

Cite as 3 WTD 473 (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. 87-264
)	
. . . )	Registration No. . . .
)	Notice of Balance Due
)	
)	

[1] **RULE 228 AND RCW 82.32.105:** PENALTY -- LATE PAYMENT OF TAX DUE -- BEYOND CONTROL OF TAXPAYER -- TAX RETURN FORMS NOT TIMELY FURNISHED. It is beyond the control of the taxpayer if the Department has a reasonable time to mail tax returns but does not do so with sufficient time to permit the completed return to be paid before its delinquent date.

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: . . .

NATURE OF ACTION

Petition for waiver of five percent penalty assessed because of late payment of tax due.

FACTS AND ISSUES

Krebs, A.L.J. -- . . . (taxpayer) is engaged in the florist business.

The taxpayer registered with the Department of Revenue on December 31, 1986.

In an envelope postmarked January 31, 1987, a Saturday, (the taxpayer submitted a photocopy of the envelope), the Department of Revenue mailed to the taxpayer a Combined Quarterly Excise Tax Return for the period of October 1 through December 31, 1986 (Q4-86). The tax return has the notation: "This return is due January 31, 1987." The taxpayer received the return on Monday, February 2, 1987. The taxpayer completed the tax return and mailed it with payment of \$864.22 for the tax to the Department on Thursday, February 5, 1987. The Department received it on Monday, February 9, 1987.

On April 10, 1987, the Department issued a Notice of Balance Due stating the tax due was \$ . . . (the taxpayer paid \$ . . . ) and imposed a 5% penalty of \$ . . . for late payment. The balance due of \$ . . . (\$ . . . penalty plus \$ . . . underpayment of tax) remains unpaid.

The taxpayer seeks waiver of the 5% penalty on the basis that she received the tax return on February 2, 1987 when the taxes were due January 31, 1987.

The issue is whether the penalty should be waived under the above described circumstances.

#### DISCUSSION

[1] The only authority to cancel penalties is found in RCW 82.32.105 which allows the Department to waive or cancel penalties if the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer. That statutory provision also requires the Department to prescribe rules for the waiver or cancellation of penalties.

The administrative rule which implements RCW 82.32.105 is WAC 458-20-228 (Rule 228), . . . . We find that situation 6 applies to the taxpayer's situation, and it states:

6. The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office, in writing, for proper forms and these were not furnished in sufficient time to permit the completed return to be paid before its delinquent date.

In this case, the taxpayer registered with the Department on December 31, 1986. Returns are mailed to the taxpayers who are placed on a quarterly reporting basis during the last week preceding the end of the quarterly reporting period. The taxpayer was placed on a quarterly reporting basis and would have received the return during the week ending December 31, 1986 except for the fact that she registered on that date. As a result, the department had to mail the return outside of its usual mailing time after processing the registration. Furthermore, the Department was undergoing a change to the Uniform Business Identification (UBI) system at that time which caused delays. The postmarked envelope shows that the Department mailed the return on January 31, 1987. The return, with payment, was due on January 31, 1987 which made it impossible for the taxpayer to be timely in making a remittance. The taxpayer received the return on February 2, 1987 and promptly completed the return and mailed it on February 5, 1987.

We believe that the taxpayer's registration on December 31, 1986 was a timely application in writing to receive the proper forms in sufficient time to permit her to complete the return with payment before its delinquent date after January 31, 1987. Unfortunately, the Department did not furnish the forms in sufficient time before January 31, 1987. Accordingly, the taxpayer's situation falls within Rule 228's situation number 6 as a circumstance beyond the control of the taxpayer. This authorizes the penalty to be cancelled.

Furthermore, under the lex de minimus doctrine (the law does not deal with trifles), the three cent underpayment of tax is waived.

#### DECISION AND DISPOSITION

The taxpayer's petition is granted. The Notice of Balance Due dated April 10, 1987 is withdrawn.

DATED this 7th day of August 1987.