

Cite as 3 WTD 329 (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. 87-221
)	
)	Registration No. . . .
. . .)	Tax Assessment Nos. . .
.	
)	
)	

RULE 228, RCW 82.32.105: PENALTIES. 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. All sub-parts of situation #7 in Rule 228 must be met, in order for a late payment penalty to be 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: June 17, 1987

NATURE OF ACTION

The taxpayer petitions for a correction of a penalty assessment for late filing of tax returns.

FACTS AND ISSUES

Normoyle, A.L.J. -- The taxpayer, an out-of-state company, makes wholesale sales in Washington. The taxpayer failed to register and pay Washington state excise taxes from 1979

through March 31, 1986. After an audit, the taxpayer was assessed taxes, interest, and a 20% late payment penalty.

The taxpayer requests a waiver of the penalties. The basis for the request is that the failure to register in Washington and pay taxes here was due to uncertainty as to whether or not this taxpayer's activities brought it within the taxing jurisdiction of this state. In short, the taxpayer believed that it had insufficient "nexus" to subject itself to this state's excise taxes. The basis for this belief was that the taxpayer did not have an office in Washington, and all of its sales were through one traveling non-resident sales person. When the case of Tyler Pipe v. Department of Revenue, 105 Wn.2d 318 (March, 1986) was decided by the Washington State Supreme Court, the taxpayer registered and began paying taxes.

The issue is whether the late payment penalties may 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 20% of the tax if, as here, the tax payment is more than 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." Lack of knowledge of a tax obligation is not one of the situations listed in Rule 228. Even if it were, the taxpayer could not meet the conditions of situation 7 of the rule, which reads as follows:

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 7 is in the conjunctive; the requirements of all three of sub-parts a-c must be met. Here, paragraph a. does not apply. Each return was received more than 30 days after its due date.

DECISION AND DISPOSITION

The petition for correction of assessments is denied.

DATED this 30th day of June 1987.