

Cite as Det No. 13-0018, 32 WTD 205 (2013)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| In the Matter of the Petition for Refund |) | D E T E R M I N A T I O N |
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| |) | No. 13-0018 |
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| |) | |
| |) | Registration No. . . . |
| |) | Commute Trip Reduction Credit Denial |
| |) | Letter Dated . . . |
| |) | Docket No. . . . |

RCW 82.70.025: COMMUTE TRIP REDUCTION CREDIT – LATE FILING OF APPLICATION. Where a CTRC application is received late, the legislature has given the Department specific instruction to deny the application. The Department has no discretion to accept an untimely CTRC application.

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.

Anderson, A.L.J. – [Taxpayer] requests the Washington State Department of Revenue (the “Department”) approve Taxpayer’s application for a Commute Trip Reduction Credit (“CTRC”) even though Taxpayer filed the application after the due date. We deny Taxpayer’s petition.¹

ISSUE

May the Department approve Taxpayer’s CTRC application under RCW 82.70.025 when it filed the application for the credit one week after the deadline?

FINDINGS OF FACT

Taxpayer is a . . . retail co-operative During 2010, Taxpayer made qualifying payments to its employees under the CTRC program, timely filed its 2010 application on January 31, 2011, and received a credit of \$. . . under RCW 82.70.025.

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

In 2011, Taxpayer again made qualifying payments to employees under the CTRC program. Taxpayer's 2011 CTRC application was due on January 31, 2012. Taxpayer filed its 2011 CTRC application with the Department by mail. The envelope containing Taxpayer's application bore a U.S. Mail postmark date of February 7, 2012. Along with the CTRC application, Taxpayer included a letter dated February 7, 2012 stating that Taxpayer was unable to gather the information needed to complete the CTRC application from its employees because extended heavy snow and wind storms had caused dangerous road conditions and power outages which prevented many employees from being able to report for work in the days leading up to the January 31, 2012 due date.

Because Taxpayer's CTRC application was postmarked after the due date, the Department's Taxpayer Accounts Administration Division ("TAA") declared it untimely and sent a letter to Taxpayer on February 28, 2012 denying the credit.

Taxpayer appealed the denial. Taxpayer does not contest that its CTRC application was postmarked February 7, 2012 (and, therefore, untimely), but asks that the Department approve the CTRC application in light of the extenuating circumstances. Taxpayer reiterates that extended heavy snow and wind storms caused dangerous road conditions and power outages that prevented employees from reporting to work, and, as a result, Taxpayer was unable to gather the information needed to timely complete the CTRC application. In addition, Taxpayer explains that it was relying on a temporary employee and new employee to assist with the year-end workload, and a key member of Taxpayer's accounting staff (who was neither a temporary nor a new employee) was dealing with a relapse of a spouse's serious illness near the time of the CTRC application due date.

ANALYSIS

Chapter 82.70 RCW establishes a Commute Trip Reduction Credit Program to encourage employers to provide incentives to employees to use ride sharing, public transportation, car sharing, and other non-motorized methods to commute into work. RCW 82.70.025(1). RCW 82.70.020 authorizes the amount of credit that can be taken under chapters 82.04² and 82.16³ RCW.

RCW 82.70.025 establishes the process for applying for the CTRC. It provides:

- (1) Application for tax credits under this chapter must be received by the department between the first day of January and the 31st day of January, following the calendar year in which the applicant made payments to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting. . . .

² Chapter 82.04 RCW governs the business and occupation tax.

³ Chapter 82.16 RCW governs the public utility tax.

- (3) The department shall disapprove any application not received by the deadline provided in subsection (1) of this section regardless of the reason that the application was received after the deadline. (Emphasis added.)

RCW 82.70.025 clearly required that Taxpayer's 2011 CTRC application had to be received by the Department by January 31, 2012. Because Taxpayer filed its CTRC application by U.S. Mail, it is deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it. RCW 82.32.080; RCW 1.12.070. The cancellation mark stamped upon the envelope was February 7, 2012, or seven days after its due date. Therefore Taxpayer's CTRC application was not received by the deadline.

Where a CTRC application is received late, the legislature has given the Department specific instruction to deny the application. By use of the word "shall," in RCW 82.70.025(3) the legislature has made disapproval of any application received after the due date mandatory, "regardless of the reason." RCW 82.70.025(3). *See* Det. No. 88-168, 5 WTD 253 (1988) ("The legislature, through its use of the word "shall" in RCW 82.32.050 and RCW 82.32.090, has made the assessment of interest and penalties mandatory."). Although we are sympathetic to the challenges Taxpayer encountered due to the extended and extreme weather conditions in mid-January 2012, the Department has no discretion to accept an untimely CTRC application. Therefore, we conclude the Department properly disapproved Taxpayer's untimely filed CTRC application.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 18th day of January 2013