

Cite as 9 WTD 139 (1990)

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</u>
<u>N</u>	
For Correction of Assessment)	
of)	No. 90-68
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	. . ./Audit No. . . .

[1] **RULE 203 AND RULE 228:** PENALTY -- DELINQUENT TAXES
-- UNREGISTERED TAXPAYER -- TAX CREDITS OF
AFFILIATED CORPORATIONS -- REDUCTION OF PENALTY.
Where unregistered taxpayer is assessed penalty for
delinquent taxes and its affiliated corporations
have tax credits at the same time, the tax credits
cannot offset the taxpayer's tax liability so as to
reduce the penalty. Each corporation, though in an
affiliated group, has separate tax liability. The
law makes no provision for filing of consolidated
tax returns or consolidated 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: . . .

NATURE OF ACTION:

Petition for reduction of penalty assessed on the basis that
tax credits received by the taxpayer's affiliated corporations
be used to offset the amount of taxpayer's tax delinquency.

FACTS AND ISSUES:

Krebs, A.L.J. -- [The taxpayer] is engaged in the business of
organizing speaking functions.

The Department of Revenue (Department) examined the taxpayer's business records for the period from . . . through As a result of this audit, the Department issued the above captioned assessments on . . . asserting excise tax liability in the combined amount of \$. . . , interest due in the combined amount of \$. . . , and penalties due in the combined amount of \$. . . for a total sum of \$ The taxpayer made payments of \$. . . on April 22, 1988 and \$. . . on July 7, 1988, and the balance of \$. . . remains due.

The taxpayer is a subsidiary corporation of [A] (parent corporation) which is also the stockholding parent corporation of [B] (. . .), Registration No. . . . and [C] (. . .), Registration No. On June 7, 1988, the Department issued also tax assessments against [B] and [C] which favored them with tax credits (not including interest) in the amounts of \$. . . and \$. . . respectfully.

Because [B] and [C] had credits due, the taxpayer requests consideration be given to combining the taxpayer's tax debit with the credits due [B] and [C] before computing the penalties assessed against it. The taxpayer asserts that this offset would result in its saving \$ The taxpayer, in requesting a favorable response, points to its sincerity and cooperation with the audit procedures.

The issue is whether tax credits given to sister corporations can be combined with the tax obligations of another sister corporation so as to reduce the penalties against the latter corporation.

DISCUSSION:

[1] 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 through stock ownership by a parent corporation...

Each corporation shall file a separate return and include therein the tax liability accruing to such corporation. This applies to each corporation in an affiliated group, as the law makes no provision for

filing of consolidated returns by affiliated corporations...

Accordingly, the taxpayer's request must be denied because, in effect, it would be tantamount to tax consequences based upon consolidated reporting of taxes.

It is noted that the taxpayer commenced taxable business activities in 1983 but did not register with the Department until June 1987 at the request of the Department after its nonregistration came to the attention of the Department.

Administration regulation WAC 458-20-101 (Rule 101) in pertinent part provides:

(18) Penalties for noncompliance. The law provides that it shall be unlawful for any person to engage in any business without having obtained a certificate of registration. To do so constitutes a gross misdemeanor.

Thus, the taxpayer should have filed the Application for Certificate of Registration in 1983 and filed excise tax returns regularly thereafter, Had this happened, the taxpayer would have avoided being delinquent and the resultant build-up of past due taxes and consequential interest and penalties.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 16th day of February 1990.