

Cite as Det. No. 23-0243, 44 WTD 052 (2025)

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. 23-0243
...)	
)	Account No. . . .
)	

[1] Rule 228; Rule 268; RCW 82.32.534; RCW 82.32.590: B&O TAX – AEROSPACE MANUFACTURER’S PREFERENTIAL RATE - AEROSPACE PRODUCT DEVELOPMENT CREDITS – ANNUAL REPORT REQUIREMENT – DEADLINE FOR SUBMISSION OF ANNUAL REPORT. Taxpayer received its one-time extension of time to file its annual performance report, and the Department has no authority to extend due dates of annual reports beyond that under RCW 82.32.534(1)(a)(i).

[2] Rule 228; RCW 82.32.534: B&O TAX – AEROSPACE MANUFACTURER’S PREFERENTIAL RATE – AEROSPACE PRODUCT CREDITS – ANNUAL REPORT REQUIREMENT – DEADLINE FOR SUBMISSION OF ANNUAL REPORT. Taxpayer is not entitled to an extension of time to file its annual report due to circumstances beyond its control, specifically that a predecessor owner failed to inform it of a previous extension or provide it with documentation necessary to determine filing requirements.

[3] PROCLAMATION 20-20; RCW 82.04.260; RCW 82.04.4461; RCW 82.32.534; RCW 82.32.590: B&O TAX – INTEREST – PENALTIES – DUE DATES. The due dates for annual reports required for aerospace manufacturer’s preferential rate and aerospace product credits were not included in the statutes waived for a state of emergency nor was interest or tax resulting from a taxpayer’s failure to timely file its annual return.

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.

Gabriella Herkert, T.R.O. – An aerospace design and manufacturer protests imposition of tax following its late filing of annual tax performance reports ([Reports]) for its aerospace business preferential business and occupation (B&O) tax rate and qualified aerospace development credits. Taxpayer requests an extension of the due date and waiver of tax imposed as a result of Taxpayer’s failure to timely file its [Report] for 2018. Taxpayer requests waiver of tax imposed when Taxpayer failed to timely file its 2019 and 2020 [Reports] based on circumstances beyond its control

including the Department's failure to discuss the liability prior to assessment, changes in ownership, loss of access to business records as a result of ownership changes and key personnel turnover. Taxpayer also requests an extension of time to file its 2019 and 2020 [Reports] and waiver of the resultant tax liability under Proclamation 20-20. We grant Taxpayer's petition in part, deny in part and remand.¹

ISSUES

1. Under RCW 82.32.534(1)(a)(i), RCW 82.32.590(3), WAC 458-20-268 (Rule 268), and WAC 458-20-228 (Rule 228), does the Department have authority to grant Taxpayer an extension of time to file its 2018 [Report]?
2. Under RCW 82.32.534(1)(a)(i) and Rule 228(9), must the Department grant the Taxpayer an extension of time to file and waive tax imposed as a result of Taxpayer's failure to timely file its [Reports] for 2018, 2019 and 2020 due to circumstances beyond taxpayer's control?
3. Under Proclamation 20-20 Department of Revenue – Interest, Fees, Penalties, Due Dates (Proclamation), must the Department waive tax assessment resulting from Taxpayer's failure to timely file its 2019 and 2020 [Reports]?

FINDINGS OF FACT

. . . (Taxpayer) designs, manufactures, certifies, and integrates aerospace solutions. Taxpayer is headquartered in . . . Washington.

Taxpayer states that it was formed on March 21, 2019, under new company ownership. Taxpayer retained its original unified business identifier (UBI) and federal employer identification number (FEIN). Taxpayer states it converted from a Washington profit corporation . . . to a Washington limited liability [company] as part of the transition. Taxpayer also states that a change in corporate ownership occurred on March 1, 2021.²

On June 17, 2016, the Department granted [the corporation] a one-time 90-day extension of time to file its [Report] for the year 2015. [The corporation's] due date for filing was extended until July 29, 2016. [The corporation] timely filed its 2015 [Report] by the extended due date.

Taxpayer claims preferential aerospace B&O tax rates under RCW 82.04.260(11). Taxpayer claims qualified aerospace product development credits under RCW 82.04.4461. Both the preferential aerospace B&O tax rate and the qualified aerospace product development credits require Taxpayer to timely file [Reports] each year to be eligible for the full benefit of the tax rate and credit.

