

Cite as Det. No. 18-0127, 37 WTD 187 (2018)

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

In the Matter of the Petition for)	<u>D E T E R M I N A T I O N</u>
Correction of Assessment/Refund of)	
)	No. 18-0127
...)	Registration No.
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RCW 82.32.590; RCW 82.32.534(1)(a); Rule 228 – ANNUAL SURVEYS OR REPORTS FOR TAX INCENTIVES – FAILURE TO FILE. A taxpayer's failure to file its annual reports because it did not register and file tax returns during the preferential aerospace B&O tax rate periods claimed does not constitute a circumstance beyond the control of the taxpayer that warrants the Department extending the due date for the preferential aerospace B&O tax rate provided in RCW 82.04.260(11)(b).

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.

Callahan, T.R.O. – A limited liability company protests the Department's denial of its annual report filing extension for the preferential aerospace business and occupation (B&O) tax rate arguing that the reports were due when it became eligible to claim the tax preference when it filed its tax returns with the Department. We deny the petition.¹

ISSUE

Under RCW 82.32.590; RCW 82.32.534(1)(a); and WAC 458-20-228 (“Rule 228”), whether the taxpayer qualifies for an annual report due date extension for the preferential aerospace B&O tax rate provided in RCW 82.04.260(11)(b).

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

FINDINGS OF FACT

... (“Taxpayer”), headquartered [out-of-state], sells aerospace tooling and component parts at retail.² On March 2, 2017, the Department received Taxpayer’s Voluntary Disclosure Program application. On April 18, 2017, Taxpayer and the Department entered into Voluntary Disclosure Agreement No. . . (the “Agreement”) for the period of January 1, 2013, through March 31, 2017 (the “Audit Period”).³

The Agreement required Taxpayer to register with the Department, and to provide detailed gross income figures for the Audit Period by May 1, 2017. The Agreement provided that the Department would waive the five percent unregistered business penalty, the five percent substantially underpaid tax penalty, and the twenty-nine percent late payment penalty. The Agreement instructed Taxpayer to file its excise tax returns in accordance with the written reporting instructions, if any, provided with the tax assessment, beginning with the Quarter Two return, which was due on or before July 31, 2017.

On August 31, 2017, the Audit Division issued an assessment (the “Assessment”) against Taxpayer for the Audit Period for \$. . .⁴ The Assessment comprised the following:

	2013	2014	2015	2016	2017	Total
retailing B&O tax	\$. . .	\$. . .	\$. . .	\$. . .	\$. . .	\$. . .
retailing aerospace B&O tax	\$. . .	\$. . .	\$. . .	\$. . .	\$. . .	\$. . .
interest	\$. . .	\$. . .	\$. . .	\$. . .	\$. . .	\$. . .
Total	\$. . .	\$. . .	\$. . .	\$. . .	\$. . .	\$. . .

Audit assessed retailing B&O tax on Taxpayer’s gross sales of aerospace tooling sold to Washington manufacturers for the manufacturers’ own use, for the period of January 1, 2013, through December 31, 2015, because Taxpayer did not submit its annual reports timely to qualify for the preferential retailing aerospace B&O tax rate.⁵ Audit assessed retailing aerospace B&O tax for tax years 2016 and 2017.

² . . . headquartered [out-of-state]. . . . headquartered [out-of-state].

³ . . . and the Department entered into Voluntary Disclosure Agreement No. . . . for the period of January 1, 2015, through March 31, 2017, on April 21, 2017. . . . and the Department entered into Voluntary Disclosure Agreement No. . . . for the period of February 14, 2014, through March 31, 2017, on April 21, 2017. . . . and the Department entered into Voluntary Disclosure Agreement No. . . . for the period of January 1, 2014, through March 31, 2017, on April 4, 2017. . . . and the Department entered into Voluntary Disclosure Agreement No. . . . for the period of January 1, 2013, through March 31, 2017, on May 25, 2017. . . . and the Department entered into Voluntary Disclosure Agreement No. . . . for the period of January 1, 2013, through March 31, 2017, on April 4, 2017.

⁴ The assessment to . . . issued on August 31, 2017, consisted of \$. . . in retailing B&O tax, and \$. . . interest for 2015. The assessment to . . . issued on August 31, 2017, consisted of \$. . . in retailing B&O tax for 2014 and 2015, \$. . . in retailing aerospace B&O tax for 2016, and \$. . . in interest. The assessment to . . . issued on August 31, 2017, consisted of \$. . . in retailing B&O tax for 2014 and 2015, \$. . . in retailing aerospace B&O tax for 2016 and 2017, and \$. . . in interest. The assessment to . . . issued on September 26, 2017, consisted of \$. . . in small business credit, \$. . . in retailing B&O tax for 2014 and 2015, \$. . . in retailing aerospace B&O tax for 2016 and 2017, and \$. . . in interest, which was paid in full. The assessment to . . . issued on August 31, 2017, consisted of \$. . . in retailing B&O tax for 2013 through 2015, \$. . . in retailing aerospace B&O tax for 2016 and 2017, and \$. . . in interest.

⁵ Audit Schedule 2.

Audit did not assess retail sales tax on Taxpayer's gross sales of aerospace tooling sold to Washington manufacturers because Taxpayer's sales qualified for the machinery and equipment retail sales tax deduction under RCW 82.08.02565.

Taxpayer asserts that it should be classified under the preferential aerospace B&O tax rate for the period of January 1, 2013, through December 31, 2015.⁶

Persons reporting under the preferential aerospace manufacturing B&O tax rate are required by RCW 82.32.534 to file annual reports (the "Reports") by May 31st of the year following any calendar year in which a person becomes eligible to claim the tax preference.

