Cite as Det. No. 04-0196E, 24 WTD 201 (2005)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

	)	FINAL EXECUTIVE
In the Matter of the Petition For Correction of	)	DETERMINATION
Tax Assessment and Future Reporting	)	
Instructions of	)	
	)	No. 04-0196E
	)	
. . .	)	Registration No. . . .
	)	TAS . . . /Audit No. . . .
	)	Docket No. . . .
	)	
. . .	)	Registration No. . . .
	)	Notice of Balance Dues . . .
	)	Docket No. . . .

[1] RULE 111; RCW 82.04.080: B&O TAX -- GROSS INCOME -- ADVANCE AND REIMBURSEMENT -- TEMPORARY STAFFING COMPANIES -- AGENT. Two temporary staffing companies were not allowed to exclude amounts received from their client to pay for worker payroll costs when the staffing companies were the actual employers of the workers.

[2] RULE 229: REFUNDS -- INITIATED BY A TAXPAYER -- CONDITIONALLY GRANTED SUBJECT TO VERIFICATION -- ESTOPPEL. When a refund request is initiated by a taxpayer's petition, Rule 229 allows DOR to conditionally grant a refund subject to future field audit verification. Absent evidence that the conditional refund request was actually verified by field audit, the DOR is not estopped from assessing additional taxes owed within the time limits allowed by RCW 82.32.050.

[3] RULE 111; RCW 82.04.080: B&O TAX -- GROSS INCOME -- ADVANCE AND REIMBURSEMENT -- TEMPORARY STAFFING COMPANIES -- AGENT -- INSURANCE. A temporary staffing company was not allowed to exclude amounts received from its client to pay for worker general liability insurance, worker life insurance and worker medical benefits, when the staffing company was the actual employer of the workers.

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.

Two companies engaged in the business of providing temporary staff to clients protest future reporting instructions issued by the Audit Division (Audit) of the Department of Revenue (DOR) requiring them to include in their gross income amounts clients paid to them for providing temporary staff. We conclude that DOR may instruct the companies to pay tax on these amounts even though it had granted a prior refund.[1]

ISSUES:

1) [Are] temporary staffing company[ies ("Taxpyaers")] allowed to exclude payroll costs and benefits from [their] gross income as advances and reimbursements under WAC 458-20-111?

2) If not, is DOR estopped from applying those future reporting instructions until [Taxpayer]'s current contract expires, because DOR had previously granted [Taxpayer] a conditional refund?

3) May [Taxpayer] deduct general liability insurance costs, worker life insurance costs and medical benefits from its gross income during the current audit period?

FINDINGS OF FACT:

Okimoto, A.L.J. [Taxpayer] and [Taxpayer 2] are temporary staffing companies (collectively Taxpayers).[2] [Taxpayer] is a national corporation based in [State A] that provides . . . technical . . . workers to the . . . industry in Washington on a temporary basis. [Taxpayer] originally filed a refund claim for business and occupation (B&O) taxes it paid in the early 1990s contending that it was a payroll service similar to the taxpayer in *Rho Co. v. Department of Rev.*, 113 Wn. 2d 561, 782 P.2d 986 (1989). [Taxpayer] contended that it should be allowed a pass through exclusion for worker payroll costs under WAC 458-20-111 (Rule 111). In response to that request, Audit performed a partial office audit of [Taxpayer]'s account in July of 1991 and conditionally granted [Taxpayer]'s written refund request subject to future field audit verification. No records were reviewed at that time, however; and it appears that no field audit verification was ever performed on that initial refund request. [Taxpayer] has continued to conduct its business in substantially the same manner, and has continued to exclude payroll costs from the measure of B&O tax. On . . . 2001, [Taxpayer] executed its current temporary staffing contract with Buyer that expires on . . . 2004. [Taxpayer] relied partly on its ability to exclude payroll costs in determining its bid.

In late 2001, [Taxpayer]'s account came up for a routine audit examination covering the period January 1, 1998 through September 30, 2001. Based on Audit's examination of [Taxpayer]'s

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

[2] . . . Since the issues are similar, Taxpayers requested that we consolidate their appeals, and we have done so.

current business activities and several recent state court cases in the temporary staffing area, Audit concluded that [Taxpayer] was not entitled to exclude worker payroll costs under Rule 111.

