

Cite as Det No. 08-0316, 28 WTD 110, (2009)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For)	<u>D E T E R M I N A T I O N</u>
Refund of Assessment of)	
)	No. 08-0316
)	
...)	Registration No. . . .
)	B&O Tax Credit
)	Docket No. . . .
)	

RULE 268; RCW 82.32.630, RCW 82.32.590: - ANNUAL SURVEY FOR TIMBER TAX INCENTIVES – DUE DATE EXTENSION. The Department has the statutory authority to extend the timber products annual survey due date provided the taxpayer’s failure to timely file was due to circumstances beyond its control. A good faith lack of knowledge of a taxpayer’s tax obligation and responsibilities, however, is not a circumstance beyond a taxpayer’s control that warrants a due date extension.

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.

Callahan, A.L.J - A . . . plywood manufacturer requests a refund of the business and occupation (B&O) tax it paid for the period of July 2006 through December 2006 based on its contention that it should have reported at the reduced timber manufacturing business B&O tax rate but did not learn of the reduced classification until after the due date for filing an annual survey, which is a prerequisite for reporting under the reduced rate. We deny the taxpayer’s petition.¹

ISSUE

Is Taxpayer’s failure to file the annual survey for the reduced B&O tax rate for timber manufacturing business under RCW 82.32.630 due to its unawareness of such reduced tax rate a circumstance beyond its control that warrants the Department to extend the due date as provided in RCW 82.32.590?

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410. Nonprecedential portions of this determination have been deleted.

FINDINGS OF FACT

Taxpayer manufactures specialty plywood timber products. In May 2007, Taxpayer submitted to the Department's Taxpayer Account Administration (TAA) Division an amended return reclassifying its income for the tax reporting period from manufacturing & wholesaling to manufacturing of timber/wood products and wholesaling of timber/wood products, which is a preferential tax rate. . . . Taxpayer requested a refund of the difference between the B&O tax it originally paid at the higher B&O tax rate and the amount it calculated was due at the lower preferential rate under RCW 82.04.260(12).

TAA denied Taxpayer's refund request. In a letter dated November 8, 2007, TAA explained to Taxpayer that the Department's records showed the Department did not receive Taxpayer's 2006 Annual Survey by the due date, March 31, 2007 and, therefore, Taxpayer forfeited its ability to use the preferential B&O tax rate for 2006. . . .

On November 29, 2007, Taxpayer petitioned the Department's Appeals Division to reverse TAA's refund denial. Taxpayer argues that it was not able to submit its 2006 Annual Survey by the due date of March 31, 2007 because it was not aware of the timber tax incentive under RCW 82.32.630 until April 2007.

ANALYSIS

A qualified taxpayer may report its income under the reduced B&O tax rate for timber businesses, provided it meets the statutory requirements. RCW 82.04.260(12).² However, such

² RCW 82.04.260(12) provides [in relevant part as follows]:

(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business shall, in the case of extractors, be equal to the value of products, including byproducts, extracted, or in the case of extractors for hire, be equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business shall, in the case of manufacturers, be equal to the value of products, including byproducts, manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business shall be equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business shall be equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d),

a taxpayer is required to file an annual survey with the Department by March 31st following the year it files its returns and reports its taxes utilizing the reduced B&O tax rate. RCW 82.32.630.

RCW 82.32.630(2)(a) in relevant part, provides that

A person who reports taxes under RCW 82.04.260(12) shall file a complete annual survey with the department. The survey is due by March 31st following any year in which a person reports taxes under RCW 82.04.260(12). The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590. The survey shall include the amount of tax reduced under the preferential rate in RCW 82.04.260(12).

(Emphasis added). The Department promulgated WAC 458-20-268 (Rule 268) to administer the annual surveys for certain tax adjustments. Rule 268 in pertinent part, provides:

(1) Introduction. In order to take certain tax credits, deferrals, and exemptions ("tax adjustments"), taxpayers must file an annual survey with the department of revenue (the "department") containing information about their business activities and employment. . . . The following persons must file an annual survey: . . . (l) A person claiming the B&O tax rate provided by RCW 82.04.260(12) for timber products.

