

Cite as Det. No. 00-068, 19 WTD 1018 (2000)

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. 00-068
)	
...)	Registration No. ...

- [1] RCW 82.45.100(5), RCW 82.32.060: REET REFUND REQUESTS – FOUR YEAR LIMITATION. The non-claim statute for REET refunds is the four calendar years allowed by RCW 82.45.100(5), not the current year plus four full prior calendar years as described in RCW 82.32.060.

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:

Taxpayer appeals denial of refund of REET where the request was made more than four years after the property sale.¹

FACTS:

Munger, A.L.J. – The taxpayer, . . . , appeals the denial of a refund request for REET (Real Estate Excise Tax). In early 1999 the Department of Revenue (the Department) received several REET refund requests from the taxpayer on behalf of its clients. The refund request was denied for the four sales on appeal.² In each case, the original real estate sale had occurred more than four years prior to the date of the refund request. The Department, in denying the refunds, utilized the non-claim statute for such requests found in RCW 82.45.100(5). The taxpayer asserts that although the [refund requests] were more than four years after the sales, that if the non-claim statute for refunds in RCW 82.32.060(1) were used, that their requests would have been timely.

ISSUES:

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

² The refund request was for \$. . . plus interest. As only the issue of the applicable statute of limitations is at issue, we will not otherwise address the merit of the refund requests.

Whether the non-claim statute for REET refunds is the four calendar years allowed by RCW 82.45.100(5), or the current year plus four full prior calendar years as described in RCW 82.32.060.

DISCUSSION:

RCW Chapter 82.45 imposes an excise tax on real estate sales. RCW 82.45.100(5) sets forth the time period for REET refund requests:

- (5) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of:
 - (a) Fraud or misrepresentation of a material fact by the taxpayer;
 - (b) A failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer; or
 - (c) A failure of the transferor or transferee to report the sale under RCW 82.45.090(2).³

While much of RCW Chapter 82.45 was enacted in 1980, RCW 82.45.100 was passed in 1981 and the amendments that added the non-claim statute were enacted in 1982.⁴

RCW 82.45.150⁵ incorporates other tax statutes by reference into Chapter 82.45:

RCW 82.45.150 Applicability of general administrative provisions--Departmental rules, scope--Real estate excise tax affidavit form--Departmental audit. All of chapter 82.32 RCW, except RCW 82.32.030, 82.32.050, 82.32.140, 82.32.270, and 82.32.090 (1) and (8), applies to the tax imposed by this chapter, in addition to any other provisions of law for the payment and enforcement of the tax imposed by this chapter. The department of revenue shall by rule provide for the effective administration of this chapter.

RCW 82.32.060 is the statute setting forth the non-claim statute for tax refunds for most state taxes.

RCW 82.32.060 Excess payment of tax, penalty, or interest--Credit or refund--Payment of judgments for refund. (1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by *the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050* any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period shall be credited to the taxpayer's account or shall be

³ Amendments to RCW 82.45.100 during the period in question did not effect this section.

⁴ See Laws of Washington, 1982 Chapter 176 Sec. 1

⁵ This is the current version of RCW 82.45.150. Amendments to it since the sales in question were not material to the issues under appeal.

refunded to the taxpayer, at the taxpayer's option. Except as provided in subsections (2) and (3) of this section, *no refund or credit shall be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.*

(Emphasis added.) The taxpayer asserts that this statute should be interpreted the same as RCW 82.45.100(5), i.e., the time period should be four years prior to the beginning of the calendar year in which the refund application is made, rather than a strict four years from the date of sale. We note that generally chapter RCW 83.32, per RCW 82.32.010, does not apply to the REET, which is in chapter RCW 82.45. Only through the operation of RCW 82.45.150, is chapter RCW 82.32 referred to in the REET laws. One of the sections of chapter RCW 82.32 specifically not incorporated by RCW 82.45.150 is RCW 82.32.050:⁶

RCW 82.32.050 Deficient tax or penalty payments--Notice--Interest--Limitations.

