

Cite as Det. No. 19-0070, 40 WTD 174 (2021)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 19-0070
)	
... )	Registration No. . . .
)	

RULE 230; RCW 82.32.050(4): STATUTORY LIMITATIONS ON ASSESSMENTS. Chapter 82.63 RCW defers when taxes are due such that the four year statutory time period does not start running until after the deferral period.

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.

Margolis, T.R.O. – A non-profit research and development organization (Taxpayer) protests assessments of use/deferred sales tax on purchases made under its High Technology Sales and Use Tax Certificate on grounds that the assessments are outside the four-year statutory time period. We deny the petition.<sup>1</sup>

ISSUE

Did the Department’s assessments of use/deferred sales tax on project costs deemed ineligible for deferral violate RCW 82.32.050(4) because the assessments were issued more than four years after the costs were incurred?

FINDINGS OF FACT

Taxpayer submitted a High Technology Application For Sales and Use Tax Deferral, dated March 24, 2010. The application is for an investment project in Seattle consisting of tenant improvements and modifications to a building leased by Taxpayer for research and development in biotechnology and electronic device technology. In its application, Taxpayer stated that the estimated completion date was December 31, 2015. Taxpayer explains that construction was actually complete as of June 2011, and due to a change in circumstances, Taxpayer rented excess space.

On May 19, 2010, the Department of Revenue’s Special Programs Division (SP) approved the application and sent Taxpayer Certificate Number . . . . The certificate allows vendors and contractors to make sales to Taxpayer without charging retail sales tax. The certificate was

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

effective from March 24, 2010, through December 31, 2015. On December 4, 2015, SP sent Taxpayer a letter stating that the estimated project completion date was approaching, asked whether the project will be complete by the due date, and explained that once the project is complete, it will be referred for partial audit. In February, 2016, Taxpayer notified the Department that the project was complete as of December 31, 2015.

On April 21, 2016, the Department’s Audit Division (Audit) toured Taxpayer’s facility, and Taxpayer subsequently provided records regarding the project. In 2016, Audit certified that the project was operationally completed but found that a portion of the project was ineligible. Because the building was used partly for purposes that did not qualify under the deferral program, and Audit could not identify non-qualifying items through separate accounting, it determined the applicable tax deferral by apportioning costs. Audit determined that Taxpayer had incurred non-qualifying costs in 2010 and 2011, and on February 16, 2018, assessed Taxpayer \$ . . . . The assessment is composed of \$ . . . is use/deferred sales tax, \$ . . . in interest, and \$ . . . in 5% assessment penalty. On February 14, 2018, Audit also issued a deferred assessment against Taxpayer, explaining that if deferral program requirements are met, this assessment will be waived. The deferred assessment is composed of \$ . . . in use/deferred sales tax for 2010 and 2011. Taxpayer petitioned for correction of both assessments on grounds that, absent a waiver extending the period of limitations, Taxpayer cannot be held liable for 2010 and 2011 taxes.

ANALYSIS

RCW 82.63.045 establishes a tax deferral for qualified investment projects, and provides for repayment as follows (in pertinent part):

If . . . the department finds that an investment project is used for purposes other than qualified research and development or pilot scale manufacturing at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes is immediately due according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

RCW 82.63.045(2)(a).

WAC 458-20-24003 (Rule 24003) is the administrative rule regarding tax incentives for high technology businesses. Rule 24003(11) explains the process for certifying that the project is complete as follows:

**(11) What should a recipient of a tax deferral do when its investment project is operationally complete?**

(a) When the building . . . is ready for use . . . the recipient must notify the special programs division in writing that the eligible investment project is operationally complete. The department must, after appropriate investigation: Certify that the project is operationally complete; not certify the project; or certify only a portion of the project. The certification will include the year in which the project is operationally complete. . . .

(b) If all or any portion of the project is not certified, the recipient must repay all or a proportional part of the deferred taxes. The department will notify the recipient of the amount due, including interest, and the due date.

RCW 82.32.050 states as follows:

(4) No assessment or correction of an assessment for additional taxes, penalties, or interest *due* may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

RCW 82.32.050(4) (*italics added.*)

The term “due” is defined as: “Immediately enforceable < payment is due on delivery >.” Black’s Law Dictionary (9<sup>th</sup> ed. 2009). In this matter, Taxpayer’s payments of use/deferred retail sales tax were not “due” upon purchases at the times of the purchases, as when the tax would normally be due, because the tax deferral program for high-technology businesses had deferred the payments of taxes. *See* Black’s Law Dictionary (9<sup>th</sup> ed. 2009) (“Defer” is defined as, “To postpone; to delay <to defer taxes to another year >.”); *see also* RCW 82.63.045(2)(a). Only when a portion of the project was not certified was Taxpayer required to repay part of the deferred taxes. *Id.*; Rule 24003(11). Because the Department certified the project operationally complete in 2016, and at that time found that part of the project was used for non-qualifying purposes, the four-year non-claim period in RCW 82.32.050(4) on taxes due for the not certified portion started running in 2016. The 2018 assessment for the not certified portion was well within the four-year period. Similarly, Taxpayer may be timely assessed taxes if it is later determined not to qualify for the deferral, in accord with RCW 82.63.045(2)(a), regardless of whether the costs were incurred outside the four-year period.

Taxpayer argues that RCW 82.32.050 and WAC 458-20-230(2), which provide that assessments must be made within four years after the year in which the tax was incurred, contain no exceptions

for Chapter 82.63 RCW, and the four-year period is not waived under the program. However, as discussed above, the deferral program does not waive the four-year period, and an exception is unnecessary. It merely defers when the taxes are due such that the time period does not start running until after the deferral period. Taxpayer also asserts that, under WAC 458-20-197 and WAC 485-20-103, taxes are due when the contractor is entitled to progress billings or the services are performed. While these rules provide guidance regarding when tax liability arises and the time and place of sale, we find no conflict between these rules and the deferral program under Chapter 82.63 RCW, under which the assessments at issue do not violate RCW 82.32.050(4).

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 7th day of March 2019.