

Cite as Det. No. 14-0339, 34 WTD 238 (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. 14-0339
)	
...)	Registration No. . . .
)	

[1] RCW 82.32.145: ASSESSMENT LIMITED LIABILITY BUSINESS ENTITY – APPEAL PERIOD – ISSUANCE OF TFAA. When a limited liability business entity is assessed, the assessment may be appealed only within 30 days of its issuance or in a petition for refund after the taxes have been paid, and the issuance of a TFAA does not re-open the appeal period.

[2] RDW 82.32.145: LIMITED LIABILITY BUSINESS ENTITY – INTRA-COMPANY CONFLICTS DEPARTMENT’S DUTY TO OBTAIN RECORDS – TFAA – DEFENSE. Because there is no authority in The Revenue Act or elsewhere in Washington law authorizing the Department to intervene in intra-company conflicts between business associates in order to obtain records from one corporate officer for the benefit of another corporate officer, the Department’s not doing so is not a defense from liability under a TFAA.

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.

Bauer, A.L.J. – The recipient of a trust fund accountability assessment (TFAA) objects to an additional amount added. He alleges that he was not a “responsible individual” because the Department did not assist him in obtaining records from another corporate officer, and was not provided the corporate records when they became available. The petition is denied.¹

ISSUES

1. Is the 2008 increase in the TFAA of the treasurer/director of a corporation in error because he has not been provided the records upon which the Department based the additional assessment?
2. Is a TFAA against an individual invalid because the Department did not intervene to assist him in obtaining financial records from another shareholder?

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

FINDINGS OF FACT

[Corporation], which installed heating and air conditioning systems, was incorporated on February 28, 2008. It charged and collected retail sales taxes from its retail customers on sales and installation of heating and air conditioning systems. [Taxpayer]² was one of [Corporation]'s three incorporators, and served as its Treasurer and Director during 2008.

From its incorporation to its dissolution, [Corporation] filed several tax returns but remitted no taxes. The Compliance Division (Compliance) of the Department of Revenue (Department) was able to seize some taxes from [Corporation]'s bank account only under warrants that were based on Taxpayer's filings or estimated assessments.

The Department closed [Corporation]'s reporting account on March 31, 2010, and Washington's Secretary of State's office dissolved [Corporation] on June 1, 2010, for failure to renew its license and provide an annual report. At that time, two tax warrants remained unpaid in the total amount of \$³

On April 26, 2010, Compliance issued an estimated TFAA under the provisions of RCW 82.32.145 against Taxpayer's marital community for state and local sales taxes [Corporation] had collected but not remitted, including penalties and interest thereon, in the total amount of \$

Taxpayer appealed his TFAA to the Department on May 12, 2012, arguing he was not a "responsible party" in accordance with RCW 82.32.145 and was therefore not liable for those taxes' payment. On May 29, 2013, we issued Det. No. . . . holding Taxpayer to be a "responsible person" and sustaining the TFAA. On July 1, 2013, Taxpayer petitioned for reconsideration of Det. No. . . . which was denied on February 20, 2014 in Det. No.⁴

Footnote 3 of Det. No. . . . noted that, since the issuance of the outstanding warrants (Invoices 4 and 7) and the filing of Taxpayer's appeal, Compliance had obtained from another of [Corporation]'s officers/directors documentation that would allow Compliance to more accurately calculate [Corporation]'s tax liabilities from its formation in 2008 through its dissolution in 2010. On February 10, 2014, based on the new records received, Compliance adjusted [Corporation]'s assessment for the period March 1, 2008 through December 31, 2008. The adjusted assessment increased [Corporation]'s retail sales tax liability from \$. . . (originally issued on May 25, 2010) to \$⁵ The assessment was mailed to [Corporation]'s address on file with the Department as required by RCW 82.32.130.⁶ Because [Corporation] did not petition for

² Although the marital community was assessed in accordance with Washington's community property laws, we will refer to [Taxpayer] as the single taxpayer.

