

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. 89-212  
)  
. . . ) Registration No. . . .  
)

**RCW 82.32.060:** REFUNDS, CREDITS AND OFFSETS -- NONCLAIM PERIOD -- STATUTE OF LIMITATIONS WAIVER AGREEMENT. Refund claim made in 1989 for taxes paid in 1983 is barred by RCW 82.32.060. No exception made because taxpayer had executed a Statute of Limitations Waiver Agreement for 1983.

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.

NATURE OF ACTION:

The taxpayer seeks a refund or credit for taxes paid in 1983.

FACTS AND ISSUES:

Roys, Sr. A.L.J.--The taxpayer petitioned for a refund for \$. . . in tax, plus statutory interest. The tax was paid in 1983 on work performed by subcontractors at out-of-state construction sites. The taxpayer stated the work was verified by the State Auditor.

The taxpayer advanced the following reasons why the petition should not be considered untimely:

- 1) The taxpayer had signed a Statute of Limitation Waiver Agreement for the taxable year 1983; and
- 2) The taxpayer was a "National Can" plaintiff.

The taxpayer contends that it appears to be "prudent and fair" to allow a refund in cases where taxes were assessed for a period for which a waiver had been signed. In the alternative, the taxpayer requests an offsetting "credit" against taxes that were paid on February 6, 1989.

#### DISCUSSION:

The statute of limitations waiver agreement signed by the taxpayer contained the following language regarding a claim for refund for any taxes which the taxpayer believed it may have been entitled to:

In signing this waiver agreement the undersigned taxpayer understands and acknowledges that any tax overpayments which occurred during the period of time covered by this waiver are not refundable or creditable and may not be used to offset tax deficiencies unless an application for refund is made for specific identifiable taxes believed to have been overpaid. Such application must be made no later than December 31, 1987 for taxes paid in the year 1983 and must contain a brief explanation and reasonable estimate of the taxes believed to have been paid in error. This information may be supplied below if known at the time of signing.

The language clearly provided that a refund claim would be untimely unless made by December 31, 1987. The fact that the taxpayer was involved in the National Can case does not extend the non-claim period for the taxes at issue.

The Department's position is that under the current version of RCW 82.32.050 and RCW 82.32.060, offsets are not permitted. This position is explained in a published final determination, Det. 85-164A, 1 WTD 1 (1986), ( . . . ). The Department does not have authority to grant a refund of taxes paid in error unless the request is made within the statutory time period provided by RCW 82.32.060. Guy F. Atkinson Co. v. State, 66 Wn.2d 570 (1965).

#### DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 14th day of April 1989.