

Cite as 3 WTD 383 (1987)

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

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u>
<u>N</u>	
For Correction of Assessment of)	
)	No. 87-242
)	
. . .)	Registration No. . . .
)	Tax Assessment No. . .
.	
)	

[1] **RULE 228, RCW 82.32.050 and RCW 82.32.105:**
PENALTIES. All subparts of situation 7 in Rule 228
must be met, in order for a late payment penalty to
be waived. The penalty may not be waived when the
taxpayer has had prior unexcused delinquencies.

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: . . .

DATE OF HEARING: July 22, 1986

NATURE OF ACTION:

The taxpayer petitioned for waiver of interest and a ten
percent penalty for late payment of a tax assessment.

FACTS AND ISSUE:

Normoyle, A.L.J. (successor to Chandler, A.L.J.) -- The
taxpayer, a Washington corporation, was audited in 1985. An
assessment for unpaid taxes and interest was issued on
February 6, 1986. The assessment notice clearly indicated
that the due date was March 3, 1986. It also contained this
language:

IMPORTANT: A PENALTY OF 10 PERCENT OF THE TAX DUE AND ADDITIONAL INTEREST AT 9% PER ANNUM FROM ISSUE DATE WILL BE ASSESSED IF PAYMENT IS NOT RECEIVED BY MARCH 3, 1986.

The taxpayer paid the assessment in full, but the envelope was postmarked March 6, 1986. Thus, it was "received" three days late.¹ The Department of Revenue then assessed additional interest (from the date of the assessment), plus a ten percent penalty. The taxpayer requests a waiver of the penalty and additional interest, on the basis that its own postage meter date, and the check date, were March 3. The taxpayer argues that it is not "fair to assume that the payment was untimely, because of (the post office) postmark of March 6, 1986. Mail delays are beyond our control."

The taxpayer admits that it has had prior unexcused penalties for late filing of returns.

The issue is whether the penalty and additional interest may be waived under these facts.

DISCUSSION:

RCW 82.32.050 provides as follows, in pertinent part, with emphasis added:

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 and . . . shall add thereto interest at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until date of payment. The department shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within ten days from the day of the notice, or within such further time as the department may provide. If payment is not received by the department by the due date specified in the notice, or any extension thereof, the

¹ A return or remittance which is sent to the Department of Revenue by United States mail is considered received on the day shown by the post office cancellation mark. RCW 82.32.080.

department shall add a penalty of ten percent of the amount of the additional tax found due.

The only statutory authority which the Department has to waive interest or penalties is RCW 82.32.105, which states in part:

If the department of revenue finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department of revenue shall waive or cancel any interest or penalties imposed under this chapter with respect to such tax. The department of revenue shall prescribe rules for the waiver or cancellation of interest or penalties imposed by this chapter.

WAC 458-20-228 implements the above statute. Seven situations are set forth which "constitute the only circumstances under which a cancellation of penalties will be considered by the department." Although none apply to the facts of this case, we will discuss briefly the one upon which the taxpayer relies. Number 7 reads as follows:

The delinquent tax return was received under the following circumstances:

- a. The return was received by the department with full payment of tax due within 30 days after the due date; i.e., within the five percent penalty period prescribed by RCW 82.32.090, and
- b. The taxpayer has never been delinquent filing a tax return prior to this occurrence, unless the penalty was excused under one of the preceding six circumstances, and
- c. The delinquency was the result of an unforeseen and unintentional circumstance, not immediately known to the taxpayer, which circumstances will include the error or misconduct of the taxpayer's employee or accountant, confusion caused by communications with the department, failure to receive return forms timely, and delays or losses related to the postal service.
- d. The delinquency will be waived under this circumstance on a one-time basis only.

The taxpayer believes that paragraph c is controlling. However, number 7 is in the conjunctive; the requirements of sub-parts a.-c. must all be met. Here, paragraph b. does not apply, as a review of the taxpayer's file shows that it has had at least seven unexcused delinquencies, dating back to 1981.

The rule also contains this provision, concerning waiver of an interest assessment:

The following situations will constitute circumstances under which a waiver or cancellation of interest upon assessments pursuant to RCW 82.32.050 will be considered by the department:

1. The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department.
2. Extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department.

As neither of these circumstances applies to this case, the additional interest assessment must also be sustained.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of Assessment No. . . . is denied. Payment of \$. . . is due by August 16, 1987.

DATED this 17th day of July 1987.