³ Compliance issued a warrant (Inv. 7) on June 29, 2010 that included the unpaid amounts assessed for both 2008 (Inv. 6) and 2010 (Inv. 5). This warrant has approximately \$. . . , including penalties and interest, still owing. The warrant issued on March 23, 2010 for unpaid amounts in 2009 (Inv. 4), with the amount of penalties and interest, still has \$. . . due and owing.

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⁵ Compliance had originally based the 2010 assessment on the tax measure [Corporation] had used to erroneously report B&O tax under the service and other activities classification for the 2008 period.

⁶ RCW 82.32.130 provides:

correction of the 2008 assessment issued on February 10, 2014 within the 30 days prescribed by WAC 458-20-100(4), it became final on March 12, 2014.

On February 18, 2014, Compliance amended Taxpayer's TFAA, increasing it by \$. . . Compliance explained the calculation in the cover letter:

Enclosed is your copy of your amended Trust Fund Accountability Assessment. The original assessment was issued to you on April 26, 2012. We know the assessment needed adjustments and stated in our conclusion to your original appeal:

If we are upheld, we will need to adjust the liability to the Corporation by \$. . . and increase the TFAA by the sales tax portion based on the invoices they provided.

The adjustments to the corporate liability [are] based on the records provided by the Corporate Officers and/or check copies provided by [Corporation] customers. You will see that the 2008 Tax Due has increased by \$. . . and the 2010 Tax Due has decreased by \$. . . The net result is an increase in Tax Due of \$. . . This is much less than what we originally anticipated because we did not use any documents that did not meet all of our requirements for proof of collected sales tax. I am enclosing the working papers used by the Excise Tax Examiner to determine the final adjustments.

The current balance before the amendments was \$. . . The current outstanding balance is \$. . . Please remit the increased balance or appeal the balance by April 24, 2014. This only pertains to the adjustment and does not affect the status of the original assessment.

On March 20, 2014, Taxpayer petitioned the Department for correction of assessment, objecting to the additional \$. . . added to his TFAA of collected, but unremitted, retail sales taxes attributable to 2008.

ANALYSIS

1. RCW 82.32.145 provided for the assessment of "responsible individuals" for the payment of retail sales tax funds collected and held in trust under RCW 82.08.050 by a corporate or limited liability business entity (entity) that is no longer operating, dissolved, or insolvent. Subsection (4) provided that persons issued notices of TFAA assessments are entitled to administrative appeal procedures.⁷ Subsection (6) provided that an entity's liability remains the same even though duplicate amounts may have been assessed under TFAAs. The issuance of a TFAA does not relieve the entity from tax.

[I]f the notice or order is mailed, it shall be addressed to the address of the taxpayer as shown by the records of the department, or, if no such address is shown, to such address as the department is able to ascertain by reasonable effort. Failure of the taxpayer to receive such notice or order whether served, mailed, or provided electronically as provided in RCW 82.32.135 shall not release the taxpayer from any tax or any increases or penalties thereon.

On Aug 8, 2010, the Department received a post office notice that [Corporation]'s mail should be forwarded to . . . This is the Department's last known address for [Corporation].

⁷ As noted in Det. No. . . . , we are using the 1995 version of RCW 82.32.145 instead of the 2010 version.

Taxpayer complains:

The Department claims to have received additional documentation showing an additional \$. . . in sales tax was collected, but the Department has not shared this information with [Taxpayer], and [Taxpayer] has not otherwise received this information. Because [Taxpayer] worked with the Department during the original desk audit, provided all the information he had available, and was unaware of the any additional sales and additional collected sales tax, [Taxpayer] did not willfully fail to pay the \$. . . to the Department.

(Emphasis added.) In Det. No. 03-0066R, 23 WTD 243 (2004), however, the Department concluded that a taxpayer who had received a TFAA could not challenge the amount of the tax 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. In concluding that the individual taxpayer could not challenge the amounts underling the TFAA, the Department 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 covered by the assessment the assessment 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.

Det. No. 03-0066R, 23 WTD 243 (2004); *see also* Det. No. 87-39, 2 WTD 189 (1987); Det No. 86-268, 1 WTD 245 (1986).