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

² Docket No. 474434, Petition, p. 3.

1. 2018 Annual Tax Performance Report

On May 1, 2019, a courtesy letter was mailed to Taxpayer at the mailing address on file reminding Taxpayer of the due date for the 2018 [Report]. The letter states that if the [Report] is not timely filed, a portion of the incentives claimed would be billed to Taxpayer. On May 23, 2019, and May 31, 2019, the Department left voicemails for the Taxpayer reminding it of the due date. On May 31, 2019, the 2018 [Report] was due. On May 31, 2019, web logon [User], associated with [Employee], obtained access to the account allowing electronic filing of the [Reports]. On June 12, 2019, the 2018 [Report] was filed by [the same] user On July 2, 2019, the Department sent Taxpayer a web message explaining that the 2018 [Report] was untimely and describing options to request an extension.

2. 2019 Report

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 and Due Dates (Proclamation).

The Proclamation reads, in pertinent part, as follows:

FURTHERMORE, based on the above situation and under the provisions of RCW 43.06.220(2)(g), I also find that strict compliance with the following statutory obligations or limitations will prevent, hinder or delay action in providing relief to taxpayers from certain statutorily imposed interest provisions, which relief is necessary for coping with the COVID-19 State of Emergency under Proclamation 20-05, and that the specific provisions of each statute listed below addressing the accrual and imposition of interest are hereby waived and suspended until midnight on April 17, 2020:

1. RCW 82.04.44525(6),
2. RCW 82.04.448(4),
3. RCW 82.24.120(1) and (2),
4. RCW 82.24.180(2),
5. RCW 82.24.280(1), (2) and (3),
6. RCW 82.25.110(4),
7. RCW 82.32.050(1),
8. RCW 82.32.033(5),
9. RCW 82.32.190(1),
10. RCW 82.32.200(1),
11. RCW 82.32.210(1),
12. RCW 82.32.537(2),
13. RCW 82.32.580(6),
14. RCW 82.45.100(1), (2), (3), and (4),
15. RCW 82.62.050(3),

16. RCW 82.63.045,
17. RCW 82.74.050,
18. RCW 82.75.040,
19. RCW 82.82.040, and
20. RCW 54.28.060.

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.³ After several additional extensions, the Proclamation expired on September 30, 2021.⁴

In explaining the implications of the expiration of Proclamation 20-20, Taxpayers were advised to request payment extensions, if required, before the due date and file by the original due date.⁵ The Department was required to waive interest from February 29, 2020, through September 30, 2021.⁶ Tax returns filed and paid in full by the extended due date are considered timely and will not incur interest.⁷

On April 30, 2020, the Department sent Taxpayer a courtesy letter reminding it of the due date for the 2019 [Report]. On May 19, 2020, May 28, 2020, and June 1, 2020, the Department left voicemails with Taxpayer reminding it of the due date for the 2019 [Report]. On May 31, 2020, the 2019 [Report] was due. On June 16, 2020, Taxpayer's 2019 [Report] was filed by [User]. On July 6, 2020, the Department sent Taxpayer a web message explaining that the 2019 [Report] was untimely and describing options to request an extension.

3. 2020 Report

On May 1, 2021, the Department sent a courtesy letter to Taxpayer reminding it of the due date for the 2020 [Report]. On May 18, 2020, the Department spoke with Taxpayer, reminding [Employee], to file the [2020 Report] by the due date. On May 31, 2021, the 2020 [Report] was due. On July 2, 2021, the Department sent Taxpayer a web message stating that the 2020 [Report] was untimely and describing options to request an extension. On December 21, 2022, Taxpayer's 2021 [Report] was filed by [User]. Taxpayer claimed no aerospace industry credits in 2020. The aerospace preferential B&O tax rate expired on March 31, 2020.

Between May 20, 2019, and August 26, 2021, [User] used her web logon credentials to access the Department's excise tax system, the system used to file [Reports], on 127 occasions. Between June 9, 2021, and December 28, 2022, [User] used her web logon credentials to access the Department's excise tax system on 34 occasions.

