

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
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 Refund of )  
 ) No. 89-266  
 )  
 . . . ) Registration No. . . .  
 ) Warrant # . . .  
) )

- [1] RULE 178; RULE 122: AGRICULTURAL EXEMPTION -- FEED  
--USE TAX. The exemption provided in Rule 122  
applies only to feed purchased or used in the  
production of agricultural products for wholesale  
sale. It does not apply to feed purchased or used  
for boarding horses, and it does not apply to feed  
purchased for horses held for retail sale.
- [2] RULE 254: RCW 82.32.070 -- RECORDS. Taxpayers are  
required to keep records that are necessary to  
determine their tax liability. Taxpayers who fail  
to keep and present such records to the Department  
of Revenue cannot question taxes assessed in the  
absence of such records.
- [3] MISCELLANEOUS: IGNORANCE -- KNOWLEDGE OF TAX LAW.  
Taxpayers are presumed to know their tax liability,  
and ignorance of the law will not excuse failure to  
pay the proper taxes.

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: . . .

DATE OF CONFERENCE: February 23, 1989

NATURE OF ACTION:

Taxpayer protests the assessment of sales tax on feed used in her business.

#### FACTS AND ISSUES:

Hesselholt, A.L.J. -- Taxpayer boards and trains horses. Taxpayer states that she has also raised horses to sell. Her records were audited for the period January 1, 1983, through June 30, 1987. An assessment was issued on October 13, 1987, in the amount of \$11,718 of which \$3011 was business and occupation tax, \$6916 was use tax, and interest was \$1791. No penalties were imposed in the assessment. The assessment was due November 12, 1987, and she received an extension until December 14, 1987. The audit was later adjusted, deleting \$140 in business and occupation tax and \$964 in use tax for the years 1983 and 1984, leaving the assessment balance at \$10,288.

Taxpayer registered with the Department of Revenue in December 1978. She stated at that time that her business was "boarding (care and feeding) of horses." The application for the Certificate of Registration with the Department stated that the date of opening of this business was January 1, 1978. Taxpayer's account was closed with the state on December 31, 1982, and reopened as a result of this audit. There is no record with the state of the taxpayer filing any tax returns from the date of opening the account in 1978 until August 23, 1988.

The audit was calculated by taking what records taxpayer made available to the auditor and projecting them throughout the audit period. The auditor commented in his "Detail of Differences" provided to the taxpayer that taxpayer's recordkeeping was inadequate. The initial records provided consisted of bank statements and deposit records from August 11 through December 1, 1986. Taxpayer's income was shown as income from boarding and training horses, and riding lessons, and taxed under the service and other category of the business and occupation tax. The use tax was imposed on the projected amounts paid for hay, straw, and shavings for the audit period. Taxpayer made no payments on the assessment, nor were any payment arrangements made. The audit became final on December 15, 1987.

Taxpayer was sent a letter in January 1988 regarding payment on the assessment. No response was received. The assessment went to warrant February 18, 1988, and the warrant was filed

March 3, 1988. The warrant includes estimated figures for the balance of 1987. The warrant also included a ten percent delinquent penalty for the taxes due in the assessment, as well as a five percent warrant penalty. During 1988, numerous contacts between Department staff and taxpayer were made in an attempt to obtain additional records from taxpayer, to bring taxpayer's tax filings current, and to work out a payment plan on the warrant. In August, 1988, taxpayer provided some receipts and figures for the 1987 tax year. Taxpayer paid quarter one and two of 1988 taxes at the time. In October, 1988, a Notice to Withhold and Deliver was delivered to Seafirst Bank. The Department received \$346.85 from taxpayer's checking account. That was the first and only payment made on the warrant. When taxpayer discovered that the Department had levied on her bank account, she contacted the Department requesting her money back. On October 16, 1988, she petitioned to this section appealing the warrant. On October 27, 1988, taxpayer met with numerous Department staff members and brought in more records. As a result of the records, adjustments were made to the audit, including allowing fifty percent of the amounts spent on feed to be exempt from use tax for the years 1983 and 1984.

Also, during 1988, taxpayer wrote numerous letters to her state representatives, the director of the Department of Revenue, as well as others. One letter to a state representative states, in part, as follows:

I was audited by the State Department of Revenue. They tell me I owe \$18,000.00 for back sales tax due mainly on hay purchases made between 1983 and 1986. They are still working on 1987 and 1988.

. . . .

I was surprised to find out about tax penalties, along with interest on the tax, interest on the penalties and interest on the interest. No wonder they keep these laws secret.

Taxpayer makes various other claims, including that a representative of the Department of Agriculture informed her that she did not owe any sales tax on feed; that no copy of the audit was mailed to her before the initial meeting she had with audit staff; that the audit worksheet was handed to her at that time; and that she was given no time to appeal this matter.

