

Cite as Det. No. 96-162, 16 WTD 134 (1996)

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	)	
	)	No. 96-162
	)	
. . .	)	Registration No. . . .
	)	FY. . ./Audit No. . . .
	)	
	)	

RULE 228; RCW 82.32.105; B&O TAX -- INTEREST -- PACCAR -- REFUND. Taxpayer who improperly requested and received a refund for which it was not eligible must pay interest on the subsequent 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:

A taxpayer appeals the assessment of interest on an improper refund.<sup>1</sup>

FACTS:

Pree, A.L.J. -- The taxpayer is an out-of-state manufacturer whose products are sold in Washington. Following the decision of the Thurston County Superior Court in Paccar v. Department of Revenue, Thurston County Cause No. 91-2-017595-3 (1991), the taxpayer requested a refund of tax for the monthly periods from January 1992 through November 1992. The Department of Revenue (Department) sent the taxpayer a refund for the amount requested.

The Department's Audit Division reviewed the taxpayers' books and records and determined that it was not entitled to a refund for the period in question. As a result of this review, the Department issued a tax assessment. The assessment included business and occupation tax for 1992 plus interest. The taxpayer appealed only the interest portion of the assessment.

Following the Paccar decision, the Department adopted WAC 458-20-193 (Rule 193) (copy attached) and issued Excise Tax Bulletin 560.04.193, 2 ETB 435 (ETB 560, copy attached) on March 1, 1993. ETB 560

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

clearly provides that Rule 193 controls for transactions occurring after December 31, 1991. The taxpayer does not dispute that under Rule 193, the tax was due in 1992.

The Department received the taxpayer's refund request on January 4, 1993. It sent the taxpayer a letter on April 13, 1993, requesting that the taxpayer sign a waiver of the statute of limitations. Enclosed with the letter was ETB 560. The Department issued the refund on August 19, 1993.

#### ISSUE:

Must the taxpayer pay interest on the improper refund that it received?

#### DISCUSSION:

For the period 1992-1996, RCW 82.32.050(1)2 provides in part:

If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the date of payment for tax liabilities arising before January 1, 1992. For tax liabilities arising after December 31, 1991, until the date of payment, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year. The department shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

The Department has limited authority to waive interest. RCW 82.32.105 provided in part:

If the department of revenue finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department of revenue shall waive or cancel any interest or penalties imposed under this chapter with respect to such tax. The department of revenue shall prescribe rules for the waiver or cancellation of interest or penalties imposed by this chapter.

The Department's rule for the waiver or cancellation of interest, WAC 458-20-228 (Rule 228)(7) provides:

The following situations will constitute circumstances under which a waiver or cancellation of interest upon assessments pursuant to RCW 82.32.050 will be considered by the department:

(a) The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department.

(b) Extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department.

Neither of these circumstances pertain to the taxpayer's improper refund. In fact, Rule 193 had been filed on November 22, 1991, and was effective January 1, 1992. It provided instructions to taxpayers regarding the delivery issue, the subject of the refund. ETB 560 specifically states in part:

This Excise Tax Bulletin explains the Department's position regarding interstate sales and deliveries as a result of the decision of the Thurston County Superior Court in Paccar v. Department of Revenue, Thurston County Cause No. 91-2-017595-3 (1991). This bulletin applies only to transactions which were completed prior to January 1, 1992, the effective date of WAC 458-20-193.

For transactions occurring after December 31, 1991, taxpayers should be guided exclusively by WAC 458-20-193 in determining the taxability of such transactions, based upon the location where the buyer receives the goods.

(Emphasis supplied.)

The Department's letter of April 13, 1993, specifically requested that the taxpayer review the ETB, and advise the Department if it wished to withdraw the refund request. The taxpayer did not amend its refund request. The Department issued the refund on August 19, 1993, with interest.

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<sup>2</sup> This section was amended in 1996.

The Department requested the statute of limitations waiver to allow it an opportunity to verify that the taxpayer complied with the applicable law regarding the refund. The review of the taxpayer's records after the Department issued the refund indicated that the refund for the periods after 1991 had been in error. RCW 82.32.050(1) requires the Department to add interest when taxpayers pay an amount less than that properly due. Under RCW 82.32.105, interest may only be waived if the failure to pay the proper amount of tax was due to a circumstance beyond the control of the taxpayer.

The taxpayer had the information that Rule 193 rather than the Paccar ruling applied to transactions after December 31, 1991. The taxpayer did not act on that information as requested by the Department. The failure to repay the tax was not a circumstance beyond the control of the taxpayer. The Department may not waive the interest.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 25th day of September, 1996.