

WAC 458-20-230 Statutory limitations on assessments. (1) **Introduction.** This section explains the time period during which the department of revenue may issue a tax assessment. It also explains the circumstances under which the department may request that a taxpayer complete a statute of limitations waiver.

(2) **Assessment period.** Tax assessments must be made within four years after the close of the tax (calendar) year in which the tax was incurred with the following exceptions:

(a) Against a taxpayer who was not registered as required by chapter 82.32 RCW.

(b) Upon a showing of fraud or of misrepresentation of a material fact by the taxpayer.

(c) Where the taxpayer has executed a written waiver of such limitation.

(d) Sales tax collected by a seller upon retail sales and not remitted to the department.

(3) **Unregistered taxpayer.** Except for evasion or misrepresentation, if the department of revenue discovers any unregistered taxpayer doing business in this state, the department will assess taxes, interest, and penalties for a period of seven years plus the current year. If a taxpayer voluntarily registers before being contacted by the department, assessments will not exceed four years plus the current year, provided the taxpayer has made a good faith attempt to report correctly and there is no evidence of intent to evade tax under RCW 82.32.050. It will be presumed that a taxpayer has registered with the department if the taxpayer voluntarily files for an identification number under the Unified Business Identifier (UBI) system prior to any contact from the department of revenue.

(4) **Evasion or misrepresentation.** There is no limitation for the period in which an assessment or correction of an assessment can be made upon a showing of evasion or of misrepresentation of a material fact. Evasion involves a situation where the taxpayer knows a tax liability is due and the taxpayer attempts to escape detection through deceit, fraud, or other intentional wrongdoing. The evasion must be shown by clear, cogent, and convincing evidence which is objective and creditable. However, in the case of evasion or misrepresentation, any assessment for taxes which extends beyond four years and the current year will be limited to taxes which were underpaid as a result of the evasion or misrepresentation. (See RCW 82.32.050 and 82.32.090.)

(5) **Statute of limitations waiver.** The department may request that a taxpayer complete a waiver of the statute of limitations in those cases where the delay in timely completing an audit or issuance of an assessment is the result of actions of the taxpayer. If the department requests that a statute of limitations waiver be completed, the waiver will also hold open the period during which the department may refund taxes discovered to have been overpaid. The department may also request that a taxpayer complete a waiver of the statute of limitations in connection with a request from a taxpayer for a refund or credit for overpaid taxes. If the refund or credit request relates to a year for which the statute of limitations will expire within a short period, the department may be able to more promptly issue a refund by delaying the verification process until it is more convenient to the taxpayer and/or the department if the taxpayer will execute a statute of limitations waiver. (Refer to WAC 458-20-229.)

(6) **Trust funds.** Retail sales tax which is collected by a seller must be remitted to the department of revenue. These amounts are deemed to be held in trust by the seller until paid to the department.

The statute of limitations does not apply to retail sales tax which was collected and not remitted to the department.

(7) **Revised assessments.** The department may issue an assessment to correct errors found in examining tax returns or it may issue an assessment to correct errors based on a review of the taxpayer's records. Assessments which are based on a review of the tax returns are subject to further review and revision by future audit. Once issued, the department may revise an audit assessment subject to the following restrictions.

(a) The assessment generally may not be increased from the amount originally assessed for those years for which the statute of limitations would have expired if this were an original assessment. For these years an assessment can be reduced, but not increased.

(b) An assessment may be increased upon discovery of fraud/evasion or misrepresentation of a material fact.

(8) **Assessments following conditional refunds or credits.** Taxpayers may petition for a credit or refund of overpaid taxes by following the procedures in WAC 458-20-229. The department at its option may grant such credits or refunds without further immediate verification. If it is later determined that a refund was granted in error and that there was no fraud/evasion or misrepresentation of a material fact, the department may issue an assessment to recover the taxes and interest which were refunded in error, provided the assessment is issued within four years from the close of the tax year in which the tax was incurred or within a period covered by a statute of limitations waiver.

(9) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) ABC Manufacturing has manufacturing plants in Oregon and Washington. This taxpayer properly registered with the department of revenue when first engaging in business in Washington a number of years ago and has remained registered. In 1987 the taxpayer transferred equipment from its Oregon plant and used the equipment in its Washington plant. (See RCW 82.12.010 for a definition of use.) This transfer was recorded in the accounting records in 1987, but the taxpayer inadvertently failed to report the use tax. The taxpayer's records were audited in 1992 at which time this transfer and the failure to report the use tax came to the department's attention. Since the department discovered the use tax had not been paid more than four years after the close of 1987 and none of the exceptions as stated in subsection (2) of this section apply, the department is barred by the statute of limitations from now assessing the use tax. The department can expand the statute of limitations to seven years plus the current year if the taxpayer was required to be registered and failed to do so.

