Cite as 5 WTD 217 (1988)

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

In the Matter of the Petition For Correction of Assessments of)		D E T E R M I N A T I O N
	)	88-159
	)	
	)	Registration No. . . .
. . .	)	Notice of Balance Due
	)	
	)	
and	)	
	)	
	)	
. . .	)	Registration No. . . .
	)	Notice 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. REVERSES PRIOR DEPARTMENT POLICY.

[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. F.I.D.

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:

A husband and wife, each with separate businesses, petitioned for correction of notices of balance due. The Department had required the taxpayers to combine their business incomes, for purposes of the $3,000 quarterly B&O exemption. The Department had also required the taxpayers to pay B&O tax each quarter, even if their combined income was less than $3,000. At the end of the year, the taxpayers were then to request a refund, in the event of overpayment.

FACTS AND ISSUES:

Normoyle, A.L.J. -- The two taxpayers are also a marital community. The wife is an attorney, the husband an architect. Each is separately registered with the Department of Revenue. The Department treated the two businesses as "parent and branch" accounts, for purposes of determining B&O tax liability. The Department, believing that the marital community is one "person," refused to allow each taxpayer the $3,000 quarterly B&O exemption. Rather, both were required to pay the B&O tax each quarter, regardless of the amount of the individual or combined gross income. Then, at the end of the calendar year, they were to seek a refund for the quarter in which their combined gross income was below the $3,000 minimum. The result is that the two taxpayers are allowed but one $3,000 quarterly exemption; and the taxpayers are each required to pay quarterly taxes even if the individual or combined income is less than $3,000 per quarter.

The following example illustrates how the Department's position works:

> Assume that the husband and wife each had $2,000 gross income one quarter. Normally, because each business would be below the $3,000 quarterly exemption, both would be exempt of B&O liability. However, because the Department has determined that, for tax purposes, they are one "person," each would have to pay B&O tax on the full $2,000, with no refund at the end of the year, because the combined income exceeds $3,000.
>
> Assuming that the wife had quarterly income of $2,000, and the husband nothing, she would still be required to pay quarterly taxes on that income, even though the combined gross income was under $3,000. Then, at the end of the year, she would have to request a refund for that particular quarter.

The threshold question is whether or not the two taxpayers are "a group of individuals acting as a unit" under RCW 82.04.030, and, therefore, one "person" for purposes of the B&O minimum exemption.

DISCUSSION:

The issue herein has not been addressed by the courts, the Board of Tax Appeals, or in any Determination of the Interpretation and Appeals Section of the Department.

The Department's policy appears to have been in existence since at least 1979. The basis for the policy was that both businesses are owned by the marital community, under the community property laws of this state; and that a marital community is liable for all taxes incurred by either spouse during the marriage. From these two generally correct statements of law, it was determined that a marital community is one "person" under the excise tax statute. Upon further review, it is our conclusion that the policy should be changed, to recognize each taxpayer here as a separate taxable person in the context of the minimum quarterly B&O exemption. We come to this conclusion through an analysis of RCW 82.04.030, which reads as follows:

> "Person" or "company", herein used interchangeably, means 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. (Emphasis added.)

Each of the underlined words must be given meaning. 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 unit, even though they have two totally distinct businesses. However, for purposes other than the Department's current interpretation of the filing requirements, this cannot be true; a lawyer cannot legally act with (be in business with) a non-lawyer, in regards to the lawyer's practice of law; nor can an architect act with a non-architect in the architectural practice. While it is true that the marital community is benefiting from the income

obtained from these two businesses, that does not mean that they are "acting as a unit" in the conduct of their two businesses.

The statute is very detailed, listing 24 types of individuals or entities which are included in the definition of "person"; the term "marital community" is conspicuously missing. 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 could have specifically included "marital community" among the other 24 listed "persons."

[1] Our conclusion that these taxpayers are separate "persons" for excise tax purposes is supported by the cannons of statutory interpretation. We rely upon the "ejusdem generis" rule of statutory interpretation, which is that:

> General terms appearing in a statute in connection with precise, specific terms, shall be accorded meaning and effect only to the extent that the general terms suggest items or things similar to those designated by the precise or specific terms. In other words, the precise terms modify, influence or restrict the interpretation or application of the general terms where both are used in sequence or collocation in legislative enactments.

John H. Sellen Constr. v. Revenue, 87 Wn.2d 878, 883; 558 P.2d 1342 (1976).

Here the generic term "any group of individuals acting as a unit" must be read in conjunction with the 24 specific "persons" in the statute. The generic term only extends to entities that are comparable to one of the specific categories but technically not falling within one of those categories. A marital community is not similar to the business forms listed as "persons" in the statute.

Based upon the preceding, we conclude that each of these taxpayers is a separate "person" under RCW 82.04.030, and each is entitled to the B&O exemption contained in RCW 82.04.300. Because of this ruling, it follows that the taxpayers may not be required to pay B&O tax on their gross income, if under the quarterly minimum.

