

BEFORE THE BOARD OF TAX APPEALS  
STATE OF WASHINGTON

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2	BESTBUY.COM, LLC,	)	
3		)	
4	Appellant,	)	Docket No. 15-116
5	v.	)	RE: Excise Tax Appeal
6	STATE OF WASHINGTON	)	ORDER GRANTING
7	DEPARTMENT OF REVENUE,	)	RESPONDENT’S MOTION TO
8	Respondent.	)	DISMISS APPEAL

The Appellant, Bestbuy.com, LLC (the Taxpayer), filed a notice of appeal with the Board of Tax Appeals (the Board) on September 3, 2015, seeking the Board’s review of Determination No. 15-0173, issued on July 7, 2015, by the Respondent, State of Washington Department of Revenue (the Department).

On May 27, 2016, the Department filed a Motion to Dismiss for Lack of Jurisdiction. In support, the Department filed the Declaration of Kelly Owings (attaching Exhibits A-B) and the Declaration of Daniel A. LaMarche (attaching Exhibits A-C). On June 13, 2016, the Taxpayer filed its Opposition to Motion to Dismiss, along with the Declaration of Stephanie Do. On June 21, 2016, the Department filed its Reply in Support of Its Motion to Dismiss for Lack of Jurisdiction, along with the Second Declaration of Kelly Owings (attaching Exhibits A-B) and the Second Declaration of Daniel A. LaMarche.

The Department argues that the Taxpayer’s appeal was not timely filed, depriving the Board of jurisdiction and requiring dismissal. RCW 82.03.130(1)(a) grants the Board “jurisdiction to decide . . . [a]ppeals taken pursuant to RCW 82.03.190.” RCW 82.03.190 provides that “any person having received notice of a denial of a petition or a notice of determination . . . may appeal by filing . . . a notice of appeal with the board of tax appeals *within thirty days after the mailing of the notice of such denial or determination.*”<sup>1</sup> Consistent with the statute is the Board’s administrative rule WAC 456-09-315:

The jurisdiction of the board to hear an appeal is limited to those appeals submitted within the deadlines stated in this section. Any appeal to the board shall be submitted within the time required by the statute governing the respective

<sup>1</sup> RCW 82.03.190(1) (emphasis added).

1 agency or proceeding involved. All time periods set forth below are expressed in  
2 calendar days including, but not limited to the following:

3 (a) Appeals taken pursuant to RCW 82.03.190, *thirty days from the mailing of the*  
4 *determination.*<sup>2</sup>

5 Thus, by statute and rule, the Taxpayer's deadline for appealing the Department's July 7, 2015,  
6 determination was August 6, 2015. The Taxpayer's notice of appeal was filed, however, on  
7 September 3, 2015, well beyond the statutory deadline.

8 In response, the Taxpayer contends that its September 3 filing was timely because the  
9 Department had extended the Taxpayer's deadline for filing a notice of appeal with the Board to  
10 September 8, 2016. The Taxpayer claims that, in an August 4, 2016, phone call, its Tax  
11 Manager, Craig Black, "requested a 30-day extension from the [Department's hearing officer,  
12 Daniel A. LaMarche] *to appeal to the [Board]*" and that Mr. LaMarche "granted the request."<sup>3</sup>  
13 Further, the Taxpayer states that its attorney, Stephanie Do, "asked [Mr. LaMarche] specifically  
14 to confirm whether the extension applied to an appeal to the [Board], and he confirmed that it  
15 did."<sup>4</sup> Additionally, the Taxpayer makes much of the Department's use of the word "appeal" in  
16 its August 4, 2015, letter confirming the extension of the deadline: "This is in reply to your  
17 request for a 30-day extension of time within which to appeal the above referenced  
18 determination. An extension to September 8, 2015 has been granted by Daniel A. LaMarche,  
19 ALJ, to provide you with the additional time as requested." The Taxpayer contends that the  
20 word "appeal" could only denote an appeal to the Board.

