BEFORE THE BOARD OF TAX APPEALS
STATE OF WASHINGTON

HENRY BACON BUILDING MATERIALS, INCORPORATED,	)	
Appellant,	)	Docket No. 89-27
v.	)	Re: Excise Tax Appeal
STATE OF WASHINGTON DEPARTMENT OF REVENUE,	)	FINAL DECISION
Respondent.	)	

This matter came before the Board of Tax Appeals (Board) for a formal hearing on July 30, 1990, to review a Determi-nation of the Department of Revenue (Department) denying Appellant, Henry Bacon Building Materials, Incorporated (Tax-payer), a refund of $12,338.64 in additional interest and late payment penalties arising out of a tax assessment issued by the Department. George C. Mastrodonato, Attorney, represented the Taxpayer. Cameron G. Comfort, Assistant Attorney General, represented the Department.

OPINION

This appeal involves the question of whether the Taxpayer is entitled to relief from additional interest and the 10 per-cent late payment penalty imposed pursuant to RCW 82.32.050. The parties agree that a taxpayer is entitled to

relief if the late payment was due to "circumstances beyond the control of the taxpayer" (RCW 82.32.105), which in this case means as a result of "erroneous information given the taxpayer by a department officer or employee." WAC 458-20-228 (Rule 228).

The factual issues center around the conflicting testimony concerning the nature of the oral communications between the Taxpayer's controller, Harold D. Roys, and members of the Department's audit staff, primarily Arnel Sansregret, Revenue Auditor. The legal issues involve the standards to be applied in resolving conflicting testimony in tax cases.

I.

FACTS

The relevant facts are set out in the Board's Findings of Fact. Briefly summarized, the evidence and testimony showed:

The Taxpayer, a building materials retailer, was assessed additional taxes of $133,145 following an audit covering the period 1985 through September 1988. Near the end of the audit process, Mr. Roys met with the Department's auditors at a "supervisor's conference". The purpose of these meetings was to discuss the audit findings and

resolve, if possible, any disputes. Mr. Roys emerged from these meetings believing that there were several unresolved issues. The Department's auditors emerged believing that the issues for the most part had been resolved save for the possibility that the Taxpayer might be able to provide additional documentation on several questioned transactions.

Shortly after the second meeting, the audit was submitted to the Department's headquarters in Olympia for final process-ing, computation of interest, and issuance of an assessment. Before the Department issued the assessment, Mr. Roys had several telephone conversations with Mr. Sansregret. The major topic of discussion concerned the amount of interest which would be included in the assessment. Mr. Roys was "closing the books" of the Taxpayer for the year and he wanted a "ballpark" estimate of the interest accrued. Mr. Sansregret provided an estimate, assuming a payment date of May 15, 1989.

Mr. Roys and Mr. Sansregret offered sharply different versions of their telephone conversations concerning the topic of payment of the assessment. Mr. Roys testified that Mr. Sansregret told him that the Taxpayer did not have to pay the assessment until all the issues were resolved, provided that interest would accrue on the unpaid balance at

the statutory rate (9 percent). On the other hand, Mr. Sansregret testified that he told Mr. Roys only that if the Taxpayer were able to come up with additional documentation, he would have four years (the statute of limitations applicable to claims for tax refunds) in which to submit the documentation for consideration in adjusting the audit.

The Department issued the assessment on May 18, 1989. The assessment notice stated that the due date for payment was June 16, 1989, and that a 10 percent penalty would be imposed if payment were made after that date. The Taxpayer did not pay the assessment until August 3, 1989, after having been contacted by the Department's Compliance Division. The 10 percent penalty and additional accrued interest were added to the assessment, and the Taxpayer ultimately paid this additional amount.

II.

FACTUAL ISSUES

The major, if not only, factual issue centers on whether the Department's auditors instructed the Taxpayer to ignore the tax assessment due date. The Department rightly concedes that if we find such to be the case, the Taxpayer is entitled to waiver of the additional interest and

penalties. Department of Revenue's Response to Appellant's Supplemental Memorandum of Authorities, at 3.

The testimony on this issue is conflicting. Mr. Roys, the Taxpayer's controller, testified on direct examination that he specifically asked Mr. Sansregret if the Taxpayer was required to pay the tax upon receipt of the assessment, and Mr. Sansregret told him that he did not have to pay, but that the interest would accrue until the assessment was paid. On cross-examination, Mr. Roys testified:

Q: by Mr. Comfort

"Did you have any conversation with Arnel about your obligation once you received the assessment notice?"

