

Cite as Det. No. 13-0331, 33 WTD 368 (2014)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Refund of)	<u>D E T E R M I N A T I O N</u>
)	
...)	No. 13-0331
)	
)	Registration No. . . .
)	

[1] RULE 267; RCW 82.04.260, RCW 82.32.545: BUSINESS AND OCCUPATION (B&O) TAX – AEROSPACE MANUFACTURER’S PREFERENTIAL RATE – ANNUAL REPORT REQUIREMENT – DEADLINE FOR SUBMISSION OF ANNUAL REPORT. Taxpayer petitioned the Department for a refund of the difference between Wholesaling B&O tax it paid for 2008 and 2009 and the preferential Aerospace Manufacturer’s rate. Taxpayer filed the required annual reports for 2008 and 2009 in the latter part of 2012. The Department denied Taxpayer’s petition, finding that the annual reports for 2008 and 2009 were due, respectively, by March 31, 2009, and March 31, 2010.

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.

Valentine, A.L.J. – [Taxpayer] petitions the Washington Department of Revenue (Department) to reverse the decision of the Department’s Taxpayer Account Administration (TAA) denying Taxpayer a business and occupation (B&O) tax refund for the difference between the wholesaling B&O tax rate it paid for years 2008 and 2009 and the preferential aerospace manufacturer’s rate. Taxpayer’s petition for refund is denied.¹

ISSUE

Pursuant to RCW 82.04.260, RCW 82.32.545,² and WAC 458-20-267 (Rule 267) does Taxpayer qualify for the preferential aerospace manufacturer’s B&O tax rate for years 2008 and 2009, even though Taxpayer did not submit the required annual reports until 2012?

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

²RCW 82.32.545 was repealed in 2010 and replaced by RCW 82.32.534.

FINDINGS OF FACT

Taxpayer is headquartered [outside of Washington State]. Taxpayer's primary business activity is manufacturing aircraft components. Taxpayer sells components at wholesale to Washington customers. In August 2012, Taxpayer asked the Department for a B&O tax refund for the difference between the wholesaling B&O tax rate Taxpayer paid for years 2008 through 2011 and the preferential aerospace manufacturing rate, which has been available since July 2007.³ Taxpayer was not aware of the preferential rate until early 2012.

The fact that Taxpayer filed its Washington excise tax returns timely is not in dispute; neither is the fact that Taxpayer timely paid any taxes owing. In addition, the parties are in agreement that Taxpayer's business activities in Washington qualify for the preferential aerospace manufacturing rate. In correspondence dated October 16, 2012, however, TAA denied Taxpayer's refund request because Taxpayer did not timely submit the annual reports required by statute. Taxpayer submitted the annual reports at issue in the latter part of 2012.

Taxpayer appealed TAA's decision for years 2008 and 2009 only. The B&O tax refund amount at issue is \$. . . , plus accrued interest.

ANALYSIS

RCW 82.04.220 imposes the B&O tax "for the act or privilege of engaging in business activities" in Washington State. The tax is based on "value of products, gross proceeds of sale, or gross income of the business." *Id.*

Persons making wholesale sales in Washington are subject to wholesaling B&O tax on the gross proceeds of sales at the rate of 0.484 percent.⁴ However, effective July 1, 2007, the B&O tax rate for persons "making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller" is 0.2904 percent.⁵ To qualify for the preferential rate, however, a taxpayer "must file a complete annual report with the department under RCW 82.32.534."⁶

The Washington Legislature enacted RCW 82.32.534 effective June 10, 2010. The statute requires that the annual reports at issue be filed "following any calendar year in which a person becomes eligible to claim the tax preference."⁷ Prior to the enactment of RCW 82.32.534, the controlling statute was RCW 82.32.545 (which was repealed upon enactment of RCW

³ A preferential rate has been available since October 1, 2005. Effective July 1, 2007, the preferential rate is 0.2904 percent. See RCW 82.04.260(11). Taxpayer paid a B&O wholesaling rate of 0.484 percent.

⁴ RCW 82.04.270

⁵ RCW 82.04.260(11)(a)(ii).

⁶ RCW 82.04.260(11)(d). Prior versions of RCW 82.04.260 reference RCW 82.32.545 for the annual report due date.

⁷ We find it unnecessary to analyze or discuss the required contents of an annual report because the issue in the present appeal is the due date.

82.32.534).⁸ RCW 82.32.545 was in effect during the time period at issue (January 1, 2008 through December 31, 2009). RCW 82.32.545 instructed, “The report is due by March 31st following *any year in which a preferential tax rate* under RCW 82.04.260(11) *is used.*” (Emphasis added.)

