Cite as Det. No. 16-0095, 35 WTD 564 (2016)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Refund of	)	D E T E R M I N A T I O N
	)	
	)	No. 16-0095
	)	
. . .	)	Registration No. . . .
	)	

RULE 272; RCW 70.95.510: TIRE FEE – PERSONAL LIABILITY FOR UNCOLLECTED TIRE FEE. A seller of vehicle tires that failed to collect the tire fee from its customers is personally liable for payment of the tire fee to the Department, even when the seller alleges it received oral advice from the Department instructing otherwise.

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.

Yonker, A.L.J. – A seller of vehicle tires (Taxpayer) protests the assessment of tire fees that Taxpayer failed to collect from its customers. Taxpayer argues that it received incorrect oral instructions from a Department employee, who reportedly advised Taxpayer that the tire fee requirement expired on June 30, 2010. Because it relied on this alleged incorrect information, Taxpayer argues it should not be liable for the tax assessment. We deny the petition.[1]

ISSUES

Is Taxpayer liable for payment of tire fees under RCW 70.95.510, where Taxpayer failed to collect such fees from its customers after it allegedly received incorrect oral advice from a Department employee that Taxpayer no longer had to collect such tire fees after June 30, 2010?

FINDINGS OF FACT

[Taxpayer] operates an auto repair and tire sale business in . . . , Washington. In 2005, Taxpayer represents that it received a notice from the Department informing Taxpayer that, as a business that sold new replacement vehicle tires, it must collect a one dollar "tire fee" on each sale of such tires until June 30, 2010. Taxpayer began collecting tire fees on such sales, and remitted those fees to the Department in compliance with the notice.

On July 9, 2009, the Department issued a Special Notice, entitled "Tire Fee on New Replacement Vehicle Tires," which states, in part:

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

> Senate Bill 5976, Chapter 261, Laws of 2009, under RCW 70.95.510, eliminates the sunset period in which retailers are required to collect a $1 per tire fee on the retail sale of new replacement vehicle tires. The tire fee was set to sunset as of June 30, 2010. Current legislation merely eliminated the sunset period in which the tire fee is effective (July 1 2005 through June 30, 2010) and imposes the fee for all sales of new replacement vehicle tires with no effective sunset date.

As of July 15, 2009, the Department's website contained at least two documents reporting on the elimination of the "sunset" date on the tire fee requirement. First, under the "new laws" category of the Department's main website, there was a link to a "2009 Legislation" report, which included a summary of Senate Bill 5976, stating that "[t]his bill eliminates the expiration date for the $1.00 per tire fee on the sale of new replacement vehicle tires. The current fee was adopted in 2005 and was scheduled to expire July 1, 2010."[2]

Second, under both the "Find taxes & rates" and "Get a form or publication" categories of the Department's website, there were links to all special notices organized by tax category. One such tax category was entitled "Tire Fee," which had a "New!" indicator next to it, and contained a link to the July 9, 2009, Special Notice discussed above.[3] There is no evidence that the Department mailed either the "2009 Legislation" report or the July 9, 2009 Special Notice to individual taxpayers.

Taxpayer's representative, [Representative], represents that sometime in July 2010, she had three separate conversations with someone in the Department's Information Center regarding tire fees. [Representative] represents she first called the Department's Information Center to find out if the requirement to collect the tire fee was extended beyond June 30, 2010. [Representative] represents that the person with whom she spoke did not know if the tire fee had been extended, but said he would find out and call [Representative] back.

When [Representative] did not receive a call back, she represents that she called the same person back a few days later. At that time, the Department employee again indicated he did not know whether the tire fee had been extended, but again committed to calling [Representative] back with the answer. Another few days later, the Department employee called [Representative] back and, according to [Representative], stated that the tire fee requirement had expired and Taxpayer no longer needed to collect the tire fee.

There are no Department records of any conversations between [Representative]and the Department's Information Center.[4] Likewise, Taxpayer has provided no records, notes, specific

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[2] Found at https://web.archive.org/web/20090716114410/http://www.dor.wa.gov/Docs/Reports/2009/Summary_2009_Tax_Leg/2009-LegSummary.pdf, last visited on March 3, 2016.

[3] Found at https://web.archive.org/web/20090720161758/http://dor.wa.gov/Docs/Pubs/SpecialNotices/2009/sn_09_TireFee.pdf, last visited on March 3, 2016. We note that the July 9, 2009, Special Notice was still posted on the Department's website under both the "Find a law or rule" and "Get a form or publication" categories as of August 12, 2010. Found at https://web.archive.org/web/20100812084059/http://dor.wa.gov/Docs/Pubs/SpecialNotices/2009/sn_09_TireFee.pdf, last visited on March 3, 2016.

[4] There is a record that [Representative] contacted the Department via Secure Messaging on July 22, 2010 in which [Representative] stated that she was amending Taxpayer's June 2010 combined excise tax return to include collected tire fees, and the Department responded to [Representative] on that same date that collected tire fees appeared to

dates, or names of Department employees, related to [Representative's]reported conversations with the Department in July 2010.

