

Cite as Det. No. 93-114, 13 WTD 249 (1994).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment)	
of Corporate Officer Liability)	No. 93-114
of:)	
)	
. . .)	Registration No. . . .
)	Warrant No. . . .
)	Warrant No. . . .

- [1] RULE 217; RCW 82.32.1457: INDIVIDUAL LIABILITY FOR CORPORATION'S FAILURE TO REMIT COLLECTED SALES TAX -- CONTROL OR SUPERVISION OF SALES TAX FUNDS. When a corporation collects but fails to remit collected sales tax to the Department of Revenue, the corporate officers who had responsibility for active executive management of the corporation or for legal custody of all corporate monies have "control or supervision of retail sales tax funds" collected and held in trust under RCW 82.08.050.
- [2] RULE 217; RCW 82.32.145: INDIVIDUAL LIABILITY FOR CORPORATIONS'S FAILURE TO REMIT COLLECTED SALES TAX -- RESPONSIBILITY FOR FILING EXCISE TAX RETURNS. A bookkeeper who has the responsibility to file the corporation's excise tax returns with the Department of Revenue is a corporate officer or other person who may be liable under RCW 82.32.145.
- [3] RULE 217; RCW 82.32.145: INDIVIDUAL LIABILITY FOR CORPORATION'S FAILURE TO REMIT COLLECTED SALES TAX -- WILLFUL FAILURE TO PAY THE TAX. A bookkeeper who drafts and signs corporate checks only at the instruction of others does not willfully fail to pay the sales tax to the Department of Revenue.
- [4] RULE 217; RCW 82.32.145: INDIVIDUAL LIABILITY FOR CORPORATION'S FAILURE TO REMIT COLLECTED SALES TAX --

WILLFUL FAILURE TO PAY THE TAX. A corporate officer who has responsibility for active executive management of the corporation or for legal custody of all corporate monies, and who either pays or instructs a corporate employee to pay other creditors without remitting the sales tax to the Department of Revenue, has willfully failed to pay the tax.

- [5] RULE 217; RCW 82.32.145: INDIVIDUAL LIABILITY FOR CORPORATION'S FAILURE TO REMIT COLLECTED SALES TAX -- CIRCUMSTANCES BEYOND THE CONTROL OF THE TAXPAYER. A corporate officer or other person who is liable under the provisions of RCW 82.32.145 may not avoid that liability by claiming "reasons beyond their control" where the taxpayer deposits the tax more than once with a bank that refuses to allow the taxpayer to pay the sales tax to the Department of Revenue.

- [6] RCW 82.32.145, 82.14.050: INDIVIDUAL LIABILITY FOR CORPORATION'S FAILURE TO REMIT COLLECTED SALES TAX -- INDIVIDUAL LIABILITY FOR LOCAL SALES TAX. A corporate officer or other person may also be liable for collected, but unremitted, local sales tax.

- [7] RCW 82.32.145, 82.32.080: INDIVIDUAL LIABILITY FOR CORPORATION'S FAILURE TO REMIT COLLECTED SALES TAX -- APPLICATION OF TAXPAYER'S PAYMENTS TO INTEREST AND PENALTIES. The Department of Revenue applies a taxpayer's payment to interest and penalties, and then to tax; a corporate officer or other person cannot reduce his or her liability under RCW 82.32.145 by directing the Department of Revenue to apply payments by the corporation to tax before interest and penalties.

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:

Five corporate officers or employees of a corporate taxpayer, and their marital communities, petition for relief from tax asserted against them in their individual capacities for retail sales tax collected but not remitted by the corporation to the state.

FACTS AND ISSUES:

Gray, A.L.J. -- The taxpayer was a corporation that ceased doing business in this state in December 1991. The Department of Revenue (Department) issued and filed tax Warrants Nos. . . . (covering the period May 1, 1990 to July 31, 1991) and . . . (covering the months of September, November and December 1991) against the corporation for unpaid taxes, including collected but unremitted retail sales tax. The Department found no corporate assets to satisfy the tax debt.

