

Cite as Det. No. 98-055, 17 WTD 191 (1998)

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. 98-055
)	
...)	Registration No. ...
)	Notices of Balance Due
)	..
)	...

[1] RULE 145: LOCAL SALES TAX -- LOCATION CODE -- CONFUSION ABOUT. Confusion over the proper location code to be applied for purposes of determining the correct local sales tax rate, in the absence of an affirmative misrepresentation by the Department, is not grounds for waiving the resulting tax differential.

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:

Retailer protests increase in rate of local sales tax.¹

FACTS:

Dressel, A.L.J. --. . . (taxpayer) is a retail seller of computers, televisions, stereos, and home appliances. Notices of Balance Due, as captioned above, were issued by the Department of Revenue (Department) on six consecutive monthly tax returns, covering the period May, 1995 through November, 1995. The notices stated that the taxpayer reported local sales tax under an incorrect location code. The total billing by the Department was for \$. . . The taxpayer appeals.

The taxpayer maintains a number of retail outlets in the state of Washington. The one in question here is in the [City A] area. That store sits very close to the border between the city of [City A] and the city of [City B]. When the taxpayer opened that store, it was under the

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

impression that it was within the [City A] city limits. Accordingly, it charged its customers sales tax at the rate of 7.9%. After many of them objected, stating that the store was actually in [City B], the taxpayer acquiesced and began charging at the lower [City B] rate of 7.6%.

In late December of 1995, responding to a request from the store manager, the taxpayer made numerous inquiries in an attempt to ascertain the proper jurisdiction. It now concedes that [City A] is that jurisdiction, but believes the tax differential should be waived because of the confusion as to the store's correct location. It asserts that even the local authorities could not give the taxpayer an accurate answer to that question. In support of this statement, it submitted several documents. One was a statement from the adjacent . . . store in which its owner complained of similar confusion, citing an instance when neither the [City A] nor [City B] police departments wanted to respond to a break-in call because each thought the store was in the other's jurisdiction. Another was a billing summary from . . . that listed the . . . store as being in [City B]. There was also a letter from the [City A] county Sheriff's [in which both cities are located] office addressed to the taxpayer in [City B]. In addition the Washington Department of Labor and Industries sent a notice to the taxpayer on which it listed *both* [City A] and [City B].

The taxpayer also made several telephone calls during this time. Eventually, both the Department of Revenue and the city of [City A] confirmed that the taxpayer's store was within the [City A] city limits.

In requesting that the tax assessed be waived, the taxpayer points to the considerable confusion of all concerned and its own good faith efforts to ascertain the proper location. Inasmuch as it cannot now go out and collect the deficient sales tax from its previous customers, it believes the fair thing to do is waive the tax.

ISSUE:

May retail sales tax be waived when a taxpayer has used an incorrect location code to determine its local tax rate because of confusion over whether its store is located in [City A] or [City B]?

DISCUSSION:

In *Det. No. 90-205*, 11 WTD 55 (1990), a taxpayer's business location was annexed into a city's limits without the taxpayer realizing it. The city had a local sales tax, whereas the jurisdiction outside the city did not. As a consequence of not being aware of the annexation, the business failed to increase its sales tax rate to cover the local tax. Subsequently, that tax was assessed in an audit. We upheld the assessment, citing² RCW 82.08.050, which provides, in part:

In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond

² *Det. No. 90-205*, 11 WTD 55, 60 (1990).

his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax . . .

Consistent with RCW 82.08.050, is WAC 458-20-145 (Rule 145), the subject of which is “Local sales and use tax”. It reads, in part:

If a business is such that a local tax will be collected for more than one taxing jurisdiction, it is necessary to keep a record of retail sales taxable to each such county or city. Vendors are responsible for determining the appropriate tax rate for each locality in which sales are made and for collecting from their purchasers the correct amount of tax due upon each sale.

[1] If this was a case where the Department had affirmatively misled the taxpayer to its detriment, the latter may have had a remedy based on an estoppel theory. *See Harbor Air Serv., Inc. v. Board of Tax Appeals*, 88 Wn.2d 359, 560 P.2d 1145 (1977). In this case, however, the Department was not contacted until *after* the taxes complained of had accrued. Had the question of the proper location code been asked of the Department at the opening of the store when the first confusion arose, the taxpayer, likely, would have been apprised of the correct code and the arrearage would not have accumulated.

While we applaud the taxpayer’s cooperative attitude and have no doubt of its good intentions, we are without authority to grant the relief requested.

DECISION AND DISPOSITION:

The taxpayer’s petition is denied.

DATED this 31st day of March 1998