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BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of) D E T E R M I N A T I O N
)
) No. 09-0129
 . . .) Registration No. . . .
) Petition for Refund
) Docket No. . . .
)

- [1] RULE 229; RCW 82.32.170: REFUNDS - APPLICATION – FILED BY REPRESENTATIVE - AUTHORIZED SIGNATURE - CTIA. If a tax refund application is filed by a taxpayer representative, Rule 229 requires that the representative's authority to file a refund claim on behalf of the taxpayer must be perfected by filing a Confidential Taxpayer Information Authorization form (CTIA). Where a taxpayer's representative filed a CTIA within 90 days after the Department first notified taxpayer that substantiating documents were required, the representative's signature was timely perfected and the refund application deemed valid.
 - [2] RULE 229; RCW 82.32.170: REFUNDS – APPLICATION – REASONS FOR REFUND CLAIM – ADDITIONAL REASONS – UNTIMELY. Where a taxpayer added two different reasons for claiming a refund five months after its original refund application was filed, the additional two reasons were not made within the nonclaim period and therefore ruled untimely.
 - [3] RULE 229; RCW 82.32.170: REFUNDS – APPLICATION – APPEAL OF – DUE DATE FOR SUBSTANTIATING DOCUMENTS – EXTENSION. Where a taxpayer appealed the denial of its original refund application and was sustained upon appeal, the delay caused by the appeal process was held to be for “good cause” and the taxpayer was allowed an extension for submitting substantiating documents.

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.

Okimoto, A.L.J. – A taxpayer appeals a denial of refund applications because it failed to timely submit a properly signed Confidential Tax Authorization Form (CTIA) under WAC 458-20-229 (Rule 229). We grant Taxpayer's petition and re-instate Taxpayer's applications for refund.¹

ISSUES

- 1) Are Taxpayer's refund claims barred because it failed to file a complete application for refund as required under WAC 458-20-229?
- 2) Are Taxpayer's two additional reasons for claiming a refund stated in its June 2, 2008, appeals petition timely under Rule 229?
- 3) If the original refund application is valid under Rule 229, is Taxpayer nevertheless precluded from submitting substantiating documents?

FINDINGS OF FACT

[Taxpayer] is a financial business based in . . . Washington that did business and reported and paid business and occupation (B&O) taxes on income earned in the State of Washington.

On December 31, 2007, [Taxpayer's representative] filed with the Appeals Division (Appeals) of the Washington State Department of Revenue (Department), a . . . petition for refund in Taxpayer's name for taxes allegedly overpaid for the period 2003 . . . and subsequent open years.

The petition for refund dated December 31, 2007 [provided the following reasons for relief]:

9. Reasons for Relief: During the time period at issue, the Taxpayer erroneously paid more B&O and sales and uses taxes than were properly due under Washington law. Among other reasons, the Taxpayer failed to claim deductions allowable under the following doctrines:
 - a. Residential mortgage interest
 - b. Bad debts losses
 - c. Sales tax on repos

The petition for refund was prepared and signed by [Taxpayer's representative]. No Confidential Tax Information Authorization form (CTIA), engagement letter, or other signed authorization form was included with its petition for refund.

On January 30, 2008, the Appeals Division notified Taxpayer that its petition for refund was being forwarded to the Department's Taxpayer Account Administration Division (TAA) for

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410. Nonprecedential portions of this determination have been deleted.

initial review and response, citing WAC 458-20-229(Rule 229)(amended effective, September 13, 2007).

On April 1, 2008, TAA first notified [Taxpayer's representative] that it had reviewed Taxpayer's request for refund dated December 31, 2007 and that [Taxpayer's representative] needed to provide a CTIA signed by Taxpayer, substantiating documents to support the refund claims and to identify the tax classifications involved, by April 30, 2008.

On April 23, 2008, [Taxpayer's representative] telephoned TAA and orally requested extensions for the time to comply with TAA's information and documentation demand. Although not communicated to TAA, [Taxpayer's representative] asserts part of the reason for requesting an extension of time was because the necessary information and/or documents for substantiating Taxpayer's claim for the lower B&O tax rate defined by RCW 82.04.293 was in the hands of third parties.

On April 24, 2008, TAA granted extensions for providing substantiating documents for the years . . . 2003, 2004, 2005, 2006, and 2007 to Taxpayer by letter stating: "Your extension has been granted. Granted – Your new due date to provide substantiation is May 31, 2008. If the requested substantiation is not provided within the statutory time period, your refund application will be denied." TAA also orally informed [Taxpayer's representative] that the due date for submitting a signed CTIA could not be extended and remained April 30, 2008.

