

Cite as 3 WTD 129 (1987)

BEFORE THE INTERPRETATION AND APPEALS SECTION  
DEPARTMENT OF WASHINGTON  
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. 87-155
)	
. . . )	Registration No. . . .
)	
)	

[1] **RULE 228, RCW 82.32.105:** PENALTY. Lack of knowledge of a tax obligation resulting in failure to file returns and pay taxes is not a circumstance beyond the control of a taxpayer.

[2] **RULE 228, RCW 82.32.105:** PENALTY -- TIMELINESS OF REQUEST FOR RETURNS. An Application for Certificate of Registration received by the Department on January 24 does not constitute a "timely" request for a return which is due on January 31.

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 23, 1986

NATURE OF ACTION:

The taxpayer petitioned for a correction of a penalty assessment for late filing of a tax return.

FACTS AND ISSUES:

Normoyle, A.L.J. (successor to Chandler, A.L.J.) -- The taxpayer operates a thrift shop. The net proceeds of the shop are given to a particular hospital. The taxpayer had been collecting sales tax, but was not registered and did not pay the tax directly to the state. Instead, it sent the tax on to

the hospital, which then remitted the tax. The hospital, at some point, notified the taxpayer that it would have to obtain its own registration number from the Department, and file its own returns.

The 4th Quarter Return for 1985 was due on January 31, 1986. On January 24, 1986, the Department received the taxpayer's Application for Certificate of Registration. The application was not accompanied with a request that the Department send the taxpayer a return form for the 4th Quarter of 1985.

The taxpayer called the Department on February 27, 1986, and requested tax forms and instructions. The forms were received by the taxpayer on March 10. As a consequence, the return which was due on January 31, 1986, was filed more than 30 days late. The Department then assessed the taxpayer a late penalty.

The issue is whether the late penalty should be waived.

#### DISCUSSION:

We start with the general statement that Washington's excise taxes are of a self-assessing nature. Each person engaged in a taxable business activity is required to register with the Department of Revenue, and must pay the appropriate excise taxes.

When a taxpayer fails to file a return and pay taxes when due, a penalty is assessed by the Department. RCW 82.32.090 provides for a penalty of 10% of the tax if, as here, the tax payment is between 30 and 60 days late. The only statutory authority which the Department has to waive interest or penalties is RCW 82.32.105. That statute provides for a waiver only if the failure to pay on time "was the result of circumstances beyond the control of the taxpayer." The statute also directs the Department to enact an administrative rule to implement this law.

Washington Administrative Code 458-20-228 (Rule 228) sets forth seven situations which "constitute the only circumstances under which a cancellation of penalties will be considered by the department." Although we believe that the failure of this taxpayer to register and pay taxes when due was the result of misinformation given to it by the hospital, lack of knowledge of a tax obligation is not one of the situations listed in Rule 228.

The taxpayer believes that the failure of the Department to send the return form was a circumstance beyond the taxpayer's control. Situations 6 and 7 of the Rule deal with that question. They read as follows:

6. The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office, in writing, for proper forms and these were not furnished in sufficient time to permit the completed return to be paid before its delinquent date.

7. 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.

Number 6 does not apply because the taxpayer did not request the 4th Quarter Return until February of 1986. The Application for Certificate of Registration cannot be construed to be a request for forms. Even if it were, we do not believe that it was a timely request, as it was received by the Department only seven days before the January 31 due date.

Number 7 is in the conjunctive; the requirements of all four of the sub-parts must be met. Here, paragraph a. does not

apply. The return was received more than 30 days after the due date.

It is unfortunate that this taxpayer, which does charitable work, must pay a penalty for the late filing. However, the legislature has chosen to treat this type of business just like any other and we have no authority, under these facts, to waive the penalty.

DECISION:

The petition for waiver of the penalty is denied. The Notice of Balance Due in the amount of \$ . . . is due by June 13, 1987.

DATED this 14th day of May 1987.