

Cite as 3 WTD 415 (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. 87-250
)	
. . .)	Registration No. . . .
)	Tax Assessment No. . . .
)	

[1] **RULE 228, RCW 82.32.050:** INTEREST -- ORAL REPRESENTATION
-- A taxpayer will not be relieved of tax or interest liability because of a claimed oral representation of the Department.

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 14, 1987

NATURE OF ACTION:

The taxpayer petitioned for a refund of interest paid.

FACTS AND ISSUES:

Normoyle, A.L.J. -- The taxpayer performs government contracting. The taxpayer was audited for the period from October 15, 1983, through March 31, 1986. The audit resulted in a B&O reclassification from Retailing to Government Contracting. Interest for unpaid taxes was assessed. The taxpayer paid the interest and seeks a refund.

The taxpayer states, as the basis for its petition, that:

(taxpayer) attempted to determine the proper category under which to report its revenue on that project from the beginning of the project. Numerous phone calls were made to the Department of Revenue, all of which resulted in the (taxpayer) being told to report under the Retailing classification of the business and occupation

tax. This was done consistently throughout the term of the project.

. . .

We do not have the name of the individual person who told (us) to report in that fashion. However, we can assure you that (we) only reported in the fashion in which (the taxpayer) was instructed to report. We can also tell you that when (the auditor) was in our offices . . . during the audit, he was not clear with regard to how the money should have been reported until he had several consultations with his superiors in Olympia.

The issue is whether an interest assessment may be cancelled under these circumstances.

DISCUSSION:

RCW 82.32.050 states, in pertinent part:

If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and . . . shall add thereto interest at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until date of payment.

The only statutory authority which the Department has to waive interest is RCW 82.32.105. That statute provides for a waiver only if the failure to properly pay taxes "was the result of circumstances beyond the control of the taxpayer." The statute also directs the Department to enact an administrative rule to implement this law.

Washington Administrative Code 458-20-228 (Rule 228) states, in pertinent part:

The following situations will constitute circumstances under which a waiver or cancellation of interest upon assessments pursuant to RCW 82.32.050 will be considered by the department:

1. The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department.
2. Extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department.

Here, the representation was not in writing. The Department's established policy regarding oral representations is contained in Excise Tax Bulletin 419.32.99. In pertinent part, it states:

The Department of Revenue gives consideration, to the extent of discretion vested in it by law, where it can be shown that failure of a taxpayer to report correctly was due to written instructions from the department or any of its authorized agents. The department cannot give consideration to claimed misinformation resulting from telephone conversations or personal consultations with a department employee.

There are three reasons for this ruling:

- (1) There is no record of the facts which might have been presented to the agent for his consideration.
- (2) There is no record of instructions or information imparted by the agent, which may have been erroneous or incomplete.
- (3) There is no evidence that such instructions were completely understood or followed by the taxpayer.

While we have no reason to doubt the veracity of the taxpayer, we are constrained to follow the administrative rule and excise tax bulletin.

DECISION AND DISPOSITION:

The taxpayer's petition for a refund is denied.

DATED THIS 22nd day of July 1987.