

Cite as 3 WTD 223 (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. 87-189
)	
)	Registration No. . . .
. . .)	Notices of Balance Due
)	
)	

[1] **RULE 228 AND RCW 82.32.105:** PENALTY. Under situation #7 of Rule 228, the Department may not waive a late payment penalty, when the taxpayer has had prior unexcused delinquencies.

[2] **RULE 228 AND RCW 82.32.105:** PENALTY -- CIRCUMSTANCE BEYOND TAXPAYER'S CONTROL. Even though a state agency fails to make its contract payments in a timely manner to a taxpayer for services rendered, the failure of the taxpayer to pay excise taxes will result in a penalty assessment.

TAXPAYER REPRESENTED BY: Pro Se

DATE OF HEARING: May 27, 1987

NATURE OF ACTION:

The taxpayer petitions for cancellation of penalties for late tax payments.

FACTS AND ISSUES:

Normoyle, A.L.J. -- The taxpayer is in the health care business. Approximately 40 percent of his income is derived from the state of Washington for services provided by the taxpayer to DSHS and in connection with the workers' compensation statutes. Frequently, the state's payments are months delinquent.

According to the taxpayer, the failure of the state to make its payments on time caused a severe financial hardship on him, in terms of his office cash flow. As a consequence, he paid his business and occupation taxes late.

The Department assessed penalties for the late payments. The taxpayer believes that the failure to pay by the due date was the result of circumstances beyond his control -- the failure of the state to pay him on time. The issue is whether or not the penalties may be waived.

DISCUSSION:

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 late the payment is. RCW 82.32.090.

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.

[1] 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 b. does not apply, as a review of the taxpayer's file shows that he has had at least twenty unexcused delinquencies, dating back to 1977.

[2] Even if paragraph b. did apply, we would still be required to deny the petition. Determinations by administrative law judges are to be "just and lawful and in accordance with the rules, principles, and precedents established by the Department of Revenue." WAC 458-20-100(12). The precise issue raised by this taxpayer has been argued before. The Department's position in that prior case was that the penalty may not be waived even though the taxpayer has difficulty making the payment because another state agency was late in its payments to the taxpayer.¹

DECISION AND DISPOSITION:

The taxpayer's petition for refund of the Notices of Balance Due is denied.

¹ It makes no difference that the state is the contracting party with the taxpayer. Our holding would be the same even if the contracting party were a private business. In other words, a person's tax liability is an absolute; it is no defense that other third parties owe the taxpayer money with which the taxes could have more easily been made.

DATED this 4th day of June 1987.