Based on the information [Representative] reports she received from a Department employee, Taxpayer stopped collecting the tire fee on its sales of new replacement vehicle tires beginning sometime in July 2010.

In 2015, the Department's Taxpayer Account Administration (TAA) conducted a review of Taxpayer's reporting history for the period of January 1, 2011 through June 30, 2015 (review period). Based on Taxpayer's stated business activity, and other information received from Taxpayer during the review process, TAA concluded that Taxpayer should have been collecting and remitting the tire fee during the entire review period. On November 2, 2015, as a result of TAA's review, the Department issued a tax assessment for $ . . . , which included $ . . . in unremitted tire fees, and $ . . . in interest. Taxpayer paid the tax assessment and appealed for a refund of the full amount of the tax assessment.

ANALYSIS

Effective July 1, 2005, RCW 70.95.510(1) stated the following regarding tire fees:

> There is levied a one dollar per tire fee on the retail sale of new replacement vehicle tires for a period of five years, beginning July 1, 2005. The fee imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the fees. The fee collected from the buyer by the seller . . . shall be paid to the department of revenue in accordance with RCW 82.32.045.

Then, effective July 26, 2009, RCW 70.95.510(1) was amended to remove "for a period of five years, beginning July 1, 2005" from the first sentence. Laws of 2009, ch. 261, § 2. The only substantive effect of the 2009 amendment to RCW 70.95.510(1) was that the five-year "sunset" provision on the tire fee was eliminated, and the tire fee was to be collected by sellers indefinitely.

WAC 458-20-272 (Rule 272), the Department's administrative rule implementing RCW 70.95.510, provides further guidance on the tire fee. Rule 272(2)(c) states that "[t]he seller is personally liable for payment of the fee, whether or not the fee is collected from the buyer." Here, Taxpayer does not dispute that its sales of new replacement vehicle tires were subject to the tire fee throughout the review period, nor does it dispute that it failed to collect the tire fee on such sales during the review period. As such, under Rule 272(2)(c), Taxpayer is personally liable for payment of the uncollected tire fees.

Taxpayer argues on appeal that its liability for payment of the uncollected tire fees should be waived because it received incorrect advice from a Department employee, which led it to believe that it no longer had to collect the tire fee. RCW 82.32A.020(2) states that taxpayers have "[t]he right to rely on specific, **official written advice and written tax reporting instructions** from

already be included in Taxpayer's original June 2010 combined excise tax return. There is no indication that this exchange included any discussion of tire fees beyond June 30, 2010.

the department of revenue to that taxpayer, and to have interest, penalties, and in some instances, tax deficiency assessments waived where the taxpayer has so relied to their proven detriment." (Emphasis added).

Here, the advice that Taxpayer allegedly received from a Department employee was oral, as opposed to written. We have consistently held that a taxpayer has no right to rely on alleged oral advice. Indeed, we have stated that "[t]he Department lacks legal authority to waive interest, penalties, or tax deficiency assessments based on oral instructions that are not corroborated." Det. No. 13-0279, 33 WTD 75 (2014). *See also* Det. No. 00-001, 19 WTD 681 (2000); Det. No. 96-114, 16 WTD 188 (1996); Det. No. 92-004, 11 WTD 551 (1992); Det. No. 87-130, 3 WTD 59 (1987). Here, even if the conversations occurred, as claimed, between [Representative] and a Department employee, there is a complete lack of documentation of those conversations, or their specific content. As such, no corroboration is possible, and we are unable to waive the tax assessment based on [Representative's] statements alone.

Taxpayer also argues in its appeal petition that "I think [the amendment to RCW 70.95.510] should have been emailed or been in the inbox on your website where I file the monthly returns." We interpret this statement as arguing that the Department's failure to properly notify Taxpayer of the amendment to RCW 70.95.510 should serve as justification for the abatement of the tax assessment. We disagree. There is no specific right to notification of changes in tax laws or administrative rules under Chapter 82.32A RCW, which identifies taxpayer rights and responsibilities. The relevant laws, administrative rules, and Department publications explaining such laws and rules, are all publicly available, and taxpayers have a legal duty to "know their tax reporting obligations." *See* RCW 82.32A.030(2).

Despite finding no legal obligation to do so, we recognize that the Department sometimes chooses to issue notifications to taxpayers as a courtesy to taxpayers, but such courtesies do not negate a taxpayer's obligation to know their own tax liability. Furthermore, even though there is no evidence that the Department sent a notice of the amendment to RCW 70.95.510 to Taxpayer here, the Department did post on its website information about the 2009 amendment to RCW 70.95.510 in at least two documents on the Department's publicly-available website during 2009 and 2010. Those resources were included on the Department's website specifically to assist taxpayers in understanding their tax liability. Moreover, those resources were available on the Department's website nearly a year before Taxpayer claims to have contacted the Department about the issue. As such, we conclude the tax assessment may not be waived due to the Department's choice to not send notice of the 2009 amendments to RCW 70.95.510 to Taxpayer. Accordingly, we affirm the tax assessment as issued.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 11th day of March, 2016.