[2] We are not unmindful of the argument posed by the Department in opposition to this conclusion. While the following discussion of the Department's argument is not

essential for the disposition of the issue before us, we believe that it is important to provide the taxpayers and the Department guidance in this area for future application.

The Department argues that if we allow the husband and wife to file separately and allow each to receive the benefit of the minimum taxable amount, the marital community may later escape future liability on the part of the delinquent spouse. The "anticipated" taxpayer argument is that the ability to file separately is tantamount to separate liability of the delinquent spouse. Currently, the marital community (which means the community property of both husband and wife) is responsible for the tax liability incurred by either spouse's business, because both the husband and wife are required to register and file under as one business. The Department is concerned that this holding will impair the state's ability to collect from the community property of the non-delinquent spouse.

The Department argues that if the taxpayer's arguments are accepted (i.e. the marital community is not a person under the Revenue Act of 1935), our holding would be equivalent to discarding the marital community for all practical tax purposes, including liability for the tax of a delinquent spouse. The premise of this argument is that if we consider the husband and wife for separate filing purposes, we are also holding that they (as a marital community) are separate for purposes of the liability. To accept this description of marital liability is to assume that the revenue laws dictate the rights and obligations of the marital community. We believe that the revenue laws as written do nothing to change the relationship of the husband and wife between one another or the relationship of the community to its creditors. We assert that the rights and obligations established in 26.04 RCW are superimposed upon the obligations generated under the revenue laws, not the reverse. To hold otherwise, where the statutes do not <u>specifically</u> provide for the legal treatment of husband, wife or their community (as the Revenue Act of 1935 does not) would place 26.04 RCW into a precarious condition and toss into great uncertainty the rights and obligations of the husband, wife, their community and the people with whom each of them deal.

Therefore, we are not persuaded by the Department's arguments that this holding will present such an undesirable result; there are basic hornbook precepts of community property law which persuades us that the law would not demand such a result. Property acquired during the existence of the marital

community is presumed to be the property of the marital community. Yesler v. Hochstettler, 4 Wash. 349, 30 P. 398 (1892); Estate of Madsen v. Commissioner, 97 Wn.2d 792, 650 P.2d 196 (1982). If a debt is incurred during marriage, by either spouse, the debt is presumed to be a community debt. Fies v. Storey, 37 Wn.2d 105, 221 P.2d 1031 (1950); Oregon Improvement Co. v. Sagmeister, 4 Wash. 710, 30 P. 1058 (1892); National Bank of Commerce v. Green, 1 Wn.App. 713, 463 P.2d 187 (1969). Whether the community actually benefits from a particular transaction is immaterial, since the presumption of community liability will not be refuted if there was any expectation of community benefit from the transaction for which the debt was contracted. Malotte v. Gorton, 75 Wn.2d 306, 450 P.2d 820 (1969); Henning v. Anderson, 121 Wash. 53, 207 P. 1048 (1922); Way v. Lyric Theater Co., 79 Wash. 275, 140 P. 320 (1914). The presumption that property or debt is community property can be overcome by only clear and convincing evidence, Beyers v. Moore, 45 Wn.2d 68, 272 P.2d 626 (1954); Auernheimer v. Gardner, 177 Wash. 158, 31 P.2d 515 (1934); see generally, Cross, H., The Community Property Law in Washington, 49 Wash. L. Rev. 730 at 820 (1974) or a valid separate property agreement, Clark v. Baker, 76 Wash. 110, 135 P. 1025 (1913); Hamlin v. Merlino, 44 Wn.2d 851, 272 P.2d 125 (1954).

From these basic fundamental notions of community property law, we believe that the Department's fears are illusory. First, the assumption that all property (e.g. a spousal business or businesses) acquired during marriage is community property is axiomatic. In other words, either spousal business is strongly presumed to be community property. Second, if the property is a community asset, then the liability of each business (including tax obligations) is also strongly presumed to be a community obligation. Lastly, either presumption can only be overcome by clear and convincing evidence or a separate property agreement to solemnize that the property is not community but rather is separate.

While this case involves a marital community consisting of two individuals who conduct businesses which cannot be legally operated together is a most persuasive case, we do not limit this holding to only professions which require only similarly licensed practitioners to conduct business together. The individuals of a marital community may also fall within this description of a "person" 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 will be permitted. We reach this conclusion not because they are married, but rather, because under these facts we believe that the husband and wife are functioning as "[a] group of individuals acting as a unit" under RCW 82.04.030. Such determinations turn upon the facts and circumstances of each case.

In conclusion, we do not perceive this holding of the revenue laws to change the Department's relationship as a creditor of the marital community. Such relationship is governed by 26.04 RCW and the caselaw interpreting the rights and obligations of the marital community and its members and is not governed by the revenue laws. We hold that the petitioners are each entitled to file separately and avail each of themselves to the benefit of the minimum taxable amount.

DECISION AND DISPOSITION:

The taxpayers' petitions are granted. All notices of balance due against these two taxpayers which were issued because of the Department policy of treating the two businesses as one "person," are hereby cancelled.

DATED this 16th day of March 1988.