

Cite as Det. No. 98-054, 18 WTD 23 (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 of)	
)	No. 98-054
)	
...)	Registration No. . . .
)	Notices of Balance Due . . . &
)	. . .
)	

RULE 228 (6): CANCELLATION OR WAIVER OF LATE PAYMENT PENALTIES – COMPUTER FAILURE. Late payment penalties will not be cancelled or waived when the taxpayer’s computer “crashed” a month prior to its next due excise tax return and where back-up records were available.

NATURE OF ACTION:

Taxpayer appeals late-payment penalty on basis that its computer “crashed” a month before its next excise tax return was due.¹

FACTS:

Munger, A.L.J. -- The taxpayers, . . . appeal late-payment penalties that were automatically assessed when their October and November 1996 excise tax returns were filed on December 29, 1996.² A 10% penalty was assessed for the October 1996 return and a 5% penalty for the November 1996 return per RCW 82.32.090(1). They explain that their computer system, which also included their store’s point of sale system “crashed” in mid-October 1996. They did keep their invoices organized by month and were eventually able to reinput the sales data after their hard drive was replaced.

ISSUES:

Whether the failure of the taxpayer’s computer system is a basis for canceling late-payment penalties.

DISCUSSION:

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

² Their December 1996 return was also filed late on February 13, 1997, but the resulting 5% late penalty was not appealed.

WAC 458-20-228(6), (Rule 228), is the administrative rule dealing with the cancellation of penalties:

(6) **Waiver or cancellation of penalties.** The department will waive or cancel the penalties imposed under RCW 82.32.090 and interest imposed under RCW 82.32.050 upon finding that the failure of a taxpayer to pay any tax by the due date was due to circumstances beyond the control of the taxpayer. The department has no authority to cancel penalties or interest for any other reason. Penalties will not be canceled merely because of ignorance or a lack of knowledge by the taxpayer of the tax liability.

...

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

...

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

...

(vii) The delinquency penalty will be waived or canceled 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.

In the present case, the major computer failure can be considered an "other casualty" of the taxpayer's business records. The question then is whether the over one month delay in filing the October 1996 return (which was due November 25, 1996) and the 3 day delay in filing the November 1996 return (due December 26, 1996) was justified given the computer failure.

We can not consider the late payment of the November 1996 return justified, given that the sales upon which it was based all occurred after the computer's failure in the preceding month.

The October 1996 return, however is a different matter. The computer's hard drive failed in the middle of that month. It is reasonable to assume that there could be delays in having all the October information as quickly available as usual. The October return, however, was not due until November 25, 1996. Given that there were invoices to work from, the taxpayers had over a month from the time the computer crashed in mid-October to the time the return was due on November 25, 1996. This was adequate time in which to prepare a return for which the taxpayers did have back up records. Alternatively, given that the taxpayers had ample warning

of the problem before the due date, they could have requested a filing extension under WAC 458-20-228(9). While we are sympathetic with the nature of the computer problem, Rule 228 does not allow for cancellation of the late-payment penalties under these circumstances.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

Dated this 31st day of March 1998.