In taxpayer's appeal letter to the Department of Revenue, she states that she wishes to appeal the "assessment of back sales taxes on my business." During the hearing, she stated that she had records of all taxes paid, which included taxes on hay.

#### DISCUSSION:

##### I. Use Tax on Feed

The retail sales tax is imposed on all retail sales of tangible personal property in the state of Washington. RCW 82.08.020. The use tax is imposed on the use of tangible personal property on which the sales tax has not been paid. RCW 82.12.020, WAC 458-20-178. All sales are considered sales at retail, and therefore subject to the sales tax, unless a specific statutory exemption exists. RCW 82.04.050. Exemptions from the sales tax are, for the most part, mirrored in the use tax exemptions. Thus, if a sale of tangible personal property is exempt of sales tax, the use of that property is generally exempt from the use tax. The tangible personal property involved in this appeal is feed used for horses.

RCW 82.04.050 is the statute that defines the term "retail sale." It currently states, in relevant part, that

The term [retail sale] shall not include sales of feed, seed, seedlings, fertilizer, and spray materials to . . . persons for the purpose of producing for sale any agricultural product whatsoever, including plantation Christmas trees and milk, eggs, wool, fur, meat, honey, or other substances obtained from animals, birds, or insects but only when such production and subsequent sale are exempt from tax under RCW 82.04.330. . . .

(Emphasis added.)

RCW 82.04.330 is the statute covering agricultural exemptions. It provides, in relevant part, that

The provisions of this chapter [imposing a business and occupation tax] shall not apply to any person in respect to the business of growing or producing for sale upon the person's own lands or upon land in which the person has a present right of possession, any agricultural or horticultural produce or crop,

or of raising upon the person's own lands or upon land in which the person has a present right of possession, any plantation Christmas tree or any animal, bird, fish, or insect, or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, or in respect to the sale of such products at wholesale by such grower, producer, or raiser thereof. This exemption shall not apply to any person selling such products at retail or using such products as ingredients in a manufacturing process; . . .

(Emphasis added.)

Both exemptions have been in existence in the law since 1935, although they have undergone several amendments since then, none of which are relevant here.<sup>1</sup>

WAC 458-20-122 (Rule 122), is the Department of Revenue's administrative rule dealing with the sales of feed and other things. Rule 122 was first promulgated in 1943. It states, in relevant part

(1)(e) The word "farmers" as used in this rule means any person engaged in the business of growing or producing for sale at wholesale upon their own lands, or upon lands in which they have a present right of possession, any agricultural product whatsoever, including milk, eggs, wool, fur, meat, honey, or other substances obtained from animals, birds, or insects. "Farmers" does not mean persons selling such products at retail, persons using such products as ingredients in a manufacturing process, or persons growing or producing such products for their own consumption. . .

. . .

(4) Retail sales tax. The retail sales tax applies to sales of feed, seed, fertilizer, and spray materials to consumers other than "farmers" as defined herein, except as explained below.

. . .

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<sup>1</sup>For example, plantation Christmas trees and fish have been added to the exemptions over the years.

(6) The sales tax also applies to sales of feed to riding clubs, race track operators, or for feeding pets, work animals, or for raising poultry, eggs, or other products for personal consumption. Also the tax applies to sales of seed, fertilizer, and spray materials to persons for use on lawns, gardens, or any other personal use other than resale or the commercial production of agricultural products.

(7) Exemptions. The sales tax does not apply to sales of feed, seed, fertilizer, and spray materials to farmers, as defined herein. . .

(10) The burden of proving that a sale of any of said articles was not a sale at retail is upon the seller, and all sales will be deemed retail sales unless the seller shall take from the purchaser, whether a registered dealer or a farmer, a resale certificate in accordance with WAC 458-20-102.

(11) Use tax. The use tax does not apply upon the use of feed, seed, fertilizer, and spray materials in this state under such circumstances that the sale of such things is exempt of sales tax as explained earlier therein. In all other cases the use tax applies upon the first use by a consumer of such things if retail sales tax has not been paid upon their acquisition.

(Emphasis added.)

[1] The exemption provided from the business and occupation tax for farmers is a broader exemption than that included in the term "retail sale." The exemption from the definition of a retail sale is more narrow. It provides that the sale of feed is not a retail sale when it is used for the production of "any agricultural product whatsoever. . . for wholesale sale." The Department's interpretation of these statutes, as shown in Rule 122, is that the sale or use of feed for the production of agricultural livestock for wholesale sale is exempt of the retail sales tax. Horses are considered agricultural livestock. However, the exemption does not apply to the sale or use of feed for persons boarding horses for any reason. The exemption also does not apply to persons who raise horses for retail sale. A retail sale of a horse, for example, is a sale for the purpose of riding or racing.

