

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

In the Matter of the Petition ) D E T E R M I N A T I O N  
For Correction of Assessment of )  
) No. 89-121  
  
)  
    . . ) Registration No. . . .  
) . . . /Audit No. . . .  
)

[1] **RULE 192:** B&O TAX -- RETAILING -- LIABILITY OF STATE-REGISTERED CORPORATIONS OWNED BY INDIAN PERSONS. Indian persons who operate businesses in corporate form chartered by Indian tribes which are also registered as corporations with the state receive certain benefits from their state-chartered status and lose their exemption from B&O tax and retail sales tax as a result of the state incorporation status.

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:

Taxpayer petitions for correction of assessment in which deductions from Retailing B&O tax were disallowed on the grounds that taxpayer is registered as a corporation with the State of Washington and not exempt from B&O tax.

FACTS AND ISSUES:

Johnson, A.L.J. -- Taxpayer is engaged in business as a contractor for residential and light commercial work. Its place of business is on the . . . Indian reservation, and taxpayer states that its business primarily serves other . . . Indian persons. Taxpayer is chartered as a tribal corporation by the . . . Nation, and its sole shareholder is a duly-registered member of the . . . Indian Nation.

Additionally, it is registered to do business as a corporation with the State of Washington.

Taxpayer protests the disallowance of deductions from Retailing B&O tax on the grounds that it believed that it was eligible for the exemption from tax granted by WAC 458-20-192 (Rule 192). Its petition materials state that

[w]e are a small new business that works very hard to be successful and meet all local and federal requirements. Since incorporating with the State of Washington we were never informed by our legal sources or any state official that we had lost our "Indian" status and would be liable for any additional taxes. Had we known we would have chosen a different business structure.

#### DISCUSSION:

[1] Rule 192 is an administrative rule promulgated by the Department of Revenue, which has the same force and effect as law. RCW 82.32.300. The rule states that Indians and Indian tribes are not subject to business and occupation tax with respect to business conducted by them within an Indian reservation.

Exemptions to a tax are narrowly construed; taxation is the rule and exemption is the exception. Budget Rent-a-Car vs. Dept. of Rev., 81 Wn.2d 171, 174 (1972). In this case, the exemption is strictly applied as to who qualifies for the exemption; the Rule is also strictly applied to Indians acting as a corporate entity. The term "Indian," for purposes of the rule, means a person duly registered with the Indian tribe. For many statutory purposes, corporations are accorded the same rights and duties as are persons. However, the state's position has been that Indians who choose to avail themselves of the benefits of state law abandon their right to be exempt from privileges granted to them as Indian persons under Rule 192. In Det. No. 88-324, \_\_\_ WTD \_\_\_ (1988; prior citations omitted), the Department held that

[w]e note that the Indian shareholders operate in the corporate form by choice. The corporate form is authorized by the state and confers certain benefits not available to sole proprietorships or partnerships. Choosing that form of business organization in this situation also causes the individual owners of the corporation to lose any tax

immunity they may have had as Indians with respect to the business. It is a consequence of their own election to use the corporate form of organization.

We believe that there is a distinction where the corporation is only chartered by its tribe and is not registered by the state. In such a case, the entity is not availing itself of state benefits and does not lose the privilege of the tax exemption. The courts have held that a corporation, even when comprised of Indian stockholders, is not an Indian. We believe that this applies to state-chartered corporations, not to those chartered only by the tribes with which the Indian owners are themselves registered. Consequently, the exemptions granted by Rule 192 shall apply to corporations which are only chartered by their tribes and are not registered as such by the state, if all of the shareholders are themselves registered with the tribe on whose reservation the business is transacted or on which delivery of purchased goods or services occurs. This means they can be exempt from B&O tax, but only if the business is transacted by

- 1) a tribally-chartered corporation,
- 2) which is not registered with the State,
- 3) of which all shareholders are duly-registered members of the chartering tribe, and
- 4) business is conducted or goods and services are received at a point within the boundaries of the chartering tribe's reservation.

We sympathize with taxpayer's complaint that it was not informed that its incorporation with the state would cost it its tax-exempt status. However, we are constrained to note that Washington's is a self-assessing tax system and persons engaging in business in this state are presumed to know the tax ramifications of their activities. Had it known that it would surrender tax-exempt status upon accepting the benefits of state incorporation, taxpayer states that it would have chosen a different business structure. Although this contention is of no assistance for the period of this audit, taxpayer does have the option of alternative business structures available to it for future periods.

#### DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 8th day of March 1989.