[In June 1992], the Department mailed Notices of Assessment of Individual Corporate Liability to five corporate officers and employees ("A", "B", "C", "D", and "E"), and their spouses (hereinafter, the "officers"). The amount of retail sales tax assessed against the individuals and their marital communities was \$ The assessment included delinquency penalties . . . and a 5% tax warrant penalty The total amount assessed against the individuals was \$¹ The Department concluded that the officers were liable because "A", "B", and "C" were listed as owners on the state's Master Business Application (that was filled out by the taxpayers's attorney), all five were authorized to write checks on the corporate bank account, all five had actually signed checks drawn on the corporate bank account, and "D" (the bookkeeper) completed and signed the state excise tax returns.

In their petition for correction of assessment, the officers set forth five reasons for relief:

1. The amount assessed includes taxes other than state sales tax that may not be asserted against the officers in their individual capacities. WAC 458-20-217(6)(g).

2. The assessment does not reflect the payment of \$. . . in August 1991 for April 1991 sales tax.

3. The officers were neither responsible for filing returns or payment of collected retail sales tax, nor were they in control of or supervised the collection of retail sales tax. WAC 458-20-217(6)(e).

4. No officer willfully failed to pay, or cause to be paid, the collected retail sales tax. WAC 458-20-217(6)(d).

¹The Department reduced the amount of the assessment against the individuals; in an earlier assessment, the amount was \$

5. Circumstances beyond the control of the officers caused non-payment of the collected sales tax; specifically, the bank's foreclosure of existing security interests in all assets.

Although none of the five officers appeared at the hearing, all five officers submitted testimony in signed declarations.²

"D" said that she was the bookkeeper for the corporation, had no financial interest in the corporation and received nothing from it other than her normal wages. As part of her duties, she prepared and mailed every monthly state excise tax return until the corporation ceased doing business in December 1991. She said that, in April 1991, she was told by the corporate officers that the bank (. . .) had refused to extend any additional credit to the corporation and had required that all corporate assets be liquidated, the money to be turned over to the bank. She said that thereafter, she only wrote checks as directed by the bank officer in charge of the liquidation or at the direction of the corporation's attorney. [The bookkeeper] said she made "every effort to pay the state sales tax but my efforts were thwarted by the periodic sweeps of our account by the bank to pay the delinquent and defaulted debt." She specifically declared that

[m]oney earmarked for sales tax would be taken by the bank pursuant to their security interest in the accounts receivable as well as all other assets. The bank made it clear that they would tolerate no misappropriation of their funds and to the best of my knowledge all funds were turned over to the bank except for wages and necessities which the bank allowed.

. . . .

At all times, I did whatever I could to see that the sales tax was paid. However, [the Bank] made it clear, under no uncertain terms, that their claim to the money was superior to all other creditors. Since April, 1991, we were simply liquidating their inventory and collecting their accounts. When we paid the August 1991 tax debt it was due solely to the bank's okay after a tremendous effort on our part to liquidate inventory.

"D" also alleged mathematical errors in the computation of the assessment. She also said she paid the March 1991 tax by a

²See, RCW 9A.72.085.

specific check number and dollar amount, and claimed that a check written in August 1991 was proof of payment of \$. . . toward the April 1991 balance.

"B" declared that he was an initial incorporator and shareholder of the taxpayer. He served as secretary-treasurer until mid-January 1991 when he sold his interests to "A" and resigned his position. He succeeded the business manager who left in August 1990, working as the manager until mid-January 1991 when he left the corporation altogether. He declared that he made sure that all sales taxes were paid to the state.

"A" declared that he was an initial incorporator and shareholder of the taxpayer and served as president until January 1992 when he resigned. He said he did not know of any problem with the sales taxes "until the monthly statements for Spring of 1991 were finally prepared in August, 1991," and that he "relied on the younger members of the Board to keep me informed since I was unable to check up on the company myself." "A" was hospitalized for a period of time in the Spring of 1991. He specifically denied any involvement with or responsibility for the collection or remittance of the sales tax, and declared that some of the staff

were suppose [sic] to prepare statements each month for the bank. This would give me an idea of what was going on. For some reason, the statements were not being prepared beginning in 1991 and I had a difficult time getting any cooperation from the people working there.

