



GEOFF SALVATORE
LOCAL GOVERNMENT TAXATION

DEPARTMENT OF THE ENVIRONMENT
TRANSPORT AND THE REGIONS
5/JI
ELAND HOUSE
BRESSENDEN PLACE
LONDON
SW1E 5DU

DIRECT LINE: 020 7944 4223
DIVISIONAL ENQUIRIES: 020 7944 4216
FAX: 020 7944 4209
GTN CODE: 3533
e-mail: geoff_salvatore@detr.gsi.gov.uk

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Chief Finance Officers
English Billing Authorities
FOR THE ATTENTION OF THE BUSINESS RATES AND COUNCIL TAX SECTIONS

Business Rates Information Letter (4/2001)

1 This is the Fourth Business Rates Information Letter issued by the Department this year (previous letters are available on the internet at www.local.detr.gov.uk/finance/busrats.htm).

Billing errors - revised Rate Demands

2 A number of billing authorities have asked for advice about the effect of the Encon Court Judgement (ENCON Insulation Ltd v Nottingham City Council, Queen's Bench Division (Crown office list), [1999] ra 382) on rectifying billing errors that come to light several years after the event. I must stress that it is not for this Department to interpret the law. We can only give our informed view you must seek your own legal advice on the matters raised here. A copy of the Encon Decision can be found at www.local.detr.gov.uk/finance/busrats.htm.

3 In our Business Rates Information Letter 7/2000 (issued on 11 August) we reminded billing authorities of their duty to issue rate demands and adjustment notices "as soon as practicable" after they become aware of changes affecting liability. We advised authorities that not to do so may jeopardise their ability to enforce non-payment. Since then, we have re-examined the Court Judgement in more detail and have been advised that its consequences on a billing authority not acting "as soon as practicable" go beyond mere enforcement.

4 We have been advised that the Judgement in effect means that if an authority does not rectify a billing error quickly, probably within the same year as the billing error occurred, then any revised rate demand would be unlawful. The judgement held that "as soon as practicable" was a mandatory requirement. It also held that in regulation 5 of the NDR (Collection and Enforcement) Regulations 1989 this means "as soon as practicable after the authority is in a position to ascertain the relevant facts" not "as soon as practicable after the authority has actually discovered the relevant facts". 9). In other words when it should have been aware of the error not from when it actually was. This would also apply to revised demands issued under regulation 9. Obviously this has serious implication for billing authorities. We would advise billing authorities to ensure that their

billing systems are robust enough to identify and rectify billing errors within the same year as the original demand notice. To do otherwise will probably lead to an inability to collect the correct amount for the ratepayer. Again billing authorities must seek their own legal advice.

5 I must point out that the Encon decision may also have implications for the collection and enforcement of council tax. Billing authorities should seek their own legal advice on this as well.

6 If an authority is unable to collect the correct amount from the ratepayer because of a billing error, they cannot offset this amount against their contribution to the rate pool. Under paragraph 4 of Schedule 8 to the Local Government Finance Act 1988 the Secretary of State has the power to make regulations containing rules for the calculation of a billing authority's annual contribution to the pool. Sub-paragraph (2) of paragraph 4 requires the rules to be "so framed that the amount calculated under them in relation to an authority is broadly the same as the total which, if the authority acted diligently, would be payable to it in respect of the year under sections 43 or 45 above" (the 1988 Act).

7 Paragraph 2 of Schedule 1 to the Non-Domestic Contributions (England) Regulations 1992 contains the formula for calculating the gross amount of rates payable to the authority from which it can deduct the items set out in paragraphs 3 to 7 of Schedule 1 to arrive at its annual contribution. We interpret the formula in paragraph 2 as requiring the authority to include in the gross amount all sums payable by way of rates to the authority, whether or not those sums are actually collected. The authority is allowed to make a deduction from the gross amount for bad debts (see paragraph 6 of the Schedule) but this does not, in our view, allow the authority to make a deduction for sums which it cannot recover because it has not issued a lawful demand in respect of them.

8 The basic reasoning behind this conclusion is that the enabling powers in paragraph 4 of Schedule 8 of the 1988 Act requires the contribution to be calculated in a way that assumes that the authority acts diligently. We do not think that it would be lawful for the rules to allow an authority to deduct from its contribution to the pool amounts which it is unable to collect as a result of a lack of diligence (for example, the inability to issue a lawful demand because the authority had not identified a billing error early enough to meet the statutory obligations).

9 Finally, I must again stress that you must seek your own legal advice on this matter. The implications of the Encon Case means that the facts of each case where a billing error has occurred must be examined individually before a decision on whether or not a revised rate demand can be lawfully issued is taken.

Enquiries to Geoff Salvatore on 020 7944 4223 or by e-mail to geoff_salvatore@detr.gsi.gov.uk.

Geoff Salvatore