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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. 13-0115
...	)	
	)	Registration No. . . .
	)	Petition for Refund
	)	Docket No. . . .
	)	

RCW 82.32.052 – AMNESTY – UNRELATED CLAIM FOR REFUND. The granting of amnesty for penalties and interest on a B&O tax liability did not bar an unrelated claim for the refund of a retail sales tax for same period

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 the Determination.

Bauer, A.L.J. – A bank (Taxpayer) was denied a refund of retail sales tax because it had been granted a waiver of penalties and interest under RCW 82.32.052 (commonly referred to as “Amnesty”) for the same tax period. Taxpayer petitions for reversal of the denial claiming that amnesty for the penalties and interest owed on an unrelated Business and Occupation (B&O) tax liability did not bar it from receiving a refund of retail sales tax. Taxpayer’s petition is granted.<sup>1</sup>

ISSUE

Under RCW 82.32.052, was Taxpayer barred from claiming a refund of retail sales tax it had paid during the same tax period for which it was granted a waiver of penalties and interest assessed on an unpaid B&O tax liability?

FINDINGS OF FACT

. . . (Taxpayer) is a full service commercial bank that serves customers through branch locations in approximately . . . states . . . . At times pertinent to this appeal, Taxpayer states that it had . . . branches in Washington. . . .

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

As one part of its business, Taxpayer purchased installment contracts from automobile, recreational vehicle, and marine dealers. The dealers had entered into installment contracts with retail borrowers (typically, individuals), who financed their purchases through dealers (or, in some cases, with other third-party lenders such as banks, automobile finance companies, credit unions, etc.). Taxpayer purchased such accounts on a nonrecourse basis, meaning that the initial lenders were not liable to Taxpayer if purchasers defaulted on their payments.

Under this scenario, if a borrower defaulted on the underlying installment loan, Taxpayer repossessed the security (automobile, RV, or boat) and sold it, usually at a loss. Taxpayer wrote off the loss as a worthless debt for federal tax purposes under the Internal Revenue Code, and requested a refund of any sales tax paid by the borrower on the worthless debt under RCW 82.08.037.<sup>2</sup>

On June 28, 2010, Taxpayer requested a refund of retail sales taxes paid on defaulted loans for the period December 1, 2006 through June 30, 2010, plus allowable statutory interest. The request was forwarded to Audit. Of this refund request, \$. . . was for the period January 1, 2007 through December 31, 2008 (refund claim period). On October 28, 2010, Audit concluded that

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<sup>2</sup> RCW 82.08.037 (2010) - provided:

- (1) A seller is entitled to a credit or refund for sales taxes previously paid on bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.
- (2) For purposes of this section, "bad debts" does not include:
  - (a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;
  - (b) Expenses incurred in attempting to collect debt; and
  - (c) Repossessed property.
- (3) If a credit or refund of sales tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.
- (4) Payments on a previously claimed bad debt are applied first proportionally to the taxable price of the property or service and the sales or use tax thereon, and secondly to interest, service charges, and any other charges.
- (5) If the seller uses a certified service provider as defined in RCW 82.32.020 to administer its sales tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount received to the seller.
- (6) The department shall allow an allocation of bad debts among member states to the streamlined sales tax agreement, as defined in RCW 82.58.010(1), if the books and records of the person claiming bad debts support the allocation.

RCW 82.08.037 was amended in April 2010 to supersede Washington's Supreme Court holding in *Puget Sound National Bank v. Dep't of Revenue*, 123 Wn.2d 284 (1994). For refund claims filed with the Department after June 30, 2010, it restricts the right of an assignee of a debt instrument to recover retail sales tax paid when debtors default on their loans. Second Engrossed Substitute Senate Bill 6143, Sec. 1501, Part XV. The amendment, effective for refunds filed with the Department of Revenue after June 30, 2010, specifies that for sales tax purposes, a bad debt does not include "debts sold or assigned by the seller to third parties where the third party is without recourse against the seller."

TAA could work Taxpayer's refund request without it being referred to Audit. TAA took no further action on the refund request until August 2011.

Taxpayer had historically calculated and reported all of its service and other activities B&O taxes to the Department of Revenue using the separate accounting method. In 2011, Taxpayer became aware that it had been erroneously using the separate accounting methodology of apportionment, and should have instead been using a cost accounting method.

On April 14, 2011, Taxpayer mailed amended excise tax returns reporting additional receipts under the service and other activities classification of the B&O tax for 2005, 2007, and 2008. Taxpayer also filed an Amnesty Application to cover any penalties and interest that would become due as a result. Taxpayer reported that \$. . . would be due under these returns, and stated that it would pay this amount by the April 30, 2011 amnesty deadline. Taxpayer stated that it

. . . will not challenge the amount of the tax paid in the amnesty program in any court or administrative tribunal.

(Emphasis added.) On April 27, 2011, Taxpayer made full payment of taxes the amount of \$. . . with respect to its Amnesty application filed April 14, 2011. Taxpayer stated:

The taxpayer will not challenge the amount of the tax paid in the amnesty program in any court or administrative tribunal.

