

Cite as 3 WTD 199 (1987)

BEFORE THE INTERPRETATION AND APPEALS SECTION
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 Refund of)	
)	No. 87-183
)	
. . .)	Registration No. . . .
)	Forest Tax Assessment
)	No. . . .

[1] **RULE 228, RCW 82.32.050, RCW 82.32.105:** INTEREST ASSESSED -- WAIVER OF INTEREST -- DUE DATE OF ASSESSMENT EXTENDED -- SOLE CONVENIENCE OF DEPARTMENT. Where the issuance of a tax assessment is extended or delayed for the sole convenience of the Department, interest will be waived for the period of delay. Where substantial agreement had been reached between the taxpayer and the Department but differences remained to be resolved as well as administrative procedural tasks (supervisory review, math and theory review), interest continues to run until the issuance of the tax assessment. Interest does not stop running merely because substantial agreement had been reached but continues to run until date of payment of the tax.

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 18, 1986

NATURE OF ACTION:

Petition for refund of interest assessed on taxes found to be due pursuant to a forest tax assessment.

FACTS AND ISSUES:

Krebs, A.L.J.-- [The taxpayer] is engaged in the harvesting of timber from private land.

As a result of the Department's audit of the taxpayer's forest excise tax returns for the period from January 1, 1981 through December 31, 1983, and on-site inspections made by the Department's area foresters, Forest Tax Assessment No. . . . was issued on September 23, 1985 asserting forest excise tax liability in the amount of \$. . . and interest due in the amount of \$. . . for a total sum of \$. . . which was paid in full on October 17, 1985.

The taxpayer seeks refund of a portion of the interest assessed, specifically for the period from December 12, 1984 through September 23, 1985, the date of issuance of the tax assessment. The taxpayer asserts that since the administrative work on the audit was completed on or about December 12, 1984, the delay in processing issuance of the tax assessment was for the sole convenience of the Department. Therefore, the taxpayer contends that a waiver of a portion of the interest is appropriate.

DISCUSSION:

RCW 82.32.050 in pertinent part provides:

If upon examination of any returns or from other information obtained by the department it appears that a tax . . . 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 from the last day of the year in which the deficiency is incurred until date of payment. (Emphasis supplied.)

RCW 82.32.105 in pertinent part provides:

If the department of revenue finds that . . . 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 . . . imposed under this chapter with respect to such tax. The department of revenue shall prescribe rules for the waiver or cancellation of interest . . . imposed by this chapter. (Emphasis supplied.)

Administrative Rule WAC 458-20-228 (Rule 228) states the two situations under which a waiver or cancellation of interest will be considered by the Department as follows:

1. 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.
2. 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.

The taxpayer's basis for waiver of interest is that there was a delay in the processing of the issuance of the tax assessment and that the delay was for the sole convenience of the Department. In other words, the due date for the payment of an assessment was extended because the Department delayed in issuing the assessment itself. The question, then, is whether there was a delay in the issuance of the assessment and whether the delay was for the sole convenience of the Department.

The taxpayer has pinpointed the date of December 12, 1984 as the date on which interest should have stopped running because allegedly an agreement had been reached at a meeting that date with the Department's employees as to differences between the taxpayer and the Department's employees.

Prior to the December 12, 1984 meeting, the following took place relevant to the audit. In April 1984, the Department's foresters in Everett and Port Angeles were supplied with field inspection data and taxpayer's quarterly tax returns. The foresters then conducted a field inspection. The Department's auditor received the taxpayer's scale data in August 1984. The bulk of the inspection process was completed as of December 1984 and there were unresolved items.

The following chronological documents (letters and memoranda) reveal what happened in December 1984 and thereafter.

December 14, 1984: Meeting was held in Olympia on December 12, 1984 of the taxpayer with Department's foresters. Substantial agreement was reached on all differences except one as reported by the Department's forester to the taxpayer: "The only real difference between us remains in the area of the volume reported as CU in Q4-81"

February 5, 1985: Taxpayer acknowledges letter dated December 14, 1984. The taxpayer accepts the proposal outlined in the letter dated December 14, 1984. The taxpayer questions whether its assumption is correct that there would be a reclassification of the grading of logs in addition to the C.U. volume. If his assumption is correct, the taxpayer requests that the audit be processed per the proposal.

