

Cite as 3 WTD 51 (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> <u>N</u>
For Correction of Assessment of)	
)	No. 87-115
)	
)	Registration No. . . .
. . . )	Notice of Balance Due,
)	. . .
)	

[1] **RULE 228, RCW 82.32.080:** PENALTY -- LATE PAYMENT -- ABSENCE OF POSTMARKED ENVELOPE. A return is considered timely where there is evidence that the return was mailed by the due date; where the Department has discarded the postmarked envelope; and where the Department employee who processed the return has no clear recollection of the postmarked date.

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:

The taxpayers petition for cancellation of a penalty contained in a "Notice of Balance Due."

FACTS AND DISCUSSION:

Normoyle, A.L.J. (successor to M. Clark Chandler, A.L.J.)--The taxpayer is in the grocery/deli business. His excise tax return for October, 1985, was due on November 25, 1985. The taxpayer and the employee who prepared the return state that it was put in a post office box on November 25, 1985, prior to the scheduled pick-up time. The taxpayer and the employee also state that the post office often picked up the mail at that particular post office box prior to the posted 5:30 p.m. final pick-up. Both the check and the return are dated November 25, 1985.

An employee of the Department first stamped "Received, December 2, 1985" on the return, and later changed it to "Received, November 26, 1985." The Department did not retain the envelope which would have shown the postmark date. A late penalty of five percent was assessed.

The Department employee believes that the return was actually received by the Department on December 2, hence the "Received, December 2, 1985" stamp. She also believes that the postmark was November 26, hence the "Received, November 26, 1985" stamp. However, she has no clear and independent recollection as to the postmark on this particular return.

RCW 82.32.080 states, in pertinent part, that "A return or remittance which is transmitted to the department by United States mail shall be deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it." In prior Determinations, we have held that the mailing of a return will be considered timely where there is evidence that the return was deposited in the mails on the due date; and where the Department has discarded the postmarked envelope. See, e.g., D. 86-256, 1 W T D 191 (1986). In the absence of the envelope or a clear recollection of the actual postmarked date by the Department employee who processed the return, we are constrained to follow the above Determination. We conclude that the return was mailed by the due date.

#### DECISION AND DISPOSITION:

The petition for cancellation of the penalty of \$ . . . , contained in the "Notice of Balance Due" issued March 21, 1986, is granted.

DATED this 22nd day of April 1987.