A: by Mr. Roys

"I believe so. Yes. I believe very specifically that nothing was due till we were done. And we weren't done. And he said, `fine.'"

On the other hand, Mr. Sansregret denied ever telling Mr. Roys that he did not have to pay the tax upon receipt of the assessment. He did not recall ever having said anything to that effect, nor was it even possible he might have said it. Mr. Sansregret and Arnold Hendry, the audit supervisor, both testified that they only told Mr. Roys that the audit

could be adjusted in the future if he (Mr. Roys) submitted further documentation.

We must resolve this conflicting testimony on the basis of our judgment of witness credibility. There are no fixed rules which serve as the test of credibility of a witness. Among the important factors which should be considered are: (1) the opportunity and capacity of the witness to observe the act or event, (2) the character and reputation of the witness for truthfulness, (3) prior inconsistent statements or actions, (4) bias or lack thereof, (5) consistency with or contradiction by other evidence, (6) inherent improbability, and (7) demeanor of the witness. See generally 81 Am. Jur. 2d Witnesses { 662-669 (1976); In re Gallinger's Estate, 31 Wn.2d 823, 199 P.2d 575 (1948). In the case before us, bias, consistency with other evidence, and inherent improbability, factors (4), (5), and (6) above, are the crucial determinants of the credibility issue.

Upon weighing the evidence, we find that the testimony of Mr. Sansregret is more credible than the testimony of Mr. Roys. We acknowledge it is a close issue. One's recollection of an oral conversation occurring many months ago is seldom perfect. Bias. Mr. Roys is biased, in that he is an employee of the Taxpayer with responsibility to pay

the assessment on time. Mr. Sansregret is also biased, in the sense that he is an employee of the Department, but he has no responsibility to collect the assessment in a timely manner. We therefore conclude that Mr. Roys' testimony is likely more biased than Mr. Sansregret's.

Consistency with other evidence. As corroboration for Mr. Roys' version of the conversation, the Taxpayer presented the testimony of John Olson, former Chief of Audit for the Department between 1981 and 1987. Mr. Olson testified that the Department's audit staff has the authority to put an audit into "abeyance"; i.e., put an audit "on hold" after an assessment has been issued. According to Mr. Olson, there is no official record of such an abeyance, only "word of mouth" to the Depart-ment's Compliance Division not to collect the assessment. Mr. Olson further testified that placing an audit in abeyance is sometimes done when there are ongoing negotiations between the Taxpayer and the Department over material issues in an audit. Mr. Olson, however, had no personal knowledge of whether the audit of the Taxpayer was placed in abeyance in this case.

Mr. Olson's testimony was contradicted in minor respects. According to Mr. Sansregret and Mr. Hendry, only

the audit supervisor has the authority to place an audit in "abeyance", and that a written authorization is required and communicated to the taxpayer. Although we do not doubt the veracity of Mr. Olson, we choose to believe the testimony of the Department's auditors. Mr. Olson was no longer the Chief of Audit at the time of the events in question. It is possible that the Department's policies regarding the method of placing an audit in "abeyance" have changed since Mr. Olson left the Department. The Department's audit staff is in the best position to know the Department's policies and procedures actually in effect at the time of the events in question. In any event, the evidence is uncontradicted that the audit of the Taxpayer was not placed in abeyance by Mr. Hendry or any other Department official.

Both witnesses' versions are consistent with their other evidence. Mr. Roys' version is corroborated by the fact that: (1) The Department's audit staff has the authority to place an assessment into abeyance. (2) Audits are sometimes placed into abeyance when there are unresolved issues outstanding. (3) The failure to pay the assessment by the due date is consistent with Mr. Roys' belief that he had no obligation to pay until all audit issues were resolved.

Mr. Sansregret's version is corroborated by the fact that: (1) He has no personal authority to place an audit into abeyance or grant an extension. (2) If an audit is placed in abeyance or an extension is granted, Department policy requires supervisory approval and the action is noted in writing and communicated to the taxpayer.