Appeals within 30 days of a TFAA – or, as in this case, an adjustment in the amount of a TFAA - may concern matters only as to the issuance of the TFAA itself, such as whether one is a “responsible party” under RCW 82.32.145. Det. No. 08-0116, 27 WTD 228 (2008).

As 23 WTD 243 explains, [Corporation] had 30 days to appeal its assessments after each one’s issuance without prior payment. RCW 82.32.160; WAC 458-20-100(4). To that end, [Corporation] could have reviewed the records used and challenged the underlying increase. [Corporation] never appealed any of its assessments, including the additional assessment dated March 25, 2014 that was the basis for the increased TFAA here at issue, and those appeal periods have now passed. Taxpayer may challenge their amounts only in a petition for refund after the taxes have been paid. RCW 82.32.060; WAC 458-20-229; Det. No. 03-0066R, 23 WTD 243 (2004).

This issue concerns only Taxpayer’s objection to the increase in the amount of his TFAA, and not whether the adjustment to the TFAA was wrongly issued. Accordingly, Taxpayer’s petition as to this issue is denied.

2. RCW 82.01.060(1) provides that one of the powers and duties of the Department is to:

Assess and collect all taxes and administer all programs relating to taxes which are the responsibility of the tax commission at the time chapter 26, Laws of 1967 ex. sess. takes

effect or which the legislature may hereafter make the responsibility of the director or of the department;

(Emphasis added.) According to Taxpayer, the Department shares fault in this matter. He has alleged:

After filing the 2009 return for [[Corporation]], . . . [Business Partner A] . . . and [Taxpayer] voluntarily contacted the Department for assistance in obtaining copies of all sales invoices and banking information from [Business Partner B] and [Spouse]. The [Business Partner B and Spouse] had possession of all the relevant documentation, and refused to turn over any documentation or provide copies. The DOR did not initiate this action. . . . [Taxpayer] and [Business Partner A] contacted the Department because they could not obtain information from [Business Partner B]; otherwise, they provided all the information they had. [Business Partner B] controlled all the sales information, and he refused to provide that information to [Taxpayer], [Business Partner A], and the Department. Also, [Taxpayer] did not issue or review [Corporation] invoices or receipts and could only prepare the 2008 excise tax return based on the information that was entered into Quickbooks. . . .

The Department has lost sight of the fact that [Taxpayer] is a victim of [Business Partner B]'s fraud, and that [Taxpayer] and [Business Partner A] voluntarily reached out to the Department of Revenue for assistance. Now, the Department is punishing [Taxpayer] for being a victim and for voluntarily contacting the Department. Had [Taxpayer] not contacted the Department, he most likely would not be in this position today. Accordingly, holding [Taxpayer] liable for the full amount of the trust fund liability assessment is an unduly harsh consequence, and it will have a chilling effect on other similarly-situation taxpayers.

(Letter dated July 1, 2013, Subj: Petition for Reconsideration of DOR Determination, pp. 1-2, Taxpayer's emphasis.) Taxpayer in his present petition again asserts that when [Business Partner B] . . . would not provide him with the [Corporation] documentation he needed to fill out the 2008 excise tax return, he:

voluntarily contacted the Department to address this issue. Once of the reasons for contacting the Department was for assistance in obtaining copies of all sales invoices and banking information from [Business Partner B] . . . and [Business Partner B's] . . . wife. [Business Partner B and Spouse] . . . had possession of all the relevant documentation, and refused to turn over any documentation or provide copies. The DOR did not initiate this action.⁸

(Emphasis ours.) Taxpayer thus, again, argues he is not liable for the additional trust fund assessment for 2008 because the Department did not assist him in obtaining records for that year.

⁸ Page 2, Taxpayer's appeal dated March 20, 2014, to the Department's District Compliance Manager.

Taxpayer's complaint, however, is ill-founded. There is no authority in The Revenue Act -- or elsewhere in Washington law -- that authorizes the Department to intervene in intra-company conflicts between business associates. The Department has done what it was authorized to do under RCW 82.01.060(1) -- "assess and collect taxes" -- by auditing [Corporation] and issuing an assessment for amounts found to be due.

Taxpayer's petition as to this issue is denied.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 24th day of October, 2014.