

Cite as 6 WTD 83 (1988)

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

In the Matter of the Petition)	
for Correction of Assessment of)	<u>F I N A L</u>
)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 87-214A
)	
. . .)	Registration No. . . .
)	Document No. . . .
)	Audit No. . . .

[1] **RULE 19301:** B&O TAX -- EXEMPTION -- MULTIPLE ACTIVITIES -- INVALIDATION. The RCW 82.04.440 multiple activities exemption was ruled unconstitutional in Tyler Pipe Industries, Inc. v. Washington Department of Revenue, 483 U.S. ____, 97 L.Ed.2d 199, 107 S.Ct. 2810 (1987). The issue of remedy was remanded to the Washington Supreme Court.

[2] **RULE 100, RCW 82.04.4286 AND 82.32.060:** B&O TAX -- EXEMPTION -- MULTIPLE ACTIVITIES -- REFUNDS -- RETROACTIVITY. The Washington Supreme Court in National Can Corporation v. Department of Revenue and Tyler Pipe Industries, Inc. v. Department of Revenue, 109 Wn.2d 878, cert. denied, 56 U.S.L.W. 3828 (1988) held that the U.S. Supreme Court decision in Tyler Pipe, which invalidated the multiple activities exemption of the B&O tax, applied prospectively only, and that RCW 82.04.4286 and 82.32.060 did not require the State to refund taxes paid before the filing of a court decision invalidating a tax statute if the decision applies prospectively only.

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:

Petition concerning an out-of-state manufacturer's liability for selling taxes in light of the U.S. Supreme Court's holding that the multiple activities exemption was violative of the Commerce Clause.

FACTS:

Fujita, Assistant Director -- The taxpayer is an out-of-state manufacturer who sells its products in Washington.

The previously unregistered taxpayer was audited for the period January 1, 1982 through December 31, 1984, and an assessment for \$. . . was issued on December 10, 1985, which amount included interest and penalties. Taxes assessed therein included wholesaling and litter tax. The taxpayer appealed this Determination under the provisions of WAC 458-20-100, and a hearing was held February 12, 1986. Determination 87-214 was issued June 24, 1987 granting the petition in part (as to cash discounts) and denying the petition in part (freight charges and late payment penalties). A new assessment of \$. . . was accordingly issued on August 27, 1987.

TAXPAYER'S EXCEPTIONS:

The taxpayer again requests the Department abate and refund all taxes, interest and penalties for the audit period, including those found due in Determination No. 87-215. The taxpayer bases its latest appeal on the U.S. Supreme Court's holding in Tyler Pipe Industries, Inc. v. Washington Department of Revenue, 483 U.S. ___, 97 L.Ed.2d 199, 107 S.Ct. 2810 (1987) (hereinafter, Tyler Pipe), in which the multiple activities exemption was found to be violative of the Commerce Clause.

DISCUSSION:

[1-2] In Tyler Pipe, the U. S. Supreme Court invalidated the RCW 82.04.440 multiple activities exemption and remanded the case to the Washington Supreme Court to decide the issue of remedy. The taxpayer's petition has been held in suspended status pending that Court's decision.

On January 28, 1988, the Washington Supreme Court issued its opinion in National Can Corporation v. Department of Revenue and Tyler Pipe Industries, Inc. v. Department of Revenue, 109 Wn.2d 878, cert. denied, 56 U.S.L.W. 3828 (1988) (hereinafter, National Can). The Court therein ruled that the U. S. Supreme Court's decision in Tyler Pipe should be applied prospectively only from the June 23, 1987 date the opinion was issued. Thus, taxpayers are properly subject to Washington's B&O tax - as calculated with the multiple activities exemption - for periods prior to that date.

In light of the Washington Supreme Court's opinion, we see no purpose in holding a hearing before an Administrative Law Judge or Director and we are issuing this Determination as the final action of the Department.

Because the assessment at issue pertains to tax reporting periods prior to June 23, 1987 the taxpayer's petition is denied. Under

the Washington Supreme Court's January 28, 1988 decisions in National Can the taxpayer is clearly subject to the tax in question prior to that date.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 22nd day of June 1988.