

Cite as 3 WTD 217 (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)	
)	87-187
)	
. . . )	Registration No. . . .
)	Notice of Balance Due
)	
)	

**RULE 228, RCW 82.32.080:** PENALTY -- LATE PAYMENT -- ABSENCE OF POSTMARKED ENVELOPE. A return is considered timely where there is evidence that the return was mailed by the due date, and where the Department has discarded the postmarked envelope.

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: May 27, 1987

NATURE OF ACTION

The taxpayer petitions for cancellation of a penalty assessment.

FACTS AND ISSUE

Normoyle, A.L.J. -- The taxpayer operates seven retail stores. Each has a separate registration number. The taxpayer's accountant states that the May, 1986, tax returns and checks for each store were timely mailed, on June 24. (The due date was June 25.) Six of the seven returns were processed by the Department of Revenue without incident. The seventh, however, was not received by the Department until July 15. Not only was the return received late, but the check had become separated from the return. However, the check was processed

by the Department on the same day that the return was received, July 15. The Department then assessed a late payment penalty.

The Department discarded the envelope, which would have shown the postmarked date.

The sole question is whether the penalty may be waived.

#### DISCUSSION

RCW 82.32.080 states, in pertinent part, that "A return or remittance which is transmitted to the department by United States mail shall be deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it." In prior Determinations, we have held that the mailing of a return will be considered timely where there is evidence that the return was deposited in the mail on or before the due date; and where the Department has discarded the postmarked envelope. See, D. 86-256, 1 WDT 191 (1986). In the absence of the envelope, we are constrained to follow the above Determination and conclude that the return was mailed by the due date.

#### DECISION AND DISPOSITION

The petition for cancellation of the penalty of \$ . . . , contained in the "delinquent notice" issued July 14, 1986, is granted.

DATED this 4th day of June 1987.