Because Audit had allowed the pass through when it conditionally granted a refund in 1991, Audit prospectively applied its future reporting instructions that specifically disallowed a Rule 111 pass through exclusion for worker payroll costs. Audit then proceeded to review [Taxpayer]'s other tax reporting procedures. That review resulted in additional B&O taxes and interest owing of $. . . and Doc. No. . . . was issued in that amount on November 1, 2002.

[Taxpayer] paid $. . . of the unprotested portion of the assessment on December 18, 2002 and now protests that portion of the assessment that disallows a Rule 111 pass through exclusion for amounts paid to cover worker liability insurance, worker life insurance, and worker medical benefits. [Taxpayer] also protests the future reporting instructions.

[Taxpayer 2] is a national corporation based in [State B] that also provides . . . technical workers to the . . . industry in Washington on a temporary basis. [Taxpayer 2] originally filed amended tax returns with DOR's Taxpayer Account Administration Division (TAA) in February of 2001. [Taxpayer 2] claimed a refund for overpaid B&O taxes based on Excise Tax Advisory 90-001 (ETA 90-001).[3] [Taxpayer 2] claimed that its Buyer had exercised pervasive control over the workers and that Buyer was the true employer. [Taxpayer 2] claimed that it was entitled to exclude reimbursed payroll costs from its gross income. After TAA requested documentation of [Taxpayer 2]'s refund claim, [Taxpayer 2] submitted sample contracts and formally requested a ruling on February 22, 2002. TAA examined [Taxpayer 2]'s documentation and disallowed [Taxpayer 2]'s refund claim because it did not satisfy the requirements of ETA 90-001. TAA explained that the sample contracts submitted by [Taxpayer 2] did not show that the client had pervasive control over the workers. In particular, TAA pointed out that [Taxpayer 2] retained some aspects of control over wage rates, hours of work performed, and discipline. TAA then examined those tax returns filed by [Taxpayer 2] after its initial refund request covering the periods Q3/01, 10/01, 11/01, 12/01, 1/02, 2/02 and 3/02 and assessed additional taxes and interest owing for the above periods on April 9, 2002 and May 29, 2002. [Taxpayer 2] protested the balance due notices and they remain due.

On appeal to this division, Taxpayers assert that they are merely the employer of record; that they pay the workers for their clients and coordinate the hiring process; but they state their clients interview the candidates, select the acceptable ones, train the employees, provide the work area, and supervise the daily activities of the employees. In short, Taxpayers claim that they are entitled to exclude the amounts they pay the workers provided to their clients pursuant to WAC 458-20-111 (Rule 111); ETA 90-001; and *Rho Co. v. Department of Rev.*, 113 Wn. 2d 561, 782 P.2d 986 (1989).

[3] ETA 90-001 was cancelled on August 20, 2003. It was replaced by ETA 2016.04.111 on September 23, 2003.

To support their contention, Taxpayers described their normal worker hiring procedure as follows:

> First, Taxpayers and their client (Buyer) enter into a negotiated master recruitment agreement. These agreements set out terms dealing with such things as the qualifications of temporary workers, the right of Buyer to audit Taxpayers' payroll records, and Buyer's minimum responsibilities regarding interviewing and length of assignment. According to Taxpayers, the actual placement of workers was accomplished through the following purchase order process:
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> 1) Buyer notifies Taxpayers of the number of . . . workers needed, the qualifications and anticipated starting dates.
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> 2) Taxpayers advertise for qualified [workers].
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> 3) Taxpayers send qualified applicant resumes to Buyer.
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> 4) Buyer screens the applications[4] and interviews the applicants.
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> 5) Buyer decides which applicants should be hired and informs Taxpayers.
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> 6) Buyer indicates what it will pay workers and Taxpayers add their markup in accordance with a previously negotiated master recruitment agreement (which covers wages, payroll taxes, travel expenses, insurance and any housing allowance).
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> 7) Taxpayers offer employment to the applicant.
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> 8) Taxpayers sign an employment contract with workers on forms provided by Buyer.

Taxpayers also provided for our review, a copy of the written agreements [Agreement] they have with the Buyer . . . . That document memorializes the contractual rights, obligations and responsibilities of Taxpayers and Buyer.