"C" declared that he was an initial incorporator and shareholder of the taxpayer and that he served as vice-president until January 1992, at which time he became president. He also declared that he did not "participate" in the management of the taxpayer, except to "pour in our savings" and to attend shareholders meetings. He denied any involvement with or responsibility for the collection or remittance of the sales tax; "C" said he had no idea of any problem with the sales tax until the monthly statements for Spring 1991 were "finally prepared in August, 1991."

If I had known the sales tax was not being paid, I would have asked the foreclosing bank to hold out sales tax from the accounts the amount necessary to pay the tax. When I found out about the tax situation, I ordered that money be paid to the Department of Revenue, however, the bookkeeper [sic], "D", informed me that we did not have any money because it had been taken out of our account by the bank.

.

In April, 1991, [the Bank] informed me that because they had not received any statements and because our debt exceeded the value of collateral, the bank needed to call in our loan. I was completely shocked. I tried to reach "B", but he refused to rerturn [sic] my calls. In fact, "B" and I had not spoken since January when he walked out. The bank required that we continue to sell the inventory and put all proceeds in the "control account" where the money would be periodically swept for payment of the outstanding debt. The bank had a security interest in the inventory, equipment [sic], accounts receivable and the proceeds of same, so we had no choice but to comply. Since I was not in charge of collecting or remitting sales tax, it never occurred to me that a problem could arise with the bank's mandate.

"E" was an employee of the taxpayer, stocking lumber in the yard, until December 1990 when he was asked to become manager. He remained manager until July 1991 "but at no time did I ever control the finances or even know what they were. My duties involved obtaining sales, seeing to the delivery of lumber and hardware and dealing with creditors." He had to ask "D" if the taxpayer could make purchases; her answers depended

upon factors I knew nothing about. I believe she would have to ask permission of the bank. These conditions were so difficult to work with that I quit in July, 1991.

I was not responsible to [sic] filing state sales tax returns and know nothing about them.

All of the officers swore their respective spouses had nothing to do with the taxpayer other than being identified as a spouse on loan documents. "C and E" swore they had nothing to do with the collection or remittance of the sales tax.

Under the corporate by-laws (a copy of which was provided by the taxpayer's attorney), the president "shall have active executive management of the operations of the Corporation" and has specific power with regard to corporate funds and loans of those corporate funds. The vice-president has the power to act in the absence or disability of the president, and "shall perform such other duties as these Bylaws may provide or the Board of Directors may prescribe." The by-laws do not contain any additional duties for the vice-president and there is no indication of any Board imposed duties. The secretary attends meetings of the shareholders and the Board of Directors, keeps minutes, is the

custodian of the records of the Corporation, gives notices, and performs other duties as provided in the by-laws or as the Board requires. The treasurer:

shall keep correct and complete records of account, showing accurately at all times the financial condition of the Corporation. He shall be the legal custodian of all moneys, notes, securities, and other valuables that may from time to time come into the possession of the Corporation. He shall immediately deposit all funds of the Corporation coming into his hands in some reliable bank or other depository to be designated by the President and shall keep this bank in the name of the Corporation. He shall furnish at meetings of the Board of Directors, or whenever requested, a statement of the financial condition of the Corporation, and shall perform such other duties as these Bylaws may provide or the President may prescribe. The treasurer may be required to furnish bond in such amount as shall be determined by the Board of Directors.

Another provision of the by-laws required all corporate checks to be signed by the president or by any two of the vice-president, secretary or treasurer.

The taxpayer's attorney provided the Department with "C's" written permission to discuss the taxpayer's sales tax debt with [the Bank] and for [the Bank] to discuss the foreclosure and liquidation of the taxpayer's loan with the Department.³

"F", a vice-president of [the Bank] and the loan officer who handled the loan matters with the taxpayer, said that while it was true that the taxpayer was required to deposit funds into the control account, at no time, to his recollection or as noted by his file, did the bank exercise control over advances against the line of credit other than through "normal advance parameters." According to "F", the recipient of a commercial loan has a line of credit against which he may borrow up to a certain amount. However, that fact alone does not mean that the customer is entitled to the full amount of the loan. Where the loan is secured by the accounts receivable and the inventory, the amount that may be borrowed is established by a "borrowing base," basically a factor determined by the amount of the accounts receivable and the inventory. "F" said that any commercial borrower would automatically have a control account established,

³On the authorization, [C] is identified as President.

and this taxpayer was no exception; i.e., the control account existed before April 1991.

