

Cite as Det. No. 01-085, 21 WTD 119 (2002)

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. 01-085
)	
...)	Registration No. . . .
)	FY . . . /Audit No. . . .
)	Docket No. . . .

[1] RULE 229: SALES TAX – REFUND OF -- STATUTE OF LIMITATIONS – EXTENSION OF -- LIMITATION. Where a taxpayer paid sales tax to vendors on supplies for which it could have claimed an exemption, the statute of limitations on its refund claim is, effectively, extended when the taxpayer pays a tax assessment covering an audit period in which the “overpayment” is actually made. The amount of any refund, however, is limited to the amount of the tax assessment.

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:

Refund claim for sales tax allegedly overpaid beyond the statute of limitations.¹

FACTS:

Dressel, A.L.J. -- . . . (taxpayer) manufactures [computer components]. Its books and records were examined by the Department of Revenue (Department) for the period January 1, 1990 through December 31, 1993. As a result a tax assessment was issued in the amount of \$ This assessment was amended during 1995 to reflect tax due of \$. . . and interest of \$ The taxpayer paid the amended assessment in July, 1995.

Subsequent to the payment of the assessment, the taxpayer discovered various sales tax overpayments during the 1992 and 1993 time periods. The taxpayer filed a timely refund claim

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

and received a total tax credit of \$² During an audit of the taxpayer by the Department for a later period, the taxpayer brought to the Department's attention the fact that, in addition to those in 1992 and 1993, the taxpayer had made similar overpayments in 1990 and 1991. It requested of the Department's Audit Division (Audit) that it be credited for those overpayments like it had been credited for those made in 1992 and 1993.

Audit, however, declined to give the claimed credit for 1990 and 1991. Its explanation is contained in a February 16, 2000 letter, that reads, in part: "The original audit assessment has been reduced by the two post assessment adjustments to a net tax credit of \$17,905.00. No further credit can be allowed for taxes overpaid in the years 1990 and 1991; because the audit assessment that included those years is now in a negative balance."

In the present proceeding, the taxpayer appeals this refund or credit denial by the Department. It contends that it paid taxes in excess of those properly due for the audit period and that, under the authority of *Paccar, Inc. v Dept. of Revenue*, 135 Wn.2d 301, 957 P.2d 669 (1998), it is entitled to a credit for excess taxes paid on a deficiency assessment for a period prior to the statutory four year refund period.³ It contends that because it paid the assessment in 1995 and formally requested a refund of overpaid taxes in 1999,⁴ its request was within the four year statute of limitations prescribed in RCW 82.32.060 and that, per *Paccar*, it may validly claim a refund for taxes overpaid in 1990 and 1991. This is because those years were included in the audit period of the tax assessment that it timely appealed.

The taxpayer's claim for credit in the years 1990 through 1993, incidentally, is based on its allegation that it paid sales tax on items it purchased for resale, as well as on packaging materials, supplies used out-of-state, and chemicals. On all of these purchases, the taxpayer claims, it could have taken valid exemptions at the times of the transactions.⁵

Audit further explained that its denial of the '90-'91 refund was based, in part, on Rule 229. It stated, in effect, that the rule provides different tracks for overpayments of tax *assessments*, as opposed to overpayments of tax *returns*. After the second amended assessment was issued, the Department owed a net credit to the taxpayer. At that point then, says Audit, there was no overpayment of the tax assessment. Thus, there was no *date* of overpayment from which the statute of limitations began to run. Otherwise, according to Audit, the '90-'91 period was clearly beyond the four year statute of limitations, and so the claim for refund for that period was time barred.

ISSUE:

² The Department gave this tax credit as the second post assessment adjustment (amended assessment) to the original assessment.

³ The taxpayer refers also to *Puget Sound Power & Light v. State of Washington*, 70 Wn.2d 493, 424 P.2d 634 (1967); and *Det. No. 98-226*, 18 WTD 316 (1999).

⁴ The taxpayer followed up its oral 1997 request for a 1990-1991 tax credit with a written one to the Audit Division in 1999.

⁵ Audit, apparently, agrees that the exemptions have a legitimate basis in that it allowed them for 1992 and 1993.

Is a refund request timely for taxes allegedly overpaid in 1990 and 1991 when an audit was conducted that included that period, an amended assessment was issued in 1995, and the taxpayer's refund request was made in 1999?

