

Cite as Det. No. 02-0048, 22 WTD 61 (2003)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 02-0048
)	
...)	Registration No. . . .
)	Warrant No. . . .
)	Docket No. . . .
)	

[1] RULE 100; RULE 228: TAX -- PENALTIES -- INTEREST -- WARRANT -- BIFURCATION OF. Where a warrant includes an amount previously assessed against a taxpayer and an amount not previously assessed, and the taxpayer appeals the warrant, only the propriety of the warrant will be [reviewed] as to the first amount, whereas the merits of the assessment will be [reviewed] vis-à-vis the second amount.

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.

NATURE OF ACTION:

Taxpayer appeals late-payment penalty and interest, claiming he mailed payment before the due date.¹

FACTS:

Dressel, A.L.J. -- . . . (taxpayer) failed to file monthly tax returns for June, July, August, and September of 2000. On November 7, 2000 the Department of Revenue (Department) sent the taxpayer a letter, assessing, on an estimated basis, tax, penalty, and interest for this four month period of \$ The letter demanded the stated amount or a corrected amount based on actual tax returns by December 7, 2000. Department records show the returns were filed and payments made on December 11, 2000. The payments were less than the amount demanded, though, so the Department issued the above-captioned tax warrant, which also included a deficient amount from May, 2000.

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

In appealing the warrant, the taxpayer states that “payment” was mailed on December 5, 2000, so that the Department would have it on December 7, 2000. The taxpayer was at a loss as to why the Department hadn’t received its check as of December 29, 2000. Further, the taxpayer stated it had experienced grave financial difficulties in the 18 months preceding December 29, 2000. It requested that “the penalty in the amount of \$. . . , and interest in the amount of \$. . . ” be rescinded.

ISSUE:

[When the taxpayer appeals a warrant that refers both to amounts assessed more than 30 days previously, which assessment was not timely appealed, and also to amounts initially assessed within the last thirty days may the Appeals Division consider the merits of issuing either assessment?]

DISCUSSION:

Although the evidence available seems to say the taxpayer’s tax returns and payments for June through September of 2000 were not [paid] by the due date of December 7, they were received well in advance of the warrant letter of December 29, 2000. The warrant was . . . issued, however, [not] because the taxpayer missed the December 7 due date. [Rather, i]t was issued because his payments, received December 11, were less than the amount owed. Further, nearly all of the warrant amount was itemized as tax, rather than as penalty or interest. [The warrant] included, as well, a deficiency for May of 2000, in addition to the June through September period referenced on the original demand letter of November 7, 2000.

RCW 82.32.210 reads, in part: “**Tax warrant--Filing--Lien--Effect.** (1) If any fee, tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due, the department of revenue may issue a warrant in the amount of such unpaid sums, together with interest thereon from the date the warrant is issued until the date of payment.” The last due date for the four monthly periods under consideration was October 25, 2000.² Fifteen days after that is, roughly, November 10. The warrant in question was issued January 4, 2001.³ Thus, it was issued lawfully, well after the first point in time after which it could have been issued.

The same goes for that portion of the warrant that demands tax for the May, 2000 period. Tax for that month was due June 25, 2000. Fifteen days after that is, roughly, July 10, 2000. Again, the warrant was issued January 4, 2001, so this part of it was lawful, as well.

The taxpayer has asked for a waiver of the penalty of \$. . . and interest of \$ The tax warrant, however, reflects tax owed of \$. . . , with the balance being penalty and interest. RCW 82.32.080 says, in part, “. . . the department shall apply the payment of the taxpayer first against penalties and interest, and then upon the tax, without regard to any direction of the taxpayer.” Thus, while the

² Monthly returns are to be filed and paid by the 25th day of the month following the period they cover. RCW 82.32.045.

³ The December 29, 2000 letter, to which the taxpayer objected, gave notice that a warrant was about to be issued.

taxpayer may have expected all of its payments received December 11 to be applied against its tax liability, portions of them were, probably, applied to penalties and interest at that time. This is, likely, why nearly all of the amount owing on the warrant is listed as tax.

[1] The November 7, 2000 assessment issued to the taxpayer itemized interest at \$. . . and penalties at \$ Per WAC 458-20-100 a taxpayer has 30 days after an action is taken by the Department to appeal that action. The taxpayer didn't appeal anything, however, until it submitted its undated petition for correction of assessment to the Appeals Division, which was received January 9, 2001. That is the appeal we are addressing in this decision. Even if we were to consider the tax warrant, primarily, penalties and interest, the taxpayer's appeal of penalties and interest is untimely. That is because the original assessment of same preceded the taxpayer's appeal by more than 30 days.

According to the Compliance Division, though, the "interest" of \$. . . , listed in the warrant, represents a deficiency from May, 2000, and was added to the leftover liability of the taxpayer for the assessment of November 7 for June through September of 2000. To the knowledge of the undersigned, the Department's letter of December 29, 2000 is the first notice of liability given by the Department to the taxpayer for [the] May, 2000 [deficiency]. The taxpayer appealed [the December 29, 2000 letter] with [a] petition for correction [we] received January 9, 2001. Thus, the taxpayer's appeal of [the May, 2000 interest reflected in both] the demand letter of December 29, [and] the tax warrant of January 4, 2001, is timely. It was filed within 30 days of the Department's action. We will then consider whether the penalty and interest portion only of this \$. . . component of the warrant may be waived.

The Department may waive a penalty imposed for the late payment of a tax return if the payment was late for "circumstances beyond the taxpayer's control." Acceptable circumstances are listed in WAC 458-20-228(9)(a)(ii)(A)-(G). The "circumstances" listed by the taxpayer are that its payment of the November 7 assessment was timely and that it had financial difficulties. The November 7 assessment included nothing attributable to May, 2000. Therefore, that "circumstance" doesn't apply. "Financial difficulties" are not listed in (A)-(G), above, as one of the acceptable circumstances. Further, WAC 458-20-228 reads at ¶ (9)(a)(iii), "[t]he following are examples of circumstances that are generally *not* considered to be beyond the control of the taxpayer and will not qualify for a waiver or cancellation of penalty: (A) Financial hardship;" (Italics ours.) Financial hardship is, also, not an acceptable reason for waiving *interest*. See WAC 458-20-228(10); *Det. No. 98-47*, 17 WTD 186 (1998); and *Det. No. 87-300*, 4 WTD 101 (1987).

Waiver of interest is covered in ¶ 10 of Rule 228, which reads:

- (10) **Waiver or cancellation of interest.** The department will waive or cancel interest imposed under chapter 82.32 RCW only in the following situations:
- (a) 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; or
 - (b) The 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. RCW 82.32.105(3).

Neither of the two situations listed above exist in the instant case. Any interest portion of the May, 2000 part of the tax warrant may not be waived, either. Further, the taxpayer is not eligible for the 24 month waiver provision of WAC 458-20-228(9)(b) because its March, 2000 tax payment was late, as well.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

Dated this 4th day of April 2002.