The purpose of a control account is to allow the bank to compare the amount of receivables collected to the total amount of monthly account receivables identified by the customer. When the bank swept the control account, it credited the taxpayer's debt by that amount. All amounts the customer received were to go into the control account. The bank allows a customer to request amounts to be transferred from the control account to the customer's general checking account, without regard to (or even knowledge of) the purpose to which the money will be put. The money could be used to pay creditors or to take a vacation. The criterion was whether the customer had sufficient collateral (accounts receivable and inventory) for the funds to be transferred from the control account to the checking account.

"F" said that his file contained a packet approximately one-half inch thick of requests for transfers of funds from the control account to the checking account between April 1, 1991 and November 8, 1991. Between April 1, 1991 and April 15, 1991, alone, the taxpayer requested, and obtained, amounts of \$. . . from the control account to the checking account. When "F" reviewed the file, he found that the taxpayer's line of credit was in place until December 1, 1991, without restrictions on further advances.

DISCUSSION:

Generally speaking, the main reason why people use the corporate form is to do business while limiting personal liability. There are certain situations in which the corporate veil may be pierced and individuals within the corporation held liable for what would otherwise be a corporate debt. RCW 82.32.145 authorizes the Department to assess against individuals in certain instances where retail sales tax was collected, but not remitted by a corporate taxpayer. The Department sought and obtained this legislation in 1987. The statute says:

- (1) Upon termination, dissolution, or abandonment of a corporate business, any officer or other person having control or supervision of retail sales tax funds collected and held in trust under RCW 82.08.050, or who is charged with the responsibility for the filing of returns or the payment of retail sales tax funds collected and held in trust under RCW 82.08.050, shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if such officer or other person wilfully fails to pay or to

cause to be paid any taxes due from the corporation pursuant to chapter 82.08 RCW. For the purposes of this section, any retail sales taxes that have been paid but not collected shall be deductible from the retail sales taxes collected but not paid.

For purposes of this subsection "wilfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(2) The officer or other person shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection (1) of this section, plus interest and penalties on those taxes.

(3) Persons liable under subsection (1) of this section are exempt from liability in situations where nonpayment of the retail sales tax funds held in trust is due to reasons beyond their control as determined by the department by rule.

(4) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

(5) This section applies only in situations where the department has determined that there is no reasonable means of collecting the retail sales tax funds held in trust directly from the corporation.

(6) This section does not relieve the corporation of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

(7) Collection authority and procedures prescribed in this chapter apply to collections under this section.

The Department promulgated WAC 458-20-217(6) to administer RCW 82.32.145. It is a lengthy provision which will not be reproduced in full here. However, WAC 458-20-217(6)(d) contains a useful summary of the statutory provisions:

Before the department may assess trust fund accountability for retail sales tax held in trust, the statute requires that the underlying retail sales tax liability be that of a corporation. Second, there must also be a termination,

dissolution or abandonment of the corporation. Third, the person against whom personal liability is sought willfully failed to pay or to cause to be paid retail sales tax collected and held in trust. Fourth, the person against whom personal liability is sought is a person who has control or supervision over the trust funds or is responsible for reporting or remitting the retail sales tax. Finally, there must be no reasonable means to collect the tax directly from the corporation.

As to the first requirement, there is no question that the taxpayer was a corporation. Second, there is no question that there was a "termination" of the corporation. The taxpayer quit doing business in December 1991. WAC 458-20-217(6)(c)(iii) defines "termination" to mean:

revocation of the corporation's certificate of registration, the first act of liquidation or distribution of corporate assets with the intent to cease any further business activity after liquidation or distribution, the filing of a petition in bankruptcy court for complete liquidation or any other act evidencing the intent to quit business or close business activity.

(Emphasis supplied.)

