Cite as Det. No. 93-191, 13 WTD 344 (1994).

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

In The Matter of the Petition For Refund of	)	D E T E R M I N A T I O N
	)	No. 93-191
. . .	)	Registration No. . . .
	)	Document Nos.: . . ., . . ., . . .
	)	Audit No. . . .

[1] RULE 111: B&O TAX -- EXCLUSION -- ADVANCES -- CREDIT REPORTS AND APPRAISAL FEES. The burden of proof is upon the taxpayer to go forward with evidence in support of its claimed deduction or exclusion. Taxpayer bank did not satisfactorily demonstrate that it had no liability for payment of appraisal and credit report fees.

[2] RULE 211: RETAIL SALES TAX -- SALE/LEASEBACK. Absent any other exclusion provision in the Revenue Act, the successive purchases at retail of computer equipment, and then leasing of that same equipment in a sale/leaseback situation, are successive sales on which retail sales tax is properly due. Since the taxpayer in this case used the computer equipment after its purchase and before resale to the leasing company, there was intervening use and the taxpayer cannot be construed to have been making a wholesale purchase.

[3] RULE 100; RCW 82.32.060: REFUNDS/CREDITS -- NONCLAIM -- OVERPAYMENTS -- DUTY OF AUDITOR TO IDENTIFY. The Revenue Act does not impose a duty on auditors to discover every error in taxpayers' reporting during the course of an audit. Neither is the nonclaim period tolled because an auditor has failed to discover an overpayment during an audit.

[4] RULE 100; RCW 82.32.060: REFUNDS/CREDITS -- NONCLAIM -- REFUND REQUEST -- UNDERESTIMATE OF AMOUNT. As a matter of policy, the Department will refund amounts which are adequately described in a taxpayer's petition for refund, even if the exact dollar amount has been

underestimated and the underestimate is not discovered until after the nonclaim period has passed.

[5] RULE 146: B&O TAX -- DEDUCTION -- INTEREST -- FEDERAL OBLIGATION -- POINTS -- STUDENT LOANS. Payment of points by a student will not be construed as payment of a direct obligation of the U.S. government merely because their payment reduces the federal government's interest obligation to the taxpayer. Points paid by the student are an obligation that the federal government has intentionally chosen not to assume under this program.

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 (1) the taxability of amounts received for credit reports and appraisals and points paid by students under a student loan program, (2) retail sales taxes paid under a sale/leaseback arrangement, and (3) the timeliness of certain refund requests.

FACTS:

Bauer, A.L.J. -- The taxpayer's business records were audited for the period from April 1, 1983 to December 31, 1987. As a result, . . . assessment and adjustments have been issued. The taxpayer paid the assessment amount after the issuance of PAA #1 (. . .). The issuance of PAA #2 granted the taxpayer a credit of . . . . The taxpayer petitioned for a refund . . . .

The taxpayer is a bank.

TAXPAYER'S EXCEPTIONS:

The taxpayer's arguments regarding the disputed items are as follows:

1. Credit Reports and Appraisal Fees. The taxpayer argues that amounts received from loan applicants for credit reports and appraisal fees are excluded from tax under the provisions of WAC 458-20-111 ("Rule 111"). The taxpayer points out that it is in the banking business and cannot render credit reporting or appraisal services, and that it procures these services on behalf of its loan applicants only as their agent in accordance with the

regular and usual custom of the business. The taxpayer contends that payment of appraisal and credit report fees to third parties on behalf of the customer is standard industry practice in the mortgage industry. In support of this argument, the taxpayer represents that customers acknowledged their obligation for these costs, and actually tendered these costs to the taxpayer in advance when they applied for their loans. These funds were placed into a "Borrower's Fund" account from which all such payments were made on each borrower's behalf. This fund, however, was not a trust or escrow account. The taxpayer never charged more than the exact amount of the fees billed by the credit reporting or appraisal companies.

The taxpayer contends that it was the individual borrower's responsibility to provide the various "proofs" necessary to qualify for a loan, which proofs included appraisal and credit report, and that the customer would accept liability for incurring the necessary costs for such information. The taxpayer characterizes its involvement in directly procuring these services as an accommodation to its loan applicants. It argues that it has "no personal liability" for these costs except as an agent, and that these amounts should therefor have been excluded from tax as "advances" under Rule 111.

The taxpayer cites Christensen v. Department of Rev., 97 Wn.2d 764, 649 P.2d 839 (1982), as being dispositive of this issue.

