

Cite as 3 WTD 363 (1987)

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

In the Matter of the Petition) D E T E R M I N A T I
O N
For Correction of Assessment)
) No. 87-235
)
. . .) Registration No. . . .
) Tax Assessment No. . .
.

RCW 82.32.090, RCW 82.32.105, RCW 82.32.050 and RULE 228: PENALTY -- LATE PAYMENT OF TAX DUE -- UNREGISTERED TAXPAYER -- LACK OF KNOWLEDGE TO REGISTER -- INTEREST AS A PENALTY. Where a taxpayer failed to register because of a lack knowledge of requirement to do so, it is not a circumstance beyond the control of the taxpayer to allow waiver of the penalty. Interest added to a tax assessment is mandated by a separate statute from the statute assessing penalties and does not excuse the assessment of a 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 cancellation of penalty imposed on delinquent taxes assessed against an unregistered taxpayer who was not aware of the requirement to register.

FACTS AND ISSUES:

Krebs, A.L.J. -- [The taxpayer] moved to Washington from Oregon in July 1983 and began working for . . . as an independent contractor. The taxpayer did not register as an independent contractor with the Department of Revenue. In

1984, the taxpayer became a partner with Robert L. Sandifur, M.D.; the partnership registered and obtained Registration No. C600 534 354.

The Department of Revenue examined the taxpayer's business records for the period from July 1, 1983 through December 31, 1985. As a result of this audit, the Department issued Tax Assessment No. . . . on May 12, 1987 asserting excise tax liability in the amount of \$. . . , interest due in the amount of \$. . . and penalty due in the amount of \$. . . for a total sum of \$ On June 1, 1987, the taxpayer made payment in the amount of \$. . . , and \$. . . remained due.

On June 4, 1987, the Department issued an amended assessment revising the penalty due of \$. . . downward to \$. . . because the penalty was not applicable to the tax year of 1984 as the taxpayer was registered through the registration of its partnership. The \$. . . remains due.

In protesting the \$. . . penalty (20%) due on the assessment of \$. . . for tax due in 1983, the taxpayer explains that he was not aware that he was "in business" when made . . . an independent contractor The taxpayer asserts that he was paid on an hourly basis, had a schedule set by [a] clinic, had vacation and health benefits, and essentially functioned as an employee. After talking with an accountant, who indicated that the taxpayer had no real grounds for appealing against the business and occupation (B & O) tax, the taxpayer paid the B & O tax and interest.

Furthermore, the taxpayer asserts that he never heard of the B & O tax until he became involved in the partnership. The taxpayer asserts that when he got his professional license, there was no need for a lawyer or accountant and he got no information about the B & O tax. The taxpayer feels that the interest charge on the tax due was already enough of a penalty.

The issue is whether the penalty was properly applied under the above-described circumstances.

DISCUSSION:

RCW 82.32.290 provides in pertinent part:

(1)(a) It shall be unlawful:

(i) For any person to engage in business without having obtained a certificate of registration as provided in this chapter;

. . .

(b) Any person violating any of the provisions of this subsection (1) shall be guilty of a gross misdemeanor in accordance with chapter 9A.20 RCW.

It is each individual's responsibility to be aware of any tax implications resulting from activities conducted within this state. Department of Revenue personnel are available to answer any inquiries pertaining to such matters and information is readily available. The taxes imposed by the Revenue Act are of a self-assessing nature and the burden is placed upon a person to correctly inform himself of his obligations under the Act.

Thus, the taxpayer should have filed the Application for Certificate of Registration in July 1983 and filed regular excise tax returns thereafter. Had this happened, the taxpayer would have avoided being delinquent and the resultant build-up of past due taxes and consequential penalties.

The statute as recited below makes mandatory the assessment of penalties upon delinquent payment of taxes.

RCW 82.32.090 provides in pertinent part:

If payment of any tax due is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not received within thirty days after the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within sixty days after the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax . . . (Emphasis supplied.)

In this case, the taxpayer did not file any tax returns for the year 1983. Thus, the payment of taxes due in 1983 was made beyond the due dates. Accordingly, the statutory penalty provisions of RCW 82.32.090 applied.

The legislature, through its use of the word "shall" in RCW 82.32.090, has made the assessment of the penalty mandatory.

The mere fact of nonpayment within a specified period of payment requires the penalty provisions of RCW 82.32.090 to be applied.

As an administrative agency, the Department of Revenue is given no discretionary authority to waive or cancel penalties. The only authority to waive or cancel penalties 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.)

Administrative Rule 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 seven situations apply to the taxpayer. Essentially, the failure of a taxpayer to pay any tax by the due date must be the result of circumstances beyond the control of the taxpayer to warrant waiver or cancellation of the penalties. RCW 82.32.105.

It is unfortunate that the taxpayer was not aware of the requirement for an independent contractor to register, that he did not consult an accountant or lawyer as to his tax liabilities, and that he was not aware of the B & O tax. However, they do not and have never been thought to constitute "circumstances beyond the control of the taxpayer."

The Department recognizes that some taxable persons do not register because of a misunderstanding or inadvertence. Where a misrepresentation, fraud or intent to evade taxes is found, an additional fifty percent evasion penalty is assessed under the provisions of RCW 82.32.050. In this case, there was no finding to warrant imposition of the evasion penalty.

The assessment of interest, perceived by the taxpayer as a penalty, is mandated by a separate statute, RCW 82.32.050, which in pertinent part provides:

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 as to assessments made . . . 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. . . . If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added. (Emphasis supplied.)

The assessment of interest upon tax deficiencies determined to be due by audit 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. Accordingly, we reject the taxpayer's perception that his payment of interest already constituted the payment of a penalty.

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

DECISION AND DISPOSITION:

The taxpayer's petition is denied. The unpaid amount of \$. . . is due for payment by August 13, 1987.

DATED this 14th day of July 1987.