February 22, 1985: The Department's forester notifies the taxpayer that its assumption was correct and acknowledges that the taxpayer had brought to its attention an error by discussing the grading of logs in the taxpayer's letter of February 5, 1985.

March 5, 1985: The Department submits to the taxpayer copies of its field inspection reports for approval.

March 12, 1985: Taxpayer acknowledges receipt of the letter dated February 22, 1985.

March 20, 1985: The Department's forester discusses unresolved inspection reports with the taxpayer.

June 10, 1985: The Department notifies the taxpayer that the reclassification of the C.U. volume resulted in reclassification of the grading of logs.

July 19, 1985: The auditor correlated the data and completed the auditing.

September 12, 1985: The tax assessment was issued after supervisory, math and theory review, and typing.

Generally and in accordance with RCW 82.32.050, supra, interest on unpaid taxes runs "from the last day of the year in which the deficiency is incurred until date of payment." However, the interest can be waived or cancelled when the tax was not paid by the due date as a "result of circumstances beyond the control of the taxpayer." RCW 82.32.105, supra. Also, the interest can be waived or cancelled when extension of the due date of an assessment "was for the sole convenience of the Department." Rule 228, supra.

The taxpayer feels that the Department's administrative work was completed on December 12, 1984 because an agreement had been reached. Obviously, this was not so. On December 12, 1984, a meeting was held to reach agreement on differences between what the taxpayer had reported on its tax returns and

what the Department's forester had concluded as to what the taxpayer should have reported. While substantial agreement was reached, differences remained for later resolution including field inspection reports. Furthermore, 67 spreadsheets of computer data printed on March 23, 1985 had to be correlated, a job that was completed by the auditor on July 19, 1985. This was followed by supervisory, math and theory review. Issuance of the assessment was on September 23, 1985.

Chapter 82.32 RCW titled General Administrative Provisions contains the statutes setting forth the administrative requirements applicable to the Department of Revenue. The tenor of the statutes is that the Department procure facts and information, examine books, records, and data, and examine goods bearing upon the amount of any tax payable or upon the correctness of any return before issuance of a tax assessment. RCW 82.32.100 and RCW 82.32.110. An audit is not complete until all questionable matters and differences are resolved to the extent that the auditor and his supervisor believe the assessment is correct and can be issued. If the taxpayer believes the assessment is incorrect, he may petition for correction. RCW 82.32.160.

Administrative rule WAC 458-20-100 (Rule 100) implements the administrative statutes and in pertinent part provides:

(1) In any case of an account under audit where substantial agreement has not been reached between taxpayer and field auditor, the taxpayer is entitled to a preliminary conference with the auditor's immediate superior, the field audit unit supervisor, prior to finalization and submission of the audit report. Such conference is informal in nature, and is intended to clarify the issues in dispute resolving them where possible, and in any event effecting agreement as to the facts and figures involved. In those cases where agreement cannot be reached at this level as to the tax interpretations applied, the report will be finalized and submitted to Olympia, from where, following review and approval of the recommendations of the report, an assessment will be issued.

Needless to say, the audit in question was complex. Our review of it and the time frame within which the work was performed by the foresters, the auditor and supervisor lead us to conclude that there was no unreasonable delay in the issuance of the assessment nor any delay that was for the sole

convenience of the Department. Indeed, it appears to us that any earlier issuance of the assessment without the resolution of differences but based solely on the auditor's conclusions would have led to a taxpayer's appeal against the tax itself and thereby prolong the running of interest on taxes if eventually sustained.

The assessment of interest upon tax deficiencies determined to be due is routine and usual as well as mandatory. Interest is simply assessed upon monies due the state earlier which by reason of nonpayment have been at the use and disposal of the taxpayer.

For the reasons expressed and the facts and law set forth, we conclude that the due date for the payment of the tax assessment resulting in additional interest due was not extended for the sole convenience of the Department. Accordingly, there can be no waiver of a portion of the interest.

DECISION AND DISPOSITION:

The taxpayer's petition for refund of a portion of the interest is denied.

DATED this 2nd day of June 1987.