

Cite as Det. No. 15-0043, 37 WTD 095 (2018)

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>
Assessments of)	
)	No. 15-0043
)	
...)	Registration No. . . .
)	

RCW 82.32.050(4); Rule 230(3); Rule 101(14) – DEFICIENT TAX OR PENALTY PAYMENTS – STATUTORY LIMITATION ON ASSESSMENTS. The statutory limitation on assessments does not bar the assessment of taxes more than four years after the close of the tax year when Taxpayer registered with the Department but asked the Department to close its account prior to the Department’s contact.

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.

Callahan, A.L.J. – An out-of-state corporation (“Taxpayer”) protests the Department of Revenue’s (the “Department”) assessment made more than four years after the close of the tax year in which the tax was incurred. Taxpayer argues that it was a registered taxpayer under RCW 82.32.050(4)(a) and WAC 458-20-230(3) (Rule 230) because it registered with the Department in 1999, notwithstanding that it asked the Department to close its account prior to the Department’s contact. We deny the petition.¹

ISSUE

Under RCW 82.32.050(4) and Rule 230, does the statutory limitation on assessments bar the assessment of taxes more than four years after the close of the tax year when Taxpayer registered with the Department but asked the Department to close its account prior to the Department’s contact?

FINDINGS OF FACT

Taxpayer is an out-of-state corporation that sells software to the ophthalmology industry. Taxpayer also provides training to its customers on how to use the software. Taxpayer does not have an office in Washington but employs an employee based in Washington to provide training to its Washington customers. Taxpayer registered under the [Unified Business Identifier (UBI)]

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

system with the Department on December 27, 1999, with an effective open date of December 15, 1999.

On March 30, 2000, Taxpayer's accountant . . . contacted the Department and asked it to close Taxpayer's account with the Department. The Department granted Taxpayer's request and closed its account effective March 30, 2000. Taxpayer filed no tax returns with the Department. Taxpayer filed returns with employment security from 2000 through June 30, 2002, during a period when it had an employee based in Washington.

[The Department's] Compliance [Division (Compliance)] sent an inquiry letter dated December 28, 2011, along with the Washington Business Activities Questionnaire ([Questionnaire]) to Taxpayer. Based on Taxpayer's answers on the [Questionnaire] and Taxpayer's activities in Washington, Compliance determined that Taxpayer had nexus with the state. Compliance extended the audit period beyond the four-year statutory limitation pursuant to RCW 82.32.050 and Rule 230(3) because it determined that Taxpayer was not registered with the Department at the time of the audit.

On November 6, 2013, Compliance issued two assessments against Taxpayer. The first one, document no. . . . , covered the period of January 1, 2006, through December 31, 2007, in the amount of \$ The second one, document no. . . . , covered the period of January 1, 2008, through June 30, 2012, in the amount of \$ Taxpayer did not pay the assessments and petitioned the Department's Appeals Division for correction of the assessments.

Taxpayer does not dispute that it has nexus with Washington and that it owes taxes to the state. However, Taxpayer contends that the Department should cancel the assessments for tax years from 2006 to 2008. Taxpayer argues the assessments for tax years 2006 to 2008 are barred by the limitation on assessments under RCW 82.32.050(4) and Rule 230(3). Taxpayer argues that it was not an "unregistered taxpayer" for purposes of RCW 82.32.050(4) and Rule 230(3) because it voluntarily registered with the Department in 1999.

ANALYSIS

Taxpayer asserts that the assessments for 2006 through 2008 were barred by the limitation on assessments, and are therefore invalid. RCW 82.32.050(4) provides limitations on tax assessments as follows (in pertinent part):

No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except **(a) against a taxpayer who has not registered as required by this chapter**, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(Emphasis added).

Under RCW 82.32.030, Taxpayer was required to apply for and obtain a registration certificate from the Department. WAC 458-20-101(14) recognizes that closing a taxpayer's account has the effect of rescinding the taxpayer's tax registration. Accordingly, under the plain meaning of RCW 82.32.050, the period for an assessment was not limited to four years after the close of the tax year for a taxpayer that was not registered as required by RCW Chapter 82.32. Under Rule 230(3), assessments against unregistered taxpayers are extended to seven years.

Although the applicable rules discuss voluntary registration for purposes of the UBI system, the rules are silent as to the effect of the rescission of a tax registration after someone voluntarily registered. However, the rules can be read to be consistent with the plain meaning of RCW 82.32.050.

For example, Rule 230 explains statutory limits on assessments as follows (in pertinent part):

(3) Unregistered taxpayer. Except for evasion or misrepresentation, **if the department of revenue discovers any unregistered taxpayer doing business in this state, the department will assess taxes, interest, and penalties for a period of seven years plus the current year.** If a taxpayer voluntarily registers before being contacted by the department, assessments will not exceed four years plus the current year, provided the taxpayer has made a good faith attempt to report correctly and there is no evidence of intent to evade tax under RCW 82.32.050. It will be presumed that a taxpayer has registered with the department if the taxpayer voluntarily files for an identification number under the Unified Business Identifier (UBI) system prior to any contact from the department of revenue.

(Emphasis added.)

Because Taxpayer's registration was rescinded, and Taxpayer was doing business in this state, it was unregistered when contacted by Compliance. Rule 230(3) does not bar assessments against Taxpayer more than four years after the close of the tax year under such circumstances, and Compliance did not err in assessing Taxpayer for periods 2006 forward. We find an insufficient basis under the rule for limiting the statutory assessment period when Taxpayer had previously registered under the UBI system but its tax registration was subsequently rescinded, and it was doing business in this state when contacted by Compliance. In addition, there is no evidence Taxpayer had active accounts with any UBI participating agencies when contacted by Compliance.

Taxpayer did not report its taxes and file its tax returns since its inception in December 1999 until Compliance contacted it. By requesting that the Department close its account in 2000, Taxpayer's registration was void, and Taxpayer was unregistered prior to Compliance's contact. Therefore, because Taxpayer was unregistered, RCW 82.32.050(4) does not bar assessments against Taxpayer more than four years after the close of the tax year. We conclude that [Compliance] properly assessed tax against Taxpayer for the period from January 1, 2006, through June 30, 2012. We deny the petition.

DECISION AND DISPOSITION

We deny Taxpayer's petition.

Dated this 25th day of February 2015.