³ [https://governor.wa.gov/sites/default/files/2023-01/proc_20-20.5.pdf] (last accessed December 12, 2023).

⁴ <https://dor.wa.gov/forms-publications/publications-subject/tax-topics/covid-19-business-relief-measures-end-sept-30-2021> (last accessed December 12, 2023).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

4. Audit and Assessment

On November 28, 2022, the Department issued Taxpayer incentive report audits for 2018, 2019, and 2020 in which the Department disallowed a portion of the incentive amounts claimed under the preferential aerospace B&O tax rate and aerospace industry credits due to Taxpayer's late filing of its 2018, 2019, and 2020 [Reports]. The Department then assessed tax on the disallowed incentives using the standard manufacturing and retailing B&O tax rates. For the 2018 period, the Department disallowed 35 percent of the incentive amounts claimed. For the 2019 and 2020 tax periods, the Department disallowed 50 percent of the incentive amounts claimed. The associated tax bills required payment by December 29, 2022. No penalties or interest were imposed as part of the incentive report audits for 2018, 2019, and 2020.

The Department's Taxpayer Account Administration (TAA) reviewed Taxpayer's books and records for the period January 1, 2018, through December 31, 2018. On November 28, 2022, the Department issued [Letter 1], Your Tax Incentive Reporting Account, showing a total adjustment of \$ On November 28, 2022, the Department issued [Letter 2] assessing \$. . . against Taxpayer.⁸ [Letter 2] recalculated Taxpayer's tax obligations for January 1, 2018, through December 31, 2018, imposing tax previously excluded due to the Manufacturing and Wholesaling of Commercial Airplanes, Components, or Aerospace Tooling preferential tax rate. The recalculation also included denial of a portion of the Qualified Aerospace Product Development Expenditures Tax Credit previously taken by Taxpayer. The Department recalculated Taxpayer's tax liability due to Taxpayer's failure to timely file its required 2018 [Report]. Taxpayer filed its 2018 [Report] on June 12, 2019.

TAA reviewed Taxpayer's books and records for the period January 1, 2019, through December 31, 2019. On November 28, 2022, the Department issued [Letter 3], Notice of Balance Due, assessing \$. . . against Taxpayer.⁹ [Letter 3] recalculated Taxpayer's tax obligations for January 1, 2019, through December 31, 2019, imposing tax previously excluded due to the Manufacturing and Wholesaling of Commercial Airplanes, Components, or Aerospace Tooling preferential tax rate. The recalculation also included denial of a portion of the Qualified Aerospace Product Development Expenditures Tax Credit previously taken by Taxpayer. The Department recalculated Taxpayer's tax liability due to Taxpayer's failure to timely file its required 2019 [Report]. Taxpayer filed its 2019 [Report] on June 16, 2020.

TAA reviewed Taxpayer's books and records for the period January 1, 2020, through December 31, 2020. On November 28, 2022, the Department issued [Letter 4], Your Tax Incentive Reporting Account, showing a total adjustment of \$ On November 28, 2022, the Department issued [Letter 5], Notice of Balance Due, assessing \$. . . against Taxpayer.¹⁰ [Letter 5] recalculated Taxpayer's tax obligations for January 1, [2020], through December 31, [2020], imposing tax previously excluded due to the Manufacturing and Wholesaling of Commercial Airplanes,

⁸ [Letter 2]'s total assessment of \$. . . includes \$. . . in tax. The assessment imposes tax on 35 percent of the incentives taken by Taxpayer during the year. The assessment includes no interest or penalties.

⁹ [Letter 3]'s total assessment of \$. . . includes \$. . . in tax. The assessment imposes tax on 50 percent of the incentives taken by Taxpayer during the year. The assessment includes no interest or penalties.

¹⁰ [Letter 5]'s total assessment of \$. . . includes \$. . . in tax. The assessment imposes tax on 50 percent of the incentive taken by Taxpayer during the year. The assessment includes no interest or penalties.

Components, or Aerospace Tooling preferential tax rate. The recalculation also included denial of a portion of the Qualified Aerospace Product Development Expenditures Tax Credit previously taken by Taxpayer. The Department recalculated Taxpayer's tax liability due to Taxpayer's failure to timely file its required 2020 [Report]. Taxpayer filed its 2020 [Report] on December 22, 2022.

