

Cite as Det. No. 15-0054, 34 WTD 412 (2015)

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. 15-0054
) )	
... )	Registration No. ...
) )	

[1] RULE 240; RCW 82.62.050: MANUFACTURER'S NEW EMPLOYEE B&O TAX CREDIT - CREDIT - EMPLOYMENT - REPORT - ANNUAL - SUBMISSION - NONCOMPLIANCE - RESCISSION - ASSESSMENT. A taxpayer claimed the manufacturer's new employee B&O tax credit, but did not file the required annual report. Thereafter, the Department rescinded the credit and assessed the taxpayer for the credit amounts taken. The taxpayer contended that the report was not filed due to changes in personnel. The taxpayer also asserted that it had been temporarily locked out of its reporting account. Appeals upheld the assessment. The statute and rule are clear about the requirement to file an annual report in order to maintain eligibility for the credit. The Department provided the taxpayer with information about the requirement to file the annual report. There was no legal basis to grant the taxpayer relief.

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.

Valentine, A.L.J. – A taxpayer appeals the rescission of the rural county business and occupation (B&O) tax credit for new employees authorized under Chapter 82.62 RCW. The Taxpayer Account Administration Division (TAA) of the Department of Revenue (Department) rescinded the credit, and issued an assessment for credit amounts already taken, because the taxpayer did not file the required report substantiating its eligibility for the credit. We deny the taxpayer's petition.<sup>1</sup>

### ISSUE

Pursuant to RCW 82.62.050 and WAC 458-20-240 (Rule 240), if a taxpayer claims the manufacturer's new employee tax credit on its excise tax returns, but does not submit the first required report, may the Department rescind the taxpayer's eligibility for the credit and issue an assessment for credit amounts already taken?

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

## FINDINGS OF FACT

From . . . , [Taxpayer] was in the business of manufacturing paper products at its paper mill. Prior to . . . , the paper mill had been closed. Under a prior name and ownership, the mill had ceased operations in . . . . Taxpayer bought the mill out of receivership in . . . , and restarted the mill. The mill was fully operational by . . . .

The mill ceased primary operations again on . . . . However, Core employees were retained for the next several months in an attempt to find a solution resulting in resumption of operations. The business was not officially closed until . . . .

According to Taxpayer, upper management mismanaged the mill and its assets, which Taxpayer asserts led to the closure of the mill. To date, the mill has not reopened and Taxpayer does not plan to reopen it. The assets of the mill were sold in a foreclosure sale on . . . .

When Taxpayer reopened the mill in . . . , it hired approximately 185 employees. Taxpayer subsequently applied for a Rural Area Business and Occupation Tax Credit on New Employees, which was approved by TAA on December 13, 2012. TAA granted Taxpayer a credit amount not to exceed \$. . . .

TAA's written approval notice to Taxpayer included information about how the credit would accrue, limitations of the credit, how to take the credit, the due dates of the required reports, and Taxpayer's responsibility for payment of any credit taken, plus interest, if the credit was ever rescinded. Taxpayer's first report was due October 30, 2013.

On October 8, 2013, the Department mailed a reminder letter to Taxpayer about the required annual report. The Department enclosed a blank report form. Taxpayer did not file the report. On December 13, 2013, the Department notified Taxpayer, via a letter, that the credit was rescinded. The Department mailed the letter to the address it had on file.

In January of 2014, Taxpayer contacted the Department via telephone. Taxpayer informed the Department that Taxpayer had a new mailing address. Taxpayer had not previously shared this information with the Department.

On February 14, 2014, the Department issued an assessment to Taxpayer in the amount of \$. . . .<sup>2</sup> This amount encompasses the credit amounts taken plus interest. Taxpayer timely appealed.

On its appeal petition, dated March 13, 2014, Taxpayer explained that its accountant left its employment in mid-June of 2013. Taxpayer contends it made multiple attempts to contact the Department in June and July of 2013 because it was locked out of online access to its excise tax account.

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<sup>2</sup> Taxpayer took a credit of \$. . . in December 2012 and a credit of \$. . . in 2013 (for the months of January through September 2013). Most of the 2013 credit was taken in January and February 2013. The remainder of the assessment is for interest.

Taxpayer also asserted on its appeal petition that it did not receive the October 8, 2013, reminder from the Department about the upcoming due date for submission of the required report. Taxpayer presumes that this was because of the change in the corporate mailing address.

