Cite as 9 WTD 286-69

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

In the Matter of the Petition For Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 90-175
. . .	)	Registration No. . . .
	)	. . . /Audit No. . . .
. . .	)	. . . /Audit No. . . .

[1] **RULE 101:** REGISTRATION WITH DEPARTMENT -- REQUIRED TO COLLECT SALES TAXES -- ENGAGED IN TAXABLE BUSINESS ACTIVITIES. Where person is required to collect sales taxes and/or is engaged in a taxable business activity, the person is required to register with the Department of Revenue.

[2] **RULE 229:** REFUNDS -- CREDITS -- FOUR YEAR LIMITATION -- SALES TAXES PAID BEYOND FOUR YEAR LIMITATION. No refund or credit may be made for taxes paid more than four years prior to the beginning of the calendar year in which the refund or credit is sought, or examination of records by the Department is completed. Where Department assessed an unregistered taxpayer beyond the four year limitation, any overpayment or incorrect payment of taxes beyond the four year limitation is not allowed as a credit to offset taxes assessed.

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: April 30, 1986

NATURE OF ACTION:

Petition protesting assessment of business and occupation taxes on the grounds that taxpayer/petitioner is not required to register with the Department. Also protested is the failure to allow credit in the tax assessment for sales taxes paid at source on purchases of equipment which were rented out where the taxes were paid more than four years prior to the beginning of the calendar year in which examination of the records was completed by the Department.

FACTS AND ISSUES:

Krebs, A.L.J. -- [The Taxpayer] is a partnership of two professional service dentist corporations, . . . (Registration No. . . .) and . . . (Registration No. . . .). These two corporations will be referred to as the "partners."

The taxpayer owns real property which it rents to the partners and other tenants. The taxpayer operates a dental laboratory and rents out equipment to the partners -- its sole customers for these activities.

The taxpayer/partnership has operated since . . . without being registered with the Department of Revenue (Department); it was registered by the Department in . . . for purposes of conducting an investigation into its meeting of tax obligations.

The Department examined the taxpayer's business records for the period from . . . through . . . . As a result of this audit, the Department issued the above two captioned assessments on . . . asserting combined excise tax liability in the amount of $ . . ., combined interest due in the amount of $ . . . and penalty due in the amount of $ . . . for a combined total sum of $ . . . . The taxpayer made a payment of $ . . . on . . . and the balance remains due.

The taxpayer's protest involves Schedules II, III and IV.

Schedules II and III.

In Schedule II, the auditor subjected the fees received by the taxpayer's dental laboratory to Service business and occupation (B&O) tax based upon the amounts reported in federal income tax returns.

In Schedule III, the auditor subjected rental income to Retailing B&O tax. The income was received by the taxpayer on equipment rented to the partners.

The taxpayer asserts that the auditor's actions were incorrect because the taxpayer, by servicing only its two partners and renting equipment to them only, does not do business with the public and need not register with the Department. In support thereof, the taxpayer cites WAC 458-20-105 (Rule 105) as indicating in part that "a person engaging in business is generally one who holds himself out to the public as engaging in business either in respect to dealing in real or personal property or in respect to the rendering of services." The taxpayer cites also WAC 458-20-106 (Rule 106) as indicating in part that "persons who hold themselves out to the public as making sales at retail or wholesale are deemed to be engaged in the business of selling."

The taxpayer further asserts that the taxpayer/partnership "is merely a conduit for the reimbursement of expenses incurred in regards to the use of personal property and the laboratory costs. These functions are not offered to the general public and do not offer any potential for profit to the partnership. The partnership is merely a convenient means by which to account for the costs of these functions and to get reimbursed. Therefore, the partnership should not be required to file as doing business, subjecting it to business and occupation tax."

Schedule IV.

In this Schedule, the auditor gave a credit of $ . . . to the taxpayer for sales taxes paid at source on purchases of equipment that were rented out. The auditor did not allow any credit for sales taxes paid prior to . . . .

The taxpayer asserts that it is entitled to a credit for all sales tax paid at the source and claims that it paid sales taxes of approximately $ . . . on purchases prior to . . . .

The taxpayer asserts that it would be a gross miscarriage of equity if it had to pay sales tax on rental payments without getting credit for the sales taxes paid on the purchase of the equipment that was rented out.

DISCUSSION:

Schedules II and III.

In these Schedules, fees received by the taxpayer/partnership for its dental laboratory work and rental income received by the taxpayer for the leasing of equipment were subjected to Service B&O tax and Retailing B&O tax respectively. The partners, two professional service dentist corporations, were the taxpayer's only customers.

