

Cite as Det. No. 14-0340, 34 WTD 244 (2015)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of ) the Amended TFAA Assessment of ) ) ) . . . ) )	<u>D E T E R M I N A T I O N</u>  No. 14-0340  Registration No. . . .
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[1] WAC 458-20-100: TFAA – APPEAL RIGHTS. Appeals within 30 days of a TFAA may not challenge the assessment against the limited liability business entity, but may protest matters only as to the issuance of the TFAA itself, such as whether one is a “responsible party” under RCW 82.32.145

[2] WAC 458-20-100: TFAA – RIGHT TO APPEAL FOR RECONSIDERATION. A corporation has 30 days to petition for reconsideration of a determination or the determination becomes final.

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.

Bauer, A.L.J. – An individual objects to his liability under a trust fund accountability assessment (TFAA), the amount of the assessment, and the additional amount added to it when corporate records became available. The petition is denied.<sup>1</sup>

ISSUES

1. Can a “responsible person” petition for the correction of the amount assessed in a TFAA?
2. In accordance with the provisions of WAC 458-20-100, can a taxpayer object to a determination upholding his TFAA after the period for filing a petition for reconsideration has passed?

FINDINGS OF FACT

[Corporation], which installed heating and air conditioning systems, was incorporated on February 28, 2008. [Corporation] charged and collected retail sales taxes from it retail

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

customers. [Taxpayer]<sup>2</sup> was one of [Corporation]'s three incorporators, and served as its Director and Secretary during 2008.

From its incorporation to its dissolution, [Corporation] filed several tax returns but voluntarily remitted no taxes. The Compliance Division (Compliance) of the Department of Revenue (Department) was able to seize some taxes from [Corporation]'s bank account under warrants that were based on Taxpayer's filings or estimated assessments.

The Department closed [Corporation]'s reporting account on March 31, 2010, and Washington's Secretary of State's office dissolved [Corporation] on June 1, 2010 for failure to renew its license and provide an annual report. At that time, two tax warrants remained unpaid in the total amount of \$ . . . .<sup>3</sup>

On April 26, 2010, Compliance issued an estimated TFAA under the provisions of RCW 82.32.145 against Taxpayer's marital community for state and local sales taxes [Corporation] had collected but not remitted, including penalties and interest thereon, in the total amount of \$ . . . .

Taxpayer appealed his TFAA to the Department on May 29, 2012, arguing he was not a "responsible party" in accordance with RCW 82.32.145 and was therefore not liable for those taxes' payment.

On May 30, 2013, we issued Det. No. 13-0161 holding Taxpayer to be a "responsible person" and sustaining the TFAA. Taxpayer did not submit a petition for reconsideration<sup>4</sup> of that Determination. Footnote 2 of that determination noted that, since the issuance of the outstanding warrants (Invoices 4 and 7) and the filing of Taxpayer's appeal, Compliance had obtained from another of [Corporation]'s officers/directors documentation that would allow Compliance to more accurately calculate [Corporation]'s tax liabilities from its formation in 2008 through its dissolution in 2010.

On February 10, 2014, based on the new records received, Compliance adjusted [Corporation]'s assessment for the period March 1, 2008 through December 31, 2008. The adjusted assessment increased [Corporation]'s retail sales tax liability from \$ . . . (originally issued on May 25, 2010) to \$ . . . .<sup>5</sup> The assessment was mailed to [Corporation]'s address on file with the Department as required by RCW 82.32.130.<sup>6</sup> Because [Corporation] did not petition for correction of the 2008

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<sup>2</sup> Although the marital community was assessed in accordance with Washington's community property laws, we will refer to [Taxpayer] as the single taxpayer.

<sup>3</sup> Compliance issued a warrant (Inv. 7) on June 29, 2010 that included the unpaid amounts assessed for both 2008 (Inv. 6) and 2010 (Inv. 5). This warrant has approximately \$ . . . , including penalties and interest, still owing. The warrant issued on March 23, 2010 for unpaid amounts in 2009 (Inv. 4), with the amount of penalties and interest, still has \$ . . . due and owing.

<sup>4</sup> . . . .

<sup>5</sup> Compliance had originally based the 2010 assessment on the tax measure [Corporation] had used to erroneously report B&O tax under the service and other activities classification for the 2008 period.

