

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 Correction of Assessment)	
of)	No. 89-2
)	
)	Registration No. . . .
. . .)	Tax Assessment No. . . .
)	
)	

- [1] **RULE 159:** FISH TAX -- AGENCY -- REQUIREMENTS OF. An alleged agency relationship between fisherpersons and a buyer of their catches will not be recognized if the record-keeping requirements of Rule 159 are not met.
- [2] **FISH TAX:** LIABILITY OF BUYER -- INDIAN FISHERPERSONS. One who purchases fish for the purpose of resale is as liable for fish tax when he or she buys from Indian fisherpersons as when he or she buys from non-Indian fisherpersons. Accord: 106 Wa.2d 695 (1986).
- [3] **MISCELLANEOUS:** ORAL MISINFORMATION -- The law does not permit the abatement of a tax or the cancellation of interest on the basis of a taxpayer's recollection of oral instructions by an agent to the Department. Accord: ETB 419.32.99.

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 for correction of fish tax assessment.

FACTS AND ISSUES:

Dressel, A.L.J. -- . . . (taxpayer) is a buyer and seller of fish. Based on an examination of fish tickets filed with the Department of Fisheries, the Department of Revenue (Department) issued the above-captioned fish tax assessment for the period

January 1, 1986 through December 31, 1986. The amount of the assessment, including a late penalty, is \$ The taxpayer appeals.

This case was set initially for a telephone conference. At the appointed time for the conference, the undersigned unsuccessfully attempted to contact the taxpayer by telephone. The number listed in his file had been disconnected. A letter was then written to the taxpayer asking that he contact me. There was no response and the letter was not returned. We, therefore, have no alternative but to decide this case based on the sketchy details of the taxpayer's two undated letters which were received by the Department on May 1, 1987 and June 4, 1987.

In the first of those letters, the taxpayer asserted that he was not given credit for a payment he made and that there was a mistake on the treaty (Indian) fish tickets. In the second letter, the taxpayer described a cooperative relationship between himself and the . . . Indian Tribe under which the Indians would catch fish, and "advance" them to the taxpayer who would then sell them. Of the proceeds the taxpayer retained a set commission and then paid the rest to the [Indians]. The taxpayer also indicated that when he first received "quarterly tax bills", he called the phone number listed on the statement and was told that his business was "tax exempt".

The issues in this case are whether the taxpayer is an agent of the Indian fisherpersons, whether he is subject to fish tax on the fish he acquires from the Indians, and, if so, whether the tax may be excused based on the misinformation he allegedly received over the telephone.

DISCUSSION:

With respect to the claim of agency, WAC 458-20-159 (Rule 159) is pertinent. It reads in part:

AGENTS AND BROKERS. Any person who claims to be acting merely as agent or broker in promoting sales for a principal or in making purchases for a buyer, will have such claim recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

1. The books and records of the broker or agent show the transactions were made in the name and for the account of the principal, and show the name of the actual owner of the property for whom the sale was made, or the actual buyer for whom the purchase was made.

2. The books and records show the amount of gross sales, the amount of commissions and any other incidental income derived by the broker or agent from such sales.

[1] No books and records of the taxpayer have been submitted to us, nor have we received any evidence of an agreement between the taxpayer and the . . . Indians beyond what is stated above. The taxpayer has not met the requirements of Rule 159 so will not be recognized as an agent of the [Indians].

On the first issue, agency, the taxpayer's petition is denied.

[2] Since he is not an agent, the taxpayer is deemed to be a buyer of fish from the Indians. The gist of his petition seems to be that whether he is an agent or not, his transactions with Indian fisherpersons are not subject to fish tax even if those with non-Indian fisherpersons are. While there certainly are limitations on the taxation of Indians for activities taking place on their reservations¹, it is not an Indian the Department is seeking to tax here. At least we have no information to the effect that the taxpayer is an Indian. In addition, the Washington Supreme Court has explicitly approved the imposition of the fish tax² against those who purchase fish from Indians. In High Tide Seafoods v. State, 106 Wn.2d 695 (1986), that court denied a fish buyer's claim for refund of one half of the fish tax it paid on transactions with Indian fisherpersons. Under Chapter 82.27 RCW a fish buyer was allowed to deduct one half of the amount of the fish tax due on purchases of fish from non-Indians. RCW 82.27.020(2). It could not take the same deduction from amounts paid to Indian fisherpersons because of federal law, so for those purchases the buyer had to shoulder the full economic burden of the fish tax. For these reasons, we conclude that the Department has acted within the law in asserting fish tax on fish purchased from Indians as well as on those purchased from non-Indians.

As to the second issue, tax on fish caught by Indians, the taxpayer's petition is denied.

[3] On the third issue, the alleged telephonic statement by a Department or other authority that the taxpayer was exempt of fish tax, the Department's position is well-settled. The law does not permit the abatement of a tax or the cancellation of interest on the basis of a taxpayer's recollection of oral instructions by an agent of the Department. See ETB 419.32.99,

¹ See WAC 458-20-192.

² Also known as the "Tax on Enhanced Food Fish". The statutory authorization for same is Chapter 82.27 RCW.

On the third issue, erroneous instructions, the taxpayer's petition is denied as well.

DECISION AND DISPOSITION:

The taxpayer's petition is denied. It does appear, however, that the taxpayer's claim that a \$. . . payment was not credited to its account may have some merit. The Department's computer and a remittance memorandum in the taxpayer's file show a payment in November, 1986 which is not reflected in the April 7, 1987 assessment at issue. For that reason the file is referred back to the Audit Division of the Department for investigation. A new assessment will then be issued which will give proper credit for the referenced payment if the investigation determines that such credit is justified. Either way, another assessment will be sent to the taxpayer which will be due on the date stated thereon.

DATED this 5th day of January 1989.