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

In the Matter of the Petition for Refund)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 18-0245
)	
...)	Registration No. . . .
)	

WAC 458-20-229(3)(b); RCW 82.32.060: REFUND REQUEST – SUBSTANTIATION. A taxpayer’s refund application is complete where Taxpayer provides the five elements required by Rule 229(3)(b) within its 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.

Casselman, T.R.O. – A developer of online gaming platforms (Taxpayer) appeals the Department of Revenue’s (Department) partial denial of refund. Taxpayer contends that the Department erred in finding Taxpayer’s refund application was incomplete. We grant Taxpayer’s petition.¹

ISSUE

Under WAC 458-20-229 (Rule 229), is Taxpayer’s refund claim partially barred as incomplete where Taxpayer referenced both of the relevant [unified business identifier (UBI)] numbers on only one page of its four-page application for refund?

FINDINGS OF FACT

Taxpayer is [an out-of-state] corporation that develops and offers an online gaming platform . . . on personal computers and is available via the internet and mobile devices. Taxpayer also sells in-game advertising, which is delivered to viewers while they play games on Taxpayer’s platform.

Taxpayer was assigned two UBI numbers.² UBI number . . . (first UBI), was assigned to Taxpayer when it first incorporated with the Washington Secretary of State as a Washington for-profit

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

² As explained on the Department website, <https://dor.wa.gov/doing-business/business-types/industry-guides/convenience-stores/common-terms>:

[S]ometimes referred to as a UBI number, registration number, or reseller number, the [UBI] number is a nine-digit number used to identify registered businesses. The number is assigned when a person completes a Business License Application to register with, or obtain a license from, state agencies. The departments of Revenue, Licensing, Employment Security, Labor and Industries, and the

corporation on August 24, 1998. On November 17, 2000, the Taxpayer incorporated as [an out-of-state] for-profit corporation and it received UBI number . . . (second UBI). The first UBI number is reported as inactive on the Secretary of State's website, but it is unclear whether the second UBI was allowed to expire or was closed when Taxpayer incorporated [out-of-state]. Taxpayer reported its tax liabilities to the Department using the first UBI, but filed its corporation Renewal and Annual Reports with the Secretary of State using the second UBI.³

In September 2012, Taxpayer reached out by email inquiry to the Department regarding the issue of its two UBI numbers. Taxpayer conveyed in its inquiry that it believed the Department was going to reinstate the first UBI number and close out the second UBI number. The Department responded by email as follows:

Hi . . . – I looked up the account under [first UBI] and see that you have been filing under that UBI – so I have closed the [second UBI] effective 11/1/2000 (which is the date it was opened). This should take care of it as far as Dept. of Revenue is concerned. Please let me know if you have any further questions.

For unknown reasons, the second UBI was not closed. Taxpayer continued to report and pay under the first UBI pursuant to its understanding of the Department communication. In 2013, the Department contacted Taxpayer and referenced the second UBI number in the subject line of the email. At that time, Taxpayer explained that it had mistakenly received two UBI numbers and that it had reported and paid under the first UBI. The Department responded by email as follows:

Hi . . . ;
Thanks very much for explaining. Sounds like we can probably make the necessary adjustments on these accounts if you can confirm that the previous UBI # (first UBI) should have filed a no business [excise tax return] for 11/2012.

On December 20, 2016, Taxpayer submitted an application for refund to the Department seeking a refund of \$. . . for the period of January 1, 2012, to June 30, 2016 (refund period). Taxpayer maintained the same corporate entity name and FEIN throughout the refund period. Both UBI numbers belong to the same Taxpayer that has used the same name since 1998. Taxpayer's application for refund consisted of four pages:⁴

1. The first page of the application packet is the Department form titled, Application for Refund or Credit. Taxpayer listed only its second UBI on this form. The refund period

Corporations Division of the Secretary of State are among the state agencies participating in the UBI program. In most cases, your UBI number will also be your account ID with the Department of Revenue.

(Site last visited June 15, 2018).

³ In at least one of its Secretary of State annual renewals, Taxpayer appears to have mistakenly, and perhaps as a result of communications with the Department, filed using the first UBI. On the annual renewal dated December 19, 2012, . . . , identified as CFO, completed the annual renewal and in so doing, made a strike through the prepopulated UBI number (the second UBI) and hand wrote the old UBI number (the first UBI) in its place.

⁴ Going forward, the four pages of Taxpayer's refund application packet will collectively be referred to as "application packet."

includes dates under which the Taxpayer reported using both UBI numbers. The total refund claimed includes amounts reported and paid under both UBI numbers. Taxpayer typed, “SEE ATTACHED” in the section of the Department form that requires the explanation of the basis for the claim. The form is signed by . . . , as Representative, and is dated December 20, 2016.