Inherent improbability. We find it improbable that Mr. Sansregret would exceed his authority in dealing with the Taxpayer. Mr. Sansregret is an experienced auditor, and we were impressed with his demeanor and candor as a witness. The Taxpayer introduced no evidence to show that Mr. Sansregret has a propensity to exceed his authority when dealing with taxpayers. It is more likely that Mr. Roys misunderstood Mr. Sansregret's and Mr. Hendry's advice concerning the time frame for submitting additional documentation to support audit adjustments. Mr. Roys testified that this was the first time he had actively participated in a Department audit, and at the time he was generally unfamiliar with the Department's proce-dures.

Weighing the testimony of the parties according to our conclusions about bias, consistency, and inherent improbabil-ity, we conclude that Mr. Sansregret's version of his conversa-tions with Mr. Roys is the more believable

version. We find that Mr. Sansregret did not tell Mr. Roys that the Taxpayer would not have to pay the assessment until all issues were resolved. Rather, we find that Mr. Sansregret merely told Mr. Roys that the Taxpayer would have four years in which to submit additional documentation to adjust the audit.

III.

LEGAL ISSUES

The first legal issue is whether, in a tax case, the fact-finder (Board) is required to resolve conflicting testimony in favor of the taxpayer.

The Taxpayer contends that a statute imposing a tax, including a tax penalty statute, should be construed against the taxing authority and in favor of the taxpayer. Vita Food Products, Inc. v. State, 91 Wn.2d 132, 587 P.2d 535 (1978). In the same vein, the Taxpayer contends that the 10 percent penalty statute, as applied by Rule 228, is ambiguous; and that, therefore, conflicting testimony should be resolved in favor of the taxpayer.

> [T]he benefit of the doubt, as in the present case where conflicting testimony exists, should be interpreted in a manner most favorable to the taxpayer. The courts are clear: ambiguity of a statute on its face or as applied brings the same result, a bias in favor of the taxpayer. The Foremost case [Foremost Dairies, Inc. v. State Tax Commission, 75 Wn.2d 758,

> 453 P.2d 870 (1969)] clearly holds that any doubt in a statute's application should be read with a tax-payer bias.

(Emphasis in original.) Appellant's Supplemental Memorandum of Authorities, at 8.

The Department contends that neither the statute imposing the 10 percent penalty, RCW 82.32.050, nor the statute (RCW 82.32.105) or the Department's rule (Rule 228) authorizing waiver of penalties and interest are ambiguous. Absent an ambiguity, the Department argues there is nothing to construe. Further, the Department argues that the Foremost case is not authority for resolving conflicting testimony.

We agree with the Department. To begin with, the issue is not whether the statute or rule is ambiguous. The Department concedes that if, in fact, Department officials told the Tax-payer that the assessment was not due on the date stated on the assessment notice (such as by telling Mr. Roys that the assessment need not be paid until all issues were resolved), a waiver of interest and penalties should be granted. We do not understand the Taxpayer to contend otherwise.

Furthermore, close analysis of the Foremost case does not support the proposition that conflicting testimony on a purely factual matter must be resolved in favor of the tax-payer. The issue in Foremost was whether a milk loading station constituted a retail outlet for purposes of applying the wholesaling functions business and occupation tax. The raw facts were agreed. Foremost, supra at 759. The court was required to determine whether the loading facilities consti-tuted "retail outlets" based upon the agreed upon activities conducted at the facilities, a task which the court charac-terized as "interpreting the facts". Foremost, supra at 763. In reality, the Foremost court was engaged in the familiar process of determining a mixed question of fact and law; i.e., drawing inferences from the raw facts and applying them to the statutory standards. See, e.g., Daily Herald Co. v. Department of Employment Security, 91 Wn.2d 559, 588 P.2d 1157 (1979); Franklin County Sheriff's Office v. Sellers, 97 Wn.2d 317, 646 P.2d 113 (1982).

In contrast to the situation in Foremost, the raw facts are in dispute here. There is conflicting testimony over who said what to whom. Resolution of this conflicting testimony does not require us to draw inferences from the

raw facts nor does it require us to engage in an inquiry as to the meaning of a statutory term.

Apart from the Foremost case, the Taxpayer has not shown any basis for resolving conflicting testimony in favor of a taxpayer. We are unable to identify any public policy reason for doing so. Accordingly, we hold that conflicting testimony as to raw facts in a tax case is to be resolved according to our human experience and with reference to the generally accepted factors which should be considered to test the credi-bility of witnesses.

