

Cite as 3 WTD 87 (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. 87-142
)	
)	Registration No. . . .
. . .)	Tax Assessment No. . . .
)	Notice of Balance Due

[1] **RULE 228, RCW 82.32.080, RCW 82.32.050, RCW 82.32.105:** PENALTY -- LATE PAYMENT OF TAX ASSESSMENT -- POST OFFICE CANCELLATION MARK -- CIRCUMSTANCES BEYOND CONTROL OF TAXPAYER. A remittance transmitted to the Department by U.S. mail is deemed filed or received on the date shown by the post office cancellation and stamped upon the envelope. Where the evidence shows that the taxpayer deposited the remittance envelope one day before the due date in one city and the envelope was taken by the postal system to another city for cancellation which was done one day after the due date, the situation was beyond the control of the taxpayer. Penalty for late payment of tax assessment is waived.

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: October 3, 1986

NATURE OF ACTION:

Petition for waiver of penalty assessed on late payment of a tax assessment.

FACTS AND ISSUES:

Krebs, A.L.J.-- . . . (taxpayer) is engaged in business as a management training consultant. The taxpayer conducts seminars and sells training films and video and audio cassettes.

The Department of Revenue examined the taxpayer's business records for the period from April 1, 1981 through June 30, 1985. As a result of this audit, the Department issued Tax Assessment No. . . . on December 5, 1985 asserting excise tax liability in the amount of \$. . . and interest due in the amount of \$. . . for a total sum of \$ The tax assessment was due for payment on December 30, 1985. The tax assessment bore the following typed notification:

IMPORTANT: A penalty of 10% of the tax due and additional interest at 9% per annum from issue date will be assessed if payment not received by December 30, 1985.

On December 11, 1985, a preliminary conference with the auditor's immediate supervisor was conducted at the taxpayer's office in This preliminary conference was conducted pursuant to the requirements of WAC 458-20-100 (Rule 100). At this conference, the due date of the assessment was "extended for a period of thirty days to provide additional time [for the taxpayer] to review the audit report and to prepare the appeal." The taxpayer was advised that additional audit interest at nine percent per annum would be charged to cover the extended time from the issue date of the tax assessment to the new date. By letter dated December 19, 1985, the Department notified the taxpayer that the new due date for the tax assessment was January 29, 1986 and that additional interest of \$. . . would cover the extension time.

Thereafter, the Department received payment . . . in an envelope bearing the postmark date of January 30, 1986 stamped by the taxpayer's . . . meter machine and the postmark date of January 30, 1986 stamped by the Seattle Post Office. This resulted in the Department's assessment on February 12, 1986 of a ten percent penalty . . . on the tax due The penalty has not been paid.

The taxpayer seeks a waiver of the penalty. The taxpayer's accountant is absolutely certain that she wrote out the check payment on January 28, 1986 because that was the last day in January for which she billed the taxpayer for her services. She submitted a copy of her bill to support that. She ran the envelope through the taxpayer's meter machine between 6 and 7

P.M. She did not pay attention to the date (January 30, 1986) stamped by the meter machine. She then deposited the envelope in the post office box outside the Bellevue Post Office. She did not know when the mail is removed from the post office box. She inquired of the Bellevue Post Office and was told that mail deposited before 6 P.M. would be postmarked that day. If deposited after 6 P.M., the envelope would be postmarked the following day. The Bellevue Post Office would not speculate as to why an envelope deposited after 6 P.M. on January 28 would be postmarked on January 30 by the Seattle Post Office.

In explanation of why the taxpayer's meter machine stamped January 30, 1986 on the envelope when she is certain that she ran the envelope through on January 28, she could only speculate that somebody had that evening of January 28 moved the date ahead two days instead of one day.

The taxpayer asserts that when the envelope was in the post office box on the evening of January 28, 1986, then the latest that the envelope should have been postmarked was January 29. If it was postmarked later than that, it was a circumstance beyond the control of the taxpayer. Accordingly, the taxpayer seeks waiver of the penalty.

DISCUSSION:

RCW 82.32.080, in pertinent part, provides:

A return or remittance which is transmitted to the department by United States mail shall be deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it.

In this case, remittance was due on January 29, 1986, a Wednesday. A postmarked envelope with a later date would not be timely.

RCW 82.32.050 provides for a penalty of ten percent of the amount of tax found due by tax assessment when the tax assessment is not timely paid and for additional interest until date of payment.

RCW 82.32.105 provides:

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. (Emphasis supplied.)

Administrative Rule WAC 458-20-228 (Rule 228), . . . , states the situations under which a cancellation of penalties and waiver of interest will be considered by the Department. The taxpayer's situation is not included, although situation number one allows consideration where a return was filed on time but inadvertently mailed to another agency. Nevertheless, it is clear from reading RCW 82.32.105 and Rule 228 that the Department may cancel penalties and/or interest where the situation is such as to warrant a finding that the failure of a taxpayer to pay any tax by the due date was due to circumstances beyond his/her control.

In this case, the envelope containing the remittance has the Seattle Post Office cancellation date of January 30, 1986. We will ignore the meter machine postmark date of January 30, 1986 because that date is set by someone in the taxpayer's employ; it could just as easily have been set at January 20, 1986 if so desired. In any event, the statute specifies the "post office cancellation."

The credible evidence is that the taxpayer's accountant deposited the remittance envelope into a Bellevue post office box after 6 P.M. on the evening of January 28, 1986, the last day that she worked for the taxpayer in January. What happened to the mailed envelope after that would be a circumstance beyond the control of the taxpayer. It appears to us that the envelope was not removed that evening because the box is not emptied after 6 P.M. until the following day. Then the envelope was forwarded to Seattle for processing where it was postmarked January 30, 1986. Other envelopes in the taxpayer's file show "Bellevue" meter machine postmarks and "Seattle" post office cancellation stamps.

The post office informed the taxpayer that "human error" could account for a January 30th cancellation instead of a January 29th cancellation. Who hasn't been troubled at one time or another by an inadvertent shortcoming of the operation of the postal system? An error, shortcoming or inadequacy of the

postal system is certainly a circumstance beyond the control of the taxpayer.

We feel that the facts in this case demonstrate a diligent effort by the taxpayer to pay the tax assessment in a timely manner. The indication by the January 30th post office cancellation mark that the remittance was only one day too late for timely remittance does not by itself warrant waiver of the penalty. However, the other facts, including the forwarding of the mail from Bellevue to Seattle for processing, lead us to conclude that circumstances beyond the control of the taxpayer are present in this case. The taxpayer is cautioned to note that when mail is deposited at the Bellevue post office box, the envelope may bear a cancellation dated 2 days later by the Seattle Post Office. If this results in the remittance being delinquent, the Department will not in the future consider the circumstance as beyond the control of the taxpayer because the taxpayer is now aware of the situation and can act accordingly.

DECISION AND DISPOSITION:

The taxpayer's petition for waiver of the penalty is granted. The Department's Notice of Balance Due dated February 12, 1986 is cancelled.

DATED this 30th day of April 1987.