

Cite as Det. No. 15-0058, 34 WTD 497 (2015)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of ) **D E T E R M I N A T I O N**  
the Trust Fund Accountability Assessment of )  
 ) No. 15-0058  
 )  
... ) Registration No. ....  
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[1] RCW 82.32.160 – APPEALS – ASSESSMENT --- PETITION FOR CORRECTION -- FINALITY – JURISDICTION. If a petition for correction of an assessment is not filed within thirty days after the assessment's issuance, or within the period covered by any extension, the assessment becomes final, and the Department lacks authority to accept a petition for correction

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. – The chairman of a defunct nonprofit corporation petitions for cancellation of his trust fund accountability assessment (TFAA), challenging the accuracy of the underlying corporate assessment that was never appealed. The petition is denied.<sup>1</sup>

## ISSUE

Under RCW 82.32.160, can a TFAA against a corporate officer be invalidated based on a challenge to the underlying assessment that was not timely appealed?

## FINDINGS OF FACT

[Taxpayer] established the [Foundation]<sup>2</sup> on June 6, 2012. Taxpayer organized the Foundation as a nonprofit corporation with the Washington State Secretary of State, and qualified as a section 501(c)(3) nonprofit organization for purposes of federal tax law. The Foundation operated a restaurant, coffee shop and bakery in . . . Washington. Taxpayer was the Foundation's chairman from October 6, 2012 until the foundation became inactive on October 1, 2013. There were no other managers, members or corporate officers noted on the Foundation's Secretary of State records.

Taxpayer and his wife, as "lessors," signed the lease for the restaurant location . . . on October 12, 2012. Compliance obtained a copy of the signed lease, an addendum to the lease, a statement

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

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of fact from the landlords . . . , and copies of various checks drawn on the . . . Bank, all of which indicated there was business activity at this address within the time frame of the trust fund assessment here at issue. Taxpayer signed the lease and the checks, and Audit determined that he had control of the business decisions and bank records used for the Foundation's business activity.

The Foundation's bank records . . . included a copy of the signature card signed by Taxpayer. Taxpayer was the only signatory on the Foundation's checks, demonstrating that he was the only person responsible for payment of retail sales taxes collected by the Foundation.

Taxpayer filed the Foundation's October 2012 tax return, which included his phone number and email address. This return included retail sales tax collected by the Foundation.

The Department attempted to audit the books and records of the Foundation for the period . . . (audit period). The Foundation, however, never gave Audit any records and was generally uncooperative and unresponsive. An auditor visited the restaurant and watched the cash register, observing that retail sales tax was being charged and collected.

Because of the lack of records, in October, 2013, Audit issued an estimated assessment for the period . . . , in the amount of \$. . . against the Foundation. The estimate was based on the business generated by a similar neighboring restaurant. The Foundation neither appealed nor paid this assessment. The unpaid assessment was later assumed into tax warrant number . . . , filed in . . . Superior Court in December 2013. In addition to the liability assumed into this first tax warrant, Taxpayer failed to report and pay the Foundation's excise taxes, including the retail sales taxes it collected from its customers, for the July, August, September and October, 2013, tax reporting periods. The liability for those unreported, unpaid tax periods was assumed into a second tax warrant number . . . filed on January 9, 2014 in the amount of \$. . . . The Foundation did not pay either of these warrants.

The Department of Revenue closed the Foundation's tax account effective October 24, 2013, at which point no assets were available to satisfy the outstanding warrants. On February 7, 2014, a Trust Fund Accountability Assessment (TFAA) was issued to [Taxpayers], a marital community, for \$. . . in retail sales taxes, \$. . . in accrued interest, and \$. . . for various penalties, including the evasion penalty, for a total due of \$. . .<sup>3</sup> The TFAA has not been paid.

## ANALYSIS

When a corporation has failed to pay retail sales taxes due, and the corporation has been terminated or abandoned, the Department may hold officers or other responsible persons personally liable for the unpaid sales taxes and interest and penalties on those taxes, and may proceed directly against such persons. The personal liability of such persons is imposed by RCW 82.32.145.

Taxpayer was the chairman of the Foundation when retail sales taxes were collected but not remitted. Audit issued assessments against the Foundation for unpaid trust funds. The

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<sup>3</sup> Interest has continued to accrue.

assessments went unpaid and were assumed into warrants. The Department's Compliance Division determined that Taxpayer was a "responsible individual" liable for their payment under RCW 82.32.145, a finding that Taxpayer has not contested.

Taxpayer instead asserts the following arguments, all of which concern the assessment against the [Foundation]:

- The Foundation was not collecting retail sales tax,
- The Foundation had annual revenue only from trade name licensing and "donations,"
- All of the Foundation's quarterly returns were filed completely and accurately,
- The assessment against the Foundation was done fraudulently,
- The taxes assessed through the "claimed" audit were higher than actual revenue,
- No audit took place and no financial records were reviewed, and
- There is no explanation as to the use tax, such as misuse of the reseller permit.

These are all arguments concerning the assessment against the Foundation. If a petition for correction of an assessment is not filed within thirty days after the assessment's issuance, or within the period covered by any extension, the assessment becomes final, and the Department lacks authority to accept a petition for correction. RCW 82.32.160. The original taxpayer – [the Foundation] -- had the opportunity to contest the amount of taxes assessed when the Department issued the assessments. *Id.* The Foundation did not appeal. The statutory consequence is that "[i]f no such petition is filed within the thirty-day period the assessment covered by the notice shall become final." RCW 82.32.160. Generally, once a tax assessment become final, there is no jurisdiction for the Department to accept a petition for correction of the assessment. *See* Det. No. 87-39, 2 WTD 189 (1987) and Det. No. 86-268, 1 WTD 245 (1986). Taxpayer may, however, pay the assessment and petition for a refund, and contest the underlying liability for the tax in the refund proceeding. Det. No. 03-0066R, 23 WTD 243 (2004).

Because the only arguments advanced concern the validity of the underlying assessment of the Foundation, which assessment cannot now be appealed, we deny Taxpayer's petition.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 5th day of March, 2015.