

Cite as Det No. 08-0116, 27 WTD 228 (2008)

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>
Trust Fund Accountability Assessment of)	
)	No. 08-0116
)	
. . .)	
)	Registration No. . . .
)	Document No. . . .
)	Docket No. . . .

[1] RULE 254; RCW 82.32.070: TRUST FUND ACCOUNTABILITY – RECORDS REQUIRED. Taxpayers are required to preserve suitable records, and a taxpayer who fails to comply is not entitled to dispute the correctness of any assessment. The taxpayers failed to provide sufficient records to dispute the correctness of the assessment.

[2] RCW 82.32.130; RCW 82.32.145; RCW 82.32.050: TRUST FUND ACCOUNTABILITY ASSESSMENT – NOTICE – ADDRESS OF RECORD. Because the Department mailed the trust fund accountability assessment to the address reflected in its records for the taxpayers, the taxpayers will not be allowed to claim lack of notice.

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.

C. Pree, A.L.J. – Taxpayers who were issued and paid a trust fund accountability assessment (“TFAA”) contest the amount of the underlying assessment, as well as the sufficiency of service of the assessment. We conclude that the taxpayers failed to provide evidence that the underlying assessment was overstated. We further conclude that service of the TFAA was proper. Accordingly, we deny the taxpayers’ petition.¹

ISSUES

1. Whether the taxpayers, who were issued and paid a TFAA, provided evidence that the underlying assessment was overstated.

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

2. Whether the taxpayers received proper service of the TFAA, where the TFAA was sent by first-class mail to the address reflected in the Department's records.

FINDINGS OF FACT

On February 22, 2006, the Department mailed a TFAA to the taxpayers with respect to the collected but unremitted retail sales taxes of the [corporation]. The TFAA was sent to the taxpayers by first-class mail to the address reflected in the Department's records for the taxpayers.

The TFAA covered the period of October 1, 1999, through December 31, 2002, and was issued in the total amount of \$. . . . The TFAA included collected but unremitted retail sales tax of the corporation, which had engaged in the restaurant business during the period covered by the TFAA, plus interest and penalties on that tax. In the notice of TFAA, the Department explained that an assessment and warrants had been issued against the corporation for collected but unremitted retail sales tax. The notice further explained that the Department determined there were no reasonable means of collection from the corporation, that the corporation was defunct, and that there were no known distrainable assets. The Department based the taxpayers' liability upon their positions as corporate officers . . . and responsible parties for the payment of retail sales tax.

. . . The taxpayers did not pay the assessment by the due date.

[After the due date], the Department obtained payment from the taxpayers of the total assessment amount of \$. . . , plus additional interest and penalties. The taxpayers now request a refund. The taxpayers dispute the amount of the assessment underlying the TFAA, as well as the sufficiency of service of the TFAA.

ANALYSIS

Generally, upon the dissolution of a corporation, RCW 82.32.145 imposes personal liability on any responsible person who willfully fails to pay or cause to be paid any retail sales tax collected by the corporation. The taxpayers do not contest that the requirements imposed by this statute for personal liability were met, but question the amount of that liability and the sufficiency of service.

1. Whether the taxpayers, who were issued and paid a TFAA, provided evidence that the underlying assessment was overstated.

[1] We must first address whether we may consider the taxpayers' argument that the amount of the underlying assessment was overstated. In Det. No. 03-0066R, 23 WTD 243 (2004), we concluded that a taxpayer could not challenge the amount of the assessment underlying the TFAA. The taxpayer in that case asserted that the corporation had not collected some or all of the taxes included in the TFAA because the corporation financed the sales and agreed to accept

payment of the taxes in installments and the debts went bad. In concluding that the individual taxpayer could not challenge the amounts underlying the TFAA, we reasoned:

We cannot grant such an offset in a TFAA appeal. The original taxpayer, the business, had an opportunity to contest the amount of taxes assessed when DOR issued the notices of balance due. RCW 82.32.160. It did not appeal. The statutory consequence is that “[i]f no such petition is filed within the thirty-day period the assessment covered by the notice shall become final.” RCW 82.32.160. Generally, once a tax assessment become[s] final, there is no jurisdiction for DOR to accept a petition for correction of the assessment. *See Det. No. 87-39*, 2 WTD 189 (1987) and *Det. No. 86-268*, 1 WTD 245 (1986).

