

Cite as Det. No. 02-0059, 22 WTD 17 (2003)

BEFORE THE APPEALS 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. 02-0059
	)	
...	)	Registration No. ...
	)	
	)	Docket No. ...

RULE 229; RCW 82.32.060: SALES/USE TAX – REFUND REQUEST – ESTOPPEL. A corporation (A) is estopped from seeking a refund of sales and use taxes paid on machinery and equipment after it wrote a letter presented by another corporation (B) in a similar refund request to the Department of Revenue disclaiming any interest in the machinery and equipment.

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.

NATURE OF ACTION:

A corporation ... seeks a refund of retail sales/use taxes paid for machinery and equipment used in ... logging ....<sup>1</sup>

FACTS:

De Luca, A.L.J. -- ... , (the taxpayer) is a Washington corporation. ... The taxpayer has been in business and registered with the Department of Revenue (the Department) for decades. From . . . 1996 through . . . 1998 the taxpayer was merged with another company, [Company]. The merged corporation became known as [Merged Corporation]. The merged corporation continued to operate and report its excise taxes under the account that the taxpayer had established with the Department decades ago. [Company]’s expertise included . . . an area [of logging] in which the taxpayer had less experience. [Company] contributed machinery and equipment for [that

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

activity.] During their time together as [Merged Corporation], the parties also purchased [logging] machinery. . . .

By the end of 1998, the taxpayer and [Company] dissolved their business arrangement. The taxpayer states the parties did not have a written agreement pertaining to their merger or dissolution. As part of their dissolution, [Company] received not only the machinery and equipment it had contributed to the merger, but also the [logging] machinery and equipment . . . acquired during the time the companies were merged. Subsequently, [Company] incorporated into [Inc.], in January 1999, and registered with the Department to do business under its own account. The taxpayer reverted to its previous name ( . . . ) and continued to report its excise taxes under its longstanding account.

In 1995, the legislature enacted a sales and use tax exemption for the purchase of machinery and equipment (M&E) bought or used by manufacturers and processors for hire. RCW 82.08.02565 and RCW 82.12.02565. *See also* WAC 458-20-13601 (Rule 13601), the Department's rule that implements the M&E tax exemption statutes. In 1999, the legislature amended the M&E statutes to also exempt from sales and use taxes machinery and equipment used in certain logging and mining activities. "Manufacturing" now includes "cutting, delimbing, and measuring of felled, cut, or taken trees." RCW 82.04.120(3). *See also* Rule 13601(2)(c). The legislature made this amendment retroactive to 1995. RCW 82.04.120.

As a result of the retroactive statutory amendments, [Inc.], in October 1999, requested a refund for sales/use tax paid on the [logging] machinery and equipment. . . . The refund request included equipment purchased during the period that the taxpayer and [Company] were merged, in addition to equipment [Company] had previously purchased. Consequently, the Department's Taxpayer Account Administration (TAA) was confronted by a refund request filed by a taxpayer [Inc.] based upon tax paid on another taxpayer's account number [the taxpayer]. Therefore, as standard procedure for formerly held joint assets, TAA asked [Inc.] to obtain a letter of release from the taxpayer that would support [Inc.]'s refund claim. On October 22, 1999, [Inc.] obtained a letter from the taxpayer and signed by the taxpayer's CFO. The complete letter reads as follows:

To whom this may Concern [sic]

This is to certify that [Taxpayer] has no claim on any equipment transferred to [Inc.] during the corporate separation and reorganization.

If you have any questions or need additional information please do not hesitate to call me.

Sincerely,

. . .

/s/  
Secretary/Treasurer

[Inc.] provided the letter to TAA, and TAA processed the refund claim in November 1999.

Subsequently, during an audit of the taxpayer by the Department, the taxpayer became aware of [Inc.]’s refund claim. As a result, the taxpayer in May 2001 requested from TAA a refund of sales/use taxes paid for the [logging] machinery and equipment purchased in 1997 and 1998. . . . The taxpayer insisted it was entitled to the refund, instead of [Inc.], because the taxpayer claimed it paid the sales/use taxes for the machinery and equipment. On August 13, 2001, TAA issued a letter to the taxpayer denying the taxpayer’s refund claim. TAA cited the taxpayer’s letter of October 22, 1999 as the basis for issuing a refund to [Inc.] and denying the taxpayer’s refund claim. The taxpayer appealed to the Department’s Appeals Division.