This analysis of the applicable statutes is not new, nor is the application of the sales or use tax on feed a new

analysis. . . . Neither the Department's position nor the law has changed in this respect.

The taxpayer has claimed that all her horses are registered, that she boards and trains horses, and that she raises horses to sell. The sales or use tax is due on all feed purchased for horses that she boards. Sales or use tax is due on all tax purchased for horses for retail sale. Sales or use tax is not due on feed purchased for horses held for wholesale sale.

Sales or use tax is due on all purchases of any material that does not meet the definition of "feed" in Rule 122, and also is due on materials, such as straw, used as bedding for the animals.

## II. Records

[2] RCW 82.32.070 states, in relevant part:

Every person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by him. All his books, records, and invoices shall be open for examination at any time by the department of revenue. . . Any person who fails to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department of revenue based upon any period for which such books, records, and invoices have not been so kept and preserved.

The law requires that taxpayers keep records which will allow the Department of Revenue to determine his or her tax liability. If a taxpayer does not keep such records, or provide them to the Department, that person cannot question or dispute any assessment of taxes made. This is not an unusual requirement. The Internal Revenue Service requires that records be kept for varying periods.

Taxpayer has had more than an adequate amount of time to provide any records she had to the Department.

## III. Knowledge of Law

[3] All citizens are charged with the knowledge of the laws of their state and country. The United States Supreme Court, as long ago as 1833, stated that: "It is a common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally. . . ." Barlow v. United States, 8 L.Ed 728, 731 (1833). The Department of Revenue will assist taxpayers in determining their tax liability whenever asked. Such assistance is free and readily available. Taxpayer must have had some idea that she had a tax liability, since she initially registered with the Department.

#### IV. Interest and Penalties

RCW 82.32.100 provides, in relevant part, as follows:

If any person fails or refuses to make any return or to make available for examination the records required by this chapter, the department shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax; and to this end the department may examine the books, records, and papers of any such person and may take evidence, on oath, of any person, relating to the subject of inquiry.

As soon as the department procures such facts and information as it is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make a return, it shall proceed to determine and assess against such person the tax and penalties due, but such action shall not deprive such person from appealing to the superior court as hereinafter provided. To the assessment the department shall add, the penalties provided in RCW 82.32.090. The department shall notify the taxpayer by mail of the total amount of such tax, penalties, and interest, and the total amount shall become due and shall be paid within ten days from the date of such notice.

RCW 82.32.050 provides, in relevant part, as follows:

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 as to assessments made on and after May 1, 1965, including assessments for additional tax or penalties due prior to that date shall add thereto interest at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until date of payment. The department shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within ten days from the date of the notice, or within such further time as the department may provide. If payment is not received by the department by the due date specified in the notice, or any extension thereof, the department shall add a penalty of ten percent of the amount of the additional tax found due.

As the statutes above illustrate, the Department is authorized to assess taxes, as well as interest and penalties, against taxpayers who have not filed returns or paid taxes. Such assessments are due by the date specified in the notice. The Department usually gives taxpayers twenty-five to thirty days for payment of assessments, and extensions are readily granted. The statute provides that interest and shall be added to such assessments. The ten percent late penalties here were added only when no payment was made on the assessment by the due date. There was no penalty in the original assessment. Further, the Department is authorized, by statute, as follows:

If a warrant be issued by the department of revenue for the collection of taxes, increases, and penalties, there shall be added thereto a penalty of five percent of the amount of the tax, but not less than five dollars.

RCW 82.32.090. Thus, under the statute, if an assessment is not paid, and a warrant is issued, the Department shall assess a five percent penalty. Warrants further carry interest at the rate of one percent per month. Penalties are calculated only on the unpaid balance of the tax due. Interest also is calculated only on the unpaid balance of tax due. Interest is not calculated on either previous unpaid interest or the penalties. Penalties are not calculated on any interest. In this case, the taxpayer has been assessed only what the laws of the state of Washington require. The Department, as an administrative agency, has no discretion to waive penalties or interest except as provided by statute. The only authority for such waiver is for circumstances beyond the taxpayer's

control. Ignorance of tax law and failure to file tax returns are not such circumstances.

#### V. Other Complaints

Taxpayer has made numerous other complaints, including that she was given no time to appeal the assessment, and that she was not given a copy of the audit before a meeting. Taxpayer was given a copy of the audit at the time it became final, and there is no statutory provision requiring that auditors give taxpayers copies of worksheets prior to the time an assessment is filed. As to taxpayer's complaint that she has had no time to appeal, we point out that the appeal has now been heard. Finally, we point out that taxpayer specifically appealed only the use tax on the feed for her horses, which represents only a part of the use tax due, and less than half of the assessment.

#### DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 24th day of May 1989.