DISCUSSION:

In *Paccar v. Dept. of Revenue*, *supra*, the Supreme Court stated, at 321: "Under RCW 82.32.060, a taxpayer may receive a refund of excess taxes paid upon a deficiency assessment calculated for a period prior to the statutory four-year refund period if the taxpayer files a petition for refund within four years of actual payment of the deficiency assessment." The court applied that theory earlier, where it said:

As the trial court determined, because Petitioner PACCAR overpaid its taxes in the years 1977 to 1981, it should have received a refund instead of an assessment of additional taxes. Consequently, the entire amount PACCAR paid as a result of the deficiency assessment, \$176,205.00, was paid "in excess of the amount properly due." The applicable versions of RCW 82.32.060 provide that petitions for refunds are timely if filed within four years of the year in which the tax was paid. PACCAR filed its petition in 1985, within four years of its 1983 payment of the deficiency assessment. Its petition was timely filed.

Paccar at 320. Analogizing *Paccar* to the instant case, we observe that the taxpayer overpaid its taxes in the years 1990 to 1993, so it should have received a refund instead of an assessment of additional taxes. Consequently, the entire amount the taxpayer paid as a result of the deficiency assessment, \$109,134, was paid "in excess of the amount properly due." "The applicable versions of RCW 82.32.060 provide that petitions for refund are timely if filed within four years of the year in which the tax was paid." The taxpayer filed its petition in 1999, within four years of its 1995 payment of the deficiency assessment. Thus, as was *Paccar's*, the taxpayer's petition appears to have been timely filed.

Audit, however, refused to add 1990 and 1991 to 1992 and 1993 as years for which it would award credit, even though, like '92 and '93, '90 and '91 were included in the audit period covered by the original tax assessment. This is because, it says, after two adjustments, the "assessment" has a negative balance.

The three leading cases on the subject of offsets and the statute of limitations are *Paccar v. Dept. of Revenue*, *supra*; *Puget Sound Power & Light Co. v. State of Washington*, 70 Wn.2d 493 (1967); and *Det. No. 98-226*, 18 WTD 316 (1999). In all three, taxpayers received refunds or credits for taxes paid beyond the statute of limitations. As near as we can tell, though, *none* of those refunds exceeded the amount of the deficiency tax assessment.

In the instant case, after two amended assessments of the original deficiency tax assessment, the taxpayer has a net credit of \$ In other words the taxpayer has already received that much more in credit than the amount it paid in 1995. In asking for further credit to the tune of \$. . . ,

the taxpayer is requesting a refund that exceeds the payment it made that, effectively, allowed it to extend the statute of limitations beyond its usual four year reach, in this case to 1990.

[1] Although it is not apparent that the taxpayers in the three leading cases cited above even asked for a refund that exceeded the tax deficiency assessment that extended the statute of limitations, we are not inclined to allow one here even though such a request has been made. Nowhere in the texts of those decisions is there an indication that the ruling bodies would have given a refund greater than the tax deficiency assessment had one been requested. Further, the three decisions focus on the phrase in RCW 82.32.060, a tax paid “in excess of that properly due.” They, clearly, have in mind the amount of the tax deficiency assessment. See *Paccar v. Dept. of Revenue*, *supra*, at 320; *Puget Sound Power & Light v. State of Washington*, *supra*, at 497; and *Det. No. 98-226*, *supra*, at 318. Their decisions, which have the effect of limiting the refund to the amount of the tax deficiency assessment, are consistent with RCW 82.32.060 and its authority for a refund of an “excess amount.” From a practical point of view, such a limitation is logical in that the only overpayment that occurred in the four year statute of limitations period was the payment of the tax deficiency assessment. The other overpayments occurred outside that period. While the Supreme Court, in our view, gave a broad interpretation of RCW 82.32.060 when it extended the statute of limitations to years of an audit period that were, actually, outside that statute,⁶ we are disinclined to broaden that interpretation even further by allowing a refund that exceeds the amount of the tax deficiency assessment.

The taxpayer has suggested that Audit improperly gave credit for the ‘92-’93 overpayments in that it issued a second amended assessment, thereby using all credit available from the tax deficiency assessment. It says Audit should have granted the refund using a mechanism other than an amended assessment. We disagree. The ‘92-’93 overpayments fit within the 1990-1993 audit period that yielded the tax deficiency assessment, so why shouldn’t they be addressed in an amendment of that assessment? Had Audit known of the overpayments at the time of the audit, they would have been factored into the original assessment. Furthermore, at the time Audit was advised of the ‘92-’93 overpayments, it had no idea that there were ‘90-’91 overpayments as well. Audit’s action in crediting the taxpayer for its ‘92-’93 overpayments was reasonable and not contrary to any law or regulation.

DECISION AND DISPOSITION:

The taxpayer’s petition is denied.

Dated this 14th day of June, 2001.

⁶ See *Paccar v. Dept. of Revenue*, *supra*.