2. The second page of the application packet is a one-page cover letter that provides a basis for the request for refund, and refers to Workpaper A “Summary of Apportionment and Refund Due” and to the Confidential Tax Information Authorization (CTIA). Taxpayer listed only its second UBI on this cover letter.
3. The third page of the application packet is Taxpayer’s one-page Workpaper A on which both UBI numbers are listed.
4. The fourth page of the application packet is the CTIA with only the second UBI number listed.⁵

On February 21, 2018, the Department’s Audit Division (Audit) partially denied the refund request for Taxpayer on grounds that Taxpayer had not submitted a completed refund application for the periods covered by the first UBI number. Audit stated that if Taxpayer wanted to seek a refund for periods prior to November 1, 2012, it must file a separate refund request.

Taxpayer appealed the partial denial letter that Audit issued and asserts that the Department should consider the petition for periods covered by both UBI numbers because Taxpayer has at all times existed with no name change, and has operated as the same business, despite having had two UBI numbers issued to it. Taxpayer further contends that its application packet, which included both its UBI numbers on one of the four pages in its application packet, constitutes a complete application under Rule 229.

ANALYSIS

RCW 82.32.060(1) explains that a taxpayer is entitled to a refund of overpaid taxes, penalties, or interest when the Department determines “within the statutory period of taxes, penalties, or interest prescribed by RCW 82.32.050” amounts were paid “in excess of that properly due.” The statute explains that either an application for refund by the taxpayer or an examination of the taxpayer’s returns or records triggers the Department’s obligation to determine if a refund is due. *Id.*

The Department promulgated Rule 229, which implements the refund procedures included in RCW 82.32.060. Rule 229 provides that while taxpayers are encouraged to use the Department’s refund application form to ensure that all necessary information is provided, use of the Department’s form is not mandatory. *See*, Rule 229(3)(b)(i). Any written request for refund that meets the requirements as set forth in Rule 229 shall constitute a valid application. *Id.*

Rule 229(3)(b) explains the five elements that must be included in a valid application for refund:

- (ii) A taxpayer must submit a refund application within the time limits described in subsection (2)(a) of this section. An application must contain the following five elements:

⁵ Prior to the hearing on July 11, 2018, Taxpayer provided a CTIA that includes its first UBI number.

(A) The taxpayer's name and UBI/TRA number must be on the application.

(B) The amount of the claim must be stated. Where the exact amount of the claim cannot be specifically ascertained at time of filing, the taxpayer may submit an application containing an estimated claim amount. Taxpayers must explain why the amount of the claim cannot be stated with specificity and how the estimated amount of the claim was determined.

(C) The tax type and taxable period must be on the application.

(D) The specific basis for the claim must be on the application. Any basis for a refund or credit not specifically identified in the initial refund application will be considered untimely, except that an application may be refiled to add additional bases at any time before the time limits in subsection (2) of this section expire.

(E) The signature of the taxpayer or the taxpayer's representative must be on the application. If the taxpayer is represented, the confidential taxpayer information waiver signed by the taxpayer specifically for that refund claim must be received by the department by the date the substantiation documents are first required, without regard to any extensions. If the signed confidential taxpayer information waiver for the refund claim lists the representative as an entity, every member or employee of that entity is authorized to represent the taxpayer.

Rule 229(3)(b)(ii)(A)-(E) (emphasis added).

The sole issue is whether the information provided by Taxpayer is sufficient to meet the first element in Rule 229(3)(b)(ii)(A) as to both of its UBI numbers. Under Rule 229(3)(b)(ii)(A), Taxpayer's name and UBI/TRA number must be on the application. Rule 229 clearly provides that use of the Department's refund application is not mandatory and that "any written request" meeting the five enumerated elements will suffice as a complete application. Rule 229(3)(b)(i). It follows that, in those instances where the Department form is not used, the Department will need to look to the writings provided by Taxpayer to ascertain whether the five elements are met.

Here, it is important to note that Taxpayer has operated as the same business continuously since its initial incorporation date in 1998. Taxpayer provided both UBI numbers on Workpaper A, which was attached and intended to be part of its application packet. The period indicated by Taxpayer as its refund claim period includes a time when Taxpayer was reporting under the first UBI. The total refund claimed also includes amounts that Taxpayer reported and paid under the first UBI. While Taxpayer did not use the best practice in completing its refund application, Rule 229 does not dictate a specific manner for including a UBI number, nor does it contain a prohibition against including more than one UBI number per application. Because Taxpayer submitted Workpaper A as part of the application packet, and Workpaper A contained both UBI numbers,

the first element of Rule 229 is satisfied. As no other element was in dispute, Taxpayer submitted a valid refund application for both [the first] UBI . . . and [the second] UBI

DECISION AND DISPOSITION

We grant Taxpayer's petition.

Dated this 11th day of September 2018.