Cite as Det. No. 01-165R, 22 WTD 11 (2003)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of	)	F I N A L
	)	D E T E R M I N A T I O N
	)	
	)	No. 01-165R[1]
. . .	)	Registration No. . . .
	)	Use Tax Assessment
	)	Docket No. . . .
	)	

[1] RULE 228; RCW 82.32.105: LATE PAYMENT OF RETURN PENALTY – CIRCUMSTANCES BEYOND THE CONTROL OF THE TAXPAYER – LACK OF KNOWLEDGE OF TAX LIABILITY – RELIANCE UPON ADVICE OF THIRD PARTIES. Lack of knowledge of a tax liability generally is not considered a circumstance beyond the control of the taxpayer. The word "generally" does not create an exception for a taxpayer who remained unaware of a liability despite inquiring of persons and entities, other than the Department, that it expected to be knowledgeable about such matters.

[2] RULE 228; RCW 82.32.105: LATE PAYMENT OF RETURN PENALTY – CANCELLATION – FAILURE TO PROMPTLY DETECT TAXPAYER'S FAILURE TO PAY TAX. That the penalty would have been less if the Department had earlier detected the taxpayer's failure to file a use tax return and pay taxes is not a basis for canceling or reducing a late payment of return penalty.

[3] RULE 228; RCW 82.32.105: LATE PAYMENT OF RETURN PENALTY – CANCELLATION – APPLICATION OF WAIVER PROVISIONS TO NONRESIDENTS. Nonresidents and foreigners are held to the same standard as Washington residents in the application of late payment of return penalty waiver provisions.

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.

[1] The original determination, Det. No. 01-165, is published at 22 WTD 5 (2003).

NATURE OF ACTION:

Two Canadian couples who formed a partnership to import into the state a recreation cabin kit, which they set up and used as a vacation cabin, seek reconsideration of Det. No. 01-165, which denied their request that the Department cancel delinquency penalty and interest portions of a use tax assessment. [2]

FACTS:

Prusia, A.L.J. -- The taxpayer, . . . , is a partnership of Mr. and Mrs. [F] and Mr. and Mrs. [M]. Mrs. [F] and Mrs. [M] are sisters. All four partners are Canadian citizens and long-time residents of [Canada].

The facts presented below are drawn from Det. No. 01-165, and from the facts presented to us by the taxpayer in its petition for reconsideration.

The two couples formed the partnership in 1997 to erect a recreation cabin at . . . , Washington. . . . . The partners bought a cedar cabin kit from a [Canadian] dealer that previously had sold half a dozen similar kits to Canadians for use at . . . . They chose that dealer because the partners had never imported anything into the U.S., and wanted to deal with someone who was experienced in such matters. They asked the . . . dealer about taxes, and he explained Canadian and provincial taxes, but said nothing about possible liability for Washington taxes. The partnership borrowed the funds to purchase and erect the cabin from a bank in . . . , Washington, granting a mortgage on the . . . property. The partners explained to the . . . bank exactly what they intended to do. The . . . bank said nothing to the partners about possible liability for Washington taxes. The taxpayer also had to receive approval from a Washington state Building/Engineering department for use of the cabin kit package. That agency said nothing to the partners about possible liability for Washington taxes.[3]

In July 1997, the dealer transported the kit across the international border to Point Roberts. The dealer arranged for trucking, handled paperwork, fees, and duty at the border crossing, and billed the partnership. The partnership assumed everything had been properly taken care of.

Prior to the notification described in the next paragraph, none of the partners knew that Washington had a use tax, and they assumed all taxes and duties related to the recreation cabin had been paid. They did not contact the Department regarding Washington tax obligations prior to being contacted by the Department as described in the next paragraph.

In April 2001, the Compliance Division of the Department of Revenue contacted the partnership to inquire whether the partnership had paid sales or use tax on the cabin kit the partnership had

[2] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.
[3] These last two sentences are new facts added on reconsideration.

erected at [Washington]. The partnership told the Compliance Division that neither sales tax nor use tax had been paid. On April 17, 2001, the Compliance Division issued a Washington use tax assessment against the partnership on its use of the cabin kit in Washington. The assessment was based on a value of $ . . . , and included a 20% delinquency penalty of $ . . . and interest of $ . . . .