. . . The Agreement refers to the "Seller" as "the entity identified in the Purchase Contract who agrees to sell Work." It also defines "Employee" or "Sellers Employee" as "any employee, agent, or representative of Seller or any subcontractor."

Section . . . describes the services to be furnished. It states:

[4] Applicants fill-out a [Non-employee Application], that is supplied by Buyer and is similar to an application for employment. The application lists the name of the employer as Taxpayers, however.

> Seller shall furnish to Buyer the services of Seller's Employees approved in this Contract by Buyer. Such services shall be furnished at the place or places and during the period or periods specified in the Contract.

Section . . . describes the compensation to be paid. It states:

> As full compensation for the performance of this Contract, unless otherwise provided in the Contract, Buyer shall pay Seller at the rates set forth in the Contract for all services provided hereunder by Seller's Employees plus for any travel required and authorized by Buyer, any travel, per diem, or other costs or allowances specifically provided in Schedule A to the Contract. Said rates cover all profit and all wages and salaries, overhead, and other costs and expenses of Seller incident to this Contract, except such costs and expenses as may be covered by any travel, per diem, or others costs or allowances specifically provided for in this Contract. Buyer's standard work week begins on Friday and ends on the following Thursday. Overtime or other premium rates, if any, will not be paid unless the performance of the overtime or other premium-pay Work has the prior written approval of Buyer.

Section . . . provides that "Discipline of Seller's Employees shall be Seller's responsibility."

Section . . . specifically states that the workers are not employees of Buyer but are Seller's Employees and subject to the rules, regulations, and management of Seller. Seller's Employees shall be paid exclusively by Seller, and Seller shall be responsible for compliance with all requirements relating to its Employees under local, state, and federal laws and regulations, including but not limited to laws and regulations governing workmen's compensation.

Section . . . further emphasizes that seller is an independent contractor and that nothing in the contract shall be construed as creating any relationship between Buyer and Seller other than that of Buyer and Seller. It further specifies that Seller is not an agent of Buyer and that neither party shall have any right, power, or authority to assume, create, or incur any expense, liability or obligation, express or implied on behalf of the other, except as expressly provided . . . .

The [Agreement] between the worker and Taxpayers also contains a statement signed by the worker acknowledging [that the worker is an employee of Seller and not an employee of Buyer for any purpose and that no compensation or any employment benefits shall be received from Buyer.].

Consistent with the above terms of the contracts, Taxpayers file returns and pay state and federal payroll related taxes and premiums to Washington's Department of Labor and Industries (L&I) and Department of Employment Security (ES) and to the Internal Revenue Service (IRS). Taxpayers have not provided any other documents to show that they make these payments as payroll agents, as the employers of record, or that their liability for payment of these expenses is solely that of agents for the Buyer.

In Schedules 2 & 3 of the [Taxpayer] audit, Audit disallowed deductions taken by [Taxpayer] during the current audit period for the costs of general liability insurance, life insurance and medical benefits paid to workers. [Taxpayer] makes the same arguments for these costs, *i.e.*, that these amounts are excludable payroll costs.

In addition to Taxpayers' contention that they are payroll agents for Buyer, [Taxpayer] asserted in the alternative that the Department is estopped from disallowing a Rule 111 exclusion because of the 1991 refund the Department granted.

[Taxpayer] explains that it negotiated its current contract with Buyer in . . . 2001 based on the belief that it could exclude amounts received for worker payroll costs from its gross income. [Taxpayer] argues that when DOR issued a refund to [Taxpayer] in 1991, DOR led it to believe that it could exclude worker payroll for all future periods. [Taxpayer] argues that it relied on that belief to its detriment and that DOR should now be estopped from applying the corrected future reporting instructions until the current contract expires on . . . 2004.

ANALYSIS:

[1] Washington imposes a B&O tax "for the act or privilege of engaging in business" in Washington. RCW 82.04.220. The B&O tax measure and rate is determined by the type or nature of the business in which a person is engaged. The measure of the B&O tax is the . . . "value of products, gross proceeds of sales, or gross income of the business, as the case may be." RCW 82.04.220. The term "gross income of the business" is defined by RCW 82.04.080 as: "the value proceeding or accruing by reason of the transaction of the business engaged in and includes . . . compensation for the rendition of services, . . . all without any deduction on account of the cost of . . . labor costs, . . . or any other expense whatsoever paid or accrued . . . ."

