

Cite as Det. No. 13-0375, 33 WTD 481 (2014)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of) Assessment of))) . . .)))	<u>D E T E R M I N A T I O N</u> No. 13-0375 Registration No. . . .
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[1] RULE 230; RCW 82.32.050: REVISIONS TO AUDIT ASSESSMENT – MATHEMATICAL ERROR – STATUTE OF LIMITATIONS – REDUCTION IN TAX REFUND. Once an assessment is issued, the Department may not increase the assessment for periods for which the statute of limitations has expired. However, for the years that the statute of limitations bars the assessment of additional tax, the Department may revise an assessment so long as the overall assessment is reduced and not increased. It is lawful for the Department to correct a mathematical error and increase a particular category of tax in periods for which the statute of limitations is expired, as long as the overall assessed amount is not increased for the periods for which the statute of limitations is expired.

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.

Chartoff, A.L.J. – A taxpayer protests the Audit Division (Audit) of the Department of Revenue’s (Department) revisions to an Audit assessment to correct a mathematical error found in the audit workbook. Because the revised assessment was less than the amount originally assessed, we conclude Audit was not barred from correcting the error. We deny the petition.¹

ISSUE

Whether the Department is barred under RCW 82.32.050(4) and WAC 458-20-230 from revising an assessment, where the revised assessment reduces the total tax originally assessed.

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

FINDINGS OF FACT

The taxpayer's business activities in Washington State during the audit period included the sale and installation of audio-video equipment as well as design services for audio-video systems in commercial buildings.

Audit reviewed the taxpayer's books and records for the period of January 1, 2007 through June 30, 2011. On July 26, 2012, Audit issued an assessment for \$. . . , consisting of \$. . . in retail sales tax, [a credit of \$. . .] in retailing B&O tax, \$. . . in wholesaling B&O tax, \$. . . in service and other activities (Service) B&O tax, \$. . . in use tax and/or deferred sales tax, and \$. . . in interest.² Audit extended the due date of the assessment to give the taxpayer additional time to review the audit report for possible adjustments.

On December 6, 2012, the taxpayer paid \$. . . towards the assessment. On the same day, the taxpayer faxed a petition for correction of the assessment to the Appeals Division of the Department, raising several issues. While the appeal was pending, Audit agreed to issue a post assessment adjustment (PAA) which resolved all of the issues raised in the petition, and reduced the retail sales tax owed by \$ However, while processing the PAA, Audit found a mistake in the audit workbook. [It] discovered that unreported service income detailed on Workpaper A2 did not correctly transfer over to Schedule 2B. Schedule 2B showed service income for 2007, but incorrectly showed zero service income for 2008 through 2011. Audit fixed this error, which resulted in additional Service B&O tax of \$

On February 5, 2013, Audit issued the adjusted assessment for \$. . . , consisting of \$. . . in retail sales tax, [a credit of \$. . .] in retailing B&O tax, \$. . . in wholesaling B&O tax, \$. . . of Service B&O tax, \$. . . of use tax and/or deferred sales tax, and \$. . . in interest, less the \$. . . payment received December 6, 2012. Even though the amount of Service B&O tax was increased, the overall amount of taxes due for each year of the audit was reduced in the PAA. In no year were taxes increased over the amount originally assessed.

The taxpayer states that all of the issues raised in its petition are resolved. However, the taxpayer objects to Audit's assessment of \$. . . in additional service B&O tax in the PAA, which the taxpayer argues is unfair. Audit responds that the adjustment of Service B&O tax was lawful because the assessment was not increased from the amount originally assessed.

ANALYSIS

At issue in this appeal is whether Audit is barred from revising an assessment to include additional tax where the PAA results in an overall reduction in the amount of tax due. We conclude Audit is not barred for the following reasons.

RCW 82.32.050(1) authorizes the Department to issue assessments to taxpayers who have paid an amount of tax or penalty less than that properly due:

² The taxpayer executed a waiver of the limitation period for 2007 to July 20, 2012, under RCW 82.32.050(4)(c).