The partnership asked the Compliance Division to waive the penalty, stating the partners were misled by the . . . dealer, had no knowledge of the tax obligation, and felt it was unfair to assess a penalty under the circumstances. The Compliance Division denied the waiver request.

The partnership then paid the Department $ . . . on the assessment, and appealed the penalty and interest portions. As grounds for appeal, the partnership asserted: 1) None of the partners knew about Washington use tax until contacted by the Compliance Division in 2001. The tax was not made known to the partnership by either the . . . dealer, the . . . bank, or U.S. Customs. 2) The partners are not in the business of importing things, so inquired of, and relied upon, persons they reasonably believed to be experienced in such matters. 3) The partnership did not hide or attempt to evade taxation, and had no intent to avoid or delay paying any tax. . . . . The partnership would have paid the tax when it imported the kit if the partners had had any inkling the tax was owed. 4) The tax, penalty, and interest constitute a financial hardship for the partnership, as they did not build these amounts into their budget for the recreation cabin.

Det. No. 01-165, issued October 29, 2001, denied the request for cancellation of penalty and interest. Det. No. 01-165 concluded that the Department had no authority under RCW 82.32.105 or WAC 458-20-228 (Rule 228) to waive either the penalty or the interest. Regarding the penalty, Det. No. 01-165 specifically concluded that the circumstance causing the taxpayer's late filing and payment of the tax (which resulted in the penalty) was not a "circumstances beyond the control of the taxpayer" as that term is defined in Rule 228. It further found that the taxpayer's circumstance was one Rule 228 lists as "generally" not considered to be beyond the control of the taxpayer -- a lack of knowledge of a tax liability. Det. No. 01-165 did not accept the taxpayer's argument that Rule 228's use of the modifier "generally" in listing circumstances that are "generally" not considered to be beyond the control of the taxpayer gives the Department the flexibility to recognize the taxpayer's circumstance as an exception to the general rule.

After Det. No. 01-165 was issued, the taxpayer paid the penalty and interest assessed. The taxpayer now requests reconsideration of Det. No. 01-165, and refund of the penalty and interest paid.

On reconsideration, the taxpayer contends that Det. No. 01-165 did not give sufficient weight to its argument regarding the effect of Rule 228's use of the word "generally." The petition for reconsideration argues:

> [ALJ] deals with our submission that the word "Generally" does not describe our circumstances as a question of first impression. We reiterate again this should not apply

> and do not feel he has given sufficient weight to our point. The Department obviously had a reason/purpose in adding that word (generally) in February 2000 and we contend that one of those reasons would be to allow an exception similar to our case. We had no intent to defraud . . . . We acted in good faith at the Bank, at the border and at all times. [We now also] recall and point out at this time: We even had to get "State of Washington" approval from your Building/Engineering Department in Olympia to proceed with this family project.
>
> We respectfully contend that recognizing our exception would not set a precedent that would/could affect many future potential taxpayers. Two Canadian families trying to do everything right and in fact doing just that with the one fatal exception? Two private Canadian families having been informed after three years of the error of their ways? Two private Canadian families dealing with a foreign government, granted a federal one at the border and there being no process to advise of the "Use Tax" at the State level. Two Canadian families dealing with a Washington State department seeking approval on the use of a "Building package". The approval of which was obtained prior to its arrival in [Washington]. With all due respect we feel we made more than enough effort and carried out due diligence to be exempted from the "General" rule.

The taxpayer also argues that the Department should give some relief based upon the time lag between the date tax liability was incurred and the date the Department informed the taxpayer of its error.

ISSUES:

1. Does the circumstance that caused the taxpayer to incur a penalty fall outside Rule 228's provision that lack of knowledge of a tax liability generally is not a circumstance considered to be beyond the control of the taxpayer? That is, is a taxpayer's lack of knowledge of a tax liability excused if the taxpayer was not advised of its potential tax liability by private (vendor/bank) and governmental third parties involved in the transaction whom the average person would have expected to be aware of possible Washington tax consequences? Does it make a difference if the taxpayer asked some of those private parties about taxes due on the transaction? Does it make a difference if the taxpayer was a Canadian?

2. Is the interval of nearly four years between the taxpayer's failure to report and pay use tax due, and the Department's contracting the taxpayer, a circumstance that allows the Department to reduce or cancel penalties or interest?

