

Cite as Det. No. 15-0166, 34 WTD 511 (2015)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of )	<u>D E T E R M I N A T I O N</u>
Assessment of )	
)	No. 15-0166
)	
... )	Registration No. . . .
)	

RCW 82.32.590; WAC 458-20-228; ANNUAL TAX INCENTIVE SURVEY – CIRCUMSTANCES BEYOND CONTROL: Where a taxpayer fails to timely file its annual tax incentive survey because the courtesy reminder was mailed to its address of record but not timely routed [internally] to the person responsible for completing the survey, this does not constitute a circumstance beyond the control of the taxpayer that would allow the Department to extend the due date of the annual survey.

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.

Anderson, A.L.J. – A company that claimed a business and occupation (“B&O”) tax credit, but failed to timely submit the required annual tax incentive survey, appeals the denial of its request for an extension to file the survey on the basis that notification of the survey was mailed to the incorrect office and not timely routed to [the] person responsible for filing the survey and the company’s record of timely filing and paying excise taxes. Petition denied.<sup>1</sup>

ISSUE

Does a taxpayer’s untimely, internal routing, of a notification of annual survey requirement to the person responsible, constitute a circumstance beyond the control of the taxpayer that caused the late filing, under RCW 82.32.590(1) or (2) and WAC 458-20-228, where the notification was mailed to the taxpayer’s address of record?

FINDINGS OF FACT

[Taxpayer] provides technical and scientific consulting services. Taxpayer established an electronic account with the Washington State Department of Revenue (the “Department”), that allows Taxpayer to report and pay taxes and send and receive messages from the Department (secure messaging).

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<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

In 2013, Taxpayer claimed a \$ . . . high technology credit against its B&O taxes.

On March 17, 2014, the Department sent Taxpayer a secure message titled, “The 2013 Annual Tax Incentive Survey – DUE BY APRIL 30, 2014” to Taxpayer’s electronic account. The secure message informed Taxpayer that because it claimed the high technology credit, it needed to electronically file and submit the 2013 Annual Tax Incentive Survey (the “Survey”) by April 30, 2014, or it would lose the credit and be assessed tax.

On March 25, 2014, [the person responsible] accessed Taxpayer’s electronic account with the Department and filed its February 2014 Combined Excise Tax Return.

On April 7, 2014, the Department mailed Taxpayer a letter regarding its obligation to complete the Survey. The letter contained the same information as the March 17, 2014 secure message and was mailed to Taxpayer’s address of record with the Department: . . . .<sup>2</sup>

On April 14, 2014, the Department sent Taxpayer another secure message titled, “The 2013 Annual Tax Incentive Survey – DUE BY APRIL 30, 2014” to Taxpayer’s electronic account. It contained the same information as the March 17, 2014 secure message.

On April 24, 2014, the Department called Taxpayer twice at its phone number of record (. . .) and, both times, the number returned a busy signal. Then, the Department called [the person responsible] at . . . – the phone number listed on Taxpayer’s Combined Excise Tax Return – and received no response.

On April 25, 2014, [the person responsible] accessed Taxpayer’s electronic account with the Department and filed its March 2014 Combined Excise Tax Return.

On June 25, 2014, the Department mailed Taxpayer a letter stating that the Survey was due April 30, 2014, and explained that Taxpayer could request a circumstantial extension. The letter was mailed to Taxpayer’s address of record with the Department: . . . .

On July 15, 2014, [the person responsible] responded to the June 25, 2014 letter and requested an extension to complete the Survey, explaining that because the June 25, 2014 letter was sent to . . . and delayed due to the letter not being specifically addressed to him and the 4<sup>th</sup> of July holiday weekday, he had just received it that day. [The person responsible further explained that mail sent to . . . often gets misplaced or takes a very long time to be forwarded to . . . (where [the person responsible] is based).

