

Cite as Det. No. 20-0194, 41 WTD 204 (2022)

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

In the Matter of the Petition for Refund of ) DETERMINATION  
)  
) No. 20-0194  
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)  
) ... ) Registration No. ...  
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WAC 458-20-228; RCW 82.32.105; Governor’s Proclamation 20-05; TAXES – INTEREST – WAIVER OR CANCELLATION OF INTEREST. When a taxpayer has been assessed interest for periods covered by the Governor’s Proclamation 20-05, the Department must waive all interest assessed in the covered periods.

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.

McCormick, T.R.O. – A company that manufactures and sells beverages at wholesale requests the Department waive its assessment of interest due to hardship caused by the COVID-19 pandemic. We deny the petition in part and grant it in part.<sup>1</sup>

ISSUE

Whether a company issued a tax assessment . . . is entitled to a waiver of assessed interest under RCW 82.32.105 and WAC 458-20-228, based on COVID-19-related hardship.

FINDINGS OF FACT

. . . (Taxpayer) operates a manufacturing facility located in Washington. Taxpayer engages in the manufacture and wholesale sale of a variety of [products].

In 2020, the Department’s Audit Division (Audit) completed an audit of Taxpayer’s business for the period of January 1, 2014, through December 31, 2017. Audit determined that Taxpayer made reporting errors on its tax returns for the covered period. After making the corresponding adjustments, Audit identified additional business and occupation (B&O) tax and use tax liabilities.

On April 3, 2020, the Department issued Letter ID . . . , a notice of balance due (Assessment) for \$. . . , which includes \$. . . in assessed B&O and use tax liability, and \$. . . in interest. Payment of

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

the Assessment was due May 6, 2020. On May 5, 2020, Taxpayer paid the balance due under the Assessment, including interest.

On April 30, 2020, Taxpayer petitioned for administrative review of the Department's assessment of interest. As stated in its petition, Taxpayer "respectfully request[s] waiver of interest due to the COVID-19 hardship." Petition . . . Taxpayer does not describe the hardship or provide any additional information in support of its request. Taxpayer does not dispute the Department's assessment of taxes.

On February 29, 2020, Governor Jay Inslee issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the State of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak. On March 18, 2020, in response to the COVID-19 pandemic, Governor Inslee issued Proclamation 20-20 Department of Revenue – Interest, Fees, Penalties, Due Dates (Proclamation). Under the Proclamation, effective February 29, 2020, the "accrual and imposition of interest [under RCW 82.32.050(1)] are hereby waived and suspended until midnight on April 17, 2020." Governor Inslee later extended the Proclamation to be effective through August 1, 2020. See Proclamation 20-20.5 Department of Revenue – Relief from Penalties, Fees, Interest, Due Dates.<sup>2</sup> [Governor Inslee ultimately extended the Proclamation through September 30, 2021. See <https://dor.wa.gov/forms-publications/publications-subject/tax-topics/covid-19-business-relief-measures-end-sept-30-2021> (last accessed April 5, 2022).]

#### ANALYSIS

Taxpayers are responsible for knowing their tax reporting obligations, and when they are uncertain about their obligations, seeking instructions from the Department. RCW 82.32A.030(2); *see also* Det. No. 01-165R, 22 WTD 11, 15-16 (2003). Because of the nature of Washington's tax system, the burden of becoming informed about tax liability falls upon the taxpayer, and it is the taxpayer who bears the consequences of a failure to be correctly informed. RCW 82.32A.030(2); 22 WTD at 15.

When the Department determines that a taxpayer has paid less tax than is properly due, it is required to assess the amount of unpaid taxes and include interest thereon. RCW 82.32.050(1). When the Department issued the Assessment to Taxpayer, it was required to include interest on the assessed tax amount.

RCW 82.32.105(3) provides the two circumstances under which the Department will waive or cancel interest:

- (a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or
- (b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

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<sup>2</sup> [https://www.governor.wa.gov/sites/default/files/proclamations/proc\\_20-20.5.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-20.5.pdf?utm_medium=email&utm_source=govdelivery) (last accessed July 9, 2020).

Here, Taxpayer failed to correctly report its tax liability during the period covered by the Assessment. As a result, the Department assessed the additional tax liabilities and included interest, as statutorily required. Taxpayer did not rely upon specific written instructions from the Department in failing to timely pay the additional tax liabilities included in the Assessment. There is also no indication that any of the due dates for the period covered by the Assessment were extended at the Department's request. Neither circumstance under RCW 82.32.105(3) is present in this case. Thus, Taxpayer is ineligible for cancellation of interest.

However, Taxpayer requests a waiver of interest "due to the COVID-19 hardship." Petition . . . . Under the Proclamation, beginning February 29, 2020, the accrual of any interest is waived and suspended. Here, Taxpayer is eligible for waiver of any interest that accrued on or after February 29, 2020. Taxpayer is not eligible for any waiver or cancellation of interest that accrued prior to February 29, 2020.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied in part and granted in part. We deny the petition with respect to Taxpayer's request for waiver of interest under RCW 82.32.105(3) because Taxpayer has failed to establish that either of the specific circumstances was present. We grant the petition with respect to any interest that has accrued on or after February 29, 2020, under the waiver and suspension of interest established under the Proclamation. We remand this case to Audit for adjustment consistent with this determination.

Dated this 14th day of July 2020.