

Cite as Det. No. 18-0013, 37 WTD 103 (2018)

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

In the Matter of the Petition for Review of) D E T E R M I N A T I O N
)
) No. 18-0013
)
...)
) Registration No. . . .
)

[1] RULE 228; RULE 268; RCW 82.32.585: ANNUAL SURVEY – FAILURE TO TIMELY FILE – ONE-TIME EXTENSION. A taxpayer’s failure to file its required annual tax preference survey after the due date, where the taxpayer had already received its one-time 90 day extension, because taxpayer’s employees were busy responding to a Department of Revenue audit, is not a circumstance beyond the taxpayer’s control for purposes of granting an additional extension to file the annual survey.

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.

Davis, T.R.O. – An out-of-state limited liability company (Taxpayer) engaging in the business of manufacturing carbon fiber in Washington State seeks extension of the deadline to file its required annual tax preference survey following denial by the Taxpayer Account Administration Division (TAA) of the Department of Revenue (Department). Taxpayer does not dispute the facts leading to the initial denial, but requests waiver of the deadline because Taxpayer was simultaneously preparing for its first Washington tax deferral audit, and it showed good faith effort to comply by filing its completed survey only two days after the deadline. We deny Taxpayer’s petition.¹

ISSUE

Under RCW 82.32.585, WAC 458-20-268 (Rule 268), and WAC 458-20-228 (Rule 228), does the Department have authority to waive or extend the filing deadline for Taxpayer’s annual tax preference survey?

FINDINGS OF FACT

. . . (Taxpayer) is [an out-of-state] limited liability company engaged in the business of manufacturing carbon fiber in Washington State.

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

In 2016, Taxpayer claimed the tax preference for investment projects in rural counties as described in chapter 82.60 RCW, allowing it to defer payment of certain taxes as long as it maintained its qualifying business activity and complied with all legal requirements, including filing an annual survey. For its 2016 deferral claim, Taxpayer's annual tax preference survey was due on May 31, 2017.

In May 2017, at the time the 2016 survey was due to be filed, the Department's Audit Division was in the process of conducting a periodic audit of Taxpayer's business records, for the specific purpose of verifying Taxpayer's compliance with tax deferral preference rules and regulations. Taxpayer represents that the employees who were responsible for its work on the audit were also attempting to respond to the annual survey, but their attention was divided as they responded to the audit's document production requirements, and there was some delay in gathering the information needed to accurately complete the survey. As a result, Taxpayer missed its May 31, 2017 survey filing deadline.

On June 28, Taxpayer sent a secure message using the Department's e-file system requesting a one-time 90 day extension of the survey filing deadline. TAA determined Taxpayer qualified for the extension and on July 6, 2017, notified Taxpayer by secure message that the extension was granted. The message stated that Taxpayer's new filing deadline was August 29, 2017.

On August 21, 2017, the Department sent Taxpayer a reminder of the approaching August 29, 2017, deadline by secure message. On August 31, 2017, Taxpayer submitted its completed annual survey and sent a secure message to the Department requesting further extension of the filing deadline to that day (August 31), stating that the reason they missed the deadline was [because] they were engaged in responding to the deferral audit and had made good faith efforts to collect the survey information as quickly as they could. TAA denied Taxpayer's request.

Taxpayer timely petitioned for review, requesting waiver of the August 29, 2017, annual survey filing deadline and retroactive extension of the deadline to August 31, 2017, the date Taxpayer filed its completed survey.

Taxpayer does not dispute the deadline or its filing requirements. Taxpayer instead asks the Department to waive the deadline due to Taxpayer's difficulty in simultaneously cooperating with the Department's deferral audit requirements and timely completing its annual survey. Taxpayer notes that it demonstrated good faith efforts to comply with the law by completing and submitting the survey within two days of the deadline.

ANALYSIS

Chapter 82.60 RCW authorizes the deferral of retail sales and use taxes due upon qualified investment projects in certain rural Washington counties. To claim the credit, a taxpayer must file a completed annual survey with the Department as required by RCW 82.32.585. RCW 82.60.070. The annual survey must be filed by May 31st in the year following any calendar year in which a person claims the credit. RCW 82.32.585(1)(a)(i); see also Rule 268(3). Failure to file the required annual survey by the due date results in twelve and one-half percent of Taxpayer's deferred tax

becoming immediately due and payable. RCW 82.32.585(6)(b). However, the Department may not assess interest or penalties on the amount due. RCW 82.32.585(6)(c); Rule 268(11)(c)-(d).

Taxpayer here seeks waiver of the filing deadline for its required annual survey, because its employees were distracted by the need to simultaneously respond to a Department audit, and on the basis of its good faith efforts to comply.

The Department may extend the due date of the annual survey as provided in RCW 82.32.590. RCW 82.32.585(1)(b). RCW 82.32.590 provides two exceptions to the filing deadline, both of which we address herein.