After the hearing, the taxpayer's representative made the following assertions regarding this issue:

> . . . As we discussed, before [the taxpayer] makes a mortgage loan to a customer, we require that a customer provide various "proofs", such as, proof of the value of the property and proof of creditworthiness. In some of the credit relationships at issue, the customer was unable to provide [the taxpayer] with an appraisal or credit report. In order to expedite the lending process, [the taxpayer] did, at the customer's direction and on the customer's behalf, order an appraisal and credit report for the customer. [The taxpayer] required the customer to make an advance deposit of the appraisal and credit report costs before the reports were ordered or the loan application was processed. These funds were placed into a "Borrower's Fund" account from which all such payments were made on each borrower's behalf. Consequently, the appraiser/credit reporting agency was not at risk of loss. Since their services had been prepaid by the borrower, appraisers and credit reporting agencies understood that they were looking to our borrowers for payment.
>
> When the appraiser's work is completed, the finished report is addressed and sent to the borrower. We have enclosed a

> copy of a sample report for your review (Attachment 1). In addition, the appraiser furnished [the taxpayer] with a copy of the report. Likewise, when a credit report is completed, a copy is sent to the borrower and [the taxpayer]. In each instance, the borrower, after reviewing the report, may request changes, additions or deletions. The borrower may also, at his/her option, use the reports to obtain a loan at a competing financial institution. Finally, where the service was deemed unsatisfactory, a borrower receives the benefit of any fee reduction(s). Appraisers and credit reporting agencies understand they are also answerable for their actions.
>
> Rule 111 provides that where a taxpayer undertakes the payment of money on behalf of its customer in "procuring a service for the customer which the taxpayer does not or cannot render", such amounts are not B&O taxable. In the Borrower's Agreement to Application of Terms, a customer acknowledges and confirms that s/he is liable for certain costs (such as appraisal and credit report fees) when incurred by [the taxpayer] on the customer's behalf. Further, the facts support [the taxpayer's] position that the reports are the borrower's property. . . .

[Taxpayer's post-hearing letter dated April 1993.]

The enclosure to this letter was correspondence from an appraiser to an individual who was, presumably, one of the taxpayer's borrowers. The letter, which was addressed directly to the borrower, stated in part:

> In accordance with <u>your request</u>, we have prepared an appraisal of the above referenced real property which is described in further detail in the attached appraisal report. The report consists of 76 pages and an Addenda. <u>The appraisal was made for the purpose of estimating the market value of the real estate upon its completion,</u> which is expected to be January 1 ....

[Emphasis added.]

In answer to a request for further evidence regarding this issue in the area of residential loans, the taxpayer later provided this office with several residential appraisal reports with the following explanation:

> . . . A copy of a cover letter requesting an appraisal is not available, as appraisals were ordered over the telephone. Lending procedures for the time period in question are no longer available. Current lending practices would not be relevant, since there have been significant regulatory changes.

> As we discussed, before [the taxpayer] made a mortgage loan to a customer, we required them to provide proof of the value of the property. Customers could provide us with an appraisal report recently obtained by them. Alternatively, [the taxpayer], at the customer's direction and on his/her behalf, would order an appraisal for the customer. Appraisal services were either prepaid by the borrower or paid out of funds deposited by the customer prior to closing. Thus, appraisers looked to our borrowers for payment, not to the Bank. In substance, the business relationship was between our borrowers, as customers, and the appraisers as service providers.
>
> When the appraiser's work was completed, the appraiser furnished [the taxpayer] and the borrower with copies of the report. The borrower, after reviewing the report, could request changes, additions or deletions. The borrower could also, at his/her option, use the reports to obtain a loan at a competing financial institution. Finally, where the service was deemed unsatisfactory, a borrower would receive the benefit of any fee reductions(s). Appraisers understand they were answerable for their actions.

[Extracted from letter from taxpayer's representative dated June 1993.]

2. Duplicate Sales/Use Taxes Paid. Certain computer equipment was offered to the taxpayer for a limited period of time at a very favorable price. In order to take advantage of the limited offer, the taxpayer purchased the equipment [in July 1986],[1] whereupon it then determined that a lease would be more cost-effective than outright ownership. The taxpayer thereupon sold the equipment [in November 1986][2] to a leasing company, which leased it back to the taxpayer. Sales tax was charged on the lease payments. The taxpayer concedes that the equipment was used between the time it was purchased and the time it was sold to the leasing company.