The second legal issue concerns the question of whether a reasonable person would, under the circumstances present in this case, be justified in thinking that the written notice of the payment date could be ignored. This is a mixed fact/law question in that it requires us to draw inferences from the raw facts and apply them to a statutory and administrative rule standard. For purposes of analysis, we have classified it as a question of law. Franklin County Sheriff's Office, supra.

The statutory standard provides for waiver of penalties and interest when the delinquency resulted from "circumstances beyond the control of the taxpayer". RCW 82.32.105. The administrative standard defines these

circumstances to include "erroneous information given the taxpayer by a department officer or employee." Rule 228. The purpose of penalties is to encourage taxpayers to timely pay their tax obligations. This purpose is not served by imposing penalties when it is unreasonable to expect taxpayer compliance. On the other hand, this purpose is vitiated by waiving penalties for a taxpayer who does not take all reasonable precautions to assure timely payment.

The Taxpayer argues that, under the circumstances, it was justified in believing that the payment date specified in the tax assessment notice could be ignored. We disagree. The Department's employees did not specifically tell Mr. Roys to ignore the assessment notice. They merely told Mr. Roys that he had four years in which to obtain additional documentation to support a claim for adjustment of the audit. This informa-tion was literally true. Although we would agree that a liter-ally true statement can be misleading in some circumstances, such as by instilling a false sense of security in a taxpayer, the statements of the Department's employees did not have the capacity to mislead, even considering that in Mr. Roys' mind some of the audit issues were unresolved. It is not reasonable to believe that the Department would give taxpayers four years in which

to pay the uncontested portion of a contested audit. A taxpayer of common understanding and experience knows that the tax laws of virtually all jurisdictions require payment of fees and taxes in a timely manner, usually within one year after the tax obligation arises.

In addition, and without in any way disparaging Mr. Roys' professional competence, we find that his failure to read the assessment notice constitutes a failure to take reasonable precautions to assure timely taxpayer compliance. A reasonable person would have read the assessment notice and would have noticed the due date. Further, a reasonable person would have then contacted the Department in order to resolve any doubts about the due date. This case is very similar to the situation described in Rasmussen v. Department of Employment Security, 30 Wn. App. 671, 638 P.2d 100 (1981), affirmed, 98 Wn.2d 846, 658 P.2d 1240 (1983). In Rasmussen, the Department of Employ-ment Security notified a claimant that she was required to file an appeal "within 10 days" of the mailing of the decision initially denying her unemployment compensation benefits. The claimant testified that she thought she had 10 working days in which to file an appeal, and consequently filed her appeal 14 calendar days after the date of mailing. The

Court of Appeals, in upholding the Department of Employment Security's decision that the claimant's appeal was untimely stated:

> First, the determination notice specified that appeal must be taken 10 days from the date of the notice, not 10 working days. Second, Rasmussen was a tutor in special education programs with the school district and may be presumed to have an average comprehension of the English language. We see nothing in the notice defining her right to appeal which would have misled her into believing she had 10 working days, as contrasted to 10 calendar days. If there was any doubt, she could have verified the language with a telephone call to the Department.

Rasmussen, supra, 30 Wn. App. 671, at 673-74.

The Taxpayer raised one additional issue in its opening brief which we briefly address. Perhaps anticipating that the Department would claim that it was not bound by oral advice given by its officials,[1] the Taxpayer argued that the Department was estopped from asserting the penalty without regard to whether the advice was oral or written. In our view, it is not necessary to reach the estoppel issue because the Department conceded for purposes of this case that it is bound by the oral instructions of it officials. In any event, Rule 228 incorporates all the elements of estoppel which are rele-vant to this matter. Given the

Department's concession, we can conceive of no circumstances under which the Taxpayer here would be ineligible for relief under Rule 228 and still be entitled to relief under the doctrine of equitable estoppel.

FINDINGS OF FACT

1. Hearing. This matter came before this Board for a formal hearing on July 30, 1990. George C. Mastrodonato, Attorney, represented the Taxpayer. Cameron G. Comfort, Assis-tant Attorney General, represented the Department. Harold D. Roys, Controller, Henry Bacon Building Materials, Inc.; and John D. Olson, Consultant, Dowell and Associates, testified for the Taxpayer. Arnold L. Hendry, Supervising Field Auditor; Arnel Sansregret, Field Auditor; and Norma Borgen, Field Auditor, testified for the Department.

