

Cite as 3 WTD 125 (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. 87-150
)	
. . .)	Registration No. . . .
)	Notices of Balance Due
)	

[1] **RULE 228, RCW 82.32.090, .105:** PENALTIES. A twenty percent penalty for a tax payment made more than 30 days after the due date may not be waived under situation number 7 of Rule 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: . . .

DATE OF HEARING: July 21, 1986

NATURE OF ACTION:

The taxpayer petitioned for a correction of penalty assessments covering Quarters 1, 2, and 3 of 1985.

FACTS:

Normoyle, A.L.J. (successor to Chandler, A.L.J.) -- The taxpayer was assessed a 20 percent penalty for late payment of three excise tax returns, as stated above. The payment for each quarter was made more than sixty days after the respective due dates. The taxpayer believes that the failure to file these three returns and pay the taxes was the result of unintentional circumstances, beyond the taxpayer's control. In the taxpayer's words, this is what happened:

The person responsible for filing (our) state tax returns retired in early 1985. The company hired a

person to replace the retired accountant and the replacement person was assigned the responsibility for preparing state returns.

The replacement person unexpectedly quit after three months of service with the company, without advising the company of uncompleted tasks, work in progress and due dates for filing and paying state taxes. (We) determined that the company had not complied with Washington's filing requirements Immediately after determining that Washington (B&O tax) returns were delinquent . . . the company arranged for the preparation and filing of those returns. (We have) since that date complied fully with Washington tax law and timely filed and paid the appropriate taxes.

ISSUE:

May the penalty assessments be waived?

DISCUSSION:

If taxes are paid more than sixty days after the due date, "there shall be assessed a total penalty of twenty percent of the tax." RCW 82.32.090. Here, the tax payments for Quarters 1, 2, and 3 of 1985 were each made more than sixty days after their due date.

The only statutory authority which the Department has to waive interest or penalties is RCW 82.32.105, which states 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 implements the above statute. Seven situations are set forth which "constitute the only circumstances under which a cancellation of penalties will be considered by the department." Although none apply to the facts of this case,

we will discuss briefly the one upon which the taxpayer relies. Number 7 reads as follows:

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.

The taxpayer believes that paragraph c is controlling. However, number 7 is in the conjunctive; the requirements of all four of the sub-parts must be met. Here, paragraph a. does not apply, as all three payments were made more than thirty days late. Therefore, we need not determine whether the requirements of paragraphs b-d were met.

DECISION AND DISPOSITION:

The taxpayer's petition is denied. The Notices of Balance Due in the amounts of \$. . . , for a total sum of \$. . . are due for payment by June 8, 1987.

DATED this 8th day of May 1987.