<sup>6</sup> RCW 82.32.130 provides:

. . . [I]f the notice or order is mailed, it shall be addressed to the address of the taxpayer as shown by the records of the department, or, if no such address is shown, to such address as the department is able to ascertain by reasonable effort. Failure of the taxpayer to receive such notice or order whether served,

assessment issued on February 10, 2014 within the 30 days prescribed by WAC 458-20-100(4), it became final on March 12, 2014.

On March 25, 2014, Compliance amended Taxpayer's TFAA, increasing it by \$. . . . Compliance explained the calculation in the cover letter:

Enclosed is your copy of your amended Trust Fund Accountability Assessment. The original assessment was issued to you on April 26, 2012. We know the assessment needed adjustments and stated in our conclusion to your original appeal:

If we are upheld, we will need to adjust the liability to the Corporation by \$. . . and increase the TFAA by the sales tax portion based on the invoices they provided.

The adjustments to the corporate liability [are] based on the records provided by the Corporate Officers and/or check copies provided by [Corporation] customers. You will see that the 2008 Tax Due has increased by \$. . . and the 2010 Tax Due has decreased by \$. . . . The net result is an increase in Tax Due of \$. . . . This is much less than what we originally anticipated because we did not use any documents that did not meet all of our requirements for proof of collected sales tax. I am enclosing the working papers used by the Excise Tax Examiner to determine the final adjustments.

The current balance before the amendments was \$. . . . The current outstanding balance is \$. . . . Please remit the increased balance or appeal the balance by April 24, 2014. This only pertains to the adjustment and does not affect the status of the original assessment.

On April 23, 2014, Taxpayer petitioned the Department asking for "reconsideration" of this matter. His petition appears to question not only the amount owed, but also his liability.<sup>7</sup>

## ANALYSIS

### 1. Can a taxpayer petition for the correction of the amount assessed in a TFAA?

RCW 82.32.145<sup>8</sup> provided for the assessment of "responsible individuals" for the payment of retail sales tax funds collected and held in trust under RCW 82.08.050 by a corporate or limited liability business entity (entity) that is no longer operating, dissolved, or insolvent. Subsection (4) provided that persons issued notices of TFAA assessments are entitled to administrative appeal procedures. Subsection (6) provides that an entity's liability remains the same even

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mailed, or provided electronically as provided in RCW 82.32.135 shall not release the taxpayer from any tax or any increases or penalties thereon.

On Aug 8, 2010, the Department received a post office notice that [Corporation]'s mail should be forwarded to . . . . This is the Department's last known address for [Corporation].

<sup>7</sup> In his letter of appeal, Taxpayer also requested copies of all documents Compliance used to calculate the assessment against [Corporation], and any other information and notes the Department received from all parties concerning the assessment, which documents are currently still being readied for release. As we will explain, the amounts assessed against [Corporation] are already final and no longer appealable in this action. Therefore, the documents requested, which are currently being provided, will not be relevant to this appeal.

<sup>8</sup> As noted in Det. No. . . . , we are using the 1995 version of RCW 82.32.145 instead of the 2010 version.

though duplicate amounts may have been assessed under TFAAs. The issuance of a TFAA does not relieve the entity from tax.

In Det. No. 03-0066R, 23 WTD 243 (2004), the Department concluded that a taxpayer who had received a TFAA could not challenge the amount of the tax assessment underlying the TFAA. The taxpayer in that case asserted that the corporation had not collected some or all of the taxes included in the TFAA. In concluding that the individual taxpayer could not challenge the amounts underlying the TFAA, the Department reasoned:

We cannot grant such an offset in a TFAA appeal. The original taxpayer, the business, had an opportunity to contest the amount of taxes assessed when DOR issued the notices of balance due. RCW 82.32.160. It did not appeal. The statutory consequence is that “[i]f no such petition is filed within the thirty-day period covered by the assessment the assessment shall become final.” RCW 82.32.160. Generally, once a tax assessment become[s] final, there is no jurisdiction for DOR to accept a petition for correction of the assessment.

Det. No. 03-0066R, 23 WTD 243 (2004); *see also* Det. No. 87-39, 2 WTD 189 (1987) and Det. No. 86-268, 1 WTD 245 (1986). Appeals within 30 days of a TFAA may concern matters only as to the issuance of the TFAA itself, such as whether one is a “responsible party” under RCW 82.32.145. Det. No. 08-0116, 27 WTD 228 (2008).