The Department has recognized, however, that certain amounts received for some expenses are not income and should be excluded in determining taxable gross income for B&O tax purposes. The Department by administrative rule allows an exclusion from taxable income for amounts received as "advance and reimbursements." WAC 458-20-111 ("Rule 111"). Rule 111 explains:

> The words "advance" and "reimbursement" apply only when the customer or client alone is liable for the payment of the fees or costs and when the taxpayer making the payment has no personal liability therefore, either primarily or secondarily, other than as agent for the customer or client.

Here, Taxpayers argue that the amounts they pay workers should be excluded from the B&O tax because they are simply a "pass through." In *Walthew, Warner, Keefe, Arron, Costello & Thompson v. Department of Rev.*, 103 Wn.2d 183, 188, 691 P.2d 559 (1984), the Court affirmed that amounts merely "passing through" a business in its capacity as an agent for the client are not taxable.

Taxpayers rely on *Rho Co. v. Department of Rev.*, 113 Wn.2d 561, 782 P.2d 986 (1989), to support their argument that the funds were simply a pass through. Taxpayers claim that they, like Rho, act as a payroll agent for their client. In *Rho* the taxpayer argued that it was not the workers' employer, but only paying them as an agent for its client. The Board of Tax Appeals (BTA) concluded that the taxpayer was the employer of the workers based on the parties' written contracts. On appeal, the Washington Supreme Court held that the BTA erred in relying solely on the contracts to determine whether Rho was an agent or the actual employer. The Court held that a determination of an agency relationship is not controlled by the manner in which the parties contractually describe their relationship. The Court went on to conclude that the record was inadequate to decide the agency issue and remanded it to the BTA for further findings. In remanding the case to the BTA, the Court gave the BTA specific instructions, which some have erroneously interpreted as the holding in the case. DOR, in response to the *Rho* decision, enacted ETA (90-001) on which [Taxpayer] relied to obtain its 1991 refund. The criteria listed in ETA 90-001 were used to determine who was the employer of the temporary workers.

Recently, the Court in *City of Tacoma v. The William Rogers Co., Inc*., 148 Wn.2d 169, 178, 60 P.3d 79 (2002), clarified its holding in *Rho*:

> Rule 111 provides that there may be excluded from taxable amounts any money or credits received by a taxpayer as reimbursement of an advance in accordance with the regular and usual custom of his business or profession. In *Rho* we explained that the taxpayer had to prove that the advance in question was made pursuant to an agency relationship. The existence of that agency relationship is not controlled by how the parties described themselves in their contract documents, and standard agency definitions should be used in analyzing the existence of the agency relationship.
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> When a taxpayer meets its burden and establishes the existence of an agency relationship, a second question must be asked: whether the taxpayer's liability to pay the advance "constituted solely agent liability." *Rho*, 113 Wn.2d at 573. If a taxpayer assumes any liability beyond that of an agent, the payments it receives are not "pass through" payments, even if the taxpayer uses the payments to pay costs related to the services it provided to its client. *Walthew*, 103 Wn.2d at 189.

In response to the *William Rogers* case, DOR cancelled ETA 90-001 and issued ETA 2016.04.111 (ETA 2016) to explain implementation of the Court's findings. ETA 2016 states:

> In order to exclude these payments from the measure of tax, the Washington State Supreme Court has ruled that two conditions must be met. The taxpayer must first establish that it received the funds as the agent of the customer or client. If this first condition is satisfied, the taxpayer must also establish that its use of the funds to pay a third party is solely as an agent of the customer or client.

Therefore, in order for Taxpayers to legally take the Rule 111 exclusion, they must first establish that they had an agency relationship with Buyer and that they had acted solely in an agency capacity when hiring and paying the workers. To determine the existence of an agency relationship, we must look beyond the labels of the contracts and utilize standard common law agency principles. *Rho*, 113 Wn.2d at 571. "The essential elements of common law agency are mutual consent of the relationship between a principal and an agent, and the right of control over the agent by the principal." ETA 2016.

