

Cite as Det. No. 17-0294, 37 WTD 161 (2018)

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

In the Matter of the Petition for Refund of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 17-0294
	)	
...	)	Registration No. . . .
	)	

RCW 82.32.060; WAC 458-20-229: RETAIL SALES TAX – REFUND – NONCLAIM PERIOD – Taxpayer may claim a refund of taxes invoiced more than four years prior to the beginning of the calendar year in which the refund application was made but actually paid during the four-year refund period.

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.

Margolis, T.R.O. – A manufacturer of silicon materials (Taxpayer) protests the denial of refund of retail sales tax that Taxpayer paid to third parties. Taxpayer argues that despite filing its refund request in 2015, it qualifies for refund on purchases invoiced in 2010, more than four years prior to the beginning of the calendar year in which the refund application was made, when it paid the retail sales tax in 2011. We grant the petition in part, and deny the petition in part, subject to verification by the Audit Division.<sup>1</sup>

ISSUE

Whether, under RCW 82.32.060, the non-claims statute precludes Taxpayer from refund of retail sales tax invoiced more than four years prior to the beginning of the calendar year in which the refund application was made, but actually paid during the four-year refund period.

FINDINGS OF FACT

Taxpayer manufactures specialty products for further processing by other manufacturers in the solar and electronics manufacturing industry. In 2015, Taxpayer requested refund of \$ . . . for amounts attributable to the period January 1, 2011, through December 31, 2011. The Department’s Audit Division (Audit) reviewed the request, and on August 24, 2016, issued a partial refund of . . . The refund comprises . . . in credit, . . . in use/deferred sales tax, and . . . in interest.

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

Taxpayer requested refund of retail sales tax paid on certain purchases of equipment, parts, labor, and software, which is either used in an exempt operation or outside the state of Washington. Taxpayer provided declarations to substantiate that it has not and will not seek a refund of the retail sales tax from both the seller and the Department.

Taxpayer's refund request also included retail sales tax paid on purchases invoiced to Taxpayer in 2010 by sellers. The goods, rentals, or services were ordered in 2010, but generally, final payment on these transactions did not occur until 2011, including the payment of retail sales tax. Most invoiced transactions at issue were invoiced in December 2010, although a few were even earlier and appear to be open purchase orders from backordered goods. Audit denied refund of retail sales tax paid on these purchases on grounds that these purchases fall outside of the four year non-claims statute. Taxpayer protests this denial on grounds that Taxpayer did not pay the invoices until 2011, so the non-claims statute does not preclude refund.

Taxpayer provided schedules in support of its petition to show that the invoices at issue were actually paid in 2011. Schedule 1 is titled "Purchases in 2010 with Payment in 2011," and Schedule 2 is titled, "SAP Report." In a letter dated February 27, 2017, Taxpayer describes the schedules as follows:

"Schedule 1 – Purchases in 2010 with Payment in 2011" summarizes the invoices at issue with cross referenced clearing documents and payment timing information directly from the "Schedule 2 – SAP Report." Schedule 2 consists of raw data from an SAP report on the particular invoices at issue. The invoices are cross referenced from Schedule 2 as the "Invoice Number" column corresponds with "Reference" column.

We forwarded the schedules to Audit, which matched Taxpayer's payment data with the original audit data, and found that, overall, Taxpayer's data documents the payment on the particular invoices occurred in 2011. Audit notes, however, that Taxpayer is seeking refund on some invoices that Taxpayer had previously agreed were not purchases subject to refund of retail sales tax, and the schedules fail to document payment of retail sales tax on two purchases that total \$ . .

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#### ANALYSIS

RCW 82.32.060(1) authorizes the Department to issue refunds upon application by the taxpayer where the Department determines that taxes have been paid in excess of that properly due. WAC 458-20-229 (Rule 229) is the administrative rule regarding refunds. Rule 229(4)(b) explains that the Department will refund retail sales tax directly to a buyer in certain situations where the buyer has not received a refund from the seller. Audit agrees that Taxpayer paid taxes in excess of that properly due and qualifies for partial refund directly from the Department. The only dispute is whether Taxpayer is precluded from refund of retail sales tax paid to vendors evidenced by invoices dated prior to 2011, which is more than four years prior to the beginning of the calendar year in which Taxpayer filed the refund request.

Except where the Department and the taxpayer have executed a written waiver under RCW 82.32.050 or 82.32.100, "no refund of credit shall be made for taxes, penalties, or interest **paid**

more than four years prior to the beginning of the calendar year in which the refund application is made . . . .” RCW 82.32.060(1) & (2) (emphasis added). The Department may not grant an extension of time to file a petition that would exceed the time limits in the statute. WAC 458-20-100(3)(b).