On April 30, 2008, [Taxpayer's representative] sent a CTIA with a copy of the engagement letter signed by Taxpayer with a note: "Please find attached the requested forms [CTIA] signed by me and executed. However, in most instances, I have had to attach the respective signature page of the engagement letter and am waiting for the signed original from the client. Each client has been contacted and presented the form, but are not as timely as preferred in returning them. As soon as I receive the executed form, I will submit to you." (Bracketed material added.) The engagement letter was entitled "Proposal for [Taxpayer's representative company name]" and dated March 26, 2002. The letter was signed by Taxpayer's Vice President. The engagement letter did not authorize the Department to release any taxpayer information to [Taxpayer's representative], however.

On May 1, 2008, TAA notified [Taxpayer's representative] that it would not accept the CTIA because the signature was not the Taxpayer's and the engagement letter was not an adequate replacement.

On May 2, 2008, TAA sent a letter denying Taxpayer's refund requests . . . stating that [Taxpayer's representative] had not provided a completed CTIA by the initial required date for submitting substantiating documents of April 30, 2008. TAA relied on WAC 458-20-229(3)(b)(ii)(E).

On June 2, 2008, Taxpayer appealed the refund denials and dismissal of refund petitions for the years . . . 2003, 2004, 2005, 2006, and 2007 to the Appeals Division. [Taxpayer's

representative] submitted a properly signed CTIA form covering all periods at that time and also added the following reasons for claiming refunds:

- a. Failed to properly apportion revenue derived from business activities that occurred both within and outside the State of Washington for B&O tax category and
- b. Erroneously reported certain revenues under the wrong B&O tax category.

ANALYSIS

[1] RCW 82.32.170, the statute authorizing the filing of administrative refund claims, states:

Any person, having paid any tax, original assessment, additional assessment, or corrected assessment of any tax, may apply to the department *within the time limitation for refund provided in this chapter*, by petition in writing for a correction of the amount paid, . . . *in which petition he shall set forth the reasons why the conference should be granted, and the amount in which the tax, interest, or penalty should be refunded*.

(Emphasis added). The time limitation referred to in RCW 82.32.170 is found in RCW 82.32.060, Washington's tax refund statute, which states:

(1) . . . Except as provided in subsection (2) of this section, *no refund or credit shall be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed*.

(Emphasis added). RCW 82.32.060 is a nonclaim statute. *Guy F. Atkinson Co. v. State*, 66 Wn.2d 570, 572 (1965) (“Although both plaintiffs and the commission in their respective briefs treat the problem posed by RCW 82.32.060 as one dealing with a statute of limitations, strictly speaking the question is one of nonclaim, rather than one of statute of limitations.”); *Paccar, Inc. v. Dep’t of Revenue*, 85 Wn. App. 48, 51 n.3 (1997), *rev’d on other grounds*, 135 Wash.2d 310 (1998) (“[I]t is a nonclaim statute in that it does more than extinguish the ability to seek a remedy; it creates and destroys the underlying right to a refund or credit.”)

As a nonclaim statute, RCW 82.32.060 “designates the time allowed for the taking of a step which is a prerequisite to the bringing of an action.” *Guy F. Atkinson Co.*, 66 Wn.2d at 572. RCW 82.32.060 is procedural, and the limitation it imposes is addressed to the power of the Department to make a refund and the conditions under which it may be made. *Id.* Once a time limit in a nonclaim statute passes, the right to bring an action is “extinguished and cannot be revived by a subsequent statute enlarging the time limitation.” *Lane v. Dep’t of Labor and Indus.*, 21 Wn.2d 420, 425 (1944). See also Black’s Law Dictionary 1078 (8th ed. 2004) (defining “nonclaim” as follows: “A person’s failure to pursue a right within the legal time limit, resulting in that person’s being barred from asserting the right.”)

RCW 82.32.300 authorizes the Department to prescribe forms and rules of procedure for the determination of the taxable status of any person, for the making of returns and for the

ascertainment, assessment and collection of taxes and penalties imposed. Pursuant to that authorization, the Department promulgated WAC 458-20-229 (Rule 229), which implements the refund provisions included in RCW 82.32.060. Rule 229(3)(b)(ii) explains the five elements that must be included in a valid application for refund. It provides:

(ii) A taxpayer must submit a refund application within the time limits described in subsection (2)(a) of this section. An application must contain the following five elements:

(A) The taxpayer's name and UBI/TRA number must be on the application.

(B) The amount of the claim must be stated. Where the exact amount of the claim cannot be specifically ascertained at time of filing, the taxpayer may submit an application containing an estimated claim amount. Taxpayers must explain why the amount of the claim cannot be stated with specificity and how the estimated amount of the claim was determined.

(C) The tax type and taxable period must be on the application.

(D) The specific basis for the claim must be on the application. Any basis for a refund or credit not specifically identified in the initial refund application will be considered untimely, except that an application may be refiled to add additional bases at any time before the time limits in subsection (2) of this section expire.

