

Cite as 6 WTD 231 (1988)

BEFORE THE INTERPRETATION AND APPEALS DIVISION
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. 88-288
)	
. . .)	Registration No. . . .
)	Forest Tax Assessment
)	No. . . .

[1] **RULE 228:** PENALTY -- LATE FILING OF RETURN -- SERIOUS ILLNESS. The serious illness waiver provision is limited; the illness must occur in a manner that shows urgency so as to eliminate a reasonable time within which to comply with the filing requirements. Waiver denied where two and one-half months elapsed between the serious injury of an accountant's brother and the due date of a tardily filed tax return.

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: April 27, 1988

NATURE OF ACTION:

Petition for refund of penalty assessed for late filing of a tax return.

FACTS AND ISSUES:

Dressel, A.L.J. -- [Taxpayer] is engaged in the business of harvesting timber. It has been assigned a quarterly frequency for purposes of filing its forest tax returns. No such return was filed for the third quarter of 1987. Subsequently, on January 5, 1988 the Department of Revenue (Department) issued the above-captioned assessment for forest tax in the amount of \$ In addition a 20% late-payment penalty of \$. . . was imposed which made the total owed \$ That amount has been paid in full.

After having some difficulty with several previous forest tax returns because of inexperience as a new business, the taxpayer arranged with private accountant . . . to file its forest tax returns. In explaining the circumstances of the late payment Mr. . . writes:

On August 8, 1987 my brother . . . was hit by a train in . . . (newspaper article attached). Since then, especially for the first couple of months my life has been in a turmoil. We were closest in age, therefore very close. He has been in a coma for six months now, and has been moved from Everett to Seattle in October, and recently from Seattle back to This problem, coupled with two weeks at the end of October to help with the relocation, caused me to forget the quarterly. You may wonder how I could have forgotten an amount so large, but I had no idea whatsoever of the size of the liability, nor did [taxpayer]. Somehow the quarterlies got put back into the file and forgotten.

I must say that this problem is completely my fault. . . . I didn't discuss my personal and family problems when I called the Forest Tax Department and I wasn't intending on it, but my brother has been on my mind more than my job over the past six months, and this is directly associated with the penalty. . . .

After the accident, the accountant had to look after his brother's wife and daughter who were also injured in the accident. The wife was seven months pregnant at the time which further complicated the situation. In addition, the major responsibility for finding care for . . . was thrust on the shoulders of . . . as well. At the time the tax return was due on October 31, the accountant was busily involved in making decisions for the future care of his brother as well as assisting his brother's attorney in an investigation relative to a lawsuit filed on . . . 's behalf. During this entire time, . . . also was largely responsible for ferrying family members to visit . . . at hospitals in Everett and Seattle.

Under these circumstances the taxpayer has asked that the late-payment penalty for the third quarter of 1987 be excused.

DISCUSSION:

Under the authority of RCW 84.33.096, the general administrative provisions of RCW 82.32 are extended to the forest excise tax. RCW 82.32.105 deals with the waiver or cancellation of interest or penalties. It reads:

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. . . .

The rules prescribed by the Department for the waiver or cancellation of penalties are found in WAC 458-20-228 (Rule 228). That administrative rule reads in part:

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.

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

. . . .

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.* (Italics ours.)

[1] Had the injury to the accountant's brother occurred in reasonable proximity, time-wise, to the due date of the subject tax return, we could consider waiver under numbered paragraph three as cited above. Here, however, there was more than a two and one half month gap between the brother's injury and the due date of the tax return. The injury took place August 8; the tax return was due October 31. This was a total of 84 days. While we are very sympathetic with the accountant's situation, we think such a large interval of time between the tragic event and the tax due date makes it impossible to waive the penalty. The cited provision of Rule 228 is not intended to have indefinite application. It is meant to give relief in emergency situations where death or serious illness has occurred at a point much nearer to the due date than is the case here. How near is a question that may vary according to the situation presented. Two and one-half months, however, is an interval which exceeded the emergency nature intended by the rule.

We find that the failure to timely file the subject tax return was not the result of circumstances beyond the taxpayer's control.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 26th day of July 1988.