

Cite as 3 WTD 175 (1987)

BEFORE THE INTERPRETATION AND APPEALS SECTION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition) D E T E R M I N A T I O N
For Correction of Assessment of)
) No. 87-176
)
 . . .) Registration No. . . .
) Tax Assessment No. . . .
 .)
)

[1] **RULE 228, RCW 82.32.050, and RCW 82.32.090:**
PENALTIES -- LATE PAYMENT -- WAIVER OR CANCELLATION
-- RETURN. Where examination of delinquent return
discloses underpayment of taxes, penalties will be
asserted on difference between tax remitted and tax
due.

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.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

Taxpayer petitions for waiver or cancellation of a late payment penalty asserted on the difference between the tax reported on a delinquent return and the corrected tax.

FACTS :

Rosenbloom, A.L.J. -- A partial audit of the taxpayer's account disclosed that the taxpayer had failed to pay Retailing B&O tax on amounts derived from leasing equipment to persons in this state. (The taxpayer did collect and remit retail sales tax but usually reported it as "use tax" on its Combined Excise Tax Returns.) The Department issued an assessment for the additional tax found due.

The assessment included a late payment penalty. The penalty was asserted on the additional tax found due for the fourth quarter of 1984 because the Combined Excise Tax Return covering that period was filed more than sixty days after the due date.

TAXPAYER'S EXCEPTIONS:

The taxpayer requests a waiver or cancellation of the penalty on the ground that it was not previously aware that Retailing B&O tax applied to rentals.

DISCUSSION:

Prior to addressing the merits of the case, we would like to clear up an apparent misunderstanding. The Department has not asserted penalties merely because the taxpayer erroneously reported its tax liability. If that were the case, penalties would have been asserted on the entire deficiency. To the contrary, a penalty was asserted only upon the additional amount found due for the fourth quarter of 1984. The Combined Excise Tax Return for that period was filed after the due date. The penalty included in the assessment represents the late payment penalty that should have been included when the fourth quarter 1984 return was filed. In other words, even if the taxpayer had been aware of its tax liability and had correctly paid Retailing B&O tax with its fourth quarter 1984 return, it would nevertheless have been liable for the penalty in question for having filed the return after the due date.

RCW 82.32.090 provides in part:

If payment of any tax due is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not received within thirty days after the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within sixty days after the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax. No penalty so added shall be less than two dollars.

RCW 82.32.050 provides in part:

If upon examination of any returns or from other information obtained by the department it appears

that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due. (Emphasis ours.)

[1] The fourth quarter 1984 Combined Excise Tax Return was filed more than 60 days after the due date and so a penalty of twenty percent was due on the taxes remitted with the return. RCW 82.32.090. The Department's examination of the return disclosed that the tax was underpaid. Because the return was filed after the due date, the penalty was underpaid as well. In such instances, the Department "shall assess against the taxpayer such additional amounts (i.e., both taxes and penalties) found to be due." RCW 82.32.050.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of its tax assessment is denied. The unpaid balance in the amount of \$. . . , plus extension interest of \$. . . , for a total of \$. . . is due for payment by June 27, 1987.

DATED this 28th day of May 1987.