We noted in Det. No. 03-0066R, however, that a taxpayer can pay the assessment, petition for a refund, and contest its liability for the tax in the refund proceeding. That is precisely the circumstance here. The amount of the TFAA, plus penalties and interest, was withdrawn from the taxpayers’ bank account, and they are requesting a refund of those amounts in this proceeding.² Their refund petition is timely. *See* RCW 82.32.060.

Thus, we will next address the issue of whether the amount of the underlying assessment was overstated. The taxpayers assert that the corporation “paid all taxes collected to the Revenue dept.” for this period. However, in response to an inquiry from the Appeals Division, the Compliance Division provided detailed records regarding how the amount of the assessment was calculated. The taxpayers, in response, provided no records to refute those calculations and no records to indicate that any payments had been made that were not reflected in the Department’s records.³

RCW 82.32.070 requires all taxpayers to maintain “suitable records as may be necessary to determine the amount of any tax for which he may be liable.” The statute further explains, “Any person who fails to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department of revenue based upon any period for which such books, records, and invoices have not been so kept and preserved.” The Department’s administrative rule regarding record keeping is WAC 458-20-254 (Rule 254), and it provides additional details regarding this requirement. We have applied this statute repeatedly in concluding that taxpayers are required to preserve suitable records, and a taxpayer who fails to comply is not entitled to dispute the correctness of any assessment. *See, e.g.*, Det. No. 04-0100, 26 WTD 83 (2007; Det. No. 04-0132,

² The taxpayers filed their refund petition in the corporation’s name.

³ By hearing letter . . . , the Appeals Division scheduled an additional telephone conference in this matter . . . with the taxpayers’ representative and also required documents to be submitted in support of the taxpayers’ claims Both of these dates had been arranged with the taxpayers’ representative during [a] telephone conference. However, the representative was not available at the scheduled time . . . , and the telephone conference was rescheduled During the [rescheduled] telephone conference, the due date for the documents was extended to . . . , because the representative explained the documents were with a third party and the taxpayers were having difficulty obtaining them. However, [later in the month] the taxpayers’ representative explained that the taxpayers neither contacted him nor provided the documents.

24 WTD 254 (2005). Accordingly, because the taxpayers failed to provide sufficient records to dispute the correctness of the assessment, we must deny their petition on this issue.

2. Whether the taxpayers received proper service of the TFAA, where the TFAA was sent by first-class mail to the address reflected in the Department's records.

[2] The taxpayers argue that because they were not personally served with any notices or complaint of the claim, the service was improper. The taxpayers cite RCW 4.28.080 and *Longview Fibre Co. v. Stokes*, 52 Wn. App. 241, 758 P.2d 1006 (1988), in support of their assertion. However, we note that both the statute and case cited by the taxpayers are inapplicable here, as they involve the requirements for personal service, rather than the requirements for notice under the revenue act.

Specifically, RCW 82.32.145 authorizes the notice of assessment for TFAAs, and RCW 82.32.050 authorizes notices of assessment to be sent by mail. RCW 82.32.130, in turn, provides, in pertinent part:

Notwithstanding any other law, any notice or order required by this title to be mailed to any taxpayer . . . shall be addressed to the address of the taxpayer as shown by the records of the department Failure of the taxpayer to receive such notice or order . . . shall not release the taxpayer from any tax or any increases or penalties thereon.

The taxpayers assert that during the period of the corporation's "non-existence," notice was sent to the corporation's owner (one of the taxpayers here) at the previous business address, and, at that time, the owner was out of the state. However, the address reflected on the TFAA is the address shown in the Department's records for the taxpayers.

We have applied RCW 82.32.130 repeatedly in concluding that the Department properly provided notice to taxpayers when it mailed notices of assessment to taxpayers at the address reflected in the Department's records. *See, e.g.*, Det. No. 04-0162, 24 WTD 194 (2005); Det. No. 87-344, 4 WTD 261 (1987). Thus, because the Department mailed the TFAA to the address reflected in its records for the taxpayers, the taxpayers will not be allowed to claim lack of notice. Accordingly, we must deny the taxpayers' petition with respect to this issue.

DECISION AND DISPOSITION

The taxpayers' refund petition is denied.

Dated this 29th day of April 2008.