

Cite as Det. No. 01-005, 20 WTD 410 (2001)

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. 01-005
)	
...)	Registration No. . . .
)	Docket No. . . .
)	FY. . . /Audit No. . . .

CHAPTERS 82.32 AND 82.32A RCW: EXCISE TAXES – CREDITING OR COMPENSATING TAXPAYER FOR COSTS INCURRED. The Department cannot grant a credit, or otherwise compensate, a taxpayer for out-of-pocket expenses the taxpayer incurs in connection with a Department examination of the taxpayer's books and records, or in connection with appeals within the Department.

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:

A taxpayer requests a credit for amounts his CPA charged him for services in procuring post-assessment adjustments which substantially reduced the amount of tax and interest assessed.¹

FACTS:

Prusia, A.L.J. -- The taxpayer, . . . , is a sole proprietor engaged in business in Washington as a general contractor.

The Audit Division of the Department of Revenue (Department) examined the taxpayer's books and records for the period January 1, 1994 through September 30, 1997. The examination resulted in additional excise taxes and interest owing, totaling \$. . . (\$. . . tax plus \$. . . interest). An assessment was issued in that amount on December 4, 1998.

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

On December 29, 1998, the taxpayer paid the Department \$. . . of the assessment, and requested the Department accept that as payment in full of the assessment. The Department did not accept the payment as payment in full, and the taxpayer requested adjustments in the assessment.

In October 1999, the Audit Division issued an adjusted assessment, reducing the assessment to \$. . . taxes and interest, based upon documentation assembled and provided by the taxpayer's CPA. This resulted in a refund to the taxpayer of \$. . . .

Subsequently, the taxpayer, through his CPA, submitted additional documentation. He also requested a credit in the amount of the CPA's charges to the taxpayer in relation to the two post-audit adjustments, totaling \$. . . in 1998 and \$. . . in 1999. On the basis of the additional documentation, the Audit Division further adjusted the assessment, reducing the assessment by \$. . . taxes and interest,² and refunded that amount in March 2000. The Audit Division rejected the requested credit for CPA charges.

The taxpayer petitions for refund. He asks the Department to adjust the assessment by granting a credit in the amount of the CPA charges, and to refund that amount. The petition, prepared by the CPA, argues the taxpayer should be granted this relief because:

The Department [']s refusal to accept his first payment in full generated a second audit adjustment. This adjustment came from the services of my firm . . . [Taxpayer] was billed for the two audit adjustments because of the Department of Revenue's errors. We feel that it is only proper that the Department reimburse his extra audit expense. Had the auditor accepted the first analysis we could have been done with this case in 1998. BUT it dragged on into 2000, with much more additional fees than should have been necessary.

We understand how he should be liable for his first defense of the audit. However, his second and elongated re-negotiation for his refund was all, OR primarily, caused by the Auditor's Office. Accordingly, we request relief for this costs.

In response to the petition, the Audit Division submitted copies of memoranda from its files stating that the taxpayer's records at the time of the initial audit investigation were unorganized and haphazard, the taxpayer was unable to explain the meaning of some figures relating to his construction draws, and the Audit Division based the original assessment on the evidence provided by the taxpayer. After the assessment was issued, the taxpayer's CPA became involved, and the Department's auditors met with the CPA several times to discuss possible adjustments and the documentation required. Their interaction related to the first (October 1999) adjustment occurred over a period of several months. Sometimes the information was forthcoming, and other times it took multiple inquiries to get the records. The second adjustment (March 2000) was necessitated when the taxpayer's CPA brought additional records to the Audit Division's attention, with respect to what were in essence four more invoices that had not been

² As finally adjusted, the assessment was for \$. . . excise tax plus interest.

justified due to lack of documentation. In short, the Audit Division asserts that the CPA expenses were primarily due to the taxpayer's poor record keeping, which required his CPA to spend considerable time interpreting the records and providing necessary documentation to the Audit Division.³

In the above teleconference, the taxpayer stated adequate records were available to the auditor during the audit investigation, and the auditor had the opportunity to review them when the auditor examined records at the taxpayer's office. The taxpayer feels the Audit Division unreasonably refused to look at what the taxpayer furnished, and put the burden on him to hire a CPA to put the invoices in a more recognizable form. The taxpayer acknowledges the records he originally made available were difficult to go through, but states that is the nature of a general contractor's records; there are sometimes hundreds of pieces of paper placed in a file on one project. The taxpayer states he offered the December 1998 payment of \$. . . as payment in full, to save himself and the Department the additional time and expense of going through every invoice, but the Audit Division refused the offer, and required he prove he paid sales tax on every invoice. He believes the fact that his CPA subsequently was able to establish that the assessment was too high demonstrates the Audit Division was unreasonable in refusing the offer.