We note the taxpayer’s refund petition of \$ . . . concerns only 1997 and 1998. The taxpayer acknowledges it is not seeking a refund equal to the refund claim made by [Inc.] because it concedes it is not entitled to all the taxes paid on all of the machinery and equipment owned by [Inc.], particularly the machinery and equipment [Inc.] purchased prior to the merger. The taxpayer limits its claim only to sales/use taxes paid for such [logging] machinery and equipment and reported on its Department account registration number during those two years.

#### TAXPAYER’S EXCEPTIONS:

The taxpayer argues it is entitled to the refund because it paid the taxes under its account registration number with the Department and the refund was issued to [Inc.] under the taxpayer’s account number. The taxpayer states that it wrote the October 22, 1999 letter at [Inc.]’s request to assist [Inc.] in obtaining financing from lenders. With the letter, [Inc.] could then use the machinery and equipment as lien-free collateral.

#### ISSUE:

Is the taxpayer estopped from seeking the refund of sales/use taxes from the Department in light of the letter it wrote stating that it had no claim on any equipment transferred to [Inc.] during their corporate separation and reorganization?

#### DISCUSSION:

We first note the Department was not privy to the merger and dissolution agreements between the taxpayer and [Inc.]. Thus, when initially faced with [Inc.]’s refund request, the Department had no knowledge of their agreements and understandings and what rights each one transferred or retained between them. However, TAA saw a potential problem when the name and registration number of the party requesting the refund differed from the registration number of the account that paid the taxes. Therefore, TAA reasonably requested [Inc.] obtain a letter of

release from the taxpayer, which it did. Similarly, the Department was not privy to what the parties discussed or understood when [Inc.] obtained the letter from the taxpayer.

We affirm TAA's decision denying the taxpayer's refund request because we find the taxpayer is estopped. "Estoppel" is "a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true." Black's Law Dictionary 570 (7<sup>th</sup> ed. 1999). Estoppel requires: (1) an admission, statement, or act inconsistent with a claim afterward asserted; (2) action by another in reasonable reliance on that act, statement, or admission; and (3) injury to the party who relied if the court allows the first party to contradict or repudiate the prior act, statement, or admission. *Berschauer/Phillips Construction Co., v. Seattle School District No. 1*, 124 Wn.2d 816, 831, 881 P.2d 986 (1994).

We now look at these three factors in the present matter. One, the taxpayer wrote a letter on October 22, 1999 addressed "to whom this may Concern." Although the taxpayer claims it wrote the letter with the intent to help [Inc.] obtain lending, the letter's language is not restricted to lending and does not even mention the topic. Clearly, the letter is addressed to anyone, including the Department, concerned with the subject machinery and equipment. Moreover, the letter states the taxpayer has "no claim on any equipment transferred to [Inc.] during the corporate separation . . . ." "Claim" is variously defined as:

1. The aggregate of operative facts giving rise to a right enforceable by a court . . . 2. The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional . . . 3. A demand for money or property to which one asserts a right . . . 4. An interest or remedy recognized at law; the means by which a person can obtain a privilege, possession, or enjoyment of a right or thing; Cause of Action.

Black's Law Dictionary 240 (7<sup>th</sup> ed. 1999).

Two, we find TAA reasonably relied on the plain language of the taxpayer's letter to grant [Inc.]'s refund request for the two years in question when the taxpayer wrote that it had no claim on any equipment transferred to [Inc.]. We find "no claim" would include no claims of: title, security interests, rights to payments (including refunds even if contingent or provisional upon subsequent statutory change), or any other enforceable rights pertaining to any of the machinery and equipment transferred to [Inc.]. Three, the Department would be injured if we allowed the taxpayer to contradict or repudiate its letter and grant its refund request. In effect, the Department would be granting two refunds where only one was due.

In sum, the dispute is between the taxpayer and [Inc.], not between the Department and either one of the parties. The Department has decided the machinery and equipment was eligible for the M&E tax exemption. [Inc.] provided a letter from the taxpayer sufficiently supporting [Inc.]'s refund claim. If the taxpayer believes it is entitled to the refund amount, it should take the matter up with [Inc.].

DECISION AND DISPOSITION:

The taxpayer's refund petition is denied.

Dated this 24th day of April 2002.