The taxpayer contends that RCW 82.12.0252 applies to this situation to give the taxpayer relief from the duplicative payment of sales tax.

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[1] The auditor determined the July date to be the date of purchase. Invoices supplied by the taxpayer indicated the date of installation/payment to have been [in August 1986].

[2] Again, this date is the auditor's. We note, however, that the Lease Agreement and Equipment Schedule were not executed by the taxpayer's representative until [December 1986] on which date the first lease period began according to the lease invoices.

The taxpayer argues that the mere timing of its internal decision-making process as to the ownership v. sale/leaseback issue should not result in double taxation to the taxpayer. The taxpayer thus requests a refund of the sales taxes paid on the lease payments.

3. Refund Request Denied by Auditor. As part of the original audit assessment, the auditor asserted a deficiency . . . in Schedule XIX, "Reconciliation of Excise Tax Return Workpapers." In addition, the auditor provided a worksheet detailing the component items on which this particular assessment was based.

In calculating this schedule, three main credit items were involved: The International Banking Facility (IBF) deduction, a deduction referred to as "Income Not Subject to B&O," and the foreign source (interstate) allocation. These three adjustments were used by the auditor to reconcile the aggregate monthly income and deductions on the B&O returns to the amount which should actually have been reported for the entire year of 1986.

In Schedule IX of PAA #1 issued in December 1991, the auditor eliminated the $ . . . which had been assessed in Schedule XIX of the original assessment. He thus "accepted as reported" the taxpayer's income for 1986.

The taxpayer, however, contends

> Upon analysis of the auditor's worksheet, it became clear that due to two major mechanical errors in the auditor's calculations (relating to the IBF deduction and the "Income Not Subject to B&O deduction), the auditor had incorrectly asserted the $ . . . deficiency. In reality, with these errors eliminated, a refund of approximately $ . . . was due to the Bank. Upon discovery (in March 1991) we brought this to the attention of the auditor, who informed us that the statute of limitations for 1986 refund claims lapsed at the end of 1990. Thus, we were not entitled to the refund since the Bank would have had to identify and file a claim for the refund by the end of 1990 in order to protect the claim. He is not disputing that we would otherwise be entitled to the refund. He did, however, eliminate the erroneous deficiency.
>
> If the auditor had treated each of the items on Worksheet XIX (as numbered in the original audit assessment) separately, rather than lumping them together to determine the net tax due, the refund amount would have been very clearly identified and the ability of [the taxpayer] to receive the refund would not be in question. We believe that because the auditor identified the claim, the Department of Revenue was on notice as to the refund claim before the statute of limitations lapsed, thereby alleviating the need to [the taxpayer] to make a specific claim for the same item. We

should not be denied this refund simply because the auditor chose to net the items together on the worksheet.

[p 3-4, taxpayer's petition dated June 1992.]

4. Disallowed Deduction for First-Lien Residential Interest. At the end of 1987 the taxpayer became aware of interest income which was not being properly deducted under the first-lien non-transient residential interest deduction. The taxpayer immediately filed a protective claim in an estimated amount to protect the statute of limitations for 1983 refund claim from lapsing. The refund claim was underestimated . . . .

The auditor originally informed the taxpayer that as long as the item was included in the claim for refund, the amount would be estimated. The taxpayer was not informed that if the claim was underestimated, it would not receive the incremental deduction.

The taxpayer notes that, where actual deductions calculated for other items for which a claim was filed were less than initially estimated, the Department refunded the lower, actual amount, rather than the estimated refund. The taxpayer likens this to a "heads I win, tails you lose" logic and patently unfair to the taxpayer. The taxpayer contends that it would seem that over-estimates on other items ought to be available to apply to the underestimate on the first lien residential mortgage interest provided there was not material detriment to the Department on an overall basis, given the claims submitted together for the 1983 tax year. The alternative simply encourages taxpayers to grossly inflate estimated refund claims in order to ensure a correct and fair refund.

5. Student Loan Fees. The taxpayer contends that interest on student loans is not taxable for B&O tax purposes, since it is an obligation of the U.S. government. It is argued that loan fees constitute "points", prepaid interest, and are not fees for services rendered. In order to obtain a government-sponsored student loan, each applicant is required to pay a loan fee, which the government offsets against the first interest payment payable to the Bank. The taxpayer reasons that, because the amount collected by the taxpayer from students represents an in-substance interest payment from the government, it should not be subject to B&O tax.

