

Cite as Det. No. 01-096, 22 WTD 126 (2003)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Refund of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	01-096
	)	
...	)	Registration No. . . .
	)	Docket No. . . .
	)	Document No. . . .
	)	Amount at Issue: \$ . . .

- [1] RULE 228: PENALTIES – INTEREST – LATE PAYMENT – INTENT OF LEGISLATURE. Washington's excise taxes are of a self-assessing nature, and the legislature intended to encourage voluntary compliance with the Revenue Act by imposing “late payment” penalties and interest on those who do not pay their tax liabilities timely, even though there might not be willful fraud in failing to do so.
- [2] RULE 228: PENALTIES – INTEREST – LATE PAYMENT – WAIVER -- LACK OF KNOWLEDGE. Neither the Revenue Act nor Rule 228 provides for the waiver of penalties or interest when an unregistered taxpayer does not timely pay a use tax obligation because of a good-faith lack of knowledge.
- [3] RULE 228: PENALTIES – INTEREST – LATE PAYMENT – WAIVER – USE TAX – IMPORTS – DELAY IN U.S. CUSTOMS NOTIFICATION. Even though delays in the U.S. Customs import reporting system might in turn delay the Department’s use tax assessments on imported goods, such delays do not alter a taxpayer’s obligation to pay the use tax timely or provide a basis for the waiver of penalties or interest.

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:**

Taxpayer complains of penalties and interest assessed on the late payment of use tax on goods he imported for his own use, asserting the Department did not timely advise him of the tax.<sup>1</sup>

**FACTS:**

Bauer, ALJ -- While on vacation in Finland, . . . (Taxpayer) purchased furniture and construction materials for his Washington home. According to Taxpayer, “ALV” tax -- a form of value added tax (VAT) -- was paid on many of these goods and is not recoverable. No sales or use tax was paid prior to or after their importation. Taxpayer imported these items in a container, and they arrived in the State of Washington on September 26, 2000. Using a customs firm, he paid all the duties and other tariffs he believed he owed on this import.

Taxpayer first became aware of his Washington use tax liability on March 3, 2001 when he received a letter from the Department of Revenue (Department) dated March 1, 2001. The Department generated its letter after it received a U.S. Customs referral advising of Taxpayer’s import.

**TAXPAYER ARGUMENT:**

Taxpayer argues he had no knowledge of the use tax obligation on the property he imported for his own use as a consumer. Taxpayer objects to the Department’s imposition of penalties and interest, stating that it was unfair of the Department to wait several months -- until the tax due was in arrears -- before issuing its assessment.

**ISSUE:**

Does the Department’s delay in assessing use tax on tangible personal property imported by a consumer justify the waiver of penalties and interest?

**DISCUSSION:**

Below are the statutes, rules and published determinations that direct when a waiver of penalties and interest may be granted:

RCW 82.12.020: Use tax is generally due on the privilege of using tangible personal property, upon which retail sales tax has not been paid, within this state as a consumer.

RCW 82.12.035: Credit is allowed against Washington use taxes owing if the user paid a retail sales or use tax to any other state or foreign country prior to the use of such property in Washington.

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<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

Det. No. 87-105, 3 WTD 001 (1987): A value-added-tax (VAT) is such that it is not the equivalent of a retail sales tax on goods sold for export.

RCW 82.32.045: A use tax return must be filed, and use tax paid, within twenty-five days after the end of the month in which the taxable activity (e.g., when tangible personal property is brought into this state by a Washington consumer) occurs.

RCW 82.32.100: When a taxpayer fails to make any return as required, the Department shall proceed to obtain facts and information on which to base a tax assessment. The Department “shall add the penalties provided in RCW 82.32.090.”

RCW 82.32.090(1): If any tax due is not received by the department of revenue by the due date, there shall be assessed a penalty. The penalty is between 5 and 20%, depending on how overdue the payment is. “If the tax is not received on or before the last day of the second month following the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax.”

RCW 82.32.050: If a tax has been paid less than properly due, the department shall also add interest at the rate of 9% per annum. If the taxpayer intentionally evaded the tax, a penalty of 50% of the tax shall be assessed.

