

Cite as 3 WTD 419 (1987)

BEFORE THE INTERPRETATION AND APPEALS SECTION
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. 87-251
)	
. . .)	Registration No. . . .
)	
)	

RULE 228: PENALTIES - LATE PAYMENT - WAIVER - HEAVY
WORKLOAD. A heavy workload resulting from an
employee's misconduct is not a circumstance beyond the
taxpayer's control for purposes of obtaining a waiver of
late payment penalties.

TAXPAYER REPRESENTED BY: . . .

DATE OF HEARING: June 23, 1987

NATURE OF ACTION:

The taxpayer petitioned for a refund of late payment penalties incurred when the third and fourth quarter tax returns for 1986 were filed late.

FACTS AND ISSUES:

Potegal, A.L.J. -- The taxpayer is a realty company. Among other things it is engaged in property management services. In the late summer of 1986 its bookkeeper of four years left earlier than planned to have her baby. No one was trained to do her job. On September 15, 1986 the broker began doing the books. The broker continued to be responsible for managing the taxpayer's two offices employing 31 people. It soon became apparent that the bookkeeper had been stealing money, primarily from property management operations. The taxpayer managed 150 properties. For each property, both a tenant account and a landlord account were maintained. Each of these accounts had to be audited to determine where and how much the losses were. This took a tremendous amount of work over several months. In addition, the Department of Licensing came in to do their own audit. This took up several more months.

With all this going on the taxpayer was not able to timely file its excise tax returns. The return for the third quarter of 1986 was due October 30, 1986 and filed February 11, 1987. The return for the fourth quarter of 1986 was due January 31, 1987 and filed June 2, 1987.

In view of the fact that other government agencies relieved the taxpayer of liability for late payment penalties and because late payment was not due to neglect, the taxpayer asks for relief from late payment penalties imposed by the Department of Revenue.

DISCUSSION:

RCW 82.32.090 states in part:

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. No penalty so added shall be less than two dollars. (Emphasis ours.)

This statute mandates that late payment penalties be assessed when taxes are not paid by the due date. Another statute permits the cancellation or waiver of penalties under certain conditions. RCW 82.32.105 provides in part:

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.

WAC 458-20-228 is the rule promulgated by the Department covering the waiver or cancellation of penalties. It states in part:

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

1. The return was filed on time but inadvertently mailed to another agency.

2. The delinquency was due to erroneous information given the taxpayer by a department officer or employee.

3. The delinquency was caused by death or serious illness of the taxpayer or his immediate family, or illness or death of his accountant or in the accountant's immediate family, prior to the filing date.

4. The delinquency was caused by unavoidable absence of the taxpayer, prior to the filing date.

5. The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

6. The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office, in writing, for proper forms and these were not furnished in sufficient time to permit the completed return to be paid before its delinquent date.

7. 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 taxpayer has never been delinquent filing a tax return prior to this occurrence, unless the penalty was excused under one of the preceding six circumstances, and

c. 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, and delays or losses related to the postal service.

d. The delinquency will be waived under this circumstance on a one-time basis only. (Emphasis ours.)

The Department as an administrative agency cannot extend relief beyond that authorized by law or by administrative regulation. The situations must be such as to warrant a finding that the failure of a taxpayer to pay any tax by its due date resulted from circumstances beyond the control of the taxpayer. The circumstances in this case do not fall within any of the enumerated situations in WAC 458-20-228. Accordingly, we find that the

delinquent payment of taxes did not result from circumstances beyond the control of the taxpayer.

DECISION:

The taxpayer's petition is denied.

DATED this 22nd day of July 1987.