5. Taxpayer's Petition

Taxpayer timely requested review.

For 2018, Taxpayer requests a one-time extension of its original due date for filing the 2018 [Report], granting an extension of time to file the return, and/or waiver of the imposed tax. Taxpayer asserts that no discussions with the Department took place prior to Taxpayer's receipt of its notices of tax due. Taxpayer asserts that it underwent an ownership change on March 22, 2019, and that all internal tax filing responsibilities were transitioned as a result. Taxpayer contends that its late filing of the 2018 [Report] was due to late receipt of pertinent information from a "prior owner," specifically [the corporation]. Taxpayer contends that on the basis of a change in ownership, it may still receive a one-time extension of time to file its 2018 [Report]. Taxpayer also seeks an extension of time to file its 2018 [Report] due to circumstances beyond its control.

For 2019, Taxpayer requests waiver of the imposed tax, penalties and interest due to circumstances beyond its control, specifically that no discussions with the Department took place prior to Taxpayer's receipt of its notices of tax due. Taxpayer also asserts that it experienced restricted access to business information resulting from a change in ownership, and key personnel changes caused by COVID-19 protocols. Taxpayer requests an extension of its due date to file its 2019 [Report] and waiver of tax under Governor Jay Inslee's Proclamation 20-20.3 "waiving and suspending laws and rules related to tax penalties, fees, interest, and due dates in order to provide tax relief through the Department of Revenue."

For 2020, Taxpayer requests extension of the due date for filing its [Report] and waiver of the imposed tax, penalties and interest due to circumstances beyond its control, specifically that no discussions with the Department took place prior to Taxpayer's receipt of its notices of tax due. Taxpayer requests waiver of tax under Governor Jay Inslee's Proclamation 20-20.3 "waiving and suspending laws and rules related to tax penalties, fees, interest, and due dates in order to provide tax relief through the Department of Revenue."¹¹ Taxpayer asserts that additional factors contributed to circumstances beyond its control including an ownership change on March 1, 2021, and key personnel turnover during state safety mandates resulting in the late filing of its 2020 [Report].

Taxpayer repeatedly requests relief from the imposition of "tax, penalties and interest" for tax years 2018, 2019, and 2020. We note that the Department did not impose any interest or penalties in the incentive report audits. We read Taxpayer's petitions as requesting relief from the tax imposed only.

¹¹ Petition, p. 2; See, Proclamation 20-20.3, *Department of Revenue – Relief from Penalties, Fees, Interest, Due Dates* [http:// 20-20.3 DOR Interest Fees Penalties \(tmp\).pdf \(wa.gov\)](http://20-20.3 DOR Interest Fees Penalties (tmp).pdf (wa.gov)) (Last Viewed December 21, 2023).

ANALYSIS

Under RCW 82.32A.030(2), a taxpayer bears responsibility to know its tax reporting obligations, and when it is uncertain about its obligations, to seek instructions from the Department. The record does not indicate that Taxpayer ever sought instructions from the Department under RCW 82.32A.030(2).

Washington imposes a B&O tax “for the act or privilege of engaging in business activities” in this state. RCW 82.04.220(1). The measure of the B&O tax is the appropriate tax rate multiplied by the “value of products, gross proceeds of sales, or gross income of the business, as the case may be.” *Id.* The specific tax rate is determined by the nature of the business activity in which a taxpayer is engaged. *See generally* chapter 82.04 RCW.

RCW 82.04.260(11)(a)¹² imposes a B&O tax on manufacturing activities in this state of commercial airplanes, components, or aerospace tooling, as follows:

Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

- (i) 0.4235 percent from October 1, 2005, through June 30, 2007; and
- (ii) 0.2904 percent beginning July 1, 2007.

RCW 82.04.260(11)(a).

Taxpayers reporting under RCW 82.04.290(3) must file a complete [Report] with the Department as provided under RCW 82.32.534. RCW 82.04.290(3)(b). Here, the Department concedes Taxpayer manufactures commercial airplanes, or components of such airplanes and other activities included in RCW 82.04.260(11)(a). Under RCW 82.04.260(11)(d)(i), a person reporting under the tax rate provided in RCW 82.04.260(11) must complete an annual [Report]. The parties agree that Taxpayer is required to file annual [Reports] to qualify for the preferential B&O tax rate in RCW 82.04.260(11).