(Emphasis added.) On May 6, 2011, TAA issued an assessment (Doc. No. . . .), assessing the additional tax liability that Taxpayer had reported for tax years 2007 and 2008 in the amount of \$. . ., interest in the amount of \$. . ., and a 5% penalty in the amount of \$. . ., for a total owed of \$. . . The Assessment stated it was due for payment not later than June 6, 2011.

On May 10, 2011, TAA notified Taxpayer that its application for amnesty had been approved for Document No. . . ., and that \$. . . in penalties and interest would be waived. TAA further stated:

You may not seek a refund, or otherwise challenge the amount of tax due in any court or administrative tribunal for any period for which amnesty was granted.

(Emphasis added.) On August 5, 2011, TAA requested additional documentation concerning Taxpayer's June 23, 2010 refund request, stating "The information provided was not sufficient to substantiate your claim." . . .

Taxpayer coordinated with TAA telephonically and provided the requested information in writing on September 16, 2011.

On February 14, 2012, the Department issued the requested refunds for 2006, 2009, and 2010, but denied Taxpayer's refund request for tax years 2007 through 2008, stating:

[Taxpayer] applied for and was granted amnesty for the periods of January 1, 2007 to December 31, 2008. Revised Code of Washington (RCW) 82.32.052 settles a taxpayer's entire tax liability for the period during which amnesty is received: "Taxpayers receiving penalty or interest relief under this section may not seek a refund, or otherwise challenge the amount, of any tax liability paid as required by subsection (1)(c) of this section." Amounts charged off as uncollectable during the period of January 1, 2007 to December 31, 2008 were removed from the refund request.

(Emphasis added.) Taxpayer objects to the disallowance of its refund for the 2007-2008 period, asserting that the Department has misinterpreted RCW 82.32.052. First, RCW 82.32.052 does not provide that a grant of amnesty "settles a taxpayer's entire tax liability for the period during which amnesty is received. Second, the amount of retail sales taxes for which it was claiming a refund was not the "tax liability paid" under amnesty "for which a penalty and interest waiver . . . [was] requested." The tax liability paid under amnesty was, instead, the additional amount owed under the service and other activities B&O tax classification because of Taxpayer's change in apportionment methodology.

#### ANALYSIS

RCW 82.32.052 provides for the waiver of penalties and interest assessed on unpaid tax liabilities provided the taxpayer met all required conditions:

(1) Except as otherwise provided in subsections (4) and (5) of this section, the department must waive all penalties and interest otherwise due under this chapter and that are unpaid as of February 1, 2011, if all of the following circumstances are met: . . . . (c) Before May 1, 2011, the taxpayer must remit full payment to the department of the balance due on all tax liabilities for which a penalty and interest waiver under this section is requested. . . .

(2) Taxpayers receiving penalty or interest relief under this section may not seek a refund, or otherwise challenge the amount, of any tax liability paid as required by subsection (1)(c) of this section. This subsection (2) applies to refund requests or appeals filed directly with the department and to proceedings brought in any court or administrative tribunal.

(Emphasis added.) The Department also put amnesty guidelines in a Q&A format on its website.<sup>3</sup> It stated, in part, the following:

**12. Do I lose the ability to appeal new taxes assessed after I am granted amnesty?"**

No. You only waive your right to appeal or seek a refund of taxes paid under the amnesty program.

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<sup>3</sup> See <http://dor.wa.gov/content/doingbusiness/registermybusiness/amnestyqnda.aspx>.

(Emphasis added.) The Q&A document states that the restriction on taxpayers' rights to further challenge taxes apply only to those "taxes paid under the amnesty program." Thus, when penalties and/or interest on an assessment – when the books and records of a taxpayer have been reviewed for a stated audit period -- are waived under amnesty, taxes attributable to that assessment's audit period cannot be further challenged by the taxpayer. In such a case, RCW 82.32.052(2) would prohibit a taxpayer from appealing or seeking a refund of any taxes assessed or paid during that audit period.

This case, however, does not involve an assessment in which there was a review of records, but Taxpayer's amendment of its B&O taxes for past periods because of a change in its apportionment method. Taxpayer's self-assessed additional B&O taxes generated penalties and interest that were waived under amnesty. The Department required the payment of those self-assessed B&O taxes -- and only those self-assessed B&O taxes – as a condition of receiving amnesty. Taxpayer's refund petition – submitted approximately 9 months before Taxpayer amended its B&O taxes – pertained to retail sales taxes on consumer loans made by other lending institutions. Those lending institutions had collected retail sales taxes from their borrowers and remitted them to the Department before selling the loans to Taxpayer. Certain of these loans were defaulted on, and, pursuant to RCW 82.08.037, Taxpayer claims it was entitled to a refund of a portion of the retail sales taxes that had been paid and remitted to the Department. Taxpayer was not required to pay these retail sales taxes over to the Department in order to receive amnesty.

Because the retail sales taxes whose refund is here at issue was never required for Taxpayer to qualify for amnesty, we conclude that, in this unique set of circumstances, the retail sales taxes whose refund Taxpayer sought were not required to be paid under amnesty and their refund is not barred by the provisions of RCW 82.32.052, assuming all other requirements for refund are met.

#### DECISION AND DISPOSITION

Taxpayer's petition is granted.

Dated this 29<sup>th</sup> day of April 2013.