On July 17, 2014, the Department found that Taxpayer had not been prevented from filing the Survey due to circumstances beyond its control and denied Taxpayer’s request for an extension to file the Survey. The Department first considered granting a 90 day extension, pursuant to RCW 82.32.590(3), but found that Taxpayer was ineligible for this one-time extension because it

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<sup>2</sup> From August 10, 2010 through April 2, 2015, its address of record with the Washington State Department of Revenue (the “Department”) was: . . . .

had requested and received the extension for its 2010 survey. Taxpayer appeals this denial and asks us to consider its “exemplary record” of timing filing and paying its taxes.

### ANALYSIS

RCW 82.04.4452 provides a high technology credit against B&O tax for “qualified research and development expenditures.” Taxpayers claiming the high technology credit are required to complete an annual survey by April 30<sup>th</sup> of the year following the calendar year in which the taxpayer claimed the credit. RCW 82.04.4452(6), RCW 82.32.585(1)(a)(i).

The Department may extend the due date of the annual survey. RCW 82.32.585(1)(b). RCW 82.32.590 authorizes the Department to grant an extension of 90 days once, and grant a 30 day extension where it finds that the failure to file the annual survey was the result of circumstances beyond the control of the taxpayer. RCW 82.32.590.<sup>3</sup> Here, Taxpayer already received the 90 day waiver, so the Department may only grant an extension if Taxpayer shows that circumstances beyond its control caused its failure to timely file.

In determining whether a taxpayer’s failure to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the Department is directed to look to the rules governing the waiver or cancellation of penalties on underpaid or untimely [paid] taxes – which, also adopt a circumstances beyond the control of the taxpayer standard. RCW 82.32.590(2). The rule governing waiver or cancellation of penalties is WAC 458-20-228. “Circumstances beyond the control of the taxpayer” is defined in WAC 458-20-228(9) as follows:

The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay.

WAC 458-20-228(9) goes on to provide a non-exclusive list of circumstances that generally will and will not be considered circumstances beyond the control of the taxpayer. As relevant here, neither a misunderstanding nor lack of knowledge or mistakes or misconduct on the part of employees, are considered a circumstance beyond the control of the taxpayer. WAC 458-20-228(9)(a)(iii)(B), (E); Det. No. 14-0155, 33 WTD 496 (2014) (Penalties cannot be waived for lack of knowledge), [and] Det. No. 90-205, 11 WTD 55 (1990) (Error of an employee is not one of the seven circumstances listed in Rule 228 which will justify the waiver or penalties). Further, taxpayers have a duty to know their tax reporting obligations. RCW 82.32A.030.

Here, we are unable to extend the due date for the Survey because Taxpayer has not shown that circumstances beyond its control caused it not to timely file the annual Survey. Taxpayer had a statutory duty to know its obligation to file the Survey. As a courtesy, the Department attempted

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<sup>3</sup> RCW 82.32.590(3) provides that a taxpayer may request, in writing, a one-time 90 day extension to the due date of the annual survey. Taxpayer requested and received a one-time 90 day extension in July 2011, with respect to the 2010 annual survey, and is ineligible for another 90 day extension under RCW 82.32.590(3).

to contact Taxpayer, several times, in several different manners (electronic secure message, written correspondence, and telephone), to remind Taxpayer of its obligation and the approaching deadline. Taxpayer's failure to timely receive such a courtesy (written reminder), sent to Taxpayer's address of record, due to Taxpayer's slow internal mail routing, does not rise to a circumstance beyond Taxpayer's control.

Further, the Department is an administrative agency empowered only to carry out the law as it is written. The Legislature has granted the Department authority to extend the due date of an annual survey as set out in RCW 82.32.590; we are not authorized to extend the due date of an annual survey on the basis of prior reporting history. And, because Taxpayer has failed to show that circumstances beyond its control caused it to not timely file its Survey, it has not met the criteria for an extension in RCW 82.32.590.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 1st day of July, 2015.