

Cite as Det. No. 02-0179, 22 WTD 100 (2003)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Correction of	)	<u>D E T E R M I N A T I O N</u>
Assessment of	)	
	)	No. 02-0179
	)	
...	)	Registration No. ...
	)	Notices of Balance Due
	)	...
	)	Docket No. ...

RULE 240; RCW 82.62.030: B&O TAX -- NEW EMPLOYEE TAX CREDIT --  
COMPUTATION. Employment positions filled prior to the credit application  
date are ineligible for the new employee tax credit, but are used to determine  
whether the 15% threshold is met.

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 Washington manufacturer protests the computation of the B&O tax credit on new employees.<sup>1</sup>

FACTS:

M. Pree, A.L.J. -- ... (taxpayer) re-manufactures engines in an area eligible for new employee  
tax credits. The taxpayer applied for the business and occupation (B&O) new employee tax  
credit on December 18, 1998. The Department of Revenue's (Department) Special Programs  
Division approved the application and issued an employee credit certificate. In 1999, the  
taxpayer submitted quarterly employer reports and applied a \$ ... credit against its B&O taxes.

The Department's Taxpayer Account Administration Division (TAA) reviewed the reports and  
rescinded the credit.<sup>2</sup> TAA stated the taxpayer did not meet the 15% hiring increase over the

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

previous year's average number of full time employees. The taxpayer contended the 15% threshold was met and petitioned the Department's Appeals Division.

During the hearing we determined the largest discrepancy between TAA's computation and the taxpayer's computation occurred in the second quarter of 1999. Following the hearing, we reviewed the taxpayer's second quarter reports with those on file with TAA. TAA was missing the last page, which identified new qualified employment positions. Given the additional employment positions, it appears the taxpayer met the 15% threshold. TAA has agreed to re-compute the credit using the correct report. However, there appears to be confusion between TAA and the taxpayer regarding how the credit (and possibly the threshold) is computed. TAA will not allow a 1999 credit for employees hired before the taxpayer submitted its application on December 18, 1998. TAA's computation results in a much lower credit than the amount of credit computed by the taxpayer. We will discuss the computation of the credit in this determination.

#### ISSUE:

Should the new employee tax credit include employees hired before the date of the tax credit application?

#### DISCUSSION:

If certain conditions are met, manufacturers located in economically distressed areas of Washington may be entitled to a credit against their business and occupation taxes under chapter 82.62 RCW. The taxpayer and TAA agreed all conditions were met in 1999, although initially they disagreed whether the taxpayer's employment positions increased by 15%, as required under RCW 82.62.010(4)(a) to qualify for the credit as an eligible project. TAA will review the missing page of the second quarter employment report. To determine whether this 15% threshold was met, TAA and the taxpayer agree to compare the increase in the average number of positions from the calendar year 1998 to the average for the 1999 calendar year. *See* WAC 458-20-240(4)(a) (Rule 240).

The taxpayer's issue with TAA now pertains to how the credit is computed. RCW 82.62.030(1) states:

A person shall be allowed a credit against the tax due under chapter 82.04 RCW as provided in this section. The credit shall equal: (a) Four thousand dollars for each qualified employment position with wages and benefits greater than forty thousand dollars annually

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<sup>2</sup> In addition to the 1999 credit, credits for 1998, 2000, and 2001 were rescinded, and TAA issued 3 other notices of balance due. The taxpayer's petition protested the 1999 and 2000 computation, but the taxpayer acknowledges under its computation method, it would have only been entitled to the credit for 1999. Therefore, we will only refer to the disputed 1999 computation in the body of this determination. The taxpayer may contact TAA if, under the holding of this determination, it is eligible for the credit in the other years, subject to the time limitation under RCW 82.32.060.

that is directly created in an eligible business and (b) two thousand dollars for each qualified employment position with wages and benefits less than or equal to forty thousand dollars annually that is directly created in an eligible business.

Application for tax credits must be made before the actual hiring of qualified employment positions. RCW 82.62.020. *See also* Det. No. 89-265, 7 WTD 345 (1989), and Det. No. 87-104, 2 WTD 453 (1987). Therefore, employment positions filled prior to December 18, 1998 are ineligible for the 1999 credit, but are used to determine the 1999 calendar average for the purpose of meeting the 15% threshold. *See* Rule 240(4)(b).<sup>3</sup>

TAA reasonably used the taxpayer's fourth quarter 1998 report to determine the number of employment positions that existed when the taxpayer applied for the credit. Lacking better records, that figure should be used as the base to compare the number of positions filled over the next year as shown in the fourth quarter 1999 report. This increase should be used to compute the 1999 credit. If the taxpayer can provide records to substantiate the actual number of employment positions on December 18, 1998, that figure can be used. Newly created positions must remain filled for twelve consecutive months. Rule 240(3)(a); *See also* Det. No. 00-033, 19 WTD 719 (2000).

#### DECISION AND DISPOSITION:

We remand the assessment to Taxpayer Account Administration (TAA) Division to re-compute the taxpayer's new employee tax credit.

Dated this 31<sup>st</sup> day of October 2002.

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<sup>3</sup> Per August 15, 2001 amendment.