

Cite as Det. No. 13-0384, 33 WTD 183 (2014)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| 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. 13-0384 |
| ...) | |
|) | Registration No. . . . |
|) | |

[1] RCW 82.32.050: SERVICE AND OTHER ACTIVITIES B&O TAX – USE TAX – CANCELLATION OR WAIVER – FINANCIAL HARDSHIP. The fact that payment of taxes, interest, or penalties that are properly due creates a financial hardship is not a basis for waiving, canceling, or reducing such taxes, interest, or penalties.

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.

Yonker, A.L.J. – A dentistry practice (Taxpayer) argues that paying a tax assessment would be an economic hardship. We deny Taxpayer’s petition.¹

ISSUE

Is economic hardship a basis for cancelling or waiving taxes found to be properly due under RCW 82.32.050?

FINDINGS OF FACT

Taxpayer is a Washington professional limited liability company that operates a general dentistry practice

In 2012, the Department’s audit division conducted a review of Taxpayer’s books and records for the period of January 1, 2009 through June 30, 2012 (audit period). During the course of that review, the auditor compared Taxpayer’s business records with the amounts Taxpayer reported to the Department during the audit period and found that Taxpayer had underreported its gross income to the Department during that period. In addition, the auditor found that Taxpayer did

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

not maintain invoices for its purchases of consumable supplies, and as a result, assessed Taxpayer use tax on its consumable supplies purchased during the audit period. The auditor granted Taxpayer additional time to locate and provide relevant invoices to the audit division; however, Taxpayer was unable to provide any additional invoices.

On December 6, 2012, as a result of the audit, the Department issued a tax assessment for \$. . . , which included \$. . . in service business and occupation (B&O) tax, \$. . . in use tax, a \$. . . five percent assessment penalty, and \$. . . in interest. The tax assessment remains unpaid. On January 3, 2013, Taxpayer timely appealed the full tax assessment.

In its appeal petition, Taxpayer stated the following:

Everyone buys on the internet tax free. It seems unfair to target dental offices and require me to pay additional sales tax, use tax. The amount is difficult to bear. Four payments of . . . dollars is not doable with my business's low profit margin. I don't have health [insurance], no 401 k, no fancy cars, not even a regular paycheck. It's not like I can trim the fat and come up with this extra money. My credit is also not strong enough to borrow the money. I'm hoping that a merciful government will see I pay a generous amount of b and o tax, and reduce my overall audit balance in favor of allowing me to stay in business.

Taxpayer made no specific argument that the audit division's findings were improper.

ANALYSIS

Taxpayer's petition essentially requests the Department to cancel the tax assessment due to Taxpayer's financial hardship. We have consistently held that economic hardship is not a valid basis for canceling tax, interest or penalties. *See* Det. No. 01-047, 21 WTD 189, 196 (2002) ("The Department has no authority to waive a tax deficiency based on either a taxpayer's good-faith belief it was reporting and paying correctly, or financial hardship"); Det. No. 90-340, 11 WTD 81, 84-85 (1990) (holding that economic hardship "is not identified by statute or rule as grounds for waiver of taxes, interest, or penalties"). We conclude that we do not have the authority to cancel any portion of the tax assessment based on Taxpayer's economic hardship.

In its petition, Taxpayer makes no specific challenge to the validity of the audit division's findings.² Department records indicate that the audit division conducted its review based on the documentation Taxpayer provided to the Department during the audit, and found that (1) Taxpayer's reported gross income to the Department did not match the gross income evident from Taxpayer's business records, and (2) Taxpayer did not have documentation to support that it paid retail sales tax on its consumable supplies during the audit period. Taxpayer presented no evidence to contradict these findings.

² Taxpayer stated in its petition that "[i]t seems unfair to target dental offices." Taxpayer presented no evidence, and we have found no evidence, to suggest that this audit was anything other than a randomly-selected taxpayer audit.

In the absence of any evidence contradicting the audit division's findings, we must conclude that the audit division's findings here are correct. Accordingly, we affirm the tax assessment.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 10th day of December, 2013.