In Taxpayers' case, they fail to establish the existence of an agency relationship with Buyer. First, there is no evidence of mutual consent between Taxpayers and Buyer that an agency relationship existed between the parties. In fact, both Buyer and Taxpayers have mutually agreed that an agency relationship did NOT exist.[5] Consistent with that denial, Taxpayers have represented themselves as the employer of the workers to all third parties, including other state and federal agencies. Taxpayers are the employers of record for the Department of Labor and Industries (L&I), Department of Employment Security (ES) and the Internal Revenue Service (IRS). Furthermore, in accordance with responsibilities normally accepted by a worker's employer, Taxpayers have deducted and remitted federal withholding and social security taxes, paid workman compensation taxes and unemployment taxes on all activities performed by their workers. Finally, we note that Taxpayers do not file a Federal Form 2678 with the IRS stating that they are merely acting as payrolling agents for Buyer. All of these facts indicate that neither Taxpayers nor Buyer intended to create an agency relationship in respect to these workers. Therefore, we conclude there was no mutual consent of an agency relationship between the parties.

In *William Rogers*, the Court also found that the company was not acting solely as an agent but was in the business of providing temporary services to its client, an essential part of which was labeling the company as the worker's employer. *William Rogers*, 149 Wn.2d at 179. Taxpayers provide this same essential service to their Buyer. In addition, the contracts between the workers and Taxpayers specifically identify the workers as employees of Taxpayers and not Buyer, thus indicating that Taxpayers are service providers and not payrolling agents. The [Agreement] specifically states [that the worker is an employee of Seller and not an employee of Buyer for any purpose and that no compensation or any employment benefits shall be received from Buyer.].

Taxpayer's contract with Buyer also supports that conclusion. Even though Taxpayers refer to amounts they receive from Buyer as "reimbursements," the contracts themselves state that Taxpayers are receiving payment for providing . . . technical services to Buyer.[6] Therefore, under the terms of the contract, these amounts are not reimbursements but instead payments for

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[5] [The contract provides that the Seller is an independent contractor and that nothing in the contract shall be construed as creating any relationship between Buyer and Seller other than that of Buyer and Seller. It further specifies that Seller is not an agent of Buyer and that neither party shall have any right, power, or authority to assume, create, or incur any expense, liability or obligation, express or implied on behalf of the other, except as expressly provided.]

[6] Section . . . of the [Contract] describes the services to be furnished by Taxpayers to Buyer. It states: "Seller shall furnish to Buyer the services of Seller's Employees approved in this Contract by Buyer. Such services shall be furnished at the place or places and during the period or periods specified in the Contract."

services rendered by Taxpayers to Buyer. Consequently, we conclude that Taxpayers are providing [technical] services to Buyer and not mere payrolling services.

We also note that Taxpayers grant their workers certain paid holidays and accrued vacation time. Taxpayers' billing rates incorporate these charges, but if the worker fails to take a vacation or holiday time, the cost savings are not refunded to Buyer. Thus, Taxpayers have not paid holiday and vacation time benefits to workers solely as an agent of Buyer.

Finally, we note that Buyer does not exercise pervasive control over the workers to the exclusion of Taxpayers. On the contrary, it is Taxpayers that exert primary control over the hiring process. Taxpayers initially advertise for workers and require them to complete employment application forms. And, even though Buyer may choose which candidate is acceptable, the actual offer of employment comes from Taxpayers. In addition, candidates sign a Temporary Employment Agreement directly with Taxpayers and not Buyer, thereby making Taxpayers primarily liable for payment to the workers. We also note that . . . their contract provides that "any discipline of Seller's Employees shall be Seller's responsibility." . . .

[W]e conclude that Taxpayers are the employers of the workers and not Buyer. Thus, Taxpayers are liable for the employees' salaries, payroll taxes and other payroll related expenses and benefits. As the Court stated in *Rho*, "If Rho is the employer, then Rho is liable in its own right for payment, and Rule 111 does not apply." 113 Wn.2d at 569. Consequently, we conclude that Taxpayers did not pay the workers solely as agent for Buyer and Taxpayers are not and never were entitled to a Rule 111 pass through exclusion for worker payroll costs and related benefits. Accordingly, Taxpayers' petitions are denied on this issue.