As 23 WTD 243 explains, [Corporation] had 30 days to appeal its assessments after each one’s issuance without prior payment. RCW 82.32.160; WAC 458-20-100(4). [Corporation] never appealed any of its assessments, including the additional assessment dated March 25, 2014, and those appeal periods have now passed. Taxpayer may challenge their amounts only in a petition for refund after the taxes have been paid. RCW 82.32.060; WAC 458-20-229; Det. No. 03-0066R, 23 WTD 243 (2004).

This issue concerns only Taxpayer’s objection to the amount of his TFAA, and not whether the TFAA was wrongly issued. Accordingly, Taxpayer’s petition as to this issue is denied.

2. In accordance with the provisions of WAC 458-20-100, can a taxpayer object to the holding of a determination after the 30-day period for filing a petition for reconsideration has passed?

RCW 82.32.160 provides that the recipient of a tax assessment may petition for its correction within 30 days of its issuance. If the assessment is timely appealed and relief is denied, WAC 458-20-100 provides that a Taxpayer who believes the resulting determination is in error must appeal that decision within 30 days of the determination’s issuance. If a petition for reconsideration is not filed within the prescribed 30 days (or extensions granted by the Department), then the assessment becomes final.

In his letter of appeal, Taxpayer argues that he does not understand why he is being assessed, and that by issuing the assessment, “the State of Washington has denied me the pursuit of happiness which we all are entitled to have in this great nation . . . and the God given rights under our constitution.” Taxpayer further states, “[t]he documents I have received shows that the information stands alone as another misunderstanding and wrongful accusation.” We are

treating these statements as challenging the issuance of the TFAA assessment and whether Taxpayer was a “responsible individual” under RCW 82.32.145.

Taxpayer originally objected to his being issued a TFAA on May 30, 2012. After reviewing and deliberating on the evidence and arguments, we issued Det. No. . . . on May 30, 2013. Det. No. . . . concluded that Compliance had lawfully issued Taxpayer’s TFAA because he was a “responsible individual.” Taxpayer did not petition for reconsideration of that determination within 30 days of its issuance, and the determination and assessment thereupon became final.

As to Taxpayer’s current objection, it is now too late to petition for reconsideration of Det. No. . . . And as to the issue of Taxpayer’s liability as a “responsible individual,” our analysis remains the same. Taxpayer’s petition as to this issue is therefore denied.

Taxpayer’s appeal is timely; however, for the limited purpose of questioning whether, on March 25, 2014, the Department lawfully amended Taxpayer’s TFAA for the 2008 period.<sup>9</sup> We are therefore treating Taxpayer’s petition as a request to review the correctness of adding the additional amount to the TFAA, and our review will be limited to that issue alone.

When a person has failed to file returns or provide records, RCW 82.32.100(3) provides:

No assessment or correction of an assessment may be made by the department more than four years after the close of the tax year, except . . . (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer . . .

Taxpayer had, until 2014, failed to provide adequate records, which resulted in estimated assessments. In 2013, one of [Corporation]’s principals provided records that Compliance used to amend the existing [Corporation] and TFAA assessments as to 2008. Under RCW 82.32.100(3), the statute of limitations for audit assessments is the current year plus four years, and that would have, in most instances, rendered an assessment in 2014 for tax year 2008 beyond the statute of limitations. WAC 458-20-230(2)(d),<sup>10</sup> provides that assessments can be made beyond the regular statute of limitations when a taxpayer has collected, but not remitted, retail sales tax.

We therefore hold that the 2014 additional assessment against Taxpayer was lawful.

Taxpayer’s petition as to this issue is denied.

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<sup>9</sup> Such an inquiry does not extend, however, to the underlying amount of the assessment, for reasons explained above.

<sup>10</sup> WAC 458-20-230(6) provides:

Trust funds. Retail sales tax which is collected by a seller must be remitted to the department of revenue. These amounts are deemed to be held in trust by the seller until paid to the department. The statute of limitations does not apply to retail sales tax which was collected and not remitted to the department.

(Emphasis added.)

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 24<sup>th</sup> day of October, 2014.