

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. 87-236
	)	
	)	Registration No. . . .
. . .	)	
	)	

[1] **RULE 228, RCW 82.32.090, .105:** PENALTIES. A 20 percent penalty for a tax payment made more than 30 days after the due date may not be waived under situation 7 of Rule 228.

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 23, 1986

NATURE OF ACTION:

The taxpayer petitioned for a refund of a penalty assessment.

FACTS AND ISSUES:

Normoyle, A.L.J. (successor to Chandler, A.L.J.) -- The taxpayer's 1985 annual excise tax return was due January 31, 1986. Apparently due to accountant error, or confusion concerning an address change, the return was not filed until after the Department of Revenue had written to the taxpayer, on May 7, 1986. The letter indicated that the return was delinquent and that a twenty percent penalty was being assessed. The first sentence of the letter stated that "You were previously notified that our records indicate the above tax reports have not been received."

The taxpayer's petition for a refund states that the letter from the Department was incorrect--the taxpayer had not been

previously notified of the delinquency. On that basis, the taxpayer petitions for a waiver of the penalty.

DISCUSSION:

If taxes are paid more than sixty days after the due date, "there shall be assessed a total penalty of twenty percent of the tax." RCW 82.32.090. Here the tax payments for 1985 were made more than sixty days after the due date.

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.

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." None apply to the facts of this case, although we will discuss briefly number 7, which 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.

Arguably, paragraph c. is applicable, if the accountant failed to file the returns when due. However, number 7 is in the conjunctive; the provisions of all four of the sub-parts must be met. Here, paragraph a. does not apply, as the payment was made more than thirty days late. Therefore, we are unable to waive the penalty.

DECISION AND DISPOSITION:

The taxpayer's petition for a refund is denied.

DATED this 14th day of July 1987.