(b) The department issued its assessment on December 20, 1992, for use taxes owed by ABC Manufacturing covering the period January 1, 1988, through September 30, 1992. The taxpayer contacted the department in April 1994 and provided documentation to support that retail sales tax had been paid on some items assessed for use tax in the tax years 1989 and 1990. In the process of reviewing the documentation, the department discovered that the auditor inadvertently had failed to assess use tax on some assets purchased in the year 1988 which would have resulted in a larger tax assessment for that year than originally assessed. The department issued a revised assessment on June 15, 1994,

covering the period January 1, 1988, through September 30, 1992 which reflected the deletion of the use tax assessed in error for 1989 and 1990. The revised assessment did not increase the tax assessment for taxes owed in 1988 because this would have resulted in the assessment being increased more than four years after the close of the 1988 tax year. Any petition for refund must be made within four years of the close of the tax year in which the tax was paid.

(c) The department contacted XYZ Distributing on September 1, 1992, to schedule a routine audit of its records. The taxpayer requested that the department delay the start of the audit until December 1, 1992, because its records are maintained on a fiscal year ending September 30 and the audit would be extremely disruptive to its year end closing if begun immediately. This delay would not allow the department sufficient time to complete the review of the records for 1988 and timely make an assessment for any taxes found to be due. The department may request the taxpayer to complete a statute of limitations waiver for the year 1988 in exchange for delaying the start of the audit. The completion of the waiver by the taxpayer will also hold open the year 1988 for refund or credit of any taxes found to have been overpaid in this period until such time as an assessment is issued or the waiver expires.

(d) ABC Manufacturing was being audited by the department for the period January 1, 1988, through September 30, 1992. During the process of examining the records, the department discovered that ABC had collected retail sales tax on sales in 1986 which had never been remitted to the department. There was no fraud or misrepresentation involved in the taxpayer's failure to remit the tax. The department appropriately expanded the period covered by the assessment to include the unremitted retail sales tax in the year 1986. Retail sales tax collected by a seller is deemed to be held in trust until paid to the department and the statute of limitations does not apply. (See RCW 82.08.050.)

(e) The department, through staff at its Seattle office, was unable to find a registration for ARC Company. The department contacted ARC by letter inquiring about its business activities in Washington and asking ARC for its registration number. ARC had not registered with the department of revenue, nor had it registered with any other state agencies through the UBI system. Shortly after being contacted by the department's Seattle staff, ARC contacted the Olympia office of the department and completed an application for registration without disclosing the earlier contact by the Seattle office. ARC subsequently argued that the assessment should be restricted to four years plus the current year. The department appropriately made its assessment for seven years plus the current year because the taxpayer was unregistered at the time of being first contacted by the department.

(f) John Smith lives in Washington part of the year, votes in Washington, has a Washington driver's license, and uses his Washington address in filing federal tax returns. He spends the winters in Arizona. In 1986, while in Arizona, he purchased a new motor home which he licensed in Arizona. He assumed that it was appropriate to license the vehicle in Arizona since he spends a considerable part of the year there and was not aware that he should pay use tax on the first use in Washington which occurred later that year. In 1992 he traded this motor home for a new motor home which he purchased from an Arizona dealer. Shortly thereafter, he returned to Washington and the department became aware of Mr. Smith's use of both of these motor homes in Washington. The department concluded that use tax was due. However, because the department could not show any evidence of evasion or misrep-

resentation and the taxpayer was not required to be registered with the department, the statute of limitations had expired on the 1986 purchase. Use tax was properly due and assessed on the 1992 purchase with the value based on the total purchase price after allowing a deduction for the trade-in value.

(g) In 1992 the department audited the records of XYZ Hauling for the years 1988 through 1991. The audit disclosed that some income from hauling performed in 1988 had not been reported and issued an assessment in 1992 for additional taxes owed under the motor transportation public utility tax. The taxpayer paid the assessment in 1992. In 1994 the taxpayer contacted the department with additional records which disclosed that part of the hauling for which motor transportation tax was assessed for the year 1988 should have been assessed under the urban transportation classification, a lower tax rate. The taxpayer requested that all of the motor transportation tax be refunded and argued that the urban transportation tax could not be assessed since the statute of limitations had expired for the year 1988. The department issued a revised assessment in which it subtracted the tax that should have been paid under urban transportation from the motor transportation tax which was assessed. The department refunded the difference. The revised assessment did not result in additional taxes being assessed, but was a reduction of the original assessment.

[Statutory Authority: RCW 82.32.300. WSR 93-03-004, § 458-20-230, filed 1/8/93, effective 2/8/93; Order ET 70-3, § 458-20-230 (Rule 230), filed 5/29/70, effective 7/1/70.]