wife is actively involved in the husband's business, the husband and wife are not conducting their businesses independently of one another and their combined efforts will constitute one person" for which only one filing exemption will be permitted. Nevertheless, either spousal business is strongly presumed to be community property, and as a community asset the liability of each business (including tax obligations) is also strongly presumed to be a community obligation.

In the future, the taxpayer or her husband may again receive a computer generated Notice of Balance Due even though their combined gross receipts is less than the quarterly \$3,000 minimum exemption. Should this occur, they are advised to request cancellation of the Notice by reference to this Determination No. 88-162. A copy of this Determination is being sent to the Department's Account Control Section to alert them of the situation and to take whatever action is deemed appropriate to prevent a recurrence of the sending out of Notices of Balance Due under similar circumstances.

Because the Notices of Balance Due dated August 15, 1986 and December 18, 1987 were erroneously issued, they are being canceled.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. The Notices of Balance Due dated August 15, 1986 and December 18, 1987 are canceled.

DATED this 23rd day of March 1988.