The third element (willful failure to pay or to cause to be paid any taxes due from the corporation pursuant to chapter 82.08 RCW) is disputed and will be addressed below. The fourth element (a person who has control or supervision over the trust funds or is responsible for reporting or remitting the retail sales tax) is also disputed and addressed below. As to the fifth element, there is no question that there are no reasonable means to collect the tax directly from the corporation. The defense of "circumstances beyond the control of the taxpayer" is also discussed below.

CONTROL OR SUPERVISION OF SALES TAX FUNDS OR RESPONSIBILITY FOR REPORTING THE RETAIL SALES TAX

The first element that should be discussed is whether any of the five officers had control or supervision of sales tax funds or was responsible for reporting or remitting the retail sales tax. RCW 82.32.145 does not define "control or supervision of retail sales tax funds." WAC 458-20-217(6)(e)(i) supplies a definition:

"Control or supervision of the collection of retail sales tax" shall mean the person who has the power and

responsibility under corporate bylaws, job description or other proper delegation of authority (as established by written documentation or through a course of conduct) to collect, account and deposit the corporate revenue and to make payment of the retail sales tax to the department of revenue. The term means significant rather than exclusive control or supervision. Thus, the term shall not mean the sales clerk who actually collects the funds from the customer or the person whose only responsibility is to take control of the funds and deposit the same into the bank, but it shall include the treasurer of the corporation if it is that person's responsibility to assure that the revenue is collected from the cash registers, tills or similar collection devices and that the amounts are deposited into the corporate account. It may also include the bookkeeper if the bookkeeper has the responsibility to collect, account and deposit the corporate revenue. In both examples, it is the treasurer or bookkeeper who have [sic] the significant control or supervision.

[1] We conclude that "B", "C", and "A" were persons who had "control or supervision of retail sales tax funds." "B" was treasurer for the corporation until mid-January 1991, and as treasurer had legal custody of all corporate monies. However, "B" had no involvement with the taxpayer after mid-January 1991, except as an "advisor." Consequently, "B's" "control or supervision" ended as of mid-January 1991. "A" was president until January 1992 and, as such, had the responsibility for "active executive management of the operations of the Corporation." "C" was vice-president and had the responsibility to act in the president's absence. Under the by-laws, all corporate checks had to be signed by the president or by any two of the vice-president, secretary or treasurer.

"E" was a manager for a period of time and, apparently, had authority to write checks, but there is no evidence that he had any responsibilities for the collection or remittance of retail sales tax, or for the reporting or remittance of retail sales tax. He also did not have responsibility for filing the tax returns or for payment of retail sales tax funds. Consequently, "E" is not personally liable for any portion of the corporate debt.

[2] There is no evidence that "D", the bookkeeper, had "the power and responsibility under corporate bylaws, job description or other proper delegation of authority (as established by written documentation or through a course of conduct) to collect, account and deposit the corporate revenue and to make payment of

the retail sales tax to the department of revenue." RCW 82.32.145(1) contains another provision, however, which applies to "D". The statute speaks of a person who either has "control or supervision" or "who is charged with the responsibility for the filing of returns or the payment of retail sales tax funds." By use of the disjunctive word "or," the legislature meant that either one provision or the other could apply. "D" signed and filed the excise tax returns. Even though "D" did not have "control or supervision," she meets the alternative element of this part of the statute.

WILLFUL FAILURE TO PAY

The next question is whether any of the remaining officers who had control or supervision of the sales tax "wilfully failed" to pay the tax. RCW 82.32.145(1) defines "wilfully fails to pay or cause to be paid" to mean "that the failure was the result of an intentional, conscious, and voluntary course of action." There is no express requirement that the funds be diverted for other purposes, only that the officer or other person willfully fail to pay the taxes or cause the taxes to be paid.

[3] It appears that "D", at least as of April 1991, only wrote and, in some instances, signed checks as directed by others. Since "wilful failure" is a necessary element under the statute to establish liability, and because there is no evidence that "D" "intentionally, consciously and voluntarily" failed to pay the sales tax or caused the sales tax not to be paid, this element is missing with regard to "D", and therefore "D" is not personally liable for the corporate debt.

