

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

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of)	
)	No. 88-299
)	
. . .)	Registration No. . . .
)	Document No. . . .
)	Audit No. . . .

[1] **RULE 228, RCW 82.32.050 AND RCW 82.32.105:** TAX ASSESSMENT -- DELINQUENCY PENALTY -- PERSONNEL CHANGE -- CIRCUMSTANCES BEYOND CONTROL OF TAXPAYER. Where a tax assessment is not paid by the due date, there is imposed a ten percent delinquency penalty on the tax due. Taxpayer's change in personnel engaged in reviewing the audit findings is not a circumstance beyond the control of the taxpayer that excuses the delinquency penalty.

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:

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

FACTS AND ISSUES:

Krebs, A.L.J. -- . . . (taxpayer) is engaged in air transportation of passengers and property.

The Department of Revenue examined the taxpayer's business records for the period from April 1, 1982 to December 31, 1986. As a result of this audit, the Department issued Document No. . . . on October 29, 1987 asserting excise tax liability in the amount of \$. . . and interest due in the amount of \$. . . for a total sum of \$. . . The tax assessment had the following printed notations:

This is your tax assessment. Payment due November 30, 1987.

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 November 30, 1987.

The taxpayer made payment of \$. . . on January 15, 1988 which the Department applied first against the 10% penalty and the interest, and then against the tax due per Washington statute RCW 82.32.080. The taxpayer made payment also of \$. . . on February 2, 1988 to cover additional accrual of interest because of late payment of the tax assessment due November 30, 1987.

The taxpayer requests waiver of the delinquent penalty in the amount of \$. . . (10% of the tax, \$. . .). The taxpayer asserts:

Due to circumstances beyond our control, a change in personnel had taken place which necessitated an additional review of the audit findings. The delay in payment was not due to willful neglect but was a direct result of this change in personnel.

The issue is whether, under the above-described circumstances, the 10% delinquent penalty on late payment of a tax assessment can be waived.

DISCUSSION:

[1] RCW 82.32.050, in mandatory terms, provides for a delinquent 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. The statute in pertinent part states:

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 . . . 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 date 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 department shall add a penalty of ten percent of the amount of the additional tax found due. (Emphasis supplied.)

In this case, payment of the tax assessment, issued October 29, 1987, was due by November 30, 1987. Payment was not made by that

date causing the ten percent penalty (\$. . .) and additional interest to date of payment to apply.

The legislature, through its use of the word "shall" in RCW 82.32.050, has made the assessment of the penalty and additional interest mandatory. The mere fact of nonpayment within a specified period of payment requires the penalty and interest provisions of RCW 82.32.050 to be applied.

As an administrative agency, the Department of Revenue is given no discretionary authority to waive or cancel penalties or interest. The only authority to waive or cancel penalties or interest is found in RCW 82.32.105 which in pertinent part 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.)

WAC 458-20-228 (Rule 228), . . . , states the only seven situations under which a cancellation of penalties will be considered by the Department. None of the situations apply to the circumstances in this case.

We are sympathetic to the taxpayer's problem that the tax assessment payment delinquency was caused by its change in personnel. However, a change in personnel is a circumstance strictly within the control of the taxpayer and has been uniformly so held by the Department of Revenue. Accordingly, we find that the delinquent payment of the tax assessment did not result from circumstances "beyond the control of the taxpayer."

The Department as an administrative agency cannot properly extend relief beyond that authorized by law or by administrative regulation.

For the reasons stated and the applicable law, we conclude that the assessed late payment penalty was proper and cannot be waived.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 28th day of July 1988.