

Cite as Det. No. 02-0063R, 22 WTD 249 (2003)

BEFORE THE APPEALS 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>
Reconsideration of the Matter concerning)	
)	No. 02-0063R
...)	
)	Registration No. . . .
)	FY . . . /Audit No. . . .
)	Docket No. . . .

RCW 82.32.050, RCW 82.32.060(1): TAXES PAID LESS THAN OR IN EXCESS OF THOSE PROPERLY DUE -- ASSESSMENT -- REFUND -- Taxes properly due prior to an audit period, but not paid until the audit period, are not attributable to that audit period for the purpose of computing "excess" taxes above those properly due during the audit period for purposes of RCW 82.04.050 and - .060.

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. – . . . (Taxpayer) requests reconsideration of Det. No. 00-0063, which denied a refund of taxes reported during the audit period because they were not in excess of those taxes “properly due.” We affirm our original decision, finding that the taxes collected were not in excess of those taxes “properly due.”¹

ISSUE:

When a tax is properly due prior to the audit period, but was erroneously reported and paid by Taxpayer during the audit period, should this tax be considered “in excess of that properly due” and credited against a deficiency assessment under RCW 82.32.060(1)?

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

FINDINGS OF FACT:

The Audit Division (Audit) of the Department of Revenue (Department) audited the books and records of . . . (Taxpayer), for the period January 1, 1992 through December 31, 1996 (audit period). The last post assessment adjustment was issued on February 1, 2001, in the amount of \$. . . , of which Taxpayer protests \$

Taxpayer had erroneously used the “completed contract” method to calculate its manufacturing business and occupation (B&O) tax instead of the “percentage of completion” method, and thus had delayed the reporting of accrued income until the contracts were complete. Using what it termed a “catch-up” adjustment, Audit realigned Taxpayer’s reporting from the “completed contract” method that Taxpayer had used to the “percentage of completion” method. In so doing, Audit determined that a portion of Taxpayer’s gross income reported during the audit period should have been reported before the audit period. This portion was referred to in the Auditor’s Detail of Differences, as “revenues earned but not closed as of 12/31/91.”

“Revenues earned but not closed as of 12/31/91,” if unpaid, would have been beyond the statute of limitations for assessment at the time of the audit. These amounts were not paid timely, but were paid during the audit period. Because periods prior to 12/31/91 were beyond the statute of limitations for assessments, Audit could not adjust the placement of these revenues from the audit period to the correct prior periods when properly reportable.

ANALYSIS:

Taxpayer has requested a correction of assessment equal to the amounts Taxpayer erroneously reported and paid after 1991 instead of during correct earlier periods, arguing that the statute of limitations would not have permitted their assessment in the audit here at issue. Taxpayer now characterizes this amount as an amount paid “in excess of that properly due” during the audit period.

Taxpayer believes the percentage of completion method of accounting should be used to correctly compute its taxable receipts for the entire audit period because the method will provide the amount of tax properly due during the audit period. Taxpayer disagrees with Audit’s use of the “catch-up” adjustment method in an effort to adjust Taxpayer’s income from the previously used completed contract method to the percentage of completion method at the end of the audit period.² Taxpayer believes this adjustment is computationally incorrect and results in income earned in periods prior to the audit period being taxed in the audit period. Taxpayer believes there is a misunderstanding of the application of the statute of limitations in computing this adjustment.

² Essentially, the Taxpayer is arguing that it erred when it reported its income prior to the audit period and now because of its error it should be entitled to a refund of taxes it admits were due for earlier periods.

RCW 82.32.050, Washington's statute of limitations, provides:

(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid **less than that properly due**, the department shall assess against the taxpayer **such additional amount** found to be due

(3) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(Emphasis added.) RCW 82.32.060, Washington's nonclaim statute, in pertinent part provides:

(1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that **within the statutory period for assessment** of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid **in excess of that properly due**, the **excess amount paid within, or attributable to, such period** shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at the taxpayer's option.

(Emphasis added.) Taxpayer correctly notes that RCW 82.32.050 and RCW 82.32.060 were enacted by the legislature to provide a limited period of time in which the state could assess additional tax or a taxpayer could apply for a refund. Taxpayer argues:

Since the amount of tax properly due must be calculated based on the income properly due, any tax paid in error on the income reportable under the percentage of completion method in 1991 and prior period must be credited to the taxpayer's account."³

We disagree. Under RCW 82.32.050, the "catch-up amount" erroneously paid by Taxpayer during the audit period was properly attributable to periods prior to the audit period. The Department, therefore, was not required to attribute such amounts to the audit period in calculating either an additional assessment or a refund. Authority for this position comes from *Paccar, Inc. v. Department of Rev.*, 135 Wn. 2d 301, 957 P.2d 669 (1998). In that case, the court held Paccar to be entitled to a refund of a deficiency assessment paid within the nonclaim period, even though the audit period to which it was attributable was itself beyond the nonclaim period. In so doing, the court analyzed the overpayment (i.e., payment of the deficiency assessment) made within the nonclaim period as being an overpayment of taxes attributable to the earlier audit period outside the nonclaim period. The court allowed a refund.

³ Page 4, Petition for Reconsideration dated June 21, 2002.

In so doing, the court determined that payment of the assessment resulted in “tax paid in excess of that properly due” by looking to the audit period to which the payment was attributed. There had actually been an overpayment of taxes due within the audit period.

[1] In this case, payment of the assessment would not result in an overpayment of taxes due during the audit period. Taxes properly due prior to an audit period, but not paid until the audit period, are not attributable to that audit period for the purpose of computing “excess” taxes above those properly due during the audit period for purposes of RCW 82.04.050 and -.060. These taxes were properly due, but were simply not paid in a timely manner. Thus, we hold that Taxpayer has not demonstrated that its tax assessment contains any taxes “in excess of that properly due” during the audit period.

As we have already explained in Det. No. 00-0063, Det. No. 92-295, 13 WTD 160 (1993) is distinguishable because it was dealing with a refund and not a correction of assessment.

Accordingly, we must again reject Taxpayer’s petition for correction of assessment and sustain the assessment

DECISION AND DISPOSITION:

Taxpayer’s petition is denied.

Dated this 8th day of July 2003