. . . (d) Due date. For persons claiming any B&O tax credit, tax exemption, or tax rate listed under this section, the survey must be filed or postmarked³ by March 31st following any calendar year in which the tax credit, tax exemption, or tax rate is claimed.

(Emphasis added). Nevertheless, although a taxpayer must file a complete annual survey by the statutory due date, the Department was charged by the legislature to extend the due date for timely filing if the failure of a taxpayer to file an annual survey timely falls under circumstances provided in RCW 82.32.590.

RCW 82.32.590 provides:

(1) If the department finds that the failure of a taxpayer to file an annual survey or annual report under RCW . . . 82.32.630 . . . by the due date was the result of circumstances beyond the control of the taxpayer, the department shall extend the time for filing the survey or report. Such extension shall be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an

"selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance. . .

³ The postmark is limited to cases where the Department has waived the electronic filing requirement pursuant to RCW82.32.600(3). RCW82.32.600(1) provides "[p]ersons required to file annual surveys or annual reports under . . . RCW82.32.630 . . . must electronically file with the department all surveys, reports, returns, and any other forms or information the department requires in an electronic format as provided or approved by the department."

extension under this section. The department may grant additional extensions as it deems proper.

- (2) In making a determination whether the failure of a taxpayer to file an annual survey or annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department shall be guided by rules adopted by the department for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(Emphasis added). Thus, the Department has the statutory authority to extend the timber products annual survey due date provided the taxpayer's failure to timely file was due to circumstances beyond its control. The Department's administrative rule governing the waiver or cancellation of penalties is WAC 458-20-228 (Rule 228). Rule 228, lists seven circumstances where the Department will waive penalties and it explains that a taxpayer claiming that a circumstance beyond its control caused the delay, must demonstrate that the circumstance was "immediate, unexpected, or in the nature of an emergency." The Rule states that "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." Rule 228(9)(a)(ii); *see also* Det. No. 06-0267, 26 WTD 159 (2007).

A good faith lack of knowledge of a taxpayer's tax obligation and responsibilities, however, is not a circumstance beyond a taxpayer's control. Rule 228(9)(a)(ii). Rule 228 does not provide for the waiver of penalties when a taxpayer does not timely pay a tax obligation because of a good faith misunderstanding of its tax obligation. Rule 228(9)(a)(iii)(B), in fact, specifically states that misunderstandings or lack of knowledge -- whether by taxpayers or their tax professionals -- are not circumstances "beyond the control of the taxpayer." *See* Det. No. 01-165R, 22 WTD 11 (2003); Det. No. 007-0048, 26 WTD 219 (2007). Thus, applying the criteria for penalty waiver under Rule 228 to this case, we conclude that Taxpayer's lack of knowledge of the statutory due date to file its 2006 annual survey is similar to a taxpayer's lack of knowledge of its tax obligation. Taxpayers are charged with the responsibility of knowing their tax reporting obligations. Title 82.32A RCW. Lack of knowledge of those obligations and responsibilities is not a basis for waiving taxes, penalties or interest. Similarly, we conclude that lack of knowledge of the availability of the preferential tax classification and the survey filing requirements is not a basis for extending the survey filing due date.

As Rule 228 explains a taxpayer bears the burden of demonstrating that circumstances that were beyond its control directly caused the delinquency in filing returns or paying taxes when due. Taxpayer's only basis for failing to timely file the annual survey was that it did not know about the preferential tax rate and, therefore, did not know about the survey filing requirement. Taxpayer's lack of knowledge was not an "immediate, unexpected, or in the nature of an emergency" circumstance that constitutes a circumstance beyond a taxpayer's control. The Department, therefore, may not extend Taxpayer's 2006 annual survey filing due date under the principles expressed in Rule 228.. RCW 82.32.590. Taxpayer's petition for a refund request is denied because we do not find a basis to extend its 2006 annual survey due date.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 19th day of November 2008.