<u>Estoppel based on 1991 Refund issued to [Taxpayer]</u>:

[2] Next, [Taxpayer] argues that Audit's instructions denying the pass through exclusions should not be implemented until after [Taxpayer]'s current contract expires on . . . 2004. [Taxpayer] argues that it was not aware that it would not be allowed a payroll exclusion until 2002 when Audit issued the audit assessment with the new reporting instructions. [Taxpayer] argues that because it assumed that the exclusion would be allowed, it did not consider the additional B&O taxes when determining its bid to Buyer made in . . . 2001. In essence, [Taxpayer] is making an equitable estoppel argument.

To establish equitable estoppel requires proof of:

> (1) an admission, statement or act inconsistent with a claim later asserted; (2) reasonable reliance on that admission, statement, or act by the other party; and (3) injury to the relying party if the court permits the first party to contradict or repudiate the admission, statement or act. *Berschauer/Phillips Constr. Co. v. Seattle Sch. Dist. No. 1*, 124 Wash. 2d 816, 831, 881 P.2d 986 (1994). Equitable estoppel against the government is not favored. *Kramarevcky v. Department of Social & Health Serv.*, 122 Wash. 2d 738, 743, 863 P.2d 535 (1993). Therefore, when the doctrine is asserted against the government,

> equitable estoppel must be necessary to prevent a manifest injustice, and the exercise of government functions must not be impaired as a result of estoppel. *Id*. Each element must be proved by clear, cogent, and convincing evidence. *Id*. at 744.

Det. No. 99-042, 19 WTD 784 (2000).

In this case, [Taxpayer] has not established by clear, cogent, and convincing evidence all of the elements of equitable estoppel. Although the act of granting a refund in 1991 may appear inconsistent with DOR's later denial of the pass through exclusion in 2001, we find that it is not.

DOR's normal refund process is described in WAC 458-20-229 (Rule 229). It states in pertinent part:

> (3) **REFUND/CREDIT PROCEDURES**. Refunds are initiated in the following ways:
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> . . .
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> (a) Taxpayer request. When a taxpayer discovers that it has overpaid taxes, penalties, or interest, it may file an amended return or a petition for refund or credit with the department. The petition or amended tax return must be submitted within the statute of limitations. Refund or credit requests should generally be made to the division of the department to which payment of the tax, penalty, or interest was originally made. The amended tax returns or **petitions are subject to future verification** or examination of the taxpayer's records. If it is later determined that the refund or credit exceeded the amount properly due the taxpayer, an assessment may be issued to recover the excess amount, provided the assessment is made within four years of the close of the tax year in which the taxes were due or prior to the expiration of a statute of limitations waiver.

(Underlining and bolding added.)

Under Rule 229 when refund requests are initiated by a petition of a taxpayer, refunds are granted on a conditional basis and subject to future field audit verification. In [Taxpayer]'s case, the evidence indicates that, in 1991, Audit issued such a conditional refund to [Taxpayer] that was subject to future verification by field audit, in accordance with Rule 229. The fact that Audit never performed the field audit verification does not change the conditional nature of the refund. In August of 2001 Audit contacted Taxpayer for a routine field audit to examine [Taxpayer]'s books and records. During this field audit examination, Audit determined that the 1991 refund request was incorrect and that [Taxpayer] should not have excluded worker payroll costs and should have included those amounts in its gross income. However, because the period for making assessments on the refunded amounts had expired, Audit correctly determined that an assessment to recover the improperly refunded taxes in 1991 was barred by RCW 82.32.050. Consequently, we conclude that DOR's written instructions in the 2001 field audit report and assessment are not inconsistent with its act of granting a conditional refund in 1991, when the facts supporting the 1991 refund claim had not been verified by a field audit investigation.

Therefore, since [Taxpayer] has not established by clear, cogent and convincing evidence the necessary elements of equitable estoppel, we are denying [Taxpayer]'s claim.

Schedules 2 & 3: Disallowed Deductions taken by [Taxpayer] for General Liability Insurance, Life Insurance and Medical Benefits Paid by [Taxpayer]:

[3] As stated above, [Taxpayer] is not legally entitled to exclude any worker payroll costs from gross income, including those paid for general liability insurance, life insurance and medical benefits. Nor is DOR estopped from assessing taxes during the current audit period, since the 1991 conditional refund was never verified by field audit and [Taxpayer] has presented no evidence that DOR gave [Taxpayer] written instructions that general liability insurance, life insurance and medical benefits were excludable. Accordingly, [Taxpayer]'s petition is denied on this issue.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

Dated this 20th day of August 2004.