

Cite as 3 WTD 377 (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>
N	
For Refund of)	
)	No. 87-241
)	
. . .)	Registration No. . . .
)	Tax Assessment No. . . .
.	
)	

[1] **RULE 228 AND RCW 82.04.442:** B&O TAX -- INVENTORY TAX CREDIT -- PERSONAL PROPERTY TAX -- LATE PAYMENT OF -- EXTENUATING CIRCUMSTANCES. The oversight of an employee of not mailing a personal property tax check which had been misfiled is not an "extenuating circumstance" which permits inventory tax credit to be applied against B&O tax owed by the employer. Two 1983 versions of Rule 228 discussed.

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: March 19, 1986

NATURE OF ACTION:

Petition for inventory tax credit to be applied against B&O tax liability notwithstanding fact that personal property tax was paid after its due date.

FACTS AND ISSUES:

Dressel, A.L.J. -- . . . (taxpayer) is a retail . . . with stores located around the state. Its books and records were audited by the Department of Revenue (Department) for the period April 1, 1981 through December 31, 1984. As a result, Tax Assessment No. . . . in the amount of \$. . . was issued November 19, 1985. Payment was made in full but taxpayer now petitions for a partial refund based on the Department's denial of Inventory Tax Credit (ITC) for 1983.

In its petition for refund the taxpayer outlined the circumstances of its delinquent property tax payment as follows:

On April 26, 1983 a check was cut for \$. . . in payment of the first half of our personal property tax assessment. Because of a change in the employee responsible for mailing checks, the check was inadvertently placed in a wrong file. Our checks are cut and filed by mailing date in a tickler file. Because of this the check was not mailed on the due date. It was not until our Accounts Payable Supervisor arrived back from vacation on May 16, 1983 that the check was found. The check was mailed on May 16th to King County but was returned to us a few days later because it was not mailed timely. On May 23, 1983, we re-issued another check for the full amount of our property taxes.

At the hearing in this matter the taxpayer further explained that, prior to the late property tax payment, its outside auditors had recommended that the taxpayer split the duty of cutting and mailing checks. Formerly, both functions were handled by one person. On the occasion in question the check was cut in advance of the property tax due date, but the new individual assigned to mail it did not because, after it was prepared, the check was placed in the wrong file. It was an inadvertent mistake. The taxpayer suggests that this is an "extenuating circumstance" similar to one cited in WAC 458-20-228 (Rule 228) as "The payment was mailed timely, but was inadvertently addressed incorrectly." Because of the extenuating circumstance which resulted in the late payment of the personal property tax, the ITC should be allowed. Whether that may be done is the sole issue we must decide.

DISCUSSION:

The statutory authority for allowing a credit against the business and occupation (B&O) tax for property tax paid is RCW 82.04.442¹ which reads:

Credit for property taxes paid on business inventories -- Percentage amounts allowable. (1)

Except as provided in subsection (2) of this section, for each of the calendar years 1974 through 1983, a percentage as set forth below, of any personal property taxes paid before delinquency after May 10, 1974 by any taxpayer upon business inventories during the same calendar year or paid after delinquency under extenuating circumstances if approved by the department of revenue shall be allowed as a credit against the total of any taxes imposed on such taxpayer or its successor by chapter 82.04 RCW (business and occupation tax), as follows:

Inventory taxes paid in	
1974.....	ten percent
Inventory taxes paid in	
1975.....	twenty percent
Inventory taxes paid in	
1976.....	thirty percent
Inventory taxes paid in	
1977.....	forty percent
Inventory taxes paid in	
1978.....	fifty percent
Inventory taxes paid in	
1979.....	sixty percent
Inventory taxes paid in	
1980.....	seventy percent
Inventory taxes paid in	
1981.....	eighty percent
Inventory taxes paid in	
1982.....	ninety percent
Inventory taxes paid in	
1983.....	one hundred
percent	

. . .