Administrative regulation, WAC 458-20-203 (Rule 203), which has the same force and effect as the law itself, in pertinent part provides:

> Each separately organized corporation is a "person" within the meaning of the law, notwithstanding its affiliation with or relation to any other corporation [partnership]...by the same group of individuals. (Bracketed word supplied.)

Revenue Act statute, RCW 82.04.030, defines "person" in pertinent part to mean:

> ...any individual ... firm, copartnership ... company ... corporation, association ... whether ... nonprofit, or otherwise ...

The B&O tax is imposed upon every person for the act or privilege of engaging in business activities measured, in this case, by the gross proceeds of sale or gross income of the business (RCW 82.04.220) without any deduction for costs or expenses (RCW 82.04.070-080).

Thus, in this case, the relationships and affiliations between the taxpayer/partnership and its two partners who are professional service dentist corporations do not sanction any other treatment of them except as separate "persons" under the law.

[1] With respect to the taxpayer's assertion that it did not have to register with the Department, WAC 458-20-101 (Rule 101) in pertinent part provides:

> ...Every person who is required by law to collect and account for tax, or who shall engage in any business for which a tax is imposed under the Revenue Act, shall, whether taxable or not, apply for and obtain a certificate of registration from the department of revenue...

The taxpayer is required by law to collect retail sales tax on its income from renting out personal property and the rental income is also subject to Retailing B&O tax. WAC 458-20-211 (Rule 211). Accordingly, we conclude that the taxpayer was required to register and must reject the taxpayer's assertion. Rule 101.

The taxpayer's reliance on Rule 105 is misplaced. That rule titled "Employees distinguished from persons engaging in business" explains the difference between an "employee" and a "person engaged in business". "Holding oneself out to the public as engaging in business" is merely one of the conditions serving to indicate that the person is in business and not an employee. Rule 105.

The taxpayer's reliance on Rule 106 is also misplaced. That rule titled "Casual or isolated sales..." explains that "persons who hold themselves out to the public as making sales at retail or wholesale are deemed to be engaged in the business of selling" and their sales are deemed not to be casual or isolated sales for tax purposes. The rule is not intended to explain who must register with the Department; Rule 101 does that.

The taxpayer's other assertions -- conduit for reimbursement of expenses, nonprofit nature and means to account for the costs -- with respect to the transactions in question (the providing of dental laboratory services and renting out of equipment) must also be rejected as bearing no weight on whether the transactions are taxable. The partners' rental payments are taxable even if they
are to "reimburse" the taxpayer for its expenses in engaging in business. Whether or not the taxpayer makes a profit is immaterial; this state has a gross receipts tax, not an income tax.

Schedule IV.

While the auditor allowed a credit for the years . . . to . . . for sales tax paid at source on purchases of equipment that were rented out, no credit was allowed for the years prior to . . . .

[2] WAC 458-20-229 (Rule 229) in pertinent part provides:

> If...upon examination of the...records of any taxpayer, it is determined by the department of

> revenue that...within the four calendar years immediately preceding the completion by the department of such an examination, a tax has been paid in excess of that properly due, the excess amount paid within said period will be credited to the taxpayer's account or will be refunded to him.
>
> No refund or credit may be made for taxes paid more than four years prior to the beginning of the calendar year in which refund application is made or examination by the department is completed. (Emphasis supplied.)

The Department, having completed the examination in . . . , was limited to the four years, . . . through . . . , in which a credit could be allowed. See Rule 229 and the statute, RCW 82.32.060, which the Rule implements. Accordingly, the auditor's action in not allowing a credit for the years prior to . . . was correct and must be sustained.

We recognize that taxes were assessed for the prior years of 1978 through . . . , but such assessment was in accordance with RCW 82.32.050 which in pertinent part provides:

> No assessment...for additional taxes due may be made by the department more than four years after the close of the tax year, except (1) against a taxpayer who has not registered as required by this chapter. (2)... (Emphasis supplied.)

Thus, while the Department can assess beyond the four year period per RCW 82.32.050, the Department by statute (RCW 82.32,060) and Rule 229 cannot allow credit beyond the four year period. Furthermore, the Washington Supreme Court in Atkinson Co. v. The State of Washington, 66 Wn.2d 570 (1965) held at page 576:

> There is no correlation between the two statutes (RCW 82.32.050 and 060) and...

And, at page 575:

> No executive or ministerial officer has authority to refund taxes [or grant a credit] except under express statutory authority. (Bracketed words supplied.)

The Department does not have express authority in the circumstances involved in this case to grant the credit.

Moreover, it must be recognized that the taxpayer itself has not paid sales tax on the rental payments and has not been held liable for them. The two corporate partners as separate "persons" have been held liable for the sales tax on the rental payments.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this the 26th day of April 1990.