Taxpayer submitted such Reports for tax years 2015 and 2016 on July 28, 2017. (Taxpayer did not submit Reports for 2013 and 2014.) Audit granted Taxpayer an extension for filing its 2016 Report, but did not grant extensions for tax years 2013 through 2015.

Taxpayer timely petitioned the Department's Administrative Review and Hearings Division (ARHD) for correction of the Assessment.

ANALYSIS

RCW 82.04.220 imposes the B&O tax "for the act or privilege of engaging in business activities" in Washington State. The tax is based on "value of products, gross proceeds of sale, or gross income of the business." RCW 82.04.220. RCW 82.04.250 states that retailing B&O tax is imposed "[u]pon every person engaging within this state in the business of making sales at retail."

However, a preferential B&O tax rate of 0.2904 percent, is available for persons "making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller." RCW 82.04.260(11)(a)(ii). Beginning July 1, 2008, the same preferential rate, or 0.2904 percent, applies to persons, "engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, . . ." RCW 82.04.260(11)(b).

A taxpayer claiming the preferential B&O tax rate for selling aerospace tooling must file a complete an annual report with the Department under RCW 82.32.850. RCW 82.04.260(11)(d). "The report is due by May 31st of the year following any calendar year in which the taxpayer becomes eligible to claim the tax preference. . . ." RCW 82.32.534(1)(a). *See* Det. No. 15-0125, 35 WTD 66 (2016).

The Department may extend the due date for timely filing of annual tax preference reports as provided in RCW 82.32.590. RCW 82.32.590 authorizes the Department to grant a thirty-day extension, where it finds that the failure to file the annual report was the result of circumstances beyond the control of

⁶ . . . asserts that it should be classified under the preferential aerospace B&O tax rate for the period of January 1, 2015, through December 31, 2015. . . . asserts that it should be classified under the preferential aerospace B&O tax rate for the period of February 14, 2014, through December 31, 2015. . . . asserts that it should be classified under the preferential aerospace B&O tax rate for the period of January 1, 2014, through December 31, 2015. . . . asserts that it should be classified under the preferential aerospace B&O tax rate for the period of January 1, 2013, through December 31, 2015. . . . asserts that it should be classified under the preferential aerospace B&O tax rate for the period of January 1, 2013, through December 31, 2015.

the taxpayer. RCW 82.32.590(1). The Department may also grant a one-time ninety-day extension if a taxpayer has filed all annual reports and surveys, if any, due in prior years by their respective due dates. RCW 82.32.590(3)(b).

Here, for tax periods of 2013 through 2015, Taxpayer became eligible to claim the tax preference in 2013 through 2015, and should have filed the Reports by May 31st following the years it became eligible to claim the tax preference. RCW 82.04.260(11)(d). Taxpayer failed to file its Reports for tax periods of 2013 through 2015 because Taxpayer did not register and file tax returns during those periods. This is not a circumstance beyond the Taxpayer's control. *See.* Det. No. 15-0215, 35 WTD 66 (2016).

Taxpayer argues that it did not become "eligible to claim" the tax preference until it filed its returns with the Department in 2017; therefore, the Reports for the tax periods of 2013 through 2015 were not due under RCW 82.32.534(1)(a) until May 31, 2018. We addressed this argument in Det. No. 15-0125, 35 WTD 66 (2016).

In 35 WTD 66, the taxpayer did not originally report its income under the preferential aerospace B&O tax rate for tax year 2009. In 2013, the taxpayer asked the Department to allow the taxpayer to claim the preferential aerospace B&O tax rate for tax year 2009. The taxpayer argued that the annual report for 2009 was not due until March 31, 2014, because it did not begin to claim the tax preference until 2013. We rejected the taxpayer's argument and concluded that the taxpayer was not entitled to the preferential aerospace B&O tax rate for tax year 2009 because the taxpayer did not claim the preferential aerospace B&O tax rate when it became eligible to claim the tax preference in 2010 under RCW 82.04.260(11). Similar here, Taxpayer failed to timely claim the preferential aerospace B&O tax rate for tax periods of 2013 through 2015 by not filing the Reports by May 31st following the years it was eligible to claim the tax preference.

Taxpayer next argues that the Department's denial of its preferential aerospace B&O tax rate for tax periods of 2013 through 2015 contradicts the intent of the Department's Voluntary Disclosure Program.

The Washington tax system is based largely on voluntary compliance. The Revenue Act imposes on taxpayers the responsibility to inform themselves about applicable tax laws, register with the Department, and accurately and timely pay taxes. RCW 82.32A.030

The Department of Revenue's Voluntary Disclosure Program encourages unregistered businesses to comply with Washington tax laws and to voluntarily register and pay prior tax obligations.⁷ Under the Department's Voluntary Disclosure Program, taxpayers can enter into an agreement whereby the taxpayer voluntarily discloses its taxable activities for the current year, plus the preceding four years and the Department agrees to limit its review to this period and partially or fully waive applicable penalties. *See* Det. No. 14-0397, 34 WTD 332 (2015). The Voluntary Disclosure Program does not extend a taxpayer's annual report filing deadline because it is not the intent of the program, which is to encourage voluntary disclosure of a taxpayer's taxable activities. Here, the Department waived the penalties that would be assessed otherwise pursuant to the Agreement.

⁷ Department of Revenue, <https://dor.wa.gov/doing-business/register-my-business/voluntary-disclosure-program#overview>.

Therefore, we conclude that there is no legal basis for the Department to grant Taxpayer extensions to file its Reports for tax periods of 2013 through 2015, under RCW 82.32.534(1)(a), and 82.32.590(1), because Taxpayer's failure to register with the Department and to file its tax returns is not a circumstance beyond its control for purposes of the Report filing extension.

DECISION AND DISPOSITION

[Petitions are denied.]

Dated this 10th day of May, 2018.