

Cite as Det. No. 99-106, 20 WTD 146 (2001)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 99-106
...)	
)	Registration No. . . .
)	FY. . . /Audit No. . . .

RULE 100; RCW 82.32.350: SETTLEMENTS. Taxpayers do not have a right to have cases settled under RCW 82.32.350 and Rule 100. Settlement is a discretionary decision of the Department. Settlement is not appropriate under Rule 100(10)(b), when the settlement offer is not based on the merits of the case.

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 settlement of a tax assessment based on the grounds the business is sold and the tax issue is nonrecurring.¹

FACTS:

Munger, A.L.J. -- The Department of Revenue (Department) examined the Taxpayer's records for the period January 1, 1993 through March 31, 1997. An audit disclosed \$. . . in taxes and interest owing. Tax Assessment No. FY. . . in that amount was issued January 28, 1998. The assessment was due February 27, 1998.

The Taxpayer owned and operated a motel . . . and also a deli-market in [Washington]. All income was reported on the same tax registration number. The Taxpayer's errors in reporting were primarily from the deli-market operation. Department records indicate that business was sold September 13, 1997.

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

The Taxpayer assigns no error to the findings in the audit, but rather attributes the tax reporting errors to an honest mistake. By letter dated February 9, 1998 Taxpayer filed this appeal, which states in pertinent part:

I am requesting a settlement of the audit assessment. I sold the business in September 1997, and this makes the issue nonrecurring.

Taxpayer argues that since the business is sold there will be no further tax obligations, therefore the issue is nonrecurring. During the teleconference Taxpayer's representative made a settlement offer of \$20,000. The assessment remains unpaid with a current balance owing of [over \$50,000].

ISSUE:

Is the Taxpayer entitled to settlement when a tax issue is nonrecurring?

DISCUSSION:

The Department of Revenue (Department) is the administrative agency statutorily charged with the responsibility of administering Washington State tax laws. RCW 82.32.300. The Department may enter into a written agreement with any person in relation to any tax liability imposed by Washington State law. RCW 82.32.350. The administrative rule that implements the Department's authority to settle tax controversies is set forth in WAC 458-20-100 (Rule 100).²

Rule 100 grants the Department limited discretion in all settlement cases. Settlement is contingent upon specific criteria set forth in the rule. Under Rule 100(10)(a) settlement may be appropriate when an issue is nonrecurring. The rule explains in pertinent part:

(10) **Settlement.** At any time during the appeal process, the taxpayer or the department may propose to compromise the matter by settlement.

(a) Settlement may be appropriate when:

(i) The issue is nonrecurring. An issue is nonrecurring when the . . . taxpayer's position or business activity has changed so that in future periods the issue under consideration is changed or does not exist. . . .

. . .

(Emphasis added.) Subsection (b) sets forth those situations where settlement is not appropriate:

(b) Settlement is not appropriate when:

(i) The same issue in the taxpayer's appeal is being litigated by the department; or

² Auditor's instructions to Taxpayer included a copy of Rule 100, which details settlement requirements.

- (ii) The taxpayer challenges a long-standing departmental policy or a WAC rule. .
- (iii) The taxpayer presents issues that have no basis upon which relief for the taxpayer can be granted or given. Settlement will not be considered if the taxpayer's offer of settlement is simply to eliminate the inconvenience or cost of further negotiation or litigation, and is not based upon the merits of the case; or
- (iv) The taxpayer's only argument is that a statute is unconstitutional; or
- (v) The taxpayer's only argument is financial hardship. Financial hardship issues are properly discussed with the department's compliance division.

(Emphasis added.) While Rule 100(a) provides that settlement may be appropriate for a nonrecurring issue, we construe the Rule as conveying no absolute "right" to have a case settled.

Addressing subsection (b), Rule 100 sets forth a limited number of very specific circumstances under which settlement will not be considered. In this instance the Taxpayer's sole basis for requesting a settlement is that the business is sold and therefore the tax issue is nonrecurring. The Taxpayer does not dispute the results of the tax assessment. Moreover, the Taxpayer makes no substantive argument in support of a settlement. As Rule 100 clearly states, settlements are not appropriate if not based on the merits of the case.

The Taxpayer appears to have been a well intentioned and a conscientious tax citizen. However, based on the evidence and testimony submitted, we find the Taxpayer's settlement offer is not based on the merits of the case and therefore not appropriate for settlement.

Accordingly, the petition for relief is denied.

DECISION AND DISPOSITION:

The Taxpayer's petition is denied.

Dated this 28th of April, 1999