

Cite as Det. No. 98-184, 18 WTD 227 (1999)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Correction of	)	<u>D E T E R M I N A T I O N</u>
Assessment/Refund of	)	
	)	No. 98-184
	)	
...	)	Registration No. . . .
	)	Notice of Balance Due . . .

[1] RULE 228; RCW 82.32.090(1); 82.32.105(1): LATE-PAYMENT PENALTIES – “ONE-TIME” WAIVER – CIRCUMSTANCES BEYOND THE CONTROL OF THE TAXPAYER – EMPLOYEE ERROR. The Department will waive a late-payment penalty on a one-time basis if the taxpayer’s employee neglects to enclose the check with the excise tax return, and the taxpayer promptly pays the full amount due within 30 days of the due date when the error is discovered.

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:

A sole proprietor seeks the waiver of a late-payment penalty, relying upon the “one-time” waiver provisions of WAC 458-20-228.<sup>1</sup>

FACTS:

Gray, A.L.J. – The taxpayer seeks a “one-time” waiver of a late-payment penalty, relying upon RCW 82.32.090 and WAC 458-20-228(6)(vii) (“Rule 228”). In his petition, the taxpayer said that he filed and paid his February 1998 excise tax return on time, but that the check either was lost or misplaced.

In his petition, he emphasized that the error was an honest mistake. He wrote that he left the completed, signed form with his secretary for her to mail.

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

On the February 1998 return, the taxpayer reported tax due in the amount of \$ . . . . The Department imposed a 5% late payment penalty of \$ . . . . In the notice of balance due, the Department explained why the 5% penalty was imposed, as follows:

We have received your tax return, but no payment was included. This notice is for taxes due plus late penalty of 5% per RCWS [sic] (Laws) 82.32.050 and 82.32.090. Penalties will continue to accrue based on the original due date until payment is received. Payment should be sent to the Revenue office printed on the return envelope enclosed.

On the same date (April 6, or 7, 1998), the Department contacted the taxpayer regarding the lack of payment, the taxpayer mailed a replacement check to the Department. In a letter to him from the Department, dated April 24, 1998, the Taxpayer Account Administration (TAA) notified him that the notice of balance due had been reduced to \$ . . . by applying credit for the February 1998 payment to the March 1998 taxes due. In a separate letter, also dated April 24, 1998, TAA informed the taxpayer that the Department could not waive the penalty on the information available at that time.

#### ISSUES:

Whether the taxpayer is entitled to a “one-time” waiver of the late payment penalty.

#### DISCUSSION:

Late payment penalties are specifically authorized in RCW 82.32.090(1). RCW 82.32.090(1) provides that “[i]f the tax return is not filed by the due date, a 5% penalty will apply.” See also, Rule 228(4)(a). The only authority for waiver of penalties is found in RCW 82.32.105. The provision upon which the taxpayer relies, RCW 82.32.105(1), 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 penalties imposed under this chapter with respect to such tax.

The statute requires that the Department find the failure was the result of “circumstances beyond the control of the taxpayer.” The Department adopted Rule 228 that generally administers the tax administration functions of “returns, remittances, penalties, extensions, interest, and stays of collection.” Rule 228(6) contains the provisions for waiver of penalties. Rule 228(6)(vii)(A) is the provision to which the taxpayer referred in his petition:

(6) The following situations will be the only circumstances under which a cancellation of penalties will be considered by the department:

...

(vii) The delinquency penalty will be waived or cancelled on a one time only basis if the delinquent tax return was received under the following circumstances:

(A) The return was received by the department with full payment of tax due within 30 days after the due date; i.e., within the five percent penalty period prescribed by RCW 82.32.090, and

(B) The delinquency was the result of an unforeseen and unintentional circumstance, not immediately known to the taxpayer, which circumstances will include the error or misconduct of the taxpayer's employee or accountant, confusion caused by communications with the department, failure to receive return forms timely, natural disasters such as a flood or earthquake, and delays or losses related to the postal service.

Based on the facts in this case, we find the late payment penalty may be waived under this provision of Rule 228. We find this because the late payment was made within 30 days of the original due date and the circumstance that caused the delinquency was unforeseen and unintentional.

Based upon the facts presented, we conclude that the penalty imposed in the notice of balance due issued in April 1996 should be canceled pursuant to WAC 458-20-228(6)(b)(vii).

#### DECISION AND DISPOSITION:

The late payment penalty imposed in the notice of balance due . . . is canceled.

Dated this 29th day of October 1998.