

Cite as Det. No. 15-0153, 34 WTD 583 (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. 15-0153
)	
...)	Registration No. ...
)	

RULE 228; RCW 82.04.4452; RCW 82.32.590: BUSINESS AND OCCUPATION TAX – TAX CREDIT FOR QUALIFIED RESEARCH AND DEVELOPMENT SPENDING – ANNUAL SURVEY REQUIREMENT – CRITERIA FOR EXTENSION OF FILING DEADLINE. Failure to timely file with the Department the annual survey required to qualify for a research and development (R&D) spending business and occupation (B&O) tax credit results in loss of the credit. Employee mistake is not a circumstance beyond the control of the taxpayer qualifying for an extension of time to file the survey.

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.

Eckholm, A.L.J. – A taxpayer seeks waiver of an assessment of business and occupation (B&O) tax issued in the amount of the taxpayer’s previously asserted credit for research and development (R&D) spending after the taxpayer failed to timely file the required annual survey. The taxpayer claims the late survey filing was the result of [its] employee[’s] mistake. The taxpayer’s petition is denied.¹

ISSUE

Whether the taxpayer qualifies for an extension of the due date to file the annual survey for the RCW 82.04.4452 B&O tax credit for R&D spending, as provided by RCW 82.32.590 and WAC 458-20-228.

FINDINGS OF FACT

[Taxpayer] is in the business of designing computer systems and software. In 2013, the taxpayer took a credit for its R&D spending against B&O taxes due as provided for by RCW 82.04.4452. On April 25, 2014, a Department of Revenue (Department) representative contacted the taxpayer with a reminder that the annual survey, required by RCW 82.04.4452, was due to be filed by April 30, 2014. The taxpayer did not request an extension of the due date and filed the annual

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

survey on September 11, 2014. As a result, the Department issued an assessment against the taxpayer for the amount of the previously taken credit, and interest, in the amount of \$ The taxpayer appealed the assessment seeking waiver of the assessment based on its employee's mistake in filing the wrong form. The taxpayer indicated that it mistakenly filed the Business R&D Survey with the U.S. Census Bureau believing that such filing met the RCW 82.04.4452 annual survey filing requirement.

ANALYSIS

RCW 82.04.4452 authorizes a B&O tax credit for qualified R&D spending. To claim the credit, a person must file a complete annual survey with the Department as required by RCW 82.32.585. RCW 82.04.4452(6). The annual survey must be filed by April 30th of the year following any calendar year in which a person becomes eligible to claim the credit. RCW 82.32.585(1)(a)(i); *see also* WAC 458-20-268(3). RCW 82.32.590 provides two exceptions to the annual survey filing deadline: (1) the Department must extend the time for filing the survey if the failure to file the survey by the due date was the result of "circumstances beyond the control of the taxpayer," as described by WAC 458-20-228(9) (Rule 228(9)) (RCW 82.32.590(1)-(2)); and (2) a taxpayer is entitled to a one-time 90-day extension of the deadline to file an annual survey where the taxpayer files a timely written request for extension and the taxpayer was timely in filing prior annual surveys, beginning in 2010 (RCW 82.32.590(3)).

"Circumstances beyond the control of the taxpayer" are generally those that are immediate, unexpected, or in the nature of an emergency, which prevent the taxpayer from the reasonable opportunity to obtain an extension of the due date or otherwise timely file. Rule 228(9)(a). Examples include: an act of fraud by a taxpayer's employee; death or serious illness of the taxpayer, family member, or accountant; or the destruction of business records by fire or other casualties. Rule 228(9)(a)(ii)(C), (E) and (F). Rule 228 also provides specific examples considered *not* to be circumstances beyond the control of the taxpayer, including where the late filing resulted from a taxpayer's misunderstanding or lack of knowledge of a tax liability, and where late filing resulted from mistakes on the part of employees or other persons contracted with the taxpayer. Rule 228(9)(a)(iii)(B), (E).

Here, in regards to the first exception for late survey filing, the taxpayer's employee's mistake in failing to timely file the annual survey was not a circumstance beyond the control of the taxpayer that would qualify the taxpayer for an extension of time to file the survey under RCW 82.32.590(1). Rule 228(9)(a)(iii)(B), (E). In regards to the second exception for late survey filing, the taxpayer did not file a request for extension and filed the annual survey well after the 90-day extension period, on September 11, 2014; therefore, the taxpayer is not entitled to an extension under RCW 82.32.590(3).

The penalty for claiming the credit under RCW 82.04.4452 but failing to timely file a complete annual survey is that the amount of credit claimed for the previous calendar year is immediately due. RCW 82.32.585(6)(a). The taxpayer failed to file the annual survey required for its claimed 2013 credit by the April 30, 2014 due date; therefore, the Department correctly assessed the taxpayer the amount of its claimed credit for 2013. The taxpayer's petition is denied.

DECISION AND DISPOSITION

The taxpayer's petition is denied.

Dated this 11th day of June, 2015.