

Cite as 6 WTD 13 (1988)

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)	
)	88-195
)	
. . .)	Registration No. . . .
)	Tax Assessment No. . . .
)	
)	

[1] **RCW 82.32.110 AND RCW 82.32.070:** AUDIT --
EXAMINATION OF RECORDS -- REFUSAL TO ALLOW. A
taxpayer who provides its own information to the
Department and declines to allow the Department to
make its own examination cannot be heard to deny the
tax liabilities resulting from such information.

[2] MISCELLANEOUS -- DELAY OF TAX PAYMENT PENDING
RESOLUTION OF COURT CASE. A taxpayer cannot decline
to pay a tax pending the resolution of a court case
that does not directly relate to its 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.

NATURE OF ACTION:

Taxpayer refused to pay use tax on an assessment based on
information it provided pending resolution of a case currently
before the U.S. Supreme Court.

FACTS AND ISSUES:

Hesselholt, A.L.J. -- The taxpayer wholesales cosmetic
products in Washington through a number of department stores
in this state. Its records were audited for the period
January 1, 1982, through June 30, 1986. A tax assessment was

issued December 17, 1987, imposing wholesaling tax, litter tax, use tax and interest in the amount of \$ The taxpayer agreed to the assessment of wholesaling and litter tax, and paid those portions of the assessment.

The taxpayer did not enclose payment of the use tax, "pending the outcome of D.H. Holmes Co. Ltd. vs. McNamara (Docket No. 87-267) before the U.S. Supreme Court . . ." To complete the assessment, taxpayer provided the auditor with schedules identifying "printed advertising matter allocated to Washington." The auditor imposed use tax on those amounts. The taxpayer declined to allow the auditor to examine records regarding those materials on the grounds that it is a private corporation and such records are private.

DISCUSSION:

[1] RCW 82.32.110 authorizes the Department of Revenue to "examine any books, papers, records, or other data, or stock of merchandise bearing upon the amount of any tax payable or upon the correctness of any return Under RCW 82.32.070, taxpayers are required to preserve suitable records for five years, and "in the case of an out-of-state concern . . . it shall be sufficient . . . if it permits the examination by an agent authorized or designated by the department of revenue at the place where such books and records are kept. Any person who fails to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceeding, the correctness of any assessment of taxes made by the department of revenue based upon any period for which such books, records, and invoices have not been so kept and preserved."

The figures used to compute the use tax were provided to the auditor in response to her request for information regarding the taxpayer's in-state use/consumption of tangible personal property. The taxpayer cannot now argue that the figures provided should not subject it to use tax in the state of Washington.

[2] The case the taxpayer refers to, currently before the U.S. Supreme Court¹, is a Louisiana case regarding the imposition of Louisiana's use tax on catalogs printed out-of-state and mailed from out-of-state to in-state customers.

¹ McNamara v. D.H. Holmes Co. Ltd., 505 S.2d 102 (La App. 1987).

This does not appear to be the same as the taxpayer's situation. It is not possible, from the information provided, to determine if any of the material taxed was mailed directly to consumers in this state from out-of-state, thus putting the taxpayer in a similar situation to one in the pending case. Even if the cases are precisely the same, the tax is currently due and owing.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 18th day of April 1988.