

## Quach, Thong (QT & T Co.)

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### 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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1 cannot construe the previously quoted language of RCW 51.48.131 to allow the Department to modify  
2 a Notice and Order of Assessment, which has already become final, simply because an employer has  
3 filed an untimely notice of appeal. The language in the statute which allows the Department to issue  
4 an order modifying, reversing, or changing a notice of assessment, or holding a notice of assessment  
5 in abeyance, and requiring the Board to deny the appeal of the earlier notice of assessment,  
6 presupposes an appeal which was timely filed.  
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10 On the other hand, it is evident from the Department's record that the orders of January 11,  
11 1989 were intended to relieve the employer from the assessments indicated in the Notices and Orders  
12 of Assessment. The employer's request to withdraw his appeal was sent to the Board, apparently at  
13 the Department's request, as further assurance to us that the Department had granted the relief  
14 requested in the notice of appeal (i.e., cancellation of the assessments).  
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17 We do not believe the Department had authority to withdraw its Notice and Order of  
18 Assessment, No. 64506. However, even if that order became final it seems to us that the Department  
19 may still, at anytime, elect not to pursue collection of the sums thereby assessed. We will, therefore,  
20 construe the Department's orders of January 11, 1989 as a decision of the Department not to pursue  
21 collection of the \$324.52 sought by its Notices and Orders of Assessment, Nos. 66121 and 64506.  
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24 On the strength of the Department's orders of January 11, 1989 we will conclude that the  
25 Department has effectively granted the relief requested in the notice of appeal, and conclude that the  
26 record of the Department sustains the contentions of the employer that he is no longer obligated on  
27 the indebtedness asserted by the Notices and Orders of Assessment. RCW 51.52.080.  
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30 Accordingly, we allow the relief asked by the employer, and direct the Department to rescind,  
31 and take no further action on, its demand for payment of the sum of \$324.52 sought as industrial  
32 insurance taxes for the period April 1, 1988 through September 30, 1988.  
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35 It is so ORDERED.  
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37 Dated this 25th day of January, 1989.  
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39 BOARD OF INDUSTRIAL INSURANCE APPEALS

40 /S/ \_\_\_\_\_  
41 SARA T. HARMON Chairperson

42 /S/ \_\_\_\_\_  
43 FRANK E. FENNERTY, JR. Member

44 /S/ \_\_\_\_\_  
45 PHILLIP T. BORK Member  
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