In this matter, Taxpayer filed the refund claim in 2015. Taxpayer has provided no evidence of written waiver under RCW 82.32.050 or RCW 82.32.100 for the years in this refund request. Absent such waiver, the Department may not issue a refund of taxes paid more than four years prior to the beginning of 2015, which was January 1, 2011. Taxpayer provided records showing that the invoices at issue were paid in 2011, despite being invoiced in 2010, but Audit initially argued that “the invoicing of the tax at the time of sale would be the incidence which the customer pays the tax to the state,” and disallowed refund on invoices dated prior to 2011. Audit’s Petition Response, Page 6.

In determining the meaning of statutes, we must ascertain and carry out the Legislature’s intent. *G-P Gypsum Corp. v. Dep’t of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010); *City of Spokane v. County of Spokane*, 158 Wn.2d 661, 672-73, 146 P.3d 893 (2006). Washington courts employ a “plain meaning” approach to interpreting statutes. Where a statute’s meaning is “plain on its face,” we must “give effect to the plain meaning as an expression of legislative intent.” *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002); Det. No. 13-0191, 33 WTD 116 (2014). The “plain meaning” of a statute “is discerned from all that the Legislature has said in the statute.” *Jongeward v. BNSF R. Co.*, 174 Wn.2d 586, 594, 278 P.3d 157 (2012) (quoting *Campbell & Gwinn*, 146 Wn.2d at 9-10).

The statute at issue, RCW 82.32.060, provides that no refund shall be made for taxes “paid” more than four years prior to the beginning of the calendar year in which the refund application is made. We find that the plain meaning of the statute is that the non-claims period is relative to when the taxes were “paid” rather than when the taxpayer was billed.<sup>2</sup>

The Washington Supreme Court has held similarly. In *PACCAR, Inc. v. Dep’t of Revenue*, 135 Wn.2d 301, 957 P. 2d 669 (1998), PACCAR overpaid its B&O taxes from 1977 through 1981. Following an audit of that period, in 1983, PACCAR paid a deficiency assessment representing sales, use, and B&O taxes. In 1985, PACCAR filed a refund petition for refund of the 1983 deficiency assessment taxes paid in 1983. *PACCAR*, 135 Wn.2d at 320.

The Court considered what additional amount of refund, if any, PACCAR was entitled to as a result of its 1977-1981 overpayment. The Court determined:

Under RCW 82.32.060, a taxpayer may receive a refund of excess taxes paid upon a deficiency assessment calculated for a period prior to the statutory four-year refund period if the taxpayer files a petition for refund within four years **of actual payment** of the deficiency assessment.

*Id.* at 321 (emphasis added).

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<sup>2</sup> We note that if there was no evidence that taxes had been paid at a different time than when the invoice was issued, the invoice date could be evidence of when the tax was paid.

. . . RCW 82.08.100 and WAC 458-20-197 recognize that taxpayers may file returns on an accrual basis, so the vendors in this matter may have reported the sales at issue in 2010, despite Taxpayer seeking refund for taxes that it paid in 2011. Regardless of Taxpayer's vendor's reporting method, the record makes clear that Taxpayer "paid" the invoices at issue in 2011. Under *PACCAR* and RCW 82.32.060, we conclude that the payment date in 2011 is the date from which the statutory period for requesting a refund is calculated.

In accord with *PACCAR* and the plain meaning of RCW 82.32.060, since Taxpayer filed the refund request in 2015, we find that where Taxpayer has shown that it overpaid retail sales tax in 2011, it is not precluded by the non-claims statute from claiming a refund of the excess taxes.

Rule 229 imposes on taxpayers the obligation to substantiate refund requests. Taxpayer has failed to establish that it qualifies for refund of retail sales tax on the two purchases that total \$ . . . where there is no evidence that Taxpayer paid the retail sales tax, nor on purchases that Taxpayer previously agreed were taxable, and has since provided no proof that the purchases were not properly subject to retail sales tax.

#### DECISION AND DISPOSITION

Taxpayer's petition is granted with regards to retail sales tax paid in excess of that properly due on purchases invoiced in 2010 and paid in 2011, subject to Audit verification. Taxpayer's petition is denied as it relates to \$ . . . in purchases where Taxpayer has not shown that it paid the retail sales tax, and purchases that Taxpayer previously agreed were taxable.

Dated this 1st day of December 2017.