

Cite as Det. No. 98-166, 18 WTD 90 (1999)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 98-166
)	
...)	Registration No. . . .
)	FY. . . /Audit No. . . .
)	
)	

- [1] RULE 228; RCW 82.32.105: PENALTY WAIVER -- SERIOUS ILLNESS -- FAMILY. The late-payment penalty was waived when serious illness of the father (of taxpayer who kept the books) caused the delinquency.
- [2] RULE 228; RCW 82.32.105: INTEREST WAIVER -- SERIOUS ILLNESS. Interest will not be waived unless the Department caused the late payment.

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.

NATURE OF ACTION:

A husband and wife request the waiver of penalties on their business.¹

FACTS:

M. Pree, A.L.J. -- . . . (taxpayers or individually as husband or wife) ran an auto repair business. The Department of Revenue (Department) reviewed the taxpayers' books and records for the period from January 1, 1992 through December 31, 1995. On August 8, 1997 the Department's Audit Division issued the above referenced assessment. . . . The notice specified a due date of September 8, 1997. The taxpayer did not respond within thirty days and a late payment penalty was added.

The wife, who had kept the taxpayer's books and handled the audit, states her father had some serious health problems, and she needed to temporarily reside with him out-of-state. She left Washington to care for her father toward the end of the audit. She left a forwarding address, but

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

apparently the street of her father's residence was renumbered. In any event, she states she did not receive the audit report.

In addition, the husband had been under constant care for heart problems and a liver disease. He had been put on Social Security Disability at the time of the assessment.

The assessment was referred to the Compliance Division for collection. The revenue agent called the taxpayer's business.² The husband stated that was the first time he learned about the assessment. He reviewed the assessment, then paid the tax and requested we "waive the interest and penalties."

ISSUES:

1. May we waive the penalties?
2. May we waive the interest?

DISCUSSION:

The Department is required to add a penalty of 10% if payment of any tax is not received by the due date specified in the notice. RCW 82.32.090(2). Because the taxpayer did not pay the assessment by September 8, 1997, the late penalty of 10% was assessed. In addition, RCW 82.32.050 requires the Department to add interest to tax assessments. Therefore, interest was added to the taxpayer's assessment.

[1] If the Department finds a taxpayer failed to pay a tax by the due date as a result of circumstances beyond the control of the taxpayer, the Department will waive or cancel the penalties. RCW 82.32.105(1). The Department considers the serious illness of the taxpayer (or the taxpayer's accountant), or illness of his or her immediate family circumstances beyond the taxpayer's control, if the illness caused the delinquency. WAC 458-20-228(6)(b)(iii).

We find the illness of the wife's father caused the delinquency. In addition to being the taxpayer, she served as the accountant-representative during the audit. She had to leave because of her father's illness, and was unable to manage the tax affairs from out-of-state. Ultimately, she turned the responsibilities over to the next generation. The tax was paid within two weeks after they learned about it. Because the delinquency was due to a circumstance beyond the control of the taxpayer, the penalty will be waived.

² Due in part to the husband's health problems and the wife's absence to care for her father, the taxpayers have now turned the business over to their son and daughter-in-law who registered the business as a partnership, and now represent the taxpayer.

[2] Interest however is another matter. The illness did not cause the interest to accrue. In fact, most of the interest accrued prior to the illness. Interest may only be waived if:

(a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

RCW 82.32.105(3).

The failure to pay the tax was not the result of any action of the Department. We cannot waive the interest. The taxpayer's petition is denied on this issue.

DECISION AND DISPOSITION:

The taxpayer's petition is granted in part. The penalty will be waived. The interest, however, is due.

Dated this 30th day of September 1998.