RCW 82.04.4461(1) provides a B&O tax credit for qualified aerospace product development expenditures. Under RCW 82.04.4461(6) “[a] person claiming the credit under this section must file a complete annual performance report with the department under RCW 82.32.534.” The parties

¹² RCW 82.04.260 was amended many times during the Audit Period. However, none of the amendments pertain to the issue here, and the language in RCW 82.04.260(11) remained unchanged during the Audit Period. *Compare* Laws of 2017, ch. 135, § 11, effective July 1, 2018; and Laws of 2011, ch. 2, § 203 (Initiative Measure No. 1107, approved November 2, 2010). [http://lawfilesexternal.wa.gov/biennium/2011-12/Pdf/Bills/Session Laws/Senate/6635.SL.pdf?cite=2012 2nd sp.s. c 6 § 204;](http://lawfilesexternal.wa.gov/biennium/2011-12/Pdf/Bills/Session%20Laws/Senate/6635.SL.pdf?cite=2012%202nd%20sp.s.%20c%206%20%24)

agree that Taxpayer is required to file annual [Reports] to qualify for the aerospace product development credit under RCW 82.04.4461(1).

RCW 82.32.534(1)(a)(i) provides:

Beginning in calendar year 2018, every person claiming a tax preference that requires an annual tax performance report under this section must file a complete annual report with the department. The report is due by May 31st of the year following any calendar year in which a person becomes eligible to claim the tax preference that requires a report under this section.

RCW 82.32.534(4)(a) provides that if a person claims a tax preference that requires a [Report] but fails to timely file it, the Department must declare that 35 percent of the amount of the tax preference claimed to be immediately due for a first failure to timely file, or 50 percent after a subsequent failure to timely file. [RCW 82.32.534(4)(a)(ii) adds the additional 15 percent penalty “if the person *has previously been assessed* under this subsection (4) for failure to submit a report under this section for the same tax preference.” (Emphasis added.) Since Taxpayer had not previously been assessed by the Department for the failure to submit such a tax preference report, the Department was precluded from assessed the additional 15 percent penalty for tax years 2019 and 2020.] We grant Taxpayer relief from the additional 15 percent disallowed incentive for tax years 2019 and 2020.

1. Extension

Notwithstanding the May 31st due date mandated by RCW 82.32.534(1)(a)(i), taxpayers are entitled to a one-time extension if certain conditions are met. RCW 82.32.590(3)¹³ provides the following criteria for entitlement to the one-time extension:

- (a) Subject to the conditions in this subsection (3), a taxpayer who fails to file a [Report] or annual survey required under subsection (1) of this section by the due date of the report or survey is entitled to an extension of the due date. A request for an extension under this subsection (3) must be made in writing to the department.
- (b) To qualify for an extension under this subsection (3), a taxpayer must have filed all [Reports] and surveys, if any, due in prior years under subsection (1) of this section by their respective due dates, beginning with [Reports] and surveys due in calendar year 2010.
- (c) An extension under this subsection (3) is for ninety days from the original due date of the [Report] or survey.
- (d) No taxpayer may be granted more than one ninety-day extension under this subsection (3).

[The corporation], a predecessor entity, was granted a 90-day extension of the due date to file its 2015 [Report]. [The corporation] was not entitled to a second extension under RCW 82.32.590(d).

¹³ RCW 82.32.534(1)(a)(iii) states that the department “may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590.”

Taxpayer claims that it is entitled to a one-time extension of the due date to file its 2018 [Report] because it had never previously received an extension. We disagree. Taxpayer, an LLC using the same UBI and FEIN as its [corporate] predecessor . . . received a one-time extension under RCW 82.32.590 for its 2015 [Report]. For our purposes, the UBI assigned to a taxpayer provides the Department with a single recognizable designation unique to a particular taxpayer. In this case, the Taxpayer . . . received an extension for its 2015 [Report]. The same taxpayer may not receive a second extension under RCW 82.32.590(3)(d). Accordingly, Taxpayer's petition is denied for a one-time extension of time to file its 2018 [Report] under RCW 82.32.590(3).