[4] Perhaps, the officers ("B", "C" and "A") were not as actively engaged in the management of the taxpayer as they should have been. Nonetheless, the officers had the legal responsibility for the management of the corporation, and one of the obligations of a corporate taxpayer is the remittance of collected sales tax to the Department. These officers also had the authority and the responsibility under the by-laws to sign the checks drawn on the corporate checking account. Under their management (with the limitation as noted for "B"), the taxpayer disbursed funds to other creditors but not the sales tax to the Department. We conclude that "A", "B", and "C" "wilfully failed" to pay the tax or cause the tax to be paid to the Department.

CIRCUMSTANCES BEYOND THE CONTROL OF THE TAXPAYER

[5] RCW 82.32.145 provides that persons who would otherwise be liable under this statute may yet escape liability if nonpayment

of the sales tax was due to reasons beyond their control. The statute called for the Department to provide for this contingency by rule. WAC 458-20-217(6)(h) does so:

Any person, who shall otherwise meet the requirements for personal liability, shall not be personally liable if the failure to pay or to cause to be paid is the result of circumstances beyond the control of such person and that person has exercised good faith in collecting and attempting to hold the funds in trust. The following examples are provided for illustrative purposes only and they do not, in any way, limit the scope of the circumstances which may be beyond the control of the person against whom liability is sought. Each case will be determined in accordance with its particular facts and circumstances.

. . . .

(iii) Immediately prior to timely payment of the retail sales tax, unknown to the person against whom personal liability is sought, the bank in which the retail sales tax has been deposited exercises a right of offset and removes the money from the taxpayer's control. Such occurrence is beyond the control of the person against whom personal liability is sought.

The officers rely upon RCW 82.32.145(2) to avoid personal liability. They argue that the bank required deposit of all corporate funds, including the sales tax, and that the bank refused to allow them to pay the sales tax to the Department. The bank contradicts the officers' arguments.

It does not appear to us that the situation between the taxpayer and the bank was a "circumstance beyond the control of the taxpayer." If the officers' story is true, then the first time the bank refused to allow payment of the tax might have been a circumstance beyond the taxpayer's control. Once having occurred, however, the taxpayer should have been alerted to the problem. The taxpayer could have set aside the sales tax, refusing to deposit that amount into the control account. The taxpayer then could have paid the taxes to the Department. There is no evidence that any of the officers (or "D" or "E") contacted the Department at all, to alert it to the problem or to ask its assistance in dealing with the bank. There is apparently no correspondence in the bank's file from any of the officers (based upon "F's" statements) alerting the bank to the problem. The bank's explanation of how the line of credit and the deposits

worked, in practice, refutes the officers's explanation that the bank refused to allow the sales tax to be paid.

[6][7] The officers raised two additional issues that do not directly pertain to the elements of RCW 82.32.145. The first argument was that the amount assessed includes taxes other than state sales tax. However, in reviewing this issue with the taxpayer's attorney, it is apparent that the officers were excluding local sales tax from the amount assessed. Local governments that may assess sales tax are required by RCW 82.14.050 to contract with the Department for the administration and collection of the local sales tax. That statute also says that "[a]ll administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter." The second argument was that the assessment does not reflect the payment . . . in August 1991 for April 1991 sales tax. RCW 82.32.080 says, in part:

Subject to the provisions of RCW 82.32.105⁴ and 82.32.350⁵, the department shall apply the payment of the taxpayer first against penalties and interest, and then upon the tax, without regard to any direction of the taxpayer.

This means that the entire \$. . . would not have been applied to the sales tax reported in the April 1991 return because it would first have been applied against interest and penalties. If anything were left over, the tax would be applied against the oldest tax first; again, it would not necessarily have been applied against the April 1991 sales tax.

DECISION AND DISPOSITION:

The Department will exclude "E" and "D" from the assessments. The Department will also modify the assessments to exclude "B" for liability for all sales tax, interest and penalties for periods from and after [January 1991]. The assessments are affirmed with regard to the remaining individuals. This decision will be referred to the Compliance Division for adjustment of the assessment.

DATED this 7th day of April, 1993.

⁴Waiver or cancellation of interest or penalties.

⁵Closing agreements authorized.