(E) The signature of the taxpayer or the taxpayer's representative must be on the application. If the taxpayer is represented, the confidential taxpayer information waiver signed by the taxpayer specifically for that refund claim must be received by the department by the date the substantiation documents are first required, without regard to any extensions. If the signed confidential taxpayer information waiver for the refund claim lists the representative as an entity, every member or employee of that entity is authorized to represent the taxpayer. If the signed confidential taxpayer information waiver for the refund claim lists the representative as an individual, only that individual is authorized to represent the taxpayer.

. . . When a signature of a taxpayer's representative is on the refund application, Rule 229(3)(b)(ii)(E) requires that the signature of the taxpayer's representative be perfected by filing a Confidential Tax Information Authorization form (CTIA) signed by the taxpayer. Rule 229 further requires that "the confidential taxpayer information waiver signed by the taxpayer specifically for that refund claim must be received by the department by the date the substantiation documents are first required, without regard to any extensions." Consequently, if a CTIA is not timely received by the Department and the signature of the taxpayer's representative on the refund application is not perfected, the signature is deemed unauthorized and the refund application becomes invalid. WAC 458-20-229.

In Taxpayer's case, it submitted a valid CTIA covering Taxpayer's representative on June 2, 2008. Consequently, we must determine whether this CTIA was timely submitted "by the date the substantiation documents are first required."

Rule 229(3)(b)(v) further explains when substantiating documents are first required for purposes of Rule 229(3)(b)(ii)(E). It provides:

(v) The taxpayer is encouraged to file substantiation documents at the time of filing the application. However, once an application is filed, the taxpayer must submit sufficient substantiation to support the claim for refund or credit before the department can determine whether the claim is valid. The department will notify the taxpayer if additional substantiation is required. The taxpayer must provide the necessary substantiation within ninety days after such notice is sent, unless the documentation is under the control of a third party, not affiliated with or under the control of the taxpayer, in which case the taxpayer will have one hundred eighty days to provide the documentation. . . .

In Taxpayer's case, it did not submit substantiating documents at the time of filing the refund application. After TAA examined Taxpayer's refund application, it first notified Taxpayer that additional substantiating documents would be required in its letter to Taxpayer dated April 1, 2008. Although TAA gave Taxpayer until April 30, 2008, to submit the required substantiating documents and additional information, Rule 229(3)(b)(ii) states that a taxpayer "must provide the necessary substantiation within ninety days after such notice is sent." In this case, TAA's notice was sent on April 1, 2008. Consequently, we conclude that TAA's April 30, 2008, due date for submitting substantiating documents was incorrect and the proper date was ninety days from the April 1, 2008 notification date, or June 30, 2008. Because Taxpayer submitted a valid CTIA for [Taxpayer's representative] on June 2, 2008, perfecting [Taxpayer's representative] signature on the original refund application, we conclude that Taxpayer's December 31, 2007, refund application and similar refund applications are valid.

[2] Are Taxpayer's two additional reasons for claiming a refund stated in its June 2, 2008, appeals petition timely under Rule 229?

Finally, we note that in Taxpayer's June 2, 2008, petition appealing TAA's refund application denial, Taxpayer added two additional reasons for requesting a refund; *i.e.*, failure to properly apportion revenue derived from business activities that occurred both within and outside the State of Washington for B&O tax category and erroneously reporting certain revenues under the wrong B&O tax category. Rule 229(3)(b)(ii)(D) clearly states:

(D) The specific basis for the claim must be on the application. Any basis for a refund or credit not specifically identified in the initial refund application will be considered untimely, except that an application may be refiled to add additional bases at any time before the time limits in subsection (2) of this section expire.

We conclude that the two additional basis for Taxpayer claiming a refund; *i.e.*, failure to apportion, and reporting under the wrong B&O tax classification are untimely for tax periods prior to 2004. Taxpayer's refund application for 2003 shall be limited to the three reasons stated on its December 31, 2007 refund application.

[3] If the original refund application is valid under Rule 229, is Taxpayer nevertheless precluded from submitting substantiating documents because the corrected date for submitting substantiating documents has also passed?

Rule 229(3)(b)(vi) explains under what circumstances the Department may extend the due date for submitting substantiating documents. It provides:

(vi) In its discretion and upon good cause shown, the department may extend the period for providing substantiation upon its own or the taxpayer's request, which may not be unreasonably denied.

We first note that Taxpayer states that it did not submit the required substantiating documents by the due date because it was appealing its refund denial to the Department's Appeals Division. In accordance with Rule 229(3)(b)(vi), we conclude Taxpayer's pending appeal of its refund application denial constitutes a good cause shown. Accordingly, we grant Taxpayer until May 29, 2009 to submit all substantiating documents for its refund applications.

DECISION AND DISPOSITION

Taxpayer's appeal of refund application denials for the years . . . 2003, 2004, 2005, 2006 and 2007 is granted. Taxpayer's refund applications shall be re-instated and remanded to TAA.

Dated this 28th day of April 2009.