2. Jurisdiction. The Department assessed a 10 percent late payment penalty and additional interest against the Taxpayer. On August 3, 1989, the Taxpayer paid in full all outstanding taxes including interest and penalties assessed by the Department. The Taxpayer then petitioned the Department for a refund of the penalties and interest in the amount of $14,539.90. The Department denied the

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[1] See, e.g., Professional Promotion Services, Inc. v. Department of Revenue, BTA Docket No. 36912, 9 WTD 219 (1990).

requested refund by a determination dated October 16, 1989. On November 15, 1989, the Taxpayer filed with this Board, and served on the Depart-ment, an appeal of the Department's determination.

3. Taxpayer. The Taxpayer operates a chain of building supply retail outlets headquartered in Bellevue, Washington. The Taxpayer generates sales in the amount of approximately $70,000,000 per year. It has a monthly excise tax liability of approximately $250,000 to $300,000.

4. Assessment of Underlying Tax. The Department audited the books and records of the Taxpayer for the years 1985 through September 1988. The Department's field audit work was performed by Arnel Sansregret and Norma Borgen. The field audit supervisor in charge was Arnold Hendry. On May 18, 1989, the Department issued an audit report and a tax assessment in the amount of $133,145. The assessment stated in writing that it was due for payment in full on June 16, 1989.

5. Meetings. Before completion of the audit, the Tax-payer's representatives and the Department's auditors held a series of meetings. The purpose of the meetings was to attempt to resolve outstanding issues and to give the Taxpayer addi-tional time to obtain documentation to support

questioned items in the audit. There were two meetings in late March and early April. The first meeting was to discuss in broad terms the issues and provide the Taxpayer clarification of questioned items. The second meeting was to review additional documenta-tion to be provided by the Taxpayer in support of his position on questioned items. Harold Roys, the Taxpayer's controller, attended both meetings. Mr. Roys, although he is a certified public accountant, had no actual previous experience in dealing with a Department audit. Mr. Hendry and Ms. Borgen attended both meetings. Mr. Sansregret attended only the first meeting. At the conclusion of the second meeting, the Department's auditors believed that all issues had been resolved to their satisfaction. Mr. Roys believed that some issues were still open, particularly those that could be resolved by providing additional documentation. At the conclusion of the second meeting, Mr. Sansregret told Mr. Roys that the audit would be submitted to the Department's headquarters in Olympia for final processing and issuance of an assessment.

6. Conversations. Mr. Sansregret submitted the audit to the Department's headquarters for final processing in April 1989. Prior to the issuance of the assessment, Mr.

Roys and Mr. Sansregret had several telephone conversations. The pri-mary purpose of these telephone conversations was to obtain and convey to Mr. Roys an estimate of the amount of the assessment, including the interest which would be charged up to the payment date. Mr. Roys was interested in obtaining a "ballpark esti-mate" of the interest in order to "close the books" for the Taxpayer's fiscal year. Mr. Sansregret was able to provide such an estimate, but he warned Mr. Roys that the estimate was not final, and depended upon corrections made at the Depart-ment's headquarters, and interest added up to the date of issuance.

During these conversations, as in conversations occurring at the two meetings, Mr. Sansregret told Mr. Roys that the Taxpayer had four years from the date of payment of the assess-ment in which to obtain additional documentation and to request an audit adjustment and a refund. This finding is based upon our evaluation of witness credibility, as discussed in the OPINION section, above.

7. Extension of Audit Payment. The Department has the authority to place an audit in "abeyance". Placement of an audit in "abeyance" status means that the audit has been issued but payment is not demanded. The Department's field audit supervisor, in this case Mr. Hendry, has the authority

to place an audit in abeyance. Non-supervisory field auditors have no authority to place an audit in abeyance. When an audit is placed in "abeyance", written notification of that fact is communicated to the taxpayer. The audit in question was not placed in abeyance. No written communication was communicated to the Taxpayer.

