

Cite as 3 WTD 141 (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 Refund of)	
)	No. 87-159
)	
. . .)	Registration No. . . .
)	Tax Assessment No. . . .
)	

[1] **RULE 228 AND RCW 82.32.105:** PENALTIES OR INTEREST -
- CIRCUMSTANCES BEYOND CONTROL OF TAXPAYER. Lack of
knowledge of a tax obligation does not render
failure to pay taxes "beyond the control" of the
taxpayer within the meaning of RCW 82.32.105 and WAC
458-20-228.

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: Pro Se

DATE OF HEARING: May 12, 1987

NATURE OF ACTION:

The taxpayer petitioned for a refund of penalties and interest
assessed under RCW 82.32.050 and .090.

FACTS:

Normoyle, A.L.J. -- The taxpayer commenced business in 1980.
Prior to that time, she was a hospital employee. When she
began her business, she was unfamiliar with this state's
business taxes. She did not register with the Department of
Revenue nor did she pay business and occupation tax.

In 1986, she learned from her colleagues that she should have
been registered, filing returns, and paying the appropriate
business and occupation tax. Upon being told this, she

applied for a Certificate of Registration, and cooperated with the Department in arriving at her taxable income dating back to the commencement of her business in 1980.

The Department assessed back taxes and added delinquency penalties and interest. The taxpayer does not appeal from the tax assessment itself, but does object to the penalties and interest. The basis for the appeal is that she was unaware of her tax obligation and the failure to pay was, therefore, a circumstance beyond her control; she "voluntarily applied for a business license" as soon as she learned of her duty to register; and she cooperated with the Department.

ISSUE:

Is a taxpayer's lack of knowledge of a tax obligation grounds for waiver of a penalty and interest assessment?

DISCUSSION:

The applicable statutes are summarized below:

RCW 82.32.030 -- Any person engaging in business is required to register with the department.

RCW 82.32.100 -- When a taxpayer fails to make any return as required, the department shall proceed to obtain facts and information on which to base a tax assessment. The Department "shall add the penalties provided in RCW 82.32.090."

RCW 82.32.090 -- If any tax due is not received by the department of revenue by the due date, there shall be assessed a penalty. The penalty is between 5 and 20%, depending on how overdue the payment is.

RCW 82.32.050 -- If a tax has been paid less than properly due, the department shall also add interest at the rate of 9% per annum. If the taxpayer intentionally evaded the tax, a penalty of 50% of the tax shall be assessed.

RCW 82.32.105 -- If the failure to pay a tax when due is the result of circumstances beyond the control of the taxpayer, the department shall waive interest and penalties. The statute also directs the Department to enact an administrative rule to implement this law.

Washington Administrative Code (WAC) 458-20-228 sets forth seven situations which "constitute the only circumstances

under which a cancellation of penalties will be considered by the Department." Although we believe that the failure of this taxpayer to register and pay taxes when due was the result of a good faith lack of knowledge of her tax obligation, that defense is not one of the circumstances listed in the Rule. Nor is voluntary registration and cooperation with the Department. Therefore, we are unable to grant the relief requested.

Washington's excise taxes are of a self-assessing nature. Although the Department has seventeen regional offices around the state to assist the taxpayers, and although the Department maintains an Office of Taxpayer Information and Education, the ultimate responsibility for registering with the Department and properly reporting taxes rests on persons in business. The Department is not required to make sure that every business knows its tax obligations before it can assess taxes.

DECISION:

The taxpayer's petition for a refund is denied.

DATED this 15th day of May 1987.