Taxpayer asserts that a March 2010 decision issued by the Washington Board of Tax Appeals (Board), *Surreal Software Incorporated v. DOR*, BTA Docket No. 70322 (2010), supports its position that submission of the annual reports for 2008 and 2009, prior to March 31, 2013, qualifies it for the preferential B&O tax rate for those years.

We disagree with Taxpayer’s conclusion about its applicability to the present case.

The issue in *Surreal* was whether a taxpayer, pursuant to RCW 82.04.4452, qualified for a Research & Development (R&D) tax credit for the years 2004 and 2006. To qualify for the R&D credit, a taxpayer must file an annual survey. *Id.* In *Surreal*, the taxpayer filed the annual surveys for 2004 and 2006 in August 2008. The Board found that the “plain language” of RCW 82.04.4452 supported the taxpayer’s position. The Board relied on the following language in RCW 82.04.4452(6)(b): “A person claiming the credit shall file a complete annual survey with the department. The survey is due by March 31 following *any year in which a credit is claimed.*”⁹ RCW 82.04.4452(6)(b) (emphasis added.) The Board opined that, since the taxpayer did not claim the credit until 2008, the taxpayer’s annual surveys were timely because they were not due until March 31, 2009. Taxpayer contends that the language “in which a credit is claimed” supports its position that Taxpayer, by requesting a refund in 2012, essentially “claimed” the preferential tax rate for 2008 and 2009 in 2012, the result being report due dates of March 31, 2013.

We conclude, however, that the Board’s *Surreal* decision is not applicable to the present case. The Board analyzed the R&D credit statute; the present case involves the aerospace manufacturing preferential B&O tax rate statute. In addition, the language contained in RCW 82.32.545, which is applicable to Taxpayer’s appeal, is different than the language of RCW 82.04.4452(6)(b). RCW 82.32.545 instructed that annual reports were due “by March 31st following any year *in which a preferential tax rate...is used.*” RCW 82.04.4452(6)(b) instructed that annual surveys were due “by March 31 of any year *in which a credit is claimed.*” (Emphasis added.) The words “used” and “claimed” are not interchangeable. The meanings are different.¹⁰ Taxpayer never “used” or “utilized” the preferential tax rate. Taxpayer requested or “claimed” a B&O tax reclassification and refund after the fact. The statute applicable to Taxpayer’s appeal, however, requires that the preferential tax rate be “used” prior to the annual reporting due date.

⁸ Laws of 2010, ch. 114, §152.

⁹ RCW 82.04.4452 was amended in 2010. The current statute references RCW 82.32.585 for instructions and information about filing an annual survey. The current language reads as follows: “[T]he survey is due by April 30th of the year following any calendar year in which a person becomes eligible to claim the tax preference that requires a survey under this section.”

¹⁰ The word “used” means: “employed in accomplishing something;” “that has been utilized according to its nature or purpose.” The word “claimed” means: “to demand recognition of esp. as a right;” “to demand delivery or possession of by or as if by right.” WEBSTER’S THIRD INTERNATIONAL DICTIONARY 2523 (3d ed. 1993).

Taxpayer also contends that Rule 267 supports its position. Again, we disagree. The following language, which was in effect from October 22, 2006, through May 27, 2010,¹¹ of Rule 267(3), reads as follows:

(b) **First Report.** The first report filed under this subsection must also include employment, wage, and benefit information for the 12-month period immediately before first use of a tax adjustment. In order to meet this requirement, a person must complete a report for the calendar year immediately preceding the first use of a tax adjustment.

(c) **Due date.** The report must be filed by March 31st following any calendar year in which any tax adjustment is taken against taxes due.

(d) **Examples.**

(i) An aerospace firm begins taking the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts on October 1, 2005. By March 31, 2006, the aerospace firm must provide two annual reports, one covering calendar year 2004 and another covering calendar year 2005. *If the aerospace firm continues to take the B&O tax rate provided by RCW 82.04.260(11) during calendar year 2006, a single annual report is due on March 31, 2007, covering calendar year 2006.*

Rule 267(3) (emphasis added.)

Thus, in addition to the statutory language relevant to this appeal, Rule 267 supports the Department's position that, in order for Taxpayer to qualify for the preferential tax rate for 2008 and 2009, Taxpayer's annual reports were due, respectively, March 31, 2009, and March 31, 2010. Because it did not file those reports by the due dates, it cannot now claim the preferential rate for those years.

DECISION AND DISPOSITION

Taxpayer's petition for refund is denied

Dated this 6th day of November 2013.

¹¹ Rule 267 was amended in May 2010.