Cite as Det. No. 98-114, 18 WTD 37 (1999)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of	)	D E T E R M I N A T I O N
	)	
	)	No. 98-114
	)	
. . .	)	Registration No. . . .
	)	Warrant No. . . .
	)	

[1] RULE 228: LATE PAYMENT PENALTY – WAIVER – SERIOUS ILLNESS – PROXIMITY TO DUE DATE. Rule 228's provision for waiver of late-payment penalties when a delinquency is caused by serious illness applies only to delinquencies that occur within a reasonable period after onset of the illness.

[2] RULE 228: LATE PAYMENT PENALTY – WAIVER – SERIOUS ILLNESS – CAUSE OF DELINQUENCY. A serious illness that is chronic or long-term cannot indefinitely be considered the cause of late excise tax payments. After some reasonable period following onset, the illness ceases to be the primary causative factor, and is replaced by neglect or failure of the taxpayer to reasonably attend to business affairs.

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, a small family-owned business, requests cancellation of penalties resulting from its failure to timely file excise tax returns. It alleges that the payments were late due to the extended serious illness of the family member who handled the books.[1]

FACTS:

Prusia, A.L.J. (successor to Bauer, A.L.J.) -- The taxpayer is a Washington corporation engaged in the construction business. It has been registered with the Department of Revenue (Department) since 1985. Taxpayer files monthly combined excise tax returns.

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

During much of 1993, 1994, and 1995, the taxpayer filed its monthly excise tax returns late. This appeal concerns the returns filed late for the months of June through November 1995. The taxpayer filed the monthly return for June 1995 late, and remitted less than the amount of tax due. The Department assessed a 5 percent delinquency penalty, and issued a notice of balance due in the amount of $ . . . .

The taxpayer filed the monthly return for July 1995 late, and remitted less than the amount of tax due. The Department assessed a 5 percent delinquency penalty, and issued a notice of balance due in the amount of $ . . . .

The taxpayer filed the monthly return for August 1995 late. The Department assessed a 10 percent delinquency penalty, and issued a notice of balance due in the amount of $ . . . .

On January 24, 1996, the taxpayer filed returns for the months of September through November 1995, without remittance. Together with the returns, the taxpayer submitted a letter which requested relief from all penalties and proposed a plan for repayment of delinquent taxes. The letter stated that the taxpayer's president, who is the wife and mother of the other persons who operate the business, had been fighting a two-year battle with Hodgkin's [Disease], and that with each complication and surgery the family's focus had been on her and not on the day-to-day details of running the business. The letter stated that the business had gotten behind in its affairs, and that although a lot of work had recently come in, the company was strapped for cash. The letter proposed a specific payment plan. The Department's Taxpayer Account Administration Division denied the waiver request.

On February 8, 1996, the Department's Compliance Division issued Tax Warrant No. . . for $ . . . . The warrant incorporated the outstanding balances due for the months of June through August 1995, assessed unpaid taxes and delinquency penalties on the late-filed returns for September through November 1995, and added warrant penalties and interest. The taxpayer appeals the delinquency and warrant penalties assessed.

In support of the appeal, the taxpayer states that it is a small, family-owned business. The president ("President") of the corporation is the wife. The President has been, at all relevant times, responsible for the administration, bookkeeping, finances and accounting for the business.

The taxpayer states that in January 1994, the President was diagnosed with [Disease]. As a result of the disease, the President's . . . was removed, she underwent chemotherapy through about October 1994, and then underwent radiation therapy until early 1995. In September 1995, it was discovered that she had a possible reoccurrence of [Disease], but it now appears that the findings were erroneous. All during the course of the [disease] and treatment, the President suffered the normal side-effects of chemotherapy and radiation therapy, i.e., physical illness, nausea, weakness, and secondary diseases such as pneumonia. She was frequently weak, barely able to swallow and tired all of the time. As a result of the treatment and monitoring of the [disease], the President was unable to reassume her administrative duties with the taxpayer until early 1996. All during the course of the [disease] and treatment, the President's family was closely involved. Her family dedicated their efforts to caring for her and assisting her through this trying time. As a consequence, the business was essentially allowed to wander like a ship without a rudder. Sales were down, money was lost, tax returns were not filed or taxes were not paid, and things were in general a catastrophe. Upon her return in early 1996, the President became aware of the disastrous financial situation into which the company had drifted, and began taking immediate action to reverse that course.

The taxpayer argues that this is a clear case for the waiver of penalties. It argues that [disease] affects not only the person who is sick, but everyone around them, becoming the dominating factor in the lives of the family, and putting everything else in a secondary position. It argues that penalties and interest are designed either to deter or punish delinquencies, and that no amount of penalty or interest would have deterred this family from spending all of their time and energy on the President's illness.

