

Cite as 9 WTD 057 (1990)

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 the Prior Determination of)
Tax Liability of:) No. 90-10
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) Registration No. . . .
. . .)
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[1] RULE 255, RULE 193B: EXPORT CERTIFICATE - NEXUS. The issuance of an export certificate by a constructive possessor of carbonated beverages is not a business activity within this state sufficient to confer B&O nexus for a business that does not otherwise have B&O tax nexus in this state.

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: . . .
. . .

FACTS AND ISSUES:

Zagelow, A.L.J. -- The petitioner has been determined to not have sufficient nexus in this state for the imposition of business and occupation tax. . . . The business activities of the petitioner have not changed. The 1989 legislature enacted the Carbonated Beverage and Syrup Tax, chapter 271, Laws of 1989, which makes the petitioner a constructive possessor of carbonated beverages in this state for purposes of the carbonated beverage and syrup tax. The petitioner intends to issue an export certificate to its suppliers for the quantity of carbonated beverages or syrup it constructively possesses but exports from this state. The sole issue presented is whether the issuance of an export certificate for purposes of the carbonated beverage tax is a business activity sufficient to confer B&O tax nexus.

DISCUSSION:

[1] The business and occupation tax is based upon business activity in this state. The petitioner has been held to not be conducting business in this state in a nature as to confer nexus and business and occupation tax liability to Washington. The petitioner does not physically possess any carbonated beverage or syrup in this state. The petitioner is, however, the constructive possessor of carbonated beverage or syrup in this state because the petitioner has "control" of product in this state. See: RCW 82.64.010(2). While the petitioner is liable for payment of the carbonated beverage tax, the payment of the tax or compliance with the procedures associated with payment of the tax, issuance of an export certificate, is not a business activity to confer B&O tax nexus where it would not otherwise be present. The petitioner states the activities of the petitioner have not changed. The petitioner still does not have physical

possession of products in this state and still conducts its activities in a manner to not be liable for business and occupation tax. The petitioner's payment of the carbonated beverage tax or compliance with other aspects associated with the tax is not an activity of business within this state to confer B&O tax nexus.

DECISION AND DISPOSITION:

The issuance by the petitioner of carbonated beverage tax export certificates does not confer nexus for B&O tax purposes, if the other business activities of the petitioner are not sufficient to provide B&O tax nexus.

This ruling is issued pursuant to WAC 458-20-100(18) and is based upon only the facts that were disclosed by the petitioner. In this regard, the department has no obligation to ascertain whether the petitioner has revealed all of the relevant facts or whether the facts disclosed are actually true. This legal opinion shall bind this taxpayer and the department on these facts. However, it shall not be binding if there are relevant facts which are in existence but have not been disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately found to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have prospective application only.

DATED this 10th day of January 1990.