8. Assessment of Penalty. The assessment was issued by the Department on May 18, 1989. The assessment contained a written statement that payment was due in full on June 16, 1989, and that failure to pay timely would result in an addi-tional 10 percent penalty and interest. Mr. Roys did not read this notice. The Taxpayer did not pay the assessment by June 16, 1989. In July, Mr. Roys was contacted by a member of the Department's collection staff. The staff member informed Mr. Roys that the assessment was delinquent and that a 10 per-cent penalty and additional interest would be imposed. This is the first time Mr. Roys realized that the Department considered the assessment due and payable. The Taxpayer paid the assess-ment, including the 10 percent penalty and additional interest on August 3, 1989.

9. Additional Meeting. On August 14, 1989, Mr. Roys met with Mr. Hendry and Mr. Sansregret. The purpose of the

meeting was to discuss additional documentation and the imposi-tion of the 10 percent penalty. The Taxpayer did not present additional documentation sufficient to cause the Department to change its assessment. Mr. Hendry, believing he had no authority to waive the 10 percent penalty, did not undertake to do so.

10. Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these findings, the Board comes to these

CONCLUSIONS OF LAW

1. Jurisdiction. This Board has jurisdiction to hear this appeal pursuant to RCW 82.03.190.

2. Credibility of Witnesses. There are no fixed rules which serve as a test of credibility of a witness. Among the important factors which should be considered are: (1) the opportunity and capacity of the witness to observe the act or event, (2) the character and reputation of the witness for truthfulness, (3) prior inconsistent statements or actions, (4) bias or lack thereof, (5) consistency with or contradiction by other evidence, (6) inherent improbability, and (7) demeanor of the witness.

3. Resolution of Conflicting Testimony. In a tax case, resolution of conflicting testimony concerning raw

facts is to be accomplished according to the factfinders' human experience with consideration given to those factors likely affecting the accuracy of testimony as outlined in Conclusion of Law 2, above. The testimony of Mr. Roys and Mr. Sansregret concerns raw facts.

4. Imposition of Penalty and Interest. If the payment required by a tax assessment is not received by the Department by the due date specified in the assessment, the Department shall add additional interest and impose a penalty of 10 percent of the assessment. RCW 82.32.050. The Taxpayer is subject to the additional interest and 10 percent penalty because it failed to timely pay the assessment.

5. Waiver of Penalty and Interest. Where the Department finds that failure to pay a tax assessment by the due date resulted from circumstances beyond the control of the taxpayer, the Department shall waive or cancel any interest or penalties with respect to such tax. RCW 82.32.105. Pursuant to RCW 82.32.105, the Department has prescribed rules for determining circumstances beyond the control of the taxpayer. The appli-cable rule in question is Rule 228. It provides that the Department shall waive or cancel interest or penalties when: "The delinquency was due

to erroneous information given the taxpayer by a department officer or employee."

6. Nonwaiver. The Department properly determined that the cause of the Taxpayer's delinquency was not due to circum-stances beyond its control. Statements by the Department's auditors to Mr. Roys that the Taxpayer would have four years from the date of assessment in which to submit additional documentation in order to obtain a refund is not "erroneous information" within the meaning of that term as it is used in Rule 228. Nor is it information which, under the circum-stances, would instill in the Taxpayer a reasonable belief that payment was not due on the date specified in the written assessment notice. The Taxpayer did not take reasonable pre-cautions to assure timely payment of the assessment, such as by reading the assessment notice or seeking clarification of the assessment's due date from the Department. Rasmussen v. Department of Employment Security, 30 Wn. App. 671, 638 P.2d 100 (1981), affirmed 98 Wn.2d 846, 658 P.2d 1240 (1983).

7. Estoppel. The Department is not estopped from claim-ing that the additional 10 percent penalty and interest is due.

8. The Taxpayer is not entitled to a refund of the penalty and interest paid in this case. The Determination of the Department upholding assessment of the additional penalty and interest is correct and should be affirmed.

9. Any Finding of Fact which should be deemed a Conclu-ion of Law is hereby adopted as such.

From these conclusions, the Board enters this

DECISION

Determination No. 89-484, issued by the Department of Revenue, is affirmed.

DATED this _____ day of _____, 1991.

BOARD OF TAX APPEALS

_____
RICHARD A. VIRANT, Chair

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MATTHEW J. COYLE, Vice Chair

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LUCILLE CARLSON, Member

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A timely Petition for Reconsideration may be filed to this Final Decision within ten days pursuant to WAC 456-09-955.