Cite as Det. No. 85-282B, 6 WTD 1 (1986)

BEFORE THE DIRECTOR
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In The Matter of the Petition For Refund of	)	S U P P L E M E N T A L F I N A L D E T E R M I N A T I O N
	)	No. 85-282B[1]
. . .	)	Real Estate Excise Tax

[1] **MISCELLANEOUS**: STATUTES -- CONSTRUCTION OF -- RETROSPECTIVE EFFECT. Legislative enactments are presumed to have prospective application only. Baker v. Baker, 80 Wn.2d 736, 498 P.2d 315 (1972); Lynch v. Department of Labor & Indust., 19 Wn2d 802, 145 P.2d 265 (1944);

[2] **MISCELLANEOUS**: ADMINISTRATIVE RULES -- CONSTRUCTION OF -- RETROSPECTIVE EFFECT. Administative rules are presumed to have prospective application only. McDowell v. Burke, 57 Wn.2d 794, 359 P.2d 1037 (1961).

[3] **MISCELLANEOUS**: STATUTES -- ADMINISTRATIVE RULES -- CONSTRUCTION OF -- RETROSPECTIVE EFFECT -- WHEN APPROPRIATE. Statutes and rules can have retroactive effect if it is remedial in nature, procedural and involves no substantive or vested rights. Yellam v. Woerner, 77 Wn.2d 604, 464 P.2d 947 (1970).

[4] **REAL ESTATE EXCISE TAX AND WAC 458-61-570**: EXEMPTION -- ASSIGNMENT OF PARTNERSHIP INTEREST -- PARTNERSHIP -- JOINT VENTURE -- DISTINCTION. Joint ventures are taxed, for real estate excise tax purposes, in the same manner as a partnership.

[1] The original determination, Det. No. 85-282A, is published at 1 WTD 19.

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

This matter arose when the taxpayer petitioned for a refund for real estate taxes paid. The Property Tax Division denied the petition, because it treated the taxpayer as joint tenants. The taxpayer appealed to the Interpretation and Appeals Section arguing that the taxpayer should be taxed as a partnership. The Administrative Law Judge denied the petition and affirmed the Property Tax Division on other grounds. The taxpayer then appealed to the Director. The Director denied the petition and affirmed the decision of the Administrative Law Judge on grounds and reasoning somewhat different from both the Property Tax Division and the Administrative Law Judge. The taxpayer now asks that the Director reconsider that decision.

FACTS

Since this is a supplemental decision, there is no need to recite the facts relating to this appeal which have earlier been produced in the other decisions heretofore issued. However, it is necessary to state those facts which are now pertinent to the resolution of the issue now before us. In that regard, at the time the issues were before the Department, the applicable rule, WAC 458-61-570, was silent on the issue of the taxability of joint ventures. For purposes of the Determination 85-282 and Final Determination 85-282A, the issue was whether a joint venture should be taxed just like a partnership. These opinions dealt with whether the taxpayer's business arrangements were that of a joint tenant, joint venture or partnership. The Determinations concluded that the relationship was that of joint venture and thus, further determined precisely how a joint venture should be taxed. The Final Determination 85-282A held that the joint venture relationship was substantively different from a partnership as respects the ownership of real property and therefore taxed differently.

While Final Determination 85-282A was being decided, the Property Tax Division was in the process of amending WAC 458-61-570. That amendment changed the rule to state that a joint venture is considered the same as a general partnership for real estate excise tax purposes. That rule became final on September 8, 1986.

DISCUSSION

The taxpayer in seeking the reconsideration argues that the rule has added the language that joint ventures are taxed just like partnerships and that the Final Determination is contrary to the Department's duly promulgated rule. In fairness to the decisions earlier issued (85-282 and 85-282A), the taxpayer acknowledges that the rule, at the time of the transaction did not contain that specific language referring to joint ventures.

[1,2,3] The case law is well established that legislative enactment is presumed to have prospective application only, unless the legislature has indicated a clear intent to the contrary. Baker v. Baker, 80 Wn.2d 736, 498 P.2d 315 (1972); Lynch v. Department of Labor & Indus., 19 Wn.2d 802, 145 P.2d 265 (1944). There is no reason why administrative rules should be treated any differently.

McDowell v. Burke, 57 Wn.2d 794, 359 P.2d 1037 (1961). Where a statute or rule has not been made specifically retrospective, it can have retroactive application if it is remedial in nature, procedural and involves no substantive or vested rights. Yellam v. Woerner, 77 Wn.2d 604, 464 P.2d 947 (1970).

This rule is not afforded retroactive application, because it was not adopted to cure a procedural practice. Further, the amendment to the rule clearly determines substantive rights as to whether a joint venture shall be treated, for real estate excise tax purposes, as a partnership or as some other entity.

Relief, however, is warranted in this case on other grounds. As discussed in the facts, the Property Tax Division denied relief, because it found that the taxpayer was operating in the form of a joint tenancy. The Administrative Law Judge and the first review by the Director, found that the taxpayer was not operating in the form of joint tenants, but rather, as tenants in common in the form of a joint venture. These decisions, assuming that the Property Tax Division was aware of the legal distinction, held correctly that joint ventures may generally be treated as partnerships where there is no law to indicate a different treatment; however, where there is law pertaining to joint ventures, that law shall prevail.
[4] After issuance of these decisions, we have now learned that the Property Tax Division has, for many years, consistently treated joint ventures like partnerships and the rule was amended to reflect that administrative practice. In other words, the administration of the real estate excise tax laws pertaining to joint ventures was the same before this case arose and after the rule was amended; the only change in the law was during the interim when the decisions were issued by the Administrative Law Judge and the Director.

For these reasons, we now believe that the law at the time of the transaction was to treat joint ventures like partnerships and for that reason, we believe that the partnership rules apply in this case. WAC 458-61-570 provides that an assignment of a partnership interest does not result in the imposition of the real estate excise tax. Thus, we find that there has been an assignment of a "partnership interest" even though a quit claim deed was filed at the insistence of the assignee. Since the assignment of a partnership interest is one of a personal property interest and not real property, the real estate excise tax does not apply; the quit claim deed was superfluous and not necessary to effectuate a transfer of a personal property interest.

DECISION AND DISPOSITION

Determinations 85-282 and 85-282A are hereby rescinded and the taxpayer's petition for refund is hereby granted.

DATED this 14th day of November 1986.