

Cite as 6 WTD 43 (1988)

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

In the Matter of the Petition
for Refund of

. . .

D E T E R M I N A T I O N
)
) No. 88-223
)
) Registration No. . . .
)
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)

[1] **RULE 228, RCW 82.32.050 AND RCW 82.32.105:**
INTEREST -- ASSESSMENT -- WAIVER -- FACTORS. The
addition of interest to an audit tax assessment is
mandatory. Interest may be waived or cancelled only
where circumstances exist which are beyond the
control of the taxpayer.

[2] **RULE 228:** INTEREST -- WAIVER. Taxpayer's
misunderstanding or misinterpretation of the tax
laws is not grounds to waive or cancel interest
imposed in a tax assessment following an audit of
taxpayer's business records.

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:

The taxpayer protests the imposition of interest in a tax
assessment. The tax assessment was issued following an audit
examination of the taxpayer's business records.

FACTS AND ISSUES:

Mastrodonato, A.L.J. -- The taxpayer is a partnership. It
operates several businesses which are separated into divisions

for leasing vehicles (. . .), auto repair and painting (. . .), car sales (. . .), and yacht brokering (. . .).

The taxpayer's business records were audited by the Department of Revenue for the period from January 1, 1984 through September 30, 1987. As a result of this audit, Tax Assessment No. . . . was issued on February 25, 1988, in the amount of \$. . . , and has been paid in full. By letter dated March 24, 1988, the taxpayer protested a portion of the tax assessment relating to interest. This Determination responds to the taxpayer's protest.

During this audit period, the taxpayer purchased equipment for use in a new [division] without the payment of the retail sales tax. The taxpayer intended to defer payment of the sales tax by leasing the equipment between its divisions. Thus, [A] leased the equipment to [B]. [A] reported the lease payments and the applicable business and occupation (B&O) tax and sales tax on the monthly excise tax returns filed by the taxpayer.

Both divisions, i.e., [A] and [B], as well as the remainder of the taxpayer's divisions, reported their tax liability under the tax registration of . . . , a partnership (the taxpayer). The taxpayer's various divisions are not separate entities for tax purposes (RCW 82.04.030), do not have their own registration numbers, and are not separately registered with the Department of Revenue. Thus, [A] and [B] are separate businesses only to the extent that they maintain separate accounting records. In all other respects, they are a part of the partnership of [the taxpayer].

The Department's auditor assessed use tax on the equipment purchased and leased by [A] to [B]. The auditor reported that since the taxpayer owns the equipment, and the two divisions are not functionally separate from the partnership, the taxpayer was not eligible to create a lease arrangement between [A] and [B] and should have paid retail sales tax when the equipment was purchased. Since sales tax had not been paid, the use tax was assessed.

As previously mentioned, the taxpayer reported and paid Retailing B&O tax and retail sales tax on the monthly lease payments charged to [B] by [A]. Under Schedule III of the audit report, the auditor gave credit for the Retailing B&O tax and retail sales tax reported and paid in the years 1986 and 1987 on these "intra-company" leases. The auditor then assessed use tax on the value of the equipment purchased in

1986. The difference in these amounts resulted in tax due of \$. . . (this amount also included some smaller, additional items). To this amount the Department added interest (\$. . .) at the rate of nine percent per annum. The total amount due was set at \$

The taxpayer protests the amount of interest charged in the assessment. The taxpayer argues that it was not knowingly depriving the state of sales tax money. Instead, the taxpayer states that it was merely paying the tax on the monthly lease payment, as is normally acceptable on the lease of an item of tangible personal property. Therefore, the taxpayer requests that the interest amount imposed in the tax assessment be waived and further requests that the Department accept payment on the remaining tax principal only.

DISCUSSION:

The question presented is whether the interest assessed in the tax assessment, which followed the audit examination and report, can be cancelled or waived under the circumstances present here.

We regret that under Washington Revenue Act and the facts and circumstances presented here, the interest cannot be cancelled or waived.

[1] RCW 82.32.050 states in pertinent part as follows:

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 from the last day of the year in which the deficiency is incurred until date of payment. (Emphasis supplied.)

The use of the word "shall" is significant. It means that the Department has no discretion in this matter. Thus, the assessment of interest is mandatory under RCW 82.32.050.

Nevertheless, the law does contain a separate provision allowing for a waiver or cancellation of interest. RCW 82.32.105 states as follows:

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.)

Thus, if a taxpayer can show that the reason for the underpayment of tax liability was due to circumstances beyond its control, interest can be cancelled or waived. The Department has prescribed rules for the waiver or cancellation of interest. The regulation in question is WAC 458-20-228 (Rule 228). It provides, in pertinent part, as follows:

The department will waive or cancel the penalties imposed under RCW 82.32.090 and interest imposed under RCW 82.32.050 upon finding that the failure of a taxpayer to pay any tax by the due date was due to circumstances beyond the control of the taxpayer. The department has no authority to cancel penalties or interest for any other reason.

The following situations will constitute circumstances under which a waiver or cancellation of interest upon assessments pursuant to RCW 82.32.050 will be considered by the department:

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.
(Emphasis supplied.)

Thus, the only two circumstances under which the Department will consider a waiver or cancellation of interest are set forth above in Rule 228. It is clear that the taxpayer does not qualify under either situation.

[2] In this case, the taxpayer purchased the equipment in question and did not pay retail sales tax to the vendor(s). Instead, the taxpayer mistakenly believed that it could establish a lease or rental agreement or contract between two

of its operating divisions, and defer payment of the retail sales tax until each of the lease or rental payments were made.

However, the Washington tax law does not allow a taxpayer to create business transactions within the same entity. Thus, the lease arrangement between [A] and [B], two of the taxpayer's operating divisions, was not a valid or recognized transaction under the state excise tax laws. Consequently, the auditor was correct in disallowing the lease transaction, giving credit for the B&O and sales taxes paid as a result of the alleged lease, and assessing the use tax on the full value of the equipment as of the time it was acquired. The addition of interest to the tax assessment as a result of the auditor's actions [is] mandatory under RCW 82.32.050 and Rule 228.

Furthermore, it is clear that the taxpayer is not eligible to be granted a waiver or cancellation of the interest assessed under either RCW 82.32.105 or Rule 228. The "circumstances" which led to the assessment were not "beyond the control of the taxpayer" (RCW 82.32.105). The taxpayer misinterpreted or misunderstood the Washington sales tax laws as applied to leases of tangible personal property. Since every taxpayer doing business in Washington State is presumed to know the tax implications of business transactions upon which it enters, the taxpayer's ignorance of the precise legal requirements here does not constitute circumstances beyond its control. The Department has no authority or discretion to waive or cancel interest which accrues as the result of the taxpayer's own choices and elections. 3 WTD 387 (1987).

Furthermore, there is no evidence here that the failure to pay the correct amount of tax was the direct result of written instructions given to the taxpayer by the Department, nor was the due date to pay the assessment extended at the request of the Department (Rule 228). These are the only circumstances under which interest may be waived or cancelled. Therefore, the addition of interest to the tax assessment in question was legal and proper, and there are no grounds upon which to waive or cancel that portion of the assessment.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 31st day of May 1988.