We note that RCW 82.32.050(3) states:

During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend *the due date of any assessment or correction of an assessment* for additional taxes, penalties, or interest as the department deems proper.

(Emphasis added.) The Department, in a state of emergency, has additional authority to make certain extensions of due dates under RCW 82.32.050(3). However, that power is limited to extending the due dates of assessment or correction of assessment. Under RCW 82.32.050(3), therefore, the Department has no authority to extend due dates of returns required to be filed including those required by RCW 82.32.534(1)(a)(i).

2. Circumstances Beyond the Control of the Taxpayer

Although Taxpayer does not qualify for the one-time ninety-day extension under RCW 82.32.590(3), the Department must nonetheless grant an extension of the [Reports'] due dates if it finds that Taxpayer's failure to timely file the [Report] "was the result of circumstances beyond the control of the taxpayer." RCW 82.32.590(1).¹⁴ We read Taxpayer's arguments for relief as an assertion that Taxpayer's failure to timely file its [Reports] were due to "circumstances beyond its control" under RCW 82.32.590(1).

In determining whether the failure to timely file an [Report] was the result of "circumstances beyond the control of the taxpayer," WAC 458-20-268(11)(c) instructs the Department to apply the provisions in Rule 228 pertaining to the waiver of penalties assessed for the underpayment or untimely payment of taxes. Rule 228 explains that "[c]ircumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file[.]" Rule 228(9)(a)(ii). The circumstances must actually cause the late filing. Rule 228(9)(a)(ii).

We first consider whether the "changes in ownership" experienced by Taxpayer in 2019 and again in 2021, constitute circumstances beyond Taxpayer's control. We find that they do not.

¹⁴ The extension granted under this subsection "is for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section." The department may grant additional extensions under this subsection "as it deems proper."

Under Rule 228(9)(a)(ii), circumstances beyond the control of a taxpayer are immediate, unexpected or in the nature of an emergency and must actually cause the late filing. A change of ownership is neither immediate nor unexpected. We do not find the change in ownership, therefore, a circumstance beyond Taxpayer's control. Furthermore, even if we were to agree that the change in ownership was a circumstance beyond Taxpayer's control, Taxpayer provided no basis to determine that it was these events that actually caused Taxpayer to file late. In order to extend the due date for the [Reports] under Rule 228, the circumstance must also cause a taxpayer to file late. Taxpayer offered no evidence that the change in ownership actually caused the late filing. We do not find the change in ownership a circumstance beyond Taxpayer's control actually causing the late filing of [Reports] under Rule 228(9)(a)(ii).

Each of Taxpayer's petitions assert that the Department did not discuss Taxpayer's potential tax liability with Taxpayer prior to the balance notices being issued. Taxpayers bear the responsibility of knowing their filing obligations, and the related tax liability under RCW 82.32A.030. The Department has no obligation to engage with taxpayers prior to issuing notice due statements. Furthermore, although it was not required to do so, the Department sent multiple courtesy reminders to Taxpayer reminding it of its obligation to file [Reports] before they became due. The record simply does not support Taxpayer's claim that the Department did not notify Taxpayer of its obligation to file [Reports] prior to their due dates even if the Department had been required to do so. We do not find a lack of discourse a circumstance beyond Taxpayer's control actually causing the late filing of [Reports] under Rule 228(9)(a).

Taxpayer argues that it lost access to business records necessary to file its [Reports] when Taxpayer's ownership changed in 2019 and 2021, and that the loss of access constitutes a circumstance beyond its control warranting waiver. Like the change of ownership discussed above, a temporary loss of access to business records resulting from a change in ownership is neither immediate nor unexpected and, therefore, does not constitute a circumstance beyond Taxpayer's control under Rule 228(9). Moreover, the record does not support Taxpayer's assertion that it did lose access to business records. Between May 20, 2019, and August 26, 2021, [User] used her web logon credentials to access the Department's excise tax system on 127 occasions. Between June 9, 2021, and December 28, 2022, [User] used her web logon credentials to access the Department's excise tax system on 34 occasions. User . . . filed the [Reports] for 2018, 2019, and 2020. So, even if we were to find loss of access to business records a circumstance beyond the control of Taxpayer, the failure to timely file the [Reports] were not caused by the loss of access since [User] had access for the entire period, used it on 161 occasions, and ultimately filed the [Reports]. We do not find temporary loss of access to business records a circumstance beyond Taxpayer's control actually causing the late filing of Taxpayer's [Reports] under Rule 228(9)(a).