At the hearing, the taxpayer's representatives explained that during the period students are attending school, the government pays the interest as it accrues on their loans. The loan origination fee is actually paid "up-front" by the student or, at the taxpayer's option, may be wrapped up into the loan.

The taxpayer's argument is that the amount of "points" paid

actually reduces the amount of interest which the government has to pay.

In addition to its petition, the taxpayer notes that the auditor refunded . . . too much in relation to Schedule III. The excess was previously refunded in Schedule XI of the original deficiency notice dated [December 1988].

ISSUES:

1. Has the taxpayer met its burden of proof in providing evidence that amounts received from customers for credit reports and appraisals were excluded as "advances" under WAC 458-20-111?

2. Was retail sales tax correctly due on both the taxpayer's purchase of computer equipment and its subsequent lease of the same equipment under a sale/leaseback arrangement when there was intervening use of the equipment between the time of its purchase and the time of its sale to the leasing company?

3. Was the nonclaim period of RCW 82.32.060 tolled as to overpayments made during an audit period when the auditor fails to discover the overpayment in the course of the audit?

4. When a taxpayer underestimates the amount in a request for a refund of a specifically identified tax paid, is the refund limited only to the amount requested?

5. When a student loan program requires advance payment of points by a student, and payment of these points reduce the amount of interest ultimately paid by the federal government while the student is in school, are the points paid deductible as an obligation of the federal government under WAC 458-20-146?

DISCUSSION:

1. Credit Reports and Appraisal Fees. WAC 458-20-111, which provides for the exclusion of "advances" and "reimbursements," states as follows in pertinent part:

> The word "advance" as used herein, means money or credits received by a taxpayer from a customer or client with which the taxpayer is to pay costs or fees for the customer or client. . . .
>
> The words "advance" and "reimbursement" apply only when the customer or client alone is liable for the payment of the fees or costs and when the taxpayer making the payment has no personal liability therefor, either primarily or secondarily, other than as agent for the customer or client.
>
> There may be excluded from the measure of tax amounts

> representing money or credit received by a taxpayer as reimbursement of an advance in accordance with the regular and usual custom of his business or profession.
>
> The foregoing is limited to cases wherein the taxpayer, as an incident to the business, undertakes, on behalf of the customer, guest or client, the payment of money, either upon an obligation owing by the customer, guest or client to a third person, or in procuring a service for the customer, guest or client which the taxpayer does not or cannot render and for which no liability attaches to the taxpayer.

[Emphasis added.]

[1] Exclusions to a tax are narrowly construed; taxation is the rule and exclusion is the exception. Budget Rent-a-Car v. Department of Rev., 81 Wn.2d 171, 174 (1972). The burden of proof is upon the taxpayer to go forward with evidence in support of its claimed deduction or exclusion. Group Health v. Tax Commission, 72 Wn.2d 422, 433 P.2d 201 (1967). The taxpayer in this case has not successfully demonstrated that it had no liability for payment of appraisal and credit report fees.

The language contained in the letter [of April 1993] submitted by the taxpayer indicates that the appraisal (which was of a commercial office building) had been requested directly by the borrower.[3] There is no indication in the letter that the appraisal was requested by the bank or paid for by the taxpayer from funds in its "Borrower's Account." There is, further, no indication that the appraiser supplied a copy of the report to the taxpayer or that the taxpayer was in any way involved in its procurement.

Upon review of the two appraisals supplied with the letter dated [June 1993], we are constrained to note that, although the name of the "Borrower" is listed on the standard form, the name and address on the "Lender/Client" line is that of the lender. Neither the borrower's address (which in most cases would be different than that of the "property address," since the borrower would normally be trying to purchase that property) nor the borrower's phone number is included or noted on the form at all. We think this is indicative that at least these particular appraisers considered the taxpayer, and not the borrowers, to be the client and would expect to deal with and be paid by that entity.

In this case, a review of the evidence submitted suggests that the taxpayer, not the borrowers, would be considered the appraisers' client. The appraisers' expectations that they would be paid by funds ultimately supplied by the borrower is neither surprising

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[3] "In accordance with your request, we have prepared. . . "

nor dispositive of the legal liability for such payment in light of the banking industry's practice of including appraisal fees from borrowers as part of their costs of obtaining loans. Absent a clear agency relationship, the legal liability for such payment would remain with the contracting bank who ordered an appraisal. No such agency has been demonstrated.