If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. . . .

RCW 82.32.050(4) limits the time period during which the Department may issue a tax assessment:

No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

WAC 458-20-230 (Rule 230) is the Department's administrative rule explaining the statutory limitations on assessments. Rule 230(7) explains the circumstances under which the Department may revise assessments:

Revised assessments. The department may issue an assessment to correct errors found in examining tax returns or it may issue an assessment to correct errors based on a review of the taxpayer's records. Assessments which are based on a review of the tax returns are subject to further review and revision by future audit. *Once issued, the department may revise an audit assessment subject to the following restrictions.*

(a) *The assessment generally may not be increased from the amount originally assessed for those years for which the statute of limitations would have expired if this were an original assessment. For these years an assessment can be reduced, but not increased.*

(b) An assessment may be increased upon discovery of fraud/evasion or misrepresentation of a material fact.

(Italics added). For the years that the statute of limitations bars the assessment of additional tax, the Department may revise an assessment so long as the assessment is reduced and not increased. *Id.*

Rule 230(9) includes examples that identify a number of facts and then state a conclusion. The examples may be used as a "general guide" to illustrate the application of the law to particular facts and circumstance. Example (g) illustrates the application of the statute of limitations to revised assessments:

In 1992 the department audited the records of XYZ Hauling for the years 1988 through 1991. The audit disclosed that some income from hauling performed in 1988 had not been reported and issued an assessment in 1992 for additional taxes owed under the motor transportation public utility tax. The taxpayer paid the assessment in 1992. In 1994 the taxpayer contacted the department with additional records which disclosed that part of the hauling for which motor transportation tax was assessed for the year 1988 should have been assessed under the urban transportation classification, a lower tax rate. The taxpayer requested that all of the motor transportation tax be refunded and argued that the urban transportation tax could not be assessed since the statute of limitations had expired for the year 1988. *The department issued a revised assessment in which it subtracted the tax that should have been paid under urban transportation from the motor transportation tax which was assessed. The department refunded the difference. The revised assessment did not result in additional taxes being assessed, but was a reduction of the original assessment.*

(Italics added). In this example, the taxpayer proved it paid public utility tax (PUT) under the motor transportation rate in error, and that it should have paid under the lower urban transportation rate. While the Department is barred under RCW 82.32.050(4) from issuing a new assessment of PUT under the urban transportation rate for 1988, the Department is not barred from reducing the refund of tax paid under the incorrect rate by the amount of tax that should have been paid. In other words, offsetting the refund by taxes that should have been paid is not “an assessment for additional taxes . . . due.”

The present case concerns adjustments made in 2013 to an assessment of taxes due for years 2007 through 2011. Under Rule 230(7)(a), Audit’s adjustments to the assessment cannot increase the amount originally assessed for 2007 and 2008. There is no such limitation for the tax years 2009 through 2011. Here, Audit issued a PAA reducing the retail sales tax due, but increasing the service B&O tax due. For each year of the audit, including 2007 and 2008, the PAA reduced the total amount of tax due. Since Audit’s adjustments reduced the amount of tax originally assessed, Rule 230 does not bar the adjustments. Similar to the example, the Department can offset the reduction in retail sales tax against other tax amounts properly due, so long as the assessment is not increased from the amount originally assessed for 2007 and 2008.

The taxpayer argues that it was not fair for Audit to fix the mistake in the audit workbook and assess additional tax. It appears the taxpayer thought it had come to an agreement with Audit concerning its tax liability, and felt it was unfair for Audit to assert additional tax upon finding the error. While we understand the taxpayer’s perception of the events, we conclude that Audit’s adjustments were appropriate and lawful. We do not find the taxpayer’s argument compelling that it should be relieved of paying taxes lawfully due for the reason that the auditor made a mistake in the original audit workbook.

In sum, we sustain the PAA, concluding the revisions to the assessment are not barred under RCW 82.32.050 and Rule 230. We deny the taxpayer’s petition for correction of assessment.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 4th day of December 2013.