Following the above telephone conference, the taxpayer submitted a supplemental request for credit or reimbursement for amounts his CPA charged him for representing him in this administrative appeal.

ISSUE:

Can the Department grant the taxpayer a credit for amounts his CPA charged him for services related to obtaining post-assessment adjustments or related to this administrative appeal?

DISCUSSION:

Laws enacted by the legislature and rules adopted by the Department establish the Department's authority, and the taxpayer's responsibilities, with respect to the audit investigation that is the subject of this appeal.

The Department is authorized to examine a taxpayer's books and records bearing upon the amount of any tax payable or upon the correctness of any return. RCW 82.32.110. If upon examination of any returns or from other information obtained by the Department it appears that a tax has been paid less than that properly due, the Department is required to assess the additional amount found to be due plus interest on the tax. RCW 82.32.050.

³ The Audit Division memoranda state two reasons for additional delay between the original assessment and completion of the adjustments. They state the CPA was very slow in getting back to the Department to complete the first adjustment, for which the CPA cited health problems. The Department's processing of the first adjustment was delayed because the Department had just adopted a computer-based system by which audits were to be formulated, and a large backlog of assessments awaiting processing had built up.

To ensure consistent application of the revenue laws, taxpayers have certain responsibilities under chapter 82.32 RCW, including the responsibility to keep accurate and complete business records. RCW 82.32A.030(3). RCW 82.32.070 provides, in pertinent 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 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 proceeding, 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.

WAC 458-20-254 (Rule 254) repeats and clarifies these taxpayer responsibilities. Rule 254 provides, at subsection (2)(a), that “[i]t is the duty of each taxpayer to prepare and preserve all books of record in a systematic manner conforming to accepted accounting methods and procedures.”

[1] There is no provision, in either laws or Department rules, for the Department to grant a credit, or otherwise compensate, a taxpayer for out-of-pocket expenses the taxpayer incurs in connection with a Department examination of the taxpayer’s books and records, or subsequent appeals within the Department. The Department has no discretionary authority to grant a credit, or otherwise compensate taxpayers, for such expenses. As an administrative agency, the Department’s authority is limited to that granted by statute. See Det. No. 87-300, 4 WTD 101 (1987); Det. No. 86-238, 1 WTD 125 (1986).

The taxpayer argues three sections of the revenue statutes are properly interpreted as authorizing the Department to credit or compensate a taxpayer for expenses the taxpayer incurred in obtaining favorable adjustments in an audit assessment. The sections the taxpayer cites are RCW 82.32A.020(3), 82.32.060(5), and 82.32.330(4)(d).

RCW 82.32A.020 sets out taxpayer rights, and subsection (3) provides:

The right to redress and relief where tax laws or rules are found to be unconstitutional by the final decision of a court of record and the right to prompt administrative remedies in such cases.

We do not read that provision as granting the Department authority to grant the monetary relief requested. It appears to reference administrative action to correct a tax liability following a final court decision that rules a Department law or rule unconstitutional. That is not the situation presented in this appeal.

RCW 82.32.060(5) provides:

Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer shall be paid in the same manner, as provided in subsection (4) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

We do not read that provision as giving the Department authority, or as implying that the Department has authority, to grant the monetary relief requested. . . . RCW 82.32.060(5) addresses the Department's payment of costs awarded a taxpayer by a court. The present appeal is not a court proceeding. It is an administrative appeal within the Department. RCW 82.32.060(5) has no applicability to the audit investigation, assessment adjustments, or this appeal. . . .

RCW 82.32.330(4)(d) has no applicability either. It relates to the Department's reimbursement of expenses for the production of data, materials, and documents incurred by the person in possession of those items when the Department discloses confidential taxpayer information about the possessor to a third party in specified situations. It is limited to that narrow circumstance.

Lacking the authority to grant the relief the taxpayer seeks in his petition, we must deny the petition.

Based upon the information provided by the taxpayer and the Audit Division, it appears the taxpayer failed to maintain his records in a systematic manner as required by Rule 254. However, we need not, and do not, reach the merits of the taxpayer's contention that he incurred the expenses solely or primarily because of Department errors or intransigence, or the Audit Division's counter-contention that the taxpayer's poor record keeping was the cause of him incurring the expenses.

DECISION AND DISPOSITION:

The petition for adjustment and refund is denied.

Dated this 19th day of January, 2001.