This situation is analogous to the legal liability for payment of a retailer who special-orders a product for a customer. The supplier would certainly expect these funds to be ultimately supplied by the customer, but payment would be legally due from the retailer who ordered the product. Although the supplier might warrant the product to the ultimate customer, the retailer would still be the party responsible for payment since that was the party who placed and contracted for the order. The retailer would not be eligible for a tax exclusion under Rule 111 simply because the funds might have been required in advance from the customer.

Neither do we think that Christensen, supra., is dispositive in this case. The court in that case based its decision on the stipulation by the parties (one of which was the Department of Revenue)

> that the associate firms hired by Christensen "understand that they are working for the named client with respect to the work performed." Consequently, the taxpayer is not legally liable to pay the associate firms.[4]

[Christensen, at 770.]

In short, we find that the taxpayer has not carried its burden in proving that it had no liability for the appraisals it ordered in processing the loan applications of its potential borrowers. Similarly, no compelling evidence has been forthcoming regarding the lack of payment liability for credit reports which were similarly ordered by the taxpayer. The taxpayer's petition as to the issue of appraisals and credit reports is therefore denied.

2. Duplicate Sales/Use Taxes Paid.

RCW 82.08.020 provides that there shall be retail sales tax imposed on each retail sale in this state, and that this tax will

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[4] The court concluded its decision stating:

> It appears that the Department of Revenue may have stipulated itself out of court on some of the claimed deductions. On a different record we may have reached a different result on some items.

apply to successive sales of the same property:

> (1) There is levied and there shall be collected a tax on each retail sale in this state equal to six and five-tenths percent of the selling price.
>
> (2) The tax imposed under this chapter shall apply to successive retail sales of the same property. . .

[Emphasis added.]

RCW 82.04.050 provides that both sales of tangible personal property and the renting or leasing of tangible personal property are both retail sales.

> (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons . . . other than a sale to a person who (a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person . . .
>
> (4) The term shall also include the renting or leasing of tangible personal property to consumers.

[Emphasis provided.]

[2] Thus, absent any other deduction provision in the Revenue Act, the successive purchase at retail of computer equipment, and then leasing of that same equipment in a sale/leaseback situation, are successive sales on which retail sales tax is properly due. In this case, since the taxpayer used the computer equipment after its purchase and before its resale, there was intervening use and the taxpayer cannot be construed to have been making a wholesale purchase.

More instructive in this matter is RCW 82.08.0295, which provides:

> The tax levied by RCW 82.08.020 [i.e., sales tax] shall not apply to lease amounts paid by a seller/lessee to a lessor after April 3, 1986, under a sale/leaseback agreement in respect to property, including equipment and components, used by the seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish, nor to the purchase amount paid by the lessee pursuant to an option to purchase at the end of the lease term: Provided, That the seller/lessee previously paid the tax imposed by this chapter or chapter 82.12 RCW at the time of acquisition of the property, including equipment and components.

[Emphasis added. See also WAC 458-20-211 (12), (14)]

This section of the Revenue Act provides an exemption of retail sales tax on lease payments in a sale/leaseback situation when the equipment which has been sold and leased back is used in the "business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables and fish." This exemption applies only when the retail sales tax was paid on the initial purchase by the seller/lessee. Absent this specific exemption, it is clear that the sales tax would apply to both the original purchase of and the subsequent rental by the seller/lessee, even though the same equipment is involved.

RCW 82.12.0252, relied on by the taxpayer, provides in pertinent part:

> The provisions of this chapter [i.e., use tax] shall not apply in respect to the use of any article of tangible personal property . . . acquired by lease . . . if the . . . use thereof by . . . the present user . . . has
>
> already been subjected to the tax under chapter 82.08 . . . and such tax has been paid by the present user . . .

This section of law, however, simply provides a use tax exclusion for persons who have already paid sales tax on [the lease of] an item. This section is not applicable to the sales taxes here at issue.

See also Det. No. 90-95, 9 WTD 189 (1990) and Det. No. 89-461, 11 WTD 021 (1989).

The taxpayer's petition as to this issue is denied.

3. Refund Request Denied by Auditor. RCW 82.32.060, as amended in 1992, provides a nonclaim period for refunds and credits:

> If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 a tax has been paid in excess of that properly due, the excess amount paid within such period shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at the taxpayer's option. No refund or credit shall be made for taxes paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

[Emphasis added.]

