

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

In the Matter of the Petition )	<u>D E T E R M I N A T I O N</u>
for Refund of )	
)	No. 89-16
)	
. . . )	Registration No. . . .
)	Tax Assessment No. . . .
)	Warrant No. . . .
)	

[1] **RULE 217, RCW 82.32.210, RCW 82.32.220:** RCW 25.04.150 -- FILING OF WARRANT -- EXECUTION UPON WARRANT JOINT LIABILITY OF PARTNERS. Payment of tax, interest and penalty by one partner as a result of a tax warrant issued to partnership and to each partner individually and executed thereupon by a notice to withhold and deliver is proper as partners are jointly liable for debts of partnership. ACCORD: Dygert v. Hansen, 31 Wn.2d 858 (1948); Wilkinson v. Smith, 31 WnApp 1 (1982).

[2] RCW 25. 04.120 -- NOTICE. Notice to managing partner of audit, assessment and due date of tax is notice to partnership and to all partners. ACCORD: Mid-City Materials, Inc. v. Heater Beaters Custom Fireplaces, 36 WnApp 480 (1984).

[3] **MISCELLANEOUS:** EQUITY. As an administrative agency, the Department does not have discretion to change the law and grant relief. ACCORD: Det.85-283A, 2 WTD 123 (1986); Det. 87-19, 2 WTD 151 (1986).

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 TELEPHONE CONFERENCES: June 11, 1986 and January 29, 1988

NATURE OF ACTION:

Petition for refund of tax, interest and penalty paid by one partner of a partnership after Department issued warrant and Notice to Withhold and Deliver.

FACTS AND ISSUES:

Zagelow, A.L.J. (successor to Dressel, A.L.J.) -- The taxpayer petitions for refund of \$ . . . tax, interest and penalty paid pursuant to Assessment No. . . . Taxpayer does not contest the correctness of the tax but contests the liability of the taxpayer for the tax, interest and penalties. The assessment was the result of an audit by the Department for the period January 1, 1981 through December 31, 1984 of . . . and . . . (taxpayer). . . . and taxpayer are general partners of a partnership which pursuant to an agreement dated November 1, 1978 operates the retail clothing business known as . . . .

Pursuant to said agreement, . . . is named the managing partner with the taxpayer being a non-managing partner sharing in the profits and losses of the partnership. Apparently the taxpayer invested funds in the partnership and has taken an inactive role in the business. Taxpayer states he was unaware of the audit and the assessment. The assessment was made September 18, 1985 in the amount of \$ . . . (tax and interest) and was due October 13, 1985. All notices and contacts were made to and through . . . . The partnership nor . . . exercised any appeal rights. As a result of no payments being received, the delinquency penalty was added; and, a warrant in the amount of \$ . . . was issued January 30, 1986 and filed in the Superior Court of Pierce County, February 21, 1986. The warrant named . . . and . . . (taxpayer); and, the marital communities of . . . and . . . (taxpayer). A copy of the warrant was mailed to taxpayer at his home address. The taxpayer claims the receipt of the copy of the warrant was the first notice he had received that the partnership owed taxes to the Department. The amount of \$ . . . was paid on February 28, 1986 and on March 25, 1986. The balance was paid April 30, 1986. A notice of order to withhold and deliver was issued April 30, 1986 to . . . Bank and to . . . Bank on May 2, 1986. The April 30th payment included an overpayment of \$ . . . which was credited to the account.

Taxpayer, through his son . . . , petitioned for review of the issuance of the warrant and of the assessment per petition dated February 16, 1986. As a result of the full payment of the amount due, the petition for review was deemed moot. The taxpayer subsequently requested the original petition for review be considered a claim for refund and a determination issued.

The issues to be considered are: (1) the validity of the issuance of the warrant naming the marital community of the taxpayer and his spouse in their individual capacity, the execution upon the warrant so issued, and the legality of the subsequent individual payment of the partnership liability; (2) the adequacy of notice; and (3) request for refund based on equity.

