# Quach, Thong (QT & T Co.)

#### **DEPARTMENT**

#### Authority of Department not to pursue collection of final assessment

The Department does not have the authority to withdraw a Notice and Order of Assessment which has become final. However, the Department may still, at any time, elect not to pursue collection of the sums assessed thereby. Board construed Department's order withdrawing Notice and Order of Assessment which had become final as a decision by the Department not to pursue collection of the sums assessed, making the employer no longer obligated on the indebtedness asserted by the Notice and Order of Assessment. ....In re Thong Quach (QT & T Co.), BIIA Dec.,, 89 0055 (1989)

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#### **BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS** STATE OF WASHINGTON

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IN RE: THONG QUACH dba QT & T CO. ) DOCKET NOS. 89 0055 & 89 0056

## FIRM NO. 535,978

## ORDER ALLOWING RELIEF ON THE RECORD

An appeal was filed by the employer, on January 4, 1989, from two Notices and Orders of Assessment of Industrial Insurance Taxes of the Department of Labor and Industries. One Notice and Order of Assessment (No. 66121) assessed industrial insurance taxes for the period July 1, 1988 through September 30, 1988 in the amount of \$162.26. We assigned Docket No. 89 0055 to the appeal of that assessment. The other Notice and Order of Assessment (No. 64506) assessed industrial insurance taxes for the period April 1, 1988 through June 30, 1988 in the amount of \$162.26. We assigned Docket No. 89 0056 to the appeal of that assessment. Both appeals are hereby CONSOLIDATED FOR PURPOSES OF DISPOSITION.

From a review of the Department record provided to the Board, pursuant to RCW 51.48.131, it appears that the Notice and Order of Assessment, No. 64506, was dated and mailed September 21, 1988 and received by the employer September 26, 1988. There is nothing in the record to suggest that a request for reconsideration or notice of appeal was filed with the Department or the Board within 30 days of the date the Notice and Order of Assessment was communicated to the employer. The Department record concerning the Notice and Order of Assessment, No. 66121, fails to disclose the date of that assessment, the date it was mailed or the date it was received by the employer.

By orders dated January 11, 1989 the Department indicated that its Notices and Orders of Assessment, Nos. 64506 and 66121, were withdrawn. Further, by letter received at the Board on January 18, 1989 the employer stated that he wished to withdraw his appeals.

RCW 51.48.131 provides, in part, that:

The department, within thirty days after receiving a notice of appeal, may modify, reverse, or change any notice of assessment, or may hold any such notice of assessment in abeyance pending further investigation, and the board shall thereupon deny the appeal, without prejudice to the employer's right to appeal from any subsequent determinative notice of assessment issued by the department.

It is clear to us that the Department's orders of January 11, 1989 were entered within 30 days after the Department received the employer's notice of appeal. However, we do not believe, with respect to the Notice and Order of Assessment, No. 64506, that the Department had the authority to withdraw its Notice and Order of Assessment. Absent a request for reconsideration or a notice of appeal that Notice and Order of Assessment became final on October 26, 1988. See RCW 51.48.131. We

cannot construe the previously quoted language of RCW 51.48.131 to allow the Department to modify a Notice and Order of Assessment, which has already become final, simply because an employer has filed an untimely notice of appeal. The language in the statute which allows the Department to issue an order modifying, reversing, or changing a notice of assessment, or holding a notice of assessment in abeyance, and requiring the Board to deny the appeal of the earlier notice of assessment, presupposes an appeal which was <u>timely</u> filed.

On the other hand, it is evident from the Department's record that the orders of January 11, 1989 were intended to relieve the employer from the assessments indicated in the Notices and Orders of Assessment. The employer's request to withdraw his appeal was sent to the Board, apparently at the Department's request, as further assurance to us that the Department had granted the relief requested in the notice of appeal (i.e., cancellation of the assessments).

We do not believe the Department had authority to withdraw its Notice and Order of Assessment, No. 64506. However, even if that order became final it seems to us that the Department may still, at anytime, elect not to pursue collection of the sums thereby assessed. We will, therefore, construe the Department's orders of January 11, 1989 as a decision of the Department not to pursue collection of the \$324.52 sought by its Notices and Orders of Assessment, Nos. 66121 and 64506.

On the strength of the Department's orders of January 11, 1989 we will conclude that the Department has effectively granted the relief requested in the notice of appeal, and conclude that the record of the Department sustains the contentions of the employer that he is no longer obligated on the indebtedness asserted by the Notices and Orders of Assessment. RCW 51.52.080.

Accordingly, we allow the relief asked by the employer, and direct the Department to rescind, and take no further action on, its demand for payment of the sum of \$324.52 sought as industrial insurance taxes for the period April 1, 1988 through September 30, 1988.

It is so ORDERED.

Dated this 25th day of January, 1989.

BOARD OF INDUSTRIAL INSURANCE APPEALS	
SARA T. HARMON /S/	Chairperson
FRANK E. FENNERTY, JR. /S/	Member
PHILLIP T. BORK	Member