

Cite as Det. No. 00-001, 19 WTD 681 (2000)

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>
Assessment of	)	
	)	No. 00-001
	)	
...	)	Registration No. ...
	)	Notices of Balance Due
	)	...

RCW 82.32A.020; ETA 419.32.99: HOTEL/MOTEL TAX – ORAL INSTRUCTIONS. The Department lacks legal authority to waive the tax based on *oral* instructions. RCW 82.32A.020 only provides authority to waive tax based upon reliance on specific, official *written* advice or *written* reporting instructions from the Department.

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 motel, which mis-computed and under-collected sales and hotel/motel tax in reliance on oral information provided by a Department of Revenue employee, requests waiver of sales tax.<sup>1</sup>

FACTS:

M. Pree, A.L.J. -- ... (taxpayer) is a motel located in Washington. It provides lodging for rental periods of less than thirty days. Last year, pursuant to RCW 67.28.180, the county in which the taxpayer's motel is located passed an ordinance imposing an additional tax of two percent (2%) on lodging charges of less than thirty days. The total tax on lodging in the county thus became 9.7%. Prior to the ordinance, the taxpayer had been paying tax of 7.7% on its lodging charges.

When the tax became effective, the taxpayer called the local Department of Revenue (Department) office, and inquired about the correct rate of tax. According to the taxpayer, the Department's employee told the taxpayer the new tax was .002 of the charge (.2%) instead of

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

2%. The taxpayers charged its customers the prior rate (7.7%) plus .2% or a total of 7.9% tax instead of 9.7%. The taxpayer remitted the tax collected to the Department.

The Department's Taxpayer Account Administration Division (TAA) noticed taxpayer's returns for the first two months did not compute the tax at the proper rate. TAA issued the above-referenced Notices of Balance Due in the amounts of \$. . . and \$. . . . Neither interest, nor penalties, were added to the Notices of Balance Due.

Upon receipt of the Notices of Balance Due, the taxpayer called the local Department office. Unable to identify the Department employee who may have provided the taxpayer incorrect advice, the taxpayer asked again the proper rate. The Department employee contacted this time also initially advised the taxpayer that 7.9% was the proper rate, but asked the taxpayer to wait while she checked. She then advised the taxpayer that 9.7% was in fact the correct rate. This time the taxpayer noted her name. We were able to call and confirm that, based upon her recollection, she initially provided the incorrect rate, but before hanging-up, advised the taxpayer 9.7% was the correct rate.

The taxpayer requested the Department waive the tax, and was advised to appeal. The taxpayer petitioned this office for waiver of the tax.

TAA provided a copy of a one-page letter addressed to the taxpayer over a month prior to the effective date of the ordinance. The letter advised the taxpayer that the county, “. . . imposed a Special Hotel/Motel tax of two percent (.02). The tax is on the charge made for the furnishing of transient lodging by . . . motels . . . .” The taxpayer does not recollect receiving the letter. In addition, TAA provided a copy of *Tax Return Information and Local Sales and Use Tax Changes* for the tax periods in question, which TAA states it sent to all taxpayers. The *Tax Return Information and Local Sales and Use Tax Changes* clearly shows a 2% rate for the taxpayer's location on the first page, and a lodging rate of .02 for the taxpayer's county on the third page. With the lodging rate heading is the note, “Special Hotel/Motel & Convention Trade taxes are in addition to state and local sales tax.”

#### ISSUE:

May taxpayers rely on incorrect oral advice of the Department regarding the local hotel/motel tax rate?

#### DISCUSSION:

RCW 67.28.180 authorizes counties to levy a special excise tax of up to 2% on the charge for furnishing temporary lodging. The county where the taxpayer's motel was located adopted the tax, clearly designating the tax as an additional 2% of the lodging charge. The taxpayer now understands a 9.7% tax should have been remitted on its lodging charges.

The taxpayer argues we should waive the tax because an employee of the Department provided incorrect advice. Had the taxpayer known the proper rate, it would have added it to its lodging

charges. But for the alleged incorrect advice, the taxpayer would have charged and remitted the proper amount.

RCW 82.32A.020 affords taxpayers the right to rely on specific, official *written* advice and *written* reporting instructions from the Department, and in some instances to have tax deficiency assessments waived where taxpayers so relied to their proven detriment. The written advice either sent to the taxpayer, or otherwise available, provided the correct tax rate. While incorrect advice may have been provided over the phone, there is no authority to waive tax on the basis of unwritten advice by the Department.<sup>2</sup>

We note that in Excise Tax Advisory 419.32.99 (ETA 419), originally issued in 1971 as Excise Tax Bulletin 419.32.99 (ETB 419), the Department reached the same conclusion. We may not authorize, nor does the law permit, the abatement of a tax on the basis of a taxpayer's recollection of oral instructions by an agent of the Department. ETA 419 succinctly and correctly stated the reasons for this position, as follows:

- (1) There is no record of the facts which might have been presented to the agent for his consideration.
- (2) There is no record of instructions or information imparted by the agent, which may have been erroneous or incomplete.
- (3) There is no evidence that such instructions were completely understood or followed by the taxpayer.

We also note that the Board of Tax Appeals expressly adopted the reasoning of ETB 419 in *Professional Promotional Services, Inc. v. State of Washington, Dept. of Rev.*, BTA Docket No. 36912, 9 WTD 219 (1990).

It is always distressing, both to the taxpayer and the Department, when a taxpayer has requested information so that it may properly report and pay taxes; the taxpayer has relied upon its understanding of information that the Department provided; when later the Department determines that the taxpayer has incorrectly reported and paid taxes. Unfortunately, in human communication there are many opportunities for error and misunderstanding. When a request and response are oral, it is simply impossible to determine where the error or misunderstanding occurred, and whether the Department is at fault.

However, the issue does not turn on fault, but law. The correct rate of tax was 9.7%. We have no legal authority to waive the tax based on *oral* instructions. RCW 82.32A.020 only provides authority to waive tax based upon reliance on specific, official *written* advice or *written* reporting instructions from the Department.

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<sup>2</sup> Regarding the second phone conversation with the named Departmental employee, we note it occurred after the periods at issue. That employee corrected the initial advice, so the taxpayer did not detrimentally rely on it. While the employee's initial confusion suggests some ambiguity in this area, a review of the written materials only leads to the correct rate.

**DECISION AND DISPOSITION:**

We deny the taxpayer's petition.

Dated this 24<sup>th</sup> day of January 2000.