The taxpayer has submitted copies of medical records in support of the appeal. The records show that in January 1994, the President was diagnosed with Stage 3 [Disease]. Her . . . was removed. She underwent eight cycles of chemotherapy between February 1994 and October 1994. She received radiation therapy in the fall of 1994, which was completed in December 1994. She responded well to therapy, but developed side effects of chemotherapy and radiation therapy, including physical illness, nausea, weakness, and secondary diseases including pneumonia (for which she was treated in August 1994). In a follow-up examination in September 1995, the President reported that she was feeling quite well, and that she was busy and active. Tests performed at that time showed a possible recurrence of [Disease], but that proved to be a false alarm. Her personal physician states that in the third quarter of 1995 she was in recovery phase from aggressive chemotherapy, and was unable to pursue most of her regular activities and duties.

ISSUES:

Is the extended illness and recuperation of the taxpayer's President and bookkeeper a basis for canceling the six late-payment penalties and warrant penalties?

DISCUSSION:

RCW 82.32.090 requires the Department to assess late-payment penalties whenever it does not receive payment of tax due on a return by the due date. The taxpayer did not pay the taxes due on the subject returns by the due dates. The Department properly imposed the late-payment penalties.

RCW 82.32.210 authorizes the Department to issue a warrant "[i]f any tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due." RCW 82.32.090 provides that if the Department issues a warrant for the collection of taxes, increases, or penalties, "there shall be added thereto a penalty of five percent of the amount of the tax." The tax warrant was issued to enforce collection of past-due taxes which had not been paid within fifteen days after they became due. The warrant was properly issued and the warrant penalties were properly assessed.

During the periods covered by the assessments and at the time of the assessments, RCW 82.32.105 provided for the waiver or cancellation of penalties and interest imposed under Chapter 82.32 RCW only under the following circumstances:

> 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 and penalties imposed by this chapter.

As an administrative agency, the Department has no waiver authority beyond that granted by the statute. See Det. No. 88-220, 6 WTD 27 (1988).

WAC 458-20-228 (Rule 228) is the Department's rule that implements RCW 82.32.105. Subsection (6) of Rule 228 lists the only circumstances under which the department will consider cancellation of penalties. Subsection (6)(b)(iii) is the only circumstance that may be applicable to the situation described by the taxpayer. It provides that the Department will consider waiver or cancellation of penalties imposed under RCW 82.32.090 upon a finding that the "delinquency was caused by death or serious illness of the taxpayer or his immediate family, or illness or death of his accountant or the accountant's immediate family, prior to the filing date."

There is no question that the taxpayer's President had a serious illness which prevented her from attending to ordinary affairs during much of 1994, and which continued to limit her at least through the third quarter of 1995. However, we must find that the illness caused the delinquencies in question before we may waive the penalties under Rule 228. We cannot make that finding on this record.

[1] The difficulty with the taxpayer's argument is that the delinquencies in question occurred more than a year and a half after the onset of the illness. We recognize that a serious illness or death, and the resulting emotional distress, can explain delinquencies occurring over a period of several months. See Det. No. 87-41, 2 WTD 197 (1986). However, such unfortunate circumstances do not provide an ongoing and indefinite basis for cancellation of penalties. Det. No. 88-288, 6 WTD 231 (1988).

In Det. No. 88-288, the Department denied waiver of a late payment penalty when a two and one-half month period elapsed between a serious injury to an accountant's brother and the date of the late-filed return. The determination stated:

> While we are very sympathetic with the accountant's situation, we think such a large interval of time between the tragic event and the tax due date makes it impossible to waive the penalty. The cited provision of Rule 228 is not intended to have indefinite application. It is meant to give relief in emergency situations where death or serious illness has occurred at a point much nearer to the due date than is the case here. How near is a question that may vary according to the situation presented. Two and one-half months, however, is an interval which exceeded the emergency nature intended by the rule.

In the present case, the initial severity of the illness and side effects of treatment, the lack of other family members' familiarity with the book work, and the lack of other family members' time to devote to the book work when the President was severely ill, may explain why returns were filed late during the first months of 1994. However, the delinquencies for which waiver is sought occurred during the latter part of 1995, more than eighteen months after the onset of the illness. There had been ample time for other members of the family to adjust to the situation and take appropriate steps to bring the business' financial affairs into order. There is no evidence of a sudden, severe relapse in the President's condition during the third or fourth quarter of 1995, i.e., no evidence of a new emergency. Indeed, according to the medical records, in September 1995, which was in the middle of the period when the delinquencies occurred, the President reported that she was feeling quite well, and that she was busy and active. As in Det. No. 88-288, the tax due dates did not occur at a point near enough in time to the medical emergency for us to be able to waive the penalties under Rule 228(b)(6)(iii).

[2] When an extended illness of this type is involved, a taxpayer cannot indefinitely rely upon the illness as the reason for not attending to business affairs. After some reasonable period, the illness ceases to be the primary causative factor, and is replaced by neglect or failure of the taxpayer to reasonably attend to business affairs. Neglect of business affairs is not a basis for waiving penalties.

We find that the failure to timely pay the taxes in question was not the result of circumstances beyond the taxpayer's control. Therefore, we cannot waive the penalties.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

Dated this 30th day of June, 1998.