#### DISCUSSION:

It is uncontested that the assessment of tax, interest and penalty and the notice of such assessment of tax, interest and penalty has been properly issued to the partnership of . . . (taxpayer). No appeal of the assessment was pursued by the partnership or a partner within the period allowable, therefore no determination is sought or is being given as the sufficiency on correctness of the assessment. The issues to be determined are the validity of the warrant, the liability of the taxpayer pursuant to the warrant, the sufficiency of notice to the taxpayer and equitable relief.

[1] RCW 82.32.210 in pertinent part states:

If any tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due, the department of revenue may issue a warrant under its official seal in the amount of such unpaid sums, together with interest thereon at the rate of one percent of the amount of such warrant for each thirty days or portion thereof after the date of such warrant. . . .

The department shall file a copy of the warrant with the clerk of the superior court of any county of the state in which real and/or personal property of the taxpayer may be found. Upon filing, the clerk shall enter in the judgment docket, the name of the taxpayer mentioned in the warrant . . . . The amount of the warrant so docketed shall thereupon also become a lien upon the title to and interest in all

other real and personal property of the taxpayer against whom it is issued the same as a judgment in a civil case duly docketed in the office of the clerk. . . .

As the "taxpayer" as mentioned above is . . . and . . . , the warrant issued to . . . and . . . and their respective communities was properly issued. The issuance was proper as partners are jointly liable for the debts of the partnership.

RCW 25.04.150 in pertinent part provides:

All partners are liable:

(1) Jointly and severally for everything chargeable to the partnership under RCW 25.04.130 and 25.04.140; and

(2) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract;

. . . .

As a tax liability is a debt, RCW 82.32.240, and as RCW 25.04.130 (referring to wrongful acts of a partner) and RCW 25.04.140 (referring to a partner's break of trust) are inapplicable, RCW 25.04.150 (2) applies and the partners are jointly liable for the tax liability debt. See Dygert v. Hansen, 31 Wn.2d 858 (1948); Wilkinson v. Smith, 31 WnApp 1 (1982).

The warrant being issued to both partners and their respective communities is the correct procedure to indicate the joint liability of the taxpayers. In contrast, if the taxpayers had been found to be jointly and severally liable, the warrant could have been issued against either party without the naming of the other.

As stated in RCW 82.32.210, above, the warrant is a judgment against each partner and a lien upon all the property used in the business and upon all real and personal property of each taxpayer-partner. Such property of the business and/or of any individual taxpayer-partner may be executed upon by the Department and a proper form of such execution may be a notice to withhold and deliver as provided in RCW 82.32.220.

As the warrant was properly issued against the taxpayer and such issuance was more than fifteen days after the due date of the assessment, taxpayer's petition for refund must be denied.

[2] The taxpayer in his petition raises the question of proper notice. The taxpayer claims he had no knowledge of the audit of the partnership, the assessment against the partnership or the non-payment of the tax liability of the partnership. Although the taxpayer may not have had actual notice of the audit, assessment and non-payment of the tax liability of the partnership, the managing partner of the partnership did have such knowledge. It is uncontroverted that managing partner, . . . , was aware of the audit, the assessment and the non-payment of the tax liability.

RCW 25.04.120 in pertinent part provides:

Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

The taxpayer is charged with the knowledge of the audit, the assessment, the non-payment of the tax liability and all other correspondence of the Department with the partnership through the knowledge of its managing partner. Additionally, as taxpayer received notice of the issuance of the warrant the "Judgment" against the taxpayer is valid. See, Mid City Materials, Inc. v. Heater Beaters Custom Fireplaces, 36 WnApp 480 (1984).

[3] The taxpayer in his petition also requests a refund based upon principles of equity. While the Department can certainly sympathize with the circumstance of the taxpayer, as an administrative agency, the Department does not have discretion to change the law and grant relief. See: Det. 85-283A, 2 WTD 123 (1986); Det. 87-19, 2 WTD 151 (1986). The taxpayer must look to his partner and partnership law for a remedy. See, for example, RCW 25.04.210 and RCW 25.04.180 (2).

DECISION AND DISPOSITION:

DETERMINATION (Cont)  
No. 89-16

6

Registration No. . . .

The taxpayer's petition for refund is denied in its entirety.

DATED this 25th day of January 1989.