

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

In the Matter of the Petition ) D E T E R M I N A T I O N  
For Correction of Assessment of)   
 ) No. 87-39  
 )  
 )  
 . . . ) Real Estate Excise Tax  
 ) Audit No. . . .  
 )  
 )  
 )

[1] **RCW 82.32.160 and RULE 100:** APPEALS -- TIMELINESS --  
PETITION FOR CORRECTION OF ASSESSMENT. Petitions for  
correction of assessment must be filed within 20 days of  
the issuance of the notice of assessment or before the  
due date of the assessment if the due date has been  
extended. Petitions not filed within this time frame  
will be dismissed.

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.

TAXPAYER REPRESENTED BY: . . .  
NATURE OF ACTION:

The taxpayer has petitioned for correction of an assessment of real  
estate excise tax.

FACTS AND ISSUES:

Potegal, A.L.J.--In a letter dated August 7, 1986 the Department of  
Revenue advised the taxpayer that he was liable for real estate  
excise tax on a transfer of property occurring on February 20,  
1986. The letter was headed "REAL ESTATE EXCISE TAX ASSESSMENT."  
It advised the taxpayer of the amount due and demanded payment no  
later than August 25, 1986.

The letter was addressed to the taxpayer's last known address which  
was the same as that of the property transferred. The Department  
had previously sent correspondence to the taxpayer at that address  
concerning this matter. The taxpayer apparently received that  
correspondence because the Department received a reply.

In a letter dated August 28, 1986 the taxpayer's attorney petitioned for a correction of the assessment. The basis for the petition was that the transfer was exempt of real estate excise tax under WAC 458-61-210(b). The attorney acknowledged that the petition was late, stating, "For unknown reasons, the post office did not forward [the taxpayer's] mail to his new residence so that he could respond by your deadline of August 25, 1986."

#### DISCUSSION:

The Department does not have jurisdiction to consider this appeal. Therefore the substantive aspects of the taxpayer's petition will not be discussed.

The Department does not have jurisdiction because the petition was not filed timely. The timeliness of petitions for correction of assessment of real estate excise tax is governed by RCW 82.45.150 and RCW 82.32.160. RCW 82.45.150 provides that most of the sections of chapter 82.32 RCW, including RCW 82.32.160, apply to the administration of the real estate excise tax. RCW 82.32.160 states in pertinent part:

Any person having been issued a notice of additional taxes, delinquent taxes, interest, or penalties assessed by the department of revenue, may within twenty days after the issuance of the original notice of the amount thereof or within the period covered by any extension of the due date thereof granted by the department petition the department in writing for a correction of the amount of the assessment, and a conference for examination and review of the assessment. . . . If no such petition is filed within the twenty day period the assessment covered by the notice shall become final. (Underscoring ours.)

The notice of assessment was issued on August 7, 1986. The twentieth day after that was August 27, 1986, a Wednesday. The taxpayer made no request for an extension of the due date of August 25, 1986. The petition was dated August 28, 1986 and received by the Department on August 29, 1986. The petition was clearly not filed within the 20-day period. The law mandates that assessments become final when no petition is filed within 20 days.

While we are unable to consider the taxpayer's petition at this time, the taxpayer does have the right, once he has paid the tax, to petition the Department for a refund. The petition for refund must be filed within four years after the end of the calendar year in which the tax is paid. RCW 82.32.170 and RCW 82.32.060.

#### DECISION AND DISPOSITION:

The taxpayer's petition is dismissed. Tax and penalty totaling . . . are due for payment immediately.

DATED this 6th day of February 1987.