RCW 82.32.105:

Subsection (1): If the failure to pay a tax when due is the result of circumstances beyond the control of the taxpayer, the department shall waive interest and penalties. The statute also directs the Department to enact an administrative rule to implement this law.

Subsection (2): When a delinquency is not due to circumstances “beyond the control” of a taxpayer, but the taxpayer has timely filed and remitted payment on all tax returns due for that tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested, the Department shall waive or cancel the penalty imposed under RCW 82.32.090(1).

Subsection (3): Interest may be waived only in two situations: when the failure to pay tax timely was a result of written instructions by the Department to the taxpayer, or the due date for payment of an assessment was extended for the sole convenience of the department, and was not at the request of the taxpayer.

Subsection (4): The Department will adopt rules implementing RCW 82.32.105.

Washington Administrative Code (WAC) 458-20-228 (Rule 228): This is the rule which implements RCW 82.32.105. The following subsections apply in this instance:

Subsection (9)(a)(ii): Seven circumstances are considered to be “beyond the control of the taxpayer” under which penalties might be waived,<sup>2</sup> a good faith lack of knowledge of a taxpayer’s tax obligation not being one of the circumstances listed.

<sup>2</sup> (A) The return payment was mailed on time but inadvertently sent to another agency.

(B) Erroneous written information given to the taxpayer by a department officer or employee caused the delinquency. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not cancelling the penalty in cases of oral information is because of the

Subsection (9)(a)(iii)(B): Specifically provides that “a misunderstanding or lack of knowledge of a tax liability” is one of the circumstances that does not justify the waiver of penalties.

Subsection (9)(b)(i): To qualify for the RCW 82.32.105(2) “twenty-four month” penalty waiver, a taxpayer must be a registered business required to submit periodic combined excise tax returns under RCW 82.32.045.

The “Taxpayer Bill of Rights,” in RCW 82.32A.030(2), imposes the specific duty on taxpayers to:

Know their tax reporting obligations, and when they are uncertain about their obligations, seek instructions from the department of revenue.

To accommodate this duty, the State of Washington has a Taxpayer Information and Education Division and field offices throughout the state to answer any questions pertaining to tax liabilities.

[1] Washington's excise taxes are, therefore, of a self-assessing nature. To encourage voluntary compliance with the Revenue Act, the legislature has imposed “late payment” penalties and interest on those who do not pay their tax liabilities on time, even though there might not be willful fraud in failing to do so.

[2] As described above, neither the Revenue Act nor Rule 228 provides for the waiver of penalties or interest when an unregistered taxpayer does not timely pay a use tax obligation because of a good-faith lack of knowledge. “Lack of knowledge” is not a “circumstance beyond the control of the taxpayer” because the law, regulations, and Department publications explaining all tax laws

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uncertainty of the facts presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

(C) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to obtain an extension or to otherwise arrange timely filing and payment is a circumstance eligible for penalty waiver.

(D) The delinquency was caused by the unavoidable absence of the taxpayer or key employee, prior to the filing date. “Unavoidable absence of the taxpayer” does not include absences because of business trips, vacations, personnel turnover, or terminations.

(E) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(F) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or other persons contracted with the taxpayer, which the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place. See subsection (9)(a)(iii)(E).

(G) The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office for proper forms and the forms were not furnished in sufficient time to permit the completed return to be paid before its due date. In this circumstance, the taxpayer kept track of pending due dates and reasonably fulfilled its responsibility by timely requesting replacement returns from the department.

are publicly available not only to taxpayers, but to the tax professionals who support them. If one could avoid penalties simply by lacking the knowledge of a tax (or by claiming a lack of knowledge), the non-payment of a tax would be risk-free, and there would be no incentive for anyone to inquire as to their tax liabilities.

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[3] As to the timing of the use tax assessment, the Department receives its import information from U.S. Customs. The Department does not have control over when information from U.S. Customs is received. Even though delays in that reporting system are, unfortunately, reflected in the dates the Department's assessments are made, such delays do not alter a taxpayer's obligation to pay the use tax by its statutory due date or provide a basis for the waiver of penalties or interest.

#### **DECISION AND DISPOSITION:**

Taxpayer's petition for waiver of penalties and interest is denied.

Dated this 29<sup>th</sup> day of June 2001.