Circumstances beyond Taxpayer's Control

First, RCW 82.32.590(1) states that the Department “must extend the time for filing the survey or report” if the failure to file an annual survey by the due date was the result of “circumstances beyond the control of the taxpayer.” If granted, the extension is for 30 days from the date the Department issues written notification to the taxpayer of the approval of an extension. *Id.* RCW 82.32.590(2) explains that the Department must follow the same Department rules for the late submission of an annual survey as for cases involving waiver or cancellation of penalties due to circumstances beyond the control of the taxpayer. *See also* Rule 268(11)(e) (stating that the Department will apply the provisions of Rule 228 in determining when late filing is due to circumstances beyond taxpayer’s control).

Under Rule 228, the Department shall cancel penalties if a taxpayer’s late filing was the result of circumstances beyond the control of the taxpayer. Taxpayers bear the burden of establishing that the circumstances were beyond their control and directly caused the late filing. Rule 228(9)(a)(i). Rule 228(9)(a)(ii) provides that such circumstances must result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file, and must actually have caused the missed filing.

Rule 228 further explains that “[c]ircumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency.” *Id.* Examples provided in the Rule include: an act of fraud by a taxpayer's employee; death or serious illness of the taxpayer, family member, or accountant; or the destruction of business records by fire or other casualties. Rule 228(9)(a)(ii)(C), (E) and (F).

Rule 228 also provides specific examples that are not considered to be circumstances beyond the control of the taxpayer, including where the late filing resulted from a taxpayer's misunderstanding or lack of knowledge of a tax liability, and where late filing resulted from mistakes on the part of employees or other persons contracted with the taxpayer. Rule 228(9)(a)(iii)(B), (E).² *See* Det. No.

² Taxpayers have a statutory duty to know their tax reporting obligations. 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. Det. No. 01-165R, 22 WTD 11 (2003). When taxpayers are uncertain about their obligations, they are responsible for seeking instructions from the Department. RCW 82.32A.030(2). *See also* Det. No. 01-165R, 22 WTD 11 (2003). We note in passing that nonresidents such as Taxpayer are held to the same standard as Washington residents in the application of provisions of the Revenue Act. *See* Det. No. 01-165R, 22 WTD 11 (2002).

15-0062, 34 WTD 419 (2015) (the taxpayer's lack of knowledge regarding Washington tax laws is not a circumstance beyond the taxpayer's control that caused the delinquent payment of taxes on its returns); Det. No. 14-0155, 33 WTD 496 (2014) (penalties cannot be waived for lack of knowledge); Det. No. 01-165, 22 WTD 5 (2003) (lack of knowledge of a tax liability is not grounds the Department may consider for waiving the penalty imposed); Det. No. 90-205, 11 WTD 55 (1990) (error of an employee is not one of the seven circumstances listed in Rule 228 that will justify the waiver of penalties).

Here, Taxpayer had a duty to know its obligation to file the Survey. As a courtesy, the Department attempted to contact Taxpayer by electronic secure message, to remind Taxpayer of its obligation and the approaching deadline. Indeed, Taxpayer concedes that it was aware of the obligation to file the Survey, but failed to do so. Taxpayer's employees' error in failing to timely file the annual survey was not a circumstance beyond the control of the taxpayer that would qualify Taxpayer for an extension of time to file the survey under RCW 82.32.590(1). Rule 228(9)(a)(iii)(B), (E).

One-Time Extension

Second, RCW 82.32.590(3) states that "a taxpayer who fails to file an annual report or annual survey . . . by the due date" is entitled to a one-time 90 day extension to the due date so long as the taxpayer requests the extension in writing to the Department. RCW 82.32.590(3)(a). With respect to the 2016 annual survey, Taxpayer requested and received its one-time 90 day extension on July 6, 2017. Because Taxpayer has already received this exception, it is ineligible for another extension under this provision. RCW 82.32.590(3)(d).

Good Faith

Finally, Taxpayer argues that it has made a good faith effort to comply with the law and promptly paid its assessment in full once it learned of its tax liability. However, we note that neither RCW 82.32.590(1) nor Rule 228 permit good faith effort to be the basis for waiving the survey filing deadline. *See* Det. No. 14-0170, 34 WTD 030 (2015). We recognize Taxpayer's employees were impacted by the need to respond to a Department audit, and Taxpayer filed soon after the expiration of the deadline. However, Taxpayer's cooperation, while greatly appreciated, cannot overcome the Department's statutory obligations and limitations.

The Department is an administrative agency empowered only to carry out the law as written, and the legislature has granted the Department authority to extend the due date of an annual survey as set out in RCW 82.32.590; we are not authorized to extend the due date of an annual survey on the basis of good faith effort.

Based on the facts presented, we conclude that there are no circumstances in this case that permit the Department to grant Taxpayer's petition. Taxpayer has failed to show that circumstances beyond its control caused it to file its survey late, and therefore it has not met the criteria for an extension in RCW 82.32.590. In addition, Taxpayer's good faith efforts to comply with the law are insufficient legal grounds to waive or extend a mandatory filing deadline. We find the Department lacks authority to waive or extend the mandatory August 29, 2017, filing deadline, and we therefore deny Taxpayer's petition.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 17th day of January 2017.