In the course of the audit, the auditor noted that there was a sizeable inconsistency between the taxpayer's own 1986 monthly workpapers and the taxpayer's "Year to Date" workpaper submitted with the taxpayer's December return. The taxpayer "Year to Date" workpapers reflected $ . . . in taxable receipts, while the taxpayer's monthly workpapers (on which the returns had been based) reflected a total of $ . . . , a difference of $ . . . . For the year 1986, then, the auditor and taxpayer's personnel attempted to reconcile the monthly and year to date workpapers, using totals on the taxpayer's own workpapers. From this reconciliation, the auditor determined that there was a $ . . . shortfall in the taxpayer's monthly returns. This amount was duly assessed in Schedule XIX of the basic audit. The accuracy of the underlying amounts on the taxpayer's audit workpapers was not specifically examined in detail, but were accepted by the auditor.

At a later date, the taxpayer apparently reviewed all the input to its own worksheets and identified certain sizeable income items in both the monthly and "Year to Date" worksheet totals which it believes should have not been included, one such item being an insurance settlement for management malfeasance. These errors resulted in inflated totals on both the taxpayer's monthly and "Year to Date" worksheets. The taxpayer then requested that the auditor refund or credit the excess taxes which had been paid as a result of these errors, which refund was denied because the nonclaim period prescribed by RCW 82.32.060 had by then passed. The auditor cancelled the amount assessed in Schedule XIX of the assessment.

The taxpayer's argument that a refund or credit should have been issued is apparently based on the theory that the auditor had a duty to discover all underlying errors in the taxpayer's classification of taxable receipts in the course of his attempting to reconcile the differences in totals between the taxpayer's monthly and "Year to Date" worksheets.

[3] The Revenue Act does not impose a duty on auditors to discover every error in taxpayers' reporting during the course of an audit. Neither is the nonclaim period tolled because an auditor has failed to discover an overpayment during an audit.

Auditors generally try to discover credits as well as deficiencies in the course of their audits in order to arrive at an accurate determination of tax liability. Auditors, however, cannot be held to a standard of perfection, a standard which would toll the nonclaim period for overpayments which are not detected.

In this case, the taxpayer's error was not discovered by the auditor in the course of the audit through no fault of his own. Neither was the error discovered by the taxpayer within the

nonclaim period, even though the auditor's workpapers, set forth on page two of Schedule XIX, were part of the December 1988 assessment. Although it is unfortunate that the error was not finally discovered until after the nonclaim period had passed, the auditor was correct in concluding that the Department could not lawfully grant a credit or refund when the taxes of which refund was requested had neither been paid nor assessed within the nonclaim period. See Det. No. 89-398, 8 WTD 149 (1989).

Although this may seem at first blush unfair, it should be noted that if, instead, the Department had discovered an underpayment of taxes in 1986, the Department would have been similarly prohibited under the statute of limitations (RCW 82.32.050) from assessing the deficiency in 1991.

The taxpayer's petition as to this issue must be denied.

4. Disallowed Deduction for First-Lien Residential Interest.

[4] As a matter of policy, the Department will refund amounts which are adequately described in a taxpayer's petition for refund, even if the exact dollar amount has been underestimated and the underestimate is not discovered until after the nonclaim period has passed.

The taxpayer's petition as to this issue is granted.

5. Student Loan Fees. The taxpayer has argued that the points paid on student loans should be considered deductible as an obligation of the federal government. WAC 458-20-146 provides in pertinent part:

> (3) . . . A deduction may also be taken for interest received on direct obligations of the federal government, but not for interest attributable to loans or other financial obligations on which the federal government is merely a guarantor or insurer.

As the taxpayer has explained, regarding the government-sponsored student loan program which is here at issue, the student is responsible for paying points on his/her loan when the loan is made. The amount of points which have been paid reduce the interest payments due by the U.S. government while the student is in school. The points paid by the student may be paid "out-of-pocket" or, if the bank allows, may be financed in the body of the entire loan itself.

[5] Under this fact pattern, we do not agree with the taxpayer's argument that the payment of points by the student can be

considered the payment of a direct obligation of the U.S. government because their payment reduces the federal government's obligation to the taxpayer. To the contrary, it appears that the points paid by the student are an obligation that the federal government has intentionally chosen not to assume under this program.

The taxpayer's petition as to this issue is denied.

DECISION AND DISPOSITION:

The taxpayer's petition is granted in part and denied in part. This matter will be remanded to the Audit Section which will grant a credit for those amounts of non-transient residential mortgage interest which were timely requested and described, but the exact dollar amount underestimated at the time of the request. An amended assessment will be issued, payment of which will be due on the date provided thereon.

DATED this 30th day of June 1993.