(3) *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.) In support of its petition, taxpayer has cited Det. No. 88-365, 6 WTD 403, 406-7 (1988), which discussed RCW 82.45.100 as follows:⁷

[3] Limitations of Actions -- RCW 82.45.100 provides that the Real Estate Excise Tax is due and payable immediately at the time of sale and that

(3) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of fraud or of misrepresentation of a material fact by the taxpayer or a failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer. (Emphasis added.)

The limitation is the same as that provided in chapter 82.32 RCW, the general administrative provisions. See RCW 82.32.060 (no refund or credit shall be made for taxes paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed). In Guy F. Atkinson Co. v. State, 66 Wn.2d 570, 572 (1965), the court held that the time for a refund allowed by RCW

⁶ This reference to RCW 82.32.050 was added to RCW 82.45.150 in 1981.

⁷ We are concerned with the way the Department initially responded to taxpayer's citation of these two cases. The Department provided taxpayer with a copy of an unpublished determination with the taxpayer's names blacked out and stated that it would rely on this case rather than the published ones. Unpublished determinations should not be relied on as precedent by either the Department or by the public. See RCW 82.32.410.

82.32.060 presented a question of nonclaim rather than a statute of limitations question. The court stated RCW 82.32.060 is procedural, imposing a limitation addressed to the power to make a refund and conditions under which a refund may be made. *Id.* We view RCW 82.45.100 also as imposing a procedural requirement for a refund.

In the present case, therefore, a second valid reason for a denial of the refund claim was that it was made more than four years after the date of the sale.

Similar language is also found in Det. No. 86-246, 1 WTD 145 (1986). However, these cases are distinguishable on their facts because they did not involve the conflict raised in the present case. Neither case involved sales occurring more than the four years prior to the sale, but less than the current year plus four calendar years. In the present case, the sales occurred more than four years prior to the refund application, but less than four years prior to the beginning of the calendar year in which the refund application was made. *I.e.*, the taxpayer's refund request would only be timely if we apply RCW 82.32.060(1) rather than RCW 82.45.100(5).

After reviewing the above statutes, we hold that the clear language of RCW 82.45.100(5) is controlling in this case for several reasons.

First, RCW 82.45.100(5) is the only statute specifically applying to REET refunds. "A specific statute will supercede a general one when both apply." *Waste Management of Seattle, Inc. v. Utilities and Transportation Commission*, 123 Wn.2d 621, 869 P.2d 1034, 1039 (1994).

Second, the language of RCW 82.45.100(5) is clear on its face. Although the taxpayer believes the Legislature intended these two statutes to be interpreted the same, it would be an unusual interpretation of "four years" to find that it really means "four years prior to the beginning of the calendar year in which the refund application was made." Had the legislature intended this in RCW 82.45.100(5), it could have easily said so.⁸ "The rules of statutory construction can be used only to ascertain the meaning of a statute and not to modify it This court cannot read into a statute language which we conceive the legislature has omitted." *State Ex Rel. Thigpen v. Kent*, 64 Wn.2d 823, 826, 394 P.2d 686 (1964).

Finally, RCW 82.45.150 specifically does not incorporate RCW 82.32.050, the statute creating a "four years after the close of the tax year" limitation on audit assessments. Were we to adopt the taxpayer's interpretation, there would be a "four years prior to the beginning of the calendar year in which the refund application was made" period for refunds, and a separate four years only period for audit assessments. The plain language of RCW 82.45.100(5) makes it clear that both audit

⁸ The House and Senate Journals for the 47th Legislature in 1992, reveal no published substantive discussion of House Bill 964, which included the time provisions now found in RCW 82.45.100(5). The 1982 Final Legislative Report only mentions the four year limit on Departmental audits in HB 964. The Legislative Digest and History of Bills for the 47th Legislature, in its summary of HB 964, states that it "Prohibits a real estate excise tax assessment or refund more than four years after a sale" None of the published legislative history of RCW 82.45.100(5) reveals any intent that this four year limit be interpreted the same as the "four years prior to the beginning of the calendar year in which the refund application was made" found in RCW 82.32.060(1).

assessments for unpaid REET and refund requests are to be limited to a straight four years from the date of the sale.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

Dated this 13th day of April, 2000.