

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition	)	<u>D E T E R M I N A T I O N</u>
For Refund of	)	
	)	No. 88-349
	)	
...	)	Registration No. ...
	)	Tax Assessment No. ...
	)	

- [1] **RULE 228, RCW 82.32.090, RCW 82.32.050 AND RCW 82.32.105: PENALTY - INTEREST -- WAIVER -- UNREGISTERED TAXPAYER -- CIRCUMSTANCES BEYOND CONTROL OF TAXPAYER.** Taxpayer's internal audit and summer vacations of employees at the time that taxpayer received a tax assessment for taxes due in prior years while it was not registered is not a circumstance beyond its control to justify waiver of interest and penalties mandated by statutes.

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: ...

NATURE OF ACTION:

Petition for waiver of interest and penalty assessed on taxes during a period of time when the taxpayer was not registered.

FACTS AND ISSUES:

Krebs, A.L.J. -- [The taxpayer] is engaged in the sale and leasing of restaurant equipment.

The taxpayer, headquartered in . . . , Michigan, registered with the Department of Revenue by filing an Application for Certificate of Registration received on November 5, 1986. The registration resulted from the Department's prior inquiry as to the taxpayer's business activities in Washington which also brought about the taxpayer's reporting of its income from leasing and sales in Washington.

Based upon the taxpayer's reported income (subject to future verification) for the period from October 1, 1983 through December 31, 1986, the Department issued Tax Assessment No. . . . on

June 23, 1987 asserting excise tax liability in the amount of \$ . . . , interest due of \$ . . . and penalty due of \$ . . . for a total sum of \$ . . . . The taxpayer made payment on September 8, 1987 in the amount of \$ . . . which included \$ . . . additional interest because payment of the tax assessment was not made by the due date of July 23, 1987. It is noted that the late payment penalty of 10% (\$ . . . ) on the excise tax assessment liability only per RCW 82.32.050 was not imposed by the Department.

The taxpayer requests waiver of the penalty (\$ . . . ) and the additional interest (\$ . . . ) because of the statement in WAC 458-20-228 (Rule 228) that "the extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the convenience of the Department." The taxpayer supports this request for waiver by stating in its petition that:

The procedure which our company has been using in reporting and remitting our back tax liabilities in most states has been to send the appropriate returns and payment for the tax liability as soon as we have reviewed the records and calculated the tax. We appreciated the efforts of Mr. Wolfinger in requesting only a schedule of our leasing activity, but when the audit report was sent to us every calculation needed to be rechecked. The due date of the tax assessment was the month of our company's audit, and we also had summer vacations of employees scheduled, therefore we were not able to completely review the audit and take advantage of the waiver of penalty.

If we had been able to follow our regular procedure in remitting our tax liability at the initial time of calculation, we would not have accrued as much interest and the penalty may have been completely waived.

The issue is whether the interest and penalty can be waived under the above-described circumstances.

#### DISCUSSION:

WAC 458-20-101 (Rule 101) in pertinent part provides:

(18) Penalties for noncompliance. The law provides that it shall be unlawful for any person to engage in any business without having obtained a certificate of registration. To do so constitutes a gross misdemeanor.

It is each individual's responsibility to be aware of any tax implications resulting from activities conducted within this state. Department of Revenue personnel are available to answer any inquiries pertaining to such matters and information is readily available. The taxes imposed by the Revenue Act are of a self-assessing nature and the burden is placed upon a business to correctly inform itself of its obligations under the Act.

Thus, the taxpayer should have filed the Application for Certificate of Registration in 1983 and filed regular excise tax returns thereafter. Had this happened, the taxpayer would have avoided being delinquent and the resultant build-up of past due taxes and consequential penalties and interest.

The statute as recited below makes mandatory the assessment of penalties upon delinquent payment of taxes.

RCW 82.32.090 provides:

If payment of any tax due is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not received within thirty days after the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within sixty days after the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax . . . (Emphasis supplied.)

The legislature, through its use of the word "shall" in RCW 82.32.090, has made the assessment of the penalty mandatory. The mere fact of nonpayment within a specified period of payment requires the penalty provisions of RCW 82.32.090 to be applied.

In this case, payment of the taxes due from October 1983 through December 31, 1986 were paid beyond sixty days after their respective due dates. Accordingly, the twenty percent penalty provision of RCW 82.32.090 applied.

RCW 82.32.050 similarly in mandatory terms provides for assessment of interest on tax deficiencies.

As an administrative agency, the Department of Revenue is given no discretionary authority to waive any penalties or interest. The only authority to waive or cancel any penalties or interest is found in RCW 82.32.105 which in pertinent part provides:

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 or penalties imposed by this chapter. (Emphasis supplied.)

Administrative Rule WAC 458-20-228 (Rule 228), . . . , states the two situations under which a waiver of interest and the only seven situations under which a waiver of penalties will be considered by the Department. None of the situations apply to the taxpayer. Essentially, the failure of a taxpayer to pay taxes by the due date must be the result of circumstances beyond the control of the taxpayer to warrant waiver of the interest and/or penalties. RCW 82.32.105.

It is unfortunate that the due date of the tax assessment was the month of the taxpayer's internal audit and also that summer vacations of its employees were scheduled. The tax assessment was issued to the taxpayer on June 23, 1987 and payment was due on July 23, 1987. The taxpayer's reasons have no relation to the penalties and interest assessed on delinquent tax payments for the audit period from October 1, 1983 through December 31, 1986. The taxpayer's payment on September 8, 1987 of the total tax assessment required additional extension interest because, contrary to the taxpayer's assertion, it was in no way "for the convenience of the Department." We conclude that the taxpayer's reasons were not circumstances beyond the control of the taxpayer.

The Department recognizes that some businesses do not register because of a misunderstanding or inadvertence. Where a misrepresentation, fraud or intent to evade taxes is found, an additional fifty

percent evasion penalty is assessed under the provisions of RCW 82.32.050. In this case, there was no finding to warrant imposition of the evasion penalty.

For the reasons stated and the applicable law, we must hold that the assessment of interest and delinquent penalties was proper and cannot be waived.

**DECISION AND DISPOSITION:**

The taxpayer's petition is denied.

DATED this 26th day of August 1988.