DISCUSSION:

As Det. No. 01-165 explains, the Department's authority to cancel penalties or interest is limited to that set out in RCW 82.32.105 and RCW 82.32A.020. The Department has no discretionary authority.

As Det. No. 01-165 explains, the Department may waive interest only in two circumstances: if the failure to timely pay was the direct result of Department instructions to the taxpayer, or the Department extended the due date. Neither of those circumstances is present in this case. The Department has no authority to cancel and refund any of the interest assessed in this case.

[1] Det. No. 01-165 addressed the taxpayer's contention that Rule 228's use of the modifier "generally" gives the Department sufficient leeway to conclude the taxpayer's circumstance is an exception to the general rule that lack of knowledge of a tax liability is not a circumstance considered beyond the control of the taxpayer. We concluded as follows:

> We do not believe the partnership's circumstance, which might be described as ignorance or lack of knowledge despite inquiries of private parties the average person would expect to be familiar with such matters, could be considered an exception to the general rule. To recognize that as an exception would excuse late payment by any taxpayer who inquires of its seller or lender and receives incorrect or insufficient information. Such a large exception would be incompatible with a system of voluntary compliance, such as Washington's.

We continue to hold that conclusion. We appreciate that the taxpayer made an effort to learn about its possible tax obligations. It is unfortunate if the people the taxpayer dealt with knew about the taxpayer's potential use tax liability, and failed to alert the taxpayer to it. We realize that Washington taxes may seem more foreign to Canadians than they do to residents of neighboring states. However, because of the nature of Washington's tax system, the burden of becoming informed about tax liability falls upon the taxpayer, and it is the taxpayer who bears the consequences of a failure to be correctly informed. The only circumstance in which a taxpayer avoids the consequences of a lack of knowledge or misinformation is when the taxpayer has requested information or instructions from the Department, and the Department gave incorrect written information or instructions.

RCW 82.32A.005(2) sets out the following legislative finding:

> The legislature further finds that the Washington tax system is based largely on voluntary compliance and that taxpayers have a responsibility to inform themselves about applicable tax laws. The legislature also finds that the rights of the taxpayers and their attendant responsibilities are best implemented where the department of revenue provides accurate tax information, instructions, forms, administrative policies, and procedures to assist taxpayers to voluntarily comply with the provisions of the revenue act.

(Emphasis added.) RCW 82.32A.050 requires the Department to maintain a taxpayer services program, including providing taxpayer assistance in the form of information, education, and instruction in person, by telephone, or by correspondence. The Department tries to provide accessible taxpayer information. There are twelve field offices around the state to assist taxpayers and answer questions without charge, including an office in Bellingham. The

Department also maintains a telephone information center. Had the taxpayer inquired of the Department regarding its possible tax liability, the Department could have correctly advised it.

[2] The taxpayer's argument that the Department should cancel or reduce the penalty or interest based upon the Department's alleged failure to timely detect the taxpayer's error is another effort to shift responsibility for knowing one's tax obligations and properly reporting and paying taxes from the taxpayer to someone else. RCW 82.32A.030 places upon taxpayers the responsibility to file accurate returns and pay taxes timely. See also Det. No. 87-66, 2 WTD 325 (1987); Det. No. 87-298, 4 WTD 87 (1987); *Richard J. Poldervart, d/b/a Quincy Alfalfa Company v. Department of Rev.*, BTA Docket No. 844 (1970).

[3] There is no provision in the Revenue Act that holds nonresidents or residents of foreign countries to a lower standard than Washington residents must meet. The Department has not treated nonresidents differently in interpreting and applying RCW 82.32.105 than it has treated Washington residents. *See, e.g.*, Det. No. 89-555, 9 WTD 043 (1989); Det. No. 89-525, 8 WTD 411 (1989); Det. No. 88-168, 5 WTD 253 (1988). The fact that the taxpayer's owners are Canadians does not allow us to make an exception to the general rule and policy expressed in RCW 82.32.105 and chapter 82.32A RCW.

In sum, we find no basis for reconsidering Det. No. 01-165. The penalty and interest were properly assessed, and the Department has no authority to cancel or reduce them under the circumstances presented.

DECISION AND DISPOSITION:

Taxpayer's petition for reconsideration is denied.

Dated this 21st day of June 2002.