The department of revenue shall adopt such rules as may be necessary for the prompt allowance of such

¹ Now repealed.

credits and the efficient administration of this section.

The administrative Rule adopted by the Department relating to inventory tax credit is WAC 458-20-228 (Rule 228). The provision on ITC, however, was not adopted until August 23, 1983. It states:

. . .

INVENTORY TAX CREDIT

A credit against business and occupation tax for property tax on business inventories paid before delinquency (i.e., paid on or before the time specified in RCW 84.56.020) is authorized by RCW 82.04.442. However, the credit may be allowed notwithstanding that the property tax was not paid by the due date for such payment upon a finding by the department of revenue that the delinquency was due to extenuating circumstances. Extenuating circumstances are those which are beyond the control of the taxpayer and are the same generally as would justify the waiver of interest or penalties, namely:

1. The payment was mailed timely, but was inadvertently addressed incorrectly.
2. The delinquency was caused by death or serious illness of the taxpayer or his immediate family, or death or serious illness of his accountant or his immediate family.
3. The delinquency was caused by unavoidable absence of the taxpayer.
4. The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

[1] In the case before us the circumstance which caused late payment of the personal property tax is not the equivalent of any of the four listed above. The taxpayer has specifically urged application of the first one but, clearly, that does not apply. The check in payment of the tax was written timely, but it was not mailed timely. Also, the reason the payment was late is not because it was addressed incorrectly but, rather, because it was not placed in the mail until after its due date. Consequently, because the taxpayer's circumstance

was not one of those specifically delineated in the Rule as "extenuating," the late payment cannot be overlooked so as to make the taxpayer eligible for the inventory tax credit.

The same conclusion is reached if one applies the version of Rule 228 which existed prior to August 23, 1983. It did not contain a separate section on inventory tax credit. It did, however, list the circumstances deemed beyond a taxpayer's control so as to justify relief from penalties and interest. The pertinent section stated:

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 the only circumstances under which a cancellation of penalties will be considered by the department:

1. The return was filed on time but inadvertently mailed to another agency.
2. The delinquency was due to erroneous information given the taxpayer by a department officer or employee.
3. The delinquency was caused by death or serious illness of the taxpayer or his immediate family, or illness or death of his accountant or in the accountant's immediate family, prior to the filing date.
4. The delinquency was caused by unavoidable absence of the taxpayer, prior to the filing date.
5. The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.
6. The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office, in writing, for proper forms and these were not furnished in sufficient time to

permit the completed return to be paid before its delinquent date.

A request for a waiver of penalties must be in letter form or, if filed through a district office, in the form of an affidavit witnessed by an agent of the department and should contain all pertinent facts and be accompanied by such proof as may be available. In all such cases the burden of proving the facts is upon the taxpayer.

The following situations will constitute circumstances under which a 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 added.)

Prior to adding to Rule 228 the section on ITC, the Department interpreted the "extenuating circumstances" referred to in RCW 82.04.442 as being the same as the "circumstances beyond the control of the taxpayer" as listed above in Rule 228. Circumstances other than those were not deemed "extenuating." Four of the ones listed are essentially the same as those cited previously in the ITC section of the later version of the Rule. As already discussed those do not fit this taxpayer's situation. The additional ones do not either.

Not only does the circumstance of the taxpayer not qualify under the administrative Rule as beyond its control, but also from a purely logical perspective it should not qualify. An employer is generally responsible for the actions of its employees and is considered to have control over them. There are no facts in this particular case which justify a deviation from that commonly-held principle.

As indicated, under neither of the Rule 228 editions which could be argued as applicable to the 1983 tax triggering events, can the circumstances of this taxpayer be classified "extenuating." In the absence of such circumstances,

inventory tax credit is denied because payment of the personal property taxes was not timely.

DECISION AND DISPOSITION:

For the above reasons the taxpayer's petition is denied.

DATED this 17th day of July 1987