

Cite as Det. No. 17-0119, 36 WTD 579 (2017)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for 2017 Commute	)	<u>D E T E R M I N A T I O N</u>
Trip Reduction Credit Application Denial	)	
	)	No. 17-0119
	)	
...	)	Registration No. . . .
	)	

RCW 82.70.025; Rule 261”(4)(j): APPLICATION FOR TAX CREDIT. A taxpayer’s failure to submit the Commute Trip Reduction Credit application by the due date due to internal personnel changes does not constitute a circumstance beyond the control of the taxpayer that warrants the Department accepting the application within fifteen days after the statutory deadline as provided in RCW 82.70.025 and Rule 261 (4)(j).

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.

Callahan, T.R.O. – . . . (“Taxpayer”) protests the Department of Revenue’s denial of Taxpayer’s application for a Commute Trip Reduction Credit (“CTRC”), arguing that its late application submission was caused by its internal personnel changes that prevented Taxpayer from gathering the information needed to timely complete its CTRC application. We deny Taxpayer’s petition.<sup>1</sup>

ISSUE

Where a taxpayer failed to submit the CTRC application by the due date due to internal personnel changes, does this constitute a circumstance beyond the control of the taxpayer that warrants the Department accepting the application [within fifteen days after the statutory deadline] as provided in RCW 82.70.025 and WAC 458-20-261 (“Rule 261”) (4)(j)?

FINDINGS OF FACT

Taxpayer is an . . . insurance company that provides insurance, such as auto and home insurance to consumers. Taxpayer has applied [and been approved] for the CTRC for payments to its employees who have used ride sharing, public transportation, car sharing, and other non-motorized methods to commute into work since 2009. The Department received Taxpayer’s 2017 CTRC application on February 3, 2017, which was after the deadline of January 31, 2017. Taxpayer stated in its 2017 CTRC application that there were internal personnel changes that prevented it

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

from gathering the information needed to complete and submit the application before the deadline of January 31, 2017.

On March 6, 2017, the Department's Taxpayer Account Administration (TAA) Division informed Taxpayer that the Department denied Taxpayer's 2017 CTRC credit application because the reason for the late submission, i.e. Taxpayer's internal personnel changes, was not a circumstance beyond Taxpayer's control [that would allow] the Department to accept the application under the statute and the rule.

On March 15, 2017, Taxpayer petitioned the Department's Administrative Review and Hearings Division (ARHD) for [review of] the denial. Taxpayer makes the same argument that it made to the TAA Division.

### 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). [Employers may apply for a credit against their business and occupation tax or public utility tax liability. RCW 82.70.020.] RCW 82.70.020 authorizes the amount of credit that can be taken under chapters 82.04 and 82.16 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. . . .

...

- (3)(a) The department must disapprove any application not received by the deadline provided in subsection (1) of this section except that the department may accept applications received up to fifteen calendar days after the deadline if the application was not received by the deadline because of circumstances beyond the control of the taxpayer.

- (b) In making a determination whether the failure of a taxpayer to file an application by the deadline was the result of circumstances beyond the control of the taxpayer, the department must be guided by rules adopted by the department for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(Emphasis added.)

The Department adopted Rule 261 to administer the commute trip reduction incentives statute. Rule 261(4)(j) provides:

**(j) What are the credit procedures?**

(i) Persons applying for the credit must complete the commute trip reduction credit annual application. The application must be electronically filed and received by the department between January 1st and January 31st, following the calendar year in which the applicant made incentive payments. The commute trip reduction credit annual application is available through the business's "My Account" on the department's web site at dor.wa.gov.

(ii) The department must make a determination on an application within sixty days of the January 31st deadline. Except as explained immediately below, the department must disapprove an application not received by the January 31st deadline. Legislation (2ESSB 5987, chapter 44, Laws of 2015) passed in 2015 allows the department to accept applications received up to fifteen calendar days after the deadline if the application was not received by the deadline because of circumstances beyond the control of the taxpayer. For what is considered circumstances beyond the control of a taxpayer see WAC 458-20-228. Returns, payments, penalties, extensions, interest, stay of collection. Once the application is approved and tax credit is granted, the department is not allowed to increase the credit.

(Emphasis added.)

Therefore, the statute and the rule provide that the Department must disapprove the CTRC application if the Department does not receive the application by January 31st, following the calendar year in which the applicant made incentive payments. However, the Department has the statutory authority to accept a CTRC application that was received up to fifteen calendar days after the deadline, if the application was not received by the deadline, provided the taxpayer's failure to timely file was due to circumstances beyond its control. RCW 82.70.025(3); Rule 261(4)(j).<sup>2</sup>

Here, the Department received Taxpayer's 2017 CTRC application on February 3, 2017, which was within fifteen calendar days after the deadline of January 31, 2017. Therefore, the Department may accept the application if the late submission was caused by a circumstance beyond Taxpayer's control. RCW 82.70.025(3); Rule 261(4)(j).

RCW 82.70.025(3) provides that the Department must be guided by rules the Department adopted for the waiver or cancellation of penalties, to determine whether the failure of a taxpayer to file an application by the deadline was the result of circumstances beyond the control of the taxpayer. RCW 82.70.025(3). The Department's administrative rule governing the waiver or cancellation of penalties is WAC 458-20-228 ("Rule 228").

Rule 228 lists seven circumstances where the Department will waive penalties, and it explains that a taxpayer claiming that a circumstance beyond its control caused the delay must demonstrate that

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<sup>2</sup> Prior to 2015, the legislature gave the Department specific instruction to deny the application where a CTRC application was received late regardless of the reason that the application was received after the deadline. See Det. No. 13-0018, 32 WTD 205 (2013); [Laws of 2005, ch. 277, § 2(3)].

the circumstance was “immediate, unexpected, or in the nature of an emergency.” The Rule states that “such circumstances [must] result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay.” Rule 228(9)(a)(ii). A [personnel change is not] a circumstance beyond the taxpayer’s control that amounts to “immediate, unexpected, or in the nature of an emergency” for purposes of Rule 228(9). Det. No. 13-0085, 32 WTD 243 (2013).

Likewise, Taxpayer’s internal personnel changes that precluded it from gathering information needed to complete its 2017 CTRC application was not unexpected, or in the nature of an emergency that caused the late submission for purposes of Rule 228(9)(a)(ii). Thus, we conclude that Taxpayer’s untimely filing, that was caused by its internal personnel changes, did not constitute a “circumstance beyond its control” under RCW 82.70.025(3); Rule 261(4)(j); and Rule 228(9)(a). We do not find a legal basis for the Department to accept Taxpayer’s 2017 CTRC application. We deny Taxpayer’s petition.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 4th day of May 2017.