21 The Board finds the Taxpayer's claims unconvincing. First, the Board is unpersuaded  
22 that the Department's hearing officer, Daniel A. LaMarche, did anything other than grant the  
23 Taxpayer a 30-day extension for requesting the Department's reconsideration of its July 7  
24 determination. Mr. LaMarche's determination plainly identifies the Taxpayer's options—either  
25 seek the Department's reconsideration within 30 days or file a notice of appeal with the Board  
within 30 days:

This decision will become final August 6, 2015, *unless you seek reconsideration*  
*of the decision.* If you decide to ask the Department to reconsider this decision,  
you must comply with the requirements for reconsideration contained in WAC  
458-20-100(7).

<sup>2</sup> WAC 456-09-315(1)(a) (emphasis added).

<sup>3</sup> Opposition to Motion to Dismiss, p. 2 (emphasis added).

<sup>4</sup> *Id.*; see also Declaration of Stephanie Do, p. 1 (¶5).

...

1 You may appeal the decision to the Board. . . . The [Board's] appeal procedures  
2 are set forth in chapter 82.03 RCW, in chapter 456-09 WAC (formal appeals), and  
3 in chapter 456-10 WAC (informal appeals). You must comply with the statutory  
and administrative rule requirements to perfect your appeal to the [Board], which  
must be filed within 30 days of the date of this letter.

4 Mr. LaMarche's description of his conversation with the Taxpayer's attorney, Stephanie Do, is  
5 consistent with the appeal information he provided in his determination:

6 I explained to Ms. Do that the Department can grant extensions of time to file a  
7 request for reconsideration before the Department. I further explained that such  
8 an extension effectively provides more time for a taxpayer to file a notice of  
9 appeal at the Board. . . . During our conversation, I never stated that I had granted  
10 an extension of time for Bestbuy.com to file a notice of appeal with the Board.<sup>5</sup>

11 The Board finds it implausible that Mr. LaMarche would have believed, and/or communicated,  
12 that, by extending the Taxpayer's deadline for seeking reconsideration, he was extending the  
13 deadline for the Taxpayer's appeal to the Board absent a decision on reconsideration. Second,  
14 the Board rejects the Taxpayer's claim that the use of the word "appeal" in the Department's  
15 August 4, 2015, letter could only signify an appeal to the Board. The Department's review, after  
16 all, is handled by its own *Appeals* Division, and, in the July 7 determination, Mr. LaMarche  
17 alerted the Taxpayer to additional information on the Department's "*appeal* process" available  
18 on the Department's "website <http://dor.wa.gov/appeals>." Finally, and more importantly, even if  
19 the Board had been persuaded that Mr. LaMarche, or another Department employee, had  
20 attempted to grant the Taxpayer a 30-day extension for appealing to the Board, such an effort  
21 would have been unavailing. Neither the Department nor the Board has the authority to extend  
22 the 30-day deadline set forth in RCW 82.03.190(1) and WAC 456-09-315(1)(a) for filing a  
23 notice of appeal with the Board.<sup>6</sup>

24 In sum, because the Department's determination was issued on July 7, 2015, and because  
25 the Taxpayer received no subsequent determination on reconsideration (which would have  
started a new 30-day clock), the Taxpayer's statutory deadline for appealing the July 7  
determination remained August 6, 2015. The Taxpayer's notice of appeal, filed with the Board  
on September 3, 2015, was untimely.

<sup>5</sup> Second Declaration of Daniel A. LaMarche, p. 2 (¶¶ 5-6).

<sup>6</sup> See Motion to Dismiss for Lack of Jurisdiction, p. 4 (citing *Assoc. of Wash. Bus. V. Dep't of Revenue*, 155 Wn.2d 430, 437, 120 P.3d 46 (2005)).

1 For the foregoing reasons, the Board now GRANTS the Department's motion and  
2 DISMISSES the Taxpayer's appeal.

3 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

4 BOARD OF TAX APPEALS

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7 MARTA B. POWELL, Chair  
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