

Cite as 8 WTD 411 (1989)

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

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u>
<u>N</u>		
For Correction of Assessment of)	
)	No. 89-525
)	
. . .)	Registration No. . . .
)	Documents No. . . .
)	

[1] RULE 194: B&O TAX - OUT-OF-STATE INDEPENDENT SALES REPRESENTATIVE - "PLACE OF BUSINESS" - WASHINGTON EMPLOYEE/SHAREHOLDER - HOME USED AS OFFICE. "Place of business" held to include the home of the Washington employee/shareholder of an out-of-state independent sales representative. Formal office not required since employee normally called on potential customers at their respective business locations and did in fact work out of his home instead of the taxpayer's Oregon office.

[2] RULE 101: B&O TAX - LACK OF KNOWLEDGE - UNREGISTERED TAXPAYER - BURDEN. Under the Washington Revenue Act, it is the taxpayer who has the burden of knowing his own tax liability.

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: June 7, 1988

NATURE OF ACTION:

Petition concerning (1) the taxability of an out-of-state independent sales representative whose Washington employee-shareholder solicited Washington customers while working out of his Washington home, and (2) the failure of the State of

Washington to notify the taxpayer of its obligation to register and pay taxes.

FACTS:

Bauer, A.L.J.-- The Department estimated the taxpayer's tax liability for the period January 1, 1980 through June 30, 1987. The above-referenced assessments were issued on September 8, 1987 in the respective amounts of \$

The taxpayer, previously a sole proprietorship, was incorporated in Oregon in August 1980. It is an independent manufacturer's representative which calls on retail sporting goods stores and solicits orders for the factories it represents. Its territory is basically Oregon and Washington.

The taxpayer does not buy and sell goods in its own name. Its representatives visit stores, make sales presentations, solicit orders, and send orders on to manufacturers. The manufacturers accept or reject the orders and ship the goods freight collect. A commission is then paid to the taxpayer.

The taxpayer had its corporate office in a small building in Portland, Oregon from January 1983 until October 1986, which building served as the taxpayer's corporate address. At all other times, the corporate address was the taxpayer's president's home address.

In 1980, the sole proprietorship entered into a contract with an individual from California to work as a sales representative as an independent agent. He moved to Washington in January 1980. When the business was incorporated, this individual became a fifty percent shareholder. He has since become the sole shareholder, having bought out the taxpayer's representative in this matter.

In 1980 Washington laws were looked at for the first time. The taxpayer - on its accountant's recommendation - called Olympia expecting to be helped. An employee in Employment Security advised the taxpayer of liability in that area.

The taxpayer was given a Washington employment security number. It thought that that was its "state number" and that it was therefore registered with the state.

The taxpayer began paying Workman's Compensation when the taxpayer's representative's brother went to work for the taxpayer in 1984.

In 1985, at the taxpayer's accountant's suggestion, the taxpayer changed the status of its Oregon salesman from an independent agent to an employee. In 1987 this Oregon employee moved to Washington, and both Employment Security and Labor and Industries were contacted.

When the taxpayer registered that employee with Labor and Industries, the taxpayer's representative filled in a Master Business Application, and received a Uniform Business Identifier (UBI). It was then explained that the taxpayer had not been properly registered with the Department of Revenue. The taxpayer was ultimately audited. The assessment at issue resulted.

TAXPAYER'S EXCEPTIONS:

The taxpayer first argues that the B&O Tax in businesses of its type is arbitrary because in the past it has been poorly communicated and not applied consistently. The concept of "nexus" has been open to interpretation, and has led to unfair competition since the tax has not been consistently applied to similarly situated taxpayers. Finally, the argument was made to the auditor that the taxpayer's Washington employee-shareholder had operated out of his home, which does not qualify as a "place of business."

Further, the taxpayer's representative feels the "innocent victim," and emphasizes that he made an effort to get the taxpayer registered with the necessary Washington agencies, and to determine its correct liabilities under Washington laws and as well as to comply with their spirit. The taxpayer points out that the taxpayer has used lawyers and accountants in its business since 1980.

The taxpayer's representative claims that

1. [The taxpayer] is a "cross the T dot the I" type of company that more than reasonably did its part as a State of Oregon corporation to attempt to comply with ALL laws and taxes in WA.

2. By its own admission the State of Washington devised the Master Business Application to help remedy their own problems of communication between departments at the state level that not only created a climate for evaders but led to many problems for businesses like ours that were attempting to comply.

3. [The taxpayer] was not an evader but simply an unknowing victim of a system that has now been redone.

4. The purpose of government is to maintain order and to protect its citizens - not to purposely or through its own organizations to oppress the people.

5. To enforce 7 years of back taxes when, in this case, the State must bear a large portion of the responsibility for the climate that led to the unpaid taxes would simply be unfair and more importantly would violate the purpose of government.

The taxpayer's representative further noted that it will be a hardship to pay these back taxes all at once. The taxpayer's representative has sold out to his partner, and didn't receive much for his share. The outstanding tax liability, however, will be shared equally with his partner. He noted that most similar businesses are short-term, and that many of his competitors during the audit period - who also did not pay taxes - are now out of business and will thus never be audited or pay back taxes.

ISSUES:

The taxpayer has raised two separate issues for our consideration:

1. Whether the taxpayer is properly taxable, and, in the alternative,
2. Whether the taxes should be excused because the state was negligent for not notifying the taxpayer of its duty to register with the Department of Revenue and pay taxes.

DISCUSSION:

As to the issue of whether the taxpayer is properly taxable, we must answer in the affirmative. WAC 458-20-194 provides as follows:

Persons engaged in a business taxable under the service and other business activities classification and who maintain places of business both inside and outside this state which contribute to the performance of a service, shall apportion to this

state that portion of gross income derived from services rendered by them in this state. Where it is not practical to determine such apportionment by separate accounting methods, the taxpayer shall apportion to this state that proportion of total income which the cost of doing business within this state bears to the total cost of doing business both within and without this state.

[1] The taxpayer argued to the auditor that its Washington employee-shareholder's home could not be properly considered to be a "place of business." We disagree. The taxpayer, as an independent sales representative, normally requires its employees to call on potential customers at their respective business locations instead of using a formal office to conduct business (we note, for example, that even the president has used his own home as the Oregon corporate office for all but approximately three and a half years). It is apparent that a formal office is not required. The taxpayer's Washington employee did in fact work out of his home instead of the taxpayer's Oregon office.

We thus hold that the auditor properly classified the Washington employee's home as a "place of business."

We disagree that a taxpayer's liability in a case such as this is unclear and unevenly applied by the Department. Enforcement, however, is admittedly difficult when businesses organized out-of-state operate here with a small number of employees and without establishing formal business offices. Because of this, the Department encourages taxpayers to aid in identifying those who have not registered.

[2] As to the second issue, we must point out that under the Washington Revenue Act, it is the taxpayer who has the burden of knowing his own tax liability. Neither the Department nor its agencies bear the responsibility of assuring that entities liable for tax register with the Department. Had the taxpayer specifically inquired regarding tax liability to the state, it could have been correctly advised of its responsibilities by this Department.

The State of Washington's recent adoption of the master business licensing program will hopefully assist taxpayers in ascertaining their various responsibilities under Washington law. The Department, however, cannot grant relief to taxpayers simply because the state has not affirmatively sought them out to inform them of their liabilities. The

responsibility of tax compliance is ultimately that of the taxpayer.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of assessment is denied. The case is remanded to the Audit Section so the taxpayer's correct liability may be determined.

DATED this 30th day of November 1989.