Taxpayer contends that key personnel turnover resulted in the late filing of its [Reports]. Rule 228(9)(a)(ii) lists examples of circumstances that are beyond a taxpayer's control sufficient to cancel penalties. One such circumstance is when the "delinquency was caused by the unavoidable absence of the taxpayer or key employee, prior to the filing date." Rule 228(9)(a)(ii)(D). However, Rule 228(9)(a)(ii)(D) states that the "unavoidable absence of the taxpayer" does not include absences which are the result of "business trips, vacations, personnel turnover, or terminations." *See* Det. No. 07-0221, 27 WTD 6 (2008). Thus, the demarcation drawn by Rule 228(9)(a)(ii)(D) between employee absences that amount to circumstances beyond the control of the taxpayer, and

those that do not, is whether the absence is truly unavoidable or whether it is within the spectrum of absences a business should reasonably expect and plan for. Taxpayer's personnel turnover is not a circumstance beyond the control of the Taxpayer under Rule 228(9)(a)(ii)(D). Furthermore, the record does not support Taxpayer's assertion that personnel turnover caused it to file its [Reports] late. Between May 20, 2019, and December 28, 2022, [User] used her web login credentials to access the Department's excise tax on 161 occasions including when she filed the [Reports]. We do not find personnel turnover a circumstance beyond Taxpayer's control actually causing the late filing of [Reports] under Rule 228(9)(a)(ii)(D).

Having considered each of Taxpayer's arguments individually, we find that Taxpayer has not alleged circumstances beyond its control, either individually or in the aggregate, sufficient to extend the due dates to file [Reports] or waive tax under RCW 82.32.105(1) and Rule 228(9)(a). We deny Taxpayer's petitions as to this argument for 2018, 2019 and 2020.

3. COVID-19

RCW 82.32.050(3) states:

During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the due date of any assessment or correction of an assessment for additional taxes, penalties, or interest as the department deems proper.

For the purposes of RCW 82.32.050(5)(b):

"Return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department and that has a statutorily defined due date.

On March 18, 2020, the Proclamation stated "the specific provisions of each statute listed below addressing the accrual and imposition of interest are hereby waived and suspended..." The list of specific provisions did not include RCW 82.04.260 authorizing the preferential tax rate, RCW 82.04.4461 authorizing credit for certain aerospace production development, RCW 82.32.534 imposing the [Report] requirement, or RCW 82.32.590 proscribing the imposition of a portion of the incentive upon a taxpayer's failure to timely file.

The Department provided additional public guidance through its Tax Topics article entitled "COVID-19 Business Relief Measures End Sept 30, 2021."¹⁵ In explaining the implications of the expiration of Proclamation 20-20, Taxpayers were advised to request payment extensions, if required, before the extended due date for returns filed by the original due date.¹⁶ The Department

¹⁵ <https://dor.wa.gov/forms-publications/publications-subject/tax-topics/covid-19-business-relief-measures-end-sept-20-2021> (last accessed December 12, 2023).

¹⁶ *Id.*

was required to waive interest from February 29, 2020, through September 30, 2021.¹⁷ Tax returns filed and paid in full by the extended due date are considered timely, and will not incur interest.¹⁸

Taxpayer asserts that its 2019 and 2020 [Reports] filing due dates were waived under the Proclamation. As a result, Taxpayer argues, it is not liable for tax imposed on the basis of Taxpayer's failure to timely file the [Reports]. We disagree.

Under the Proclamation, only certain provisions imposing due dates or interest were waived. Since RCW 82.04.260, RCW 82.04.4461, RCW 82.32.534 and RCW 82.32.590 were not included in the list of specific provisions subject to waiver under the Proclamation, the due dates and imposition of a portion of the incentive upon Taxpayer's failure to timely file its 2019 and 2020 [Reports] were not waived. We deny Taxpayer's petition as to this issue.

DECISION AND DISPOSITION

Taxpayer's petition is denied in part and granted in part.

Dated this 29th day of December 2023.

¹⁷ *Id.*

¹⁸ *Id.*