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
	)	No. 89-77
. . .	)	Registration No. . . .
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RULE 250: PUBLIC UTILITY TAX -- SERVICE B&O -- REFUSE BUSINESS -- ESTOPPEL -- ETB 534.16.250. Doctrine of equitable estoppel applied to preclude retroactive reclassification of income where refuse collection and disposal businesses showed detrimental reliance on previous written instructions from the Department of Revenue as to the proper reporting of their income.

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: November 29, 1988

NATURE OF ACTION:

The taxpayers, three refuse collection and disposal businesses, protest the reclassification of income from disposal activities to the Service B&O classification.

FACTS AND ISSUES:

Roys, A.L.J. -- The above six assessments are at issue. . . .
The larger assessment against each company was for the period April 1982 through March 31, 1986 and the smaller assessment for April l through June 30, 1986.

At issue is the reclassification of income from the taxpayers' disposal activities. The taxpayers had reported their total income under the garbage collection classification. The auditor relied on ETB 534.16.250 and assessed Service B&O on income from disposal activities. The deductions taken for fees paid to landfill operators were disallowed. The auditor concluded the fees were part of the disposal business and that no deduction is allowed under the B&O tax for amounts paid out for services jointly rendered. The reclassification of income was for the period July 1, 1985 to June 11, 1986.

The taxpayers filed a consolidated petition for correction of the assessments. They contend that there is no legislative basis for the interpretations set forth in the ETB. Furthermore, they argue that the ETB was issued after the public utility tax on refuse services had been revised by Chapter 282, Laws of 1986, and after their opportunity for recoupment by adjustment to their rate requests to the Washington Utilities and Transportation Commission had long since passed. They had reported as instructed in a letter dated August 13, 1985 from the Department of Revenue to the Washington Waste Management Association.

DISCUSSION:

SSB 4228 Sec. 10(l)(f) reclassified income from refuse businesses from the Service B&O tax to the higher public utility tax. The reclassification became effective on July 1, 1985. The August 1985 letter which the taxpayers relied on stated the Department's position as follows:

> [A]ll charges for refuse collection and all related activities incidental thereto are now subject to the public utility tax . . .. Therefore, the public utility tax applies to all charges, however billed or collected, for refuse pick-up and collections,

> interception, treatment, and disposal, including any charges for landfill or dump site access.

The letter went on to add that the Department had confirmed the legislative intent that the public utility tax application to refuse collection businesses should not pyramid. The letter stated:

> That is, each entity, agency, or service contractor involved will be liable for the tax measured only by its paid share of the total billings to customers. Thus, for example, if a city, county, or other public agency does the customer billing which consists of charges for all services rendered -- pick-up, collection, interception, treatment, disposal, dumping, etc. -- but that billing agency subcontracts out any of these services, then the billing agency will be liable for public utility tax measured only by the portion of the total charge which it actually retains as its own share of income. In turn, whoever provides the subcontracted services (pick-up, dumping, etc.) will be liable for public utility tax measured only by their own paid over share of income. Not only is legislative intent clear on this non-pyramiding feature, but the result is also explicit in RCW 82.16.050(3). . . .

After that letter was sent to the Washington Waste Management Association, the Washington Utilities and Transportation Commission (WUTC) sent a notice to all garbage and refuse collection companies. (Notice, June 6, 1986) The Notice instructed the companies that they were expected to take action, such as decrease tariff rates, to insure that the change in tax rates did not result in a windfall profit to the garbage industry. A copy of the Notice was provided to the Department of Revenue. The taxpayers reduced their fees as instructed by the WUTC on April 1, l986. The taxpayers stated they cannot go back and raise rates for that period to take into effect the revised reporting instructions for that period.

Shortly after the WUTC notice was sent, the Department received a letter from the Washington State Legislature's Joint Administrative Rules Review Committee (JARRC) stating the Department's rule relating to the application of the utility tax to sewerage collection, WAC 458-20-179, did not meet the legislative intent of RCW 82.16.020, Chapter 471, Laws of 1985. . . .

After a hearing before JARRC, the Department changed its interpretation of the 1985 law regarding refuse and sewerage collection services to implement JARRC's recommendations. ETB 534.04.16.250/179 was issued on September 3, 1986. The bulletin provided a special provision for retroactive application for the period at issue, July 1, 1985 to June 11, 1986 as follows:

> The following provisions apply only for the period from July 1, 1985 to June 11, 1986. During this period, customer billings for refuse services which represented the value of the "collection" part of the services rendered was subject to tax under the public utility tax classification, "garbage collection," at the rate of .05029. The remainder of the receipts from customer billings were subject to Service business tax at the rate of .015. Because there is (and was) no provision under Chapter 82.04 RCW for nonpyramiding of Service business tax for the refuse service business, the measure of this tax for the retroactive period is still "gross income," without any deduction for amounts paid to other refuse service providers.

The auditor relied on ETB 534 in reclassifying a portion of the taxpayer's income to Service B&O and denying a deduction for amounts paid to other refuse service providers.

The taxpayers contend that refuse companies were clearly taxable under RCW 82.16 public utility tax during the period July 1, 1985 through June 11, 1986 and were exempt from the B&O tax with respect to that business. They argued that the Department should be estopped from retroactively changing its position for reporting the income at issue.

To create an estoppel, three elements must be present: (1) an admission, statement, or act inconsistent with the claim afterwards asserted; (2) action by the other party on the faith of such admission, statement, or act; and (3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement, or act. Harbor Air Service, Inc. v. Board of Tax Appeals, 88 Wn.2d 359, 366-67 (1977). Because the taxpayers have shown that they relied on the earlier instructions from the Department as to the proper reporting of their income, and that this reliance was to their detriment as they were required by the WUTC to lower their rates to reflect the change in tax

liability, we find the Department is estopped from retroactively reclassifying the income at issue.

DECISION AND DISPOSITION:

The taxpayers' petitions are granted. . . .

DATED this 14th day of February 1989.