Taxpayer acknowledged that it received help from a Department Revenue Agent to gain access to its excise tax account. With the Revenue Agent's help, Taxpayer was able to gain access to its account and file its excise tax returns. Taxpayer asserts, however, that it presumed there were no outstanding issues about the tax credit because the Revenue Agent did not identify any issues about the credit or the required report upon her review of Taxpayer's account.

### ANALYSIS

Chapter 82.62 RCW provides B&O tax credits for eligible business projects in rural counties. "The credits are intended to stimulate the economy by creating employment opportunities in specific rural counties and community empowerment zones in this state." Rule 240(1).

RCW 82.62.030 specifically authorizes a tax credit for qualified employment positions.

Rule 240(3)(a) instructs that a "qualified employment position," is a position that must be filled "by a permanent full-time employee employed at an eligible business project for twelve consecutive months." Thus, an employment position is not a "qualified employment position" unless it lasts for 12 consecutive months.

RCW 82.62.030(b)(ii) specifies that "a credit is earned for the four consecutive full calendar quarters after the calendar year quarter during which the first qualified employment position is filled." The first qualified employment position was filled in September 2012. Thus, Taxpayer was eligible to earn the credit for the four quarters of October 2012 through September 2013.

RCW 82.62.050(1) requires recipients of the new employee tax credit to submit a report of employment activities "by the last day of the month immediately following the end of the four consecutive full calendar quarter period for which a credit under this chapter is earned." *See also* Rule 240(9) and (9)(b). In Taxpayer's case, the report at issue was due October 30, 2013. This fact is not in dispute. The purpose of the report is to provide the Department with information "from which the department may determine whether the recipient is meeting the requirements of this chapter." RCW 82.62.050(1).

RCW 82.62.050(1) also authorizes the Department to immediately assess and demand payment of the amount of taxes for which a credit has been used if a taxpayer "fails to submit a report or submits an inadequate report." Taxpayer did not submit the required report. This fact is also not in dispute.

Whether Taxpayer received the October 8, 2013, reminder about submitting the required report by the due date of October 30, 2013, is not relevant. When the Department approved Taxpayer for the credit, all of the pertinent information about the credit, and how and when to file the report, was provided to Taxpayer by the Department. Taxpayer does not dispute that the Department provided this information when Taxpayer received approval for the credit. And, the

fact that Taxpayer actually took the credit over a period of several months shows that Taxpayer had significant knowledge of how the credit works. The October 8, 2013, notice was a courtesy reminder. It was not a notice required by law.

In addition, the Revenue Agent mentioned by Taxpayer assisted Taxpayer in gaining access to its online excise tax account so that Taxpayer could submit the necessary excise tax returns. Taxpayer, however, had already been informed of the reporting requirements for the credit, including the due date, at the time of approval, which was prior to Taxpayer's contact with the Revenue Agent referenced above.

Taxpayer does not claim that it asked the Revenue Agent anything about the tax credit or the required report. Taxpayer simply asserts that the Revenue Agent did not broach the subject. Clearly, the Revenue Agent's purpose was to help Taxpayer gain access to its online account, following the departure of Taxpayer's accountant, so that Taxpayer could submit excise tax returns. The submission of excise tax returns and the submission of a report required by a taxpayer's choice to benefit from a tax credit are two different functions.

In addition, it is a taxpayer's responsibility to contact the Department and seek instructions if it is uncertain about its tax reporting obligations. RCW 82.32A.030. Taxpayer was aware of the credit and had been provided the necessary information from the Department at the time the credit was approved. Also, the Department's public website includes links to statutes and rules. Rule 240 is available to any taxpayer that needs information about the manufacturer's new employee tax credit.

We conclude that Washington law is clear about the requirement to file the report at issue.<sup>3</sup> In addition, Washington law authorized the Department to assess the credit amounts taken when the report was not timely filed. Thus, we deny Taxpayer's petition.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 5th day of March, 2015.

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<sup>3</sup> Because we determine that TAA's rescission of the tax credit due to Taxpayer's failure to file the required report is authorized by Washington State law, we conclude it unnecessary to analyze and discuss the issue of whether Taxpayer met the qualified employment positions requirements for the necessary length of time.