

Cite as Det. No. 15-0109, 35 WTD 132 (2016)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Refund of ) D E T E R M I N A T I O N  
  )  
  )  
  No. 15-0109  
  )  
  )  
  Registration No. . . .  
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WAC 458-20-228; RCW 82.32.105(1) – CANCEL LATE-PAYMENT PENALTY – PAYMENT SENT TIMELY, BUT IN ERROR TO ANOTHER WASHINGTON STATE AGENCY. WAC 458-20-228(9)(a)(ii) specifically provides that inadvertently sending a timely payment to another agency constitutes a “circumstance beyond the control of the taxpayer”, which allows for cancellation of late-payment penalty.

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.

Lewis, A.L.J. – A taxpayer appeals a delinquent payment penalty resulting from sending payment timely, but to another Washington Government Agency. We grant Taxpayer’s refund request.<sup>1</sup>

**ISSUE:**

Do the provisions of RCW 82.32.105(1) and WAC 458-20-228 (“Rule 228”) allow cancellation of a delinquent payment penalty when payment of an assessment is made timely, but inadvertently sent to another Washington Government Agency?

**FINDINGS OF FACT:**

[Taxpayer] earned income in Washington from providing, underwriting, abstracting, and escrowing services. The Department of Revenue’s (Department) Audit Division audited Taxpayer’s business records for the period January 1, 2010 through December 31, 2013. On December 11, 2014, the Department issued a \$ . . . assessment.<sup>2</sup> The assessment contained a prominent statement that:

This is your Tax Assessment

Pay on or Before January 12, 2015

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

<sup>2</sup> The \$ . . . assessment consisted of \$ . . . tax, \$ . . . interest, and \$ . . . assessment penalty.

If full payment is not made by the due date, additional penalties and interest will be added.

The Department sent the assessment to Taxpayer's address of record. Taxpayer received the assessment. On January 5, 2015, Taxpayer inadvertently sent a check in payment of the full amount of the assessment (\$ . . . ) to the Washington Insurance Commissioner's Office – 5000 Capitol Blvd. – Tumwater, Washington 98501.<sup>3</sup>

The Insurance Commissioner's Office returned the check on January 7, 2015, with a letter stating that the check was sent to the Washington State Office of the Insurance Commissioner in error. On January 16, 2015, Taxpayer mailed the same check, made out to the Insurance Commissioner, to the Department of Revenue – PO Box 47464 – Olympia, Washington 98504-7464.<sup>4</sup> The Department cashed the check even though it was made out to the Insurance Commissioner's office.

On January 27, 2015, the Department sent Taxpayer notice of a \$ . . . delinquent penalty, with a due date of February 6, 2015. The Department's records show that the Department received Taxpayer's timely payment of the \$ . . . delinquent penalty on February 2, 2015.

Taxpayer disagreed with the assessment of the delinquent penalty. On April 1, 2015, Taxpayer filed a petition requesting refund of the \$ . . . delinquent penalty. Taxpayer's petition argued that the delinquent penalty was assessed in error and the penalty should be refunded because:

- The payment to the State was timely. It is only that the payment was inadvertently sent to the wrong Department.
- Taxpayer issue had not previously occurred and was corrected immediately upon notification.

#### ANALYSIS:

RCW 82.32.090(2) provides:

If the department of revenue determines that any tax has been substantially underpaid, there is assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there is assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, there is assessed a total penalty of twenty-five percent of the amount of the tax under this subsection

<sup>3</sup> Taxpayer provided: 1) a copy of its check number . . . dated January 5, 2015 and 2) a copy of a FedEx delivery receipt showing that FedEx picked the envelope up on January 6, 2015.

<sup>4</sup> Taxpayer supplied a copy of the USPS tracking that shows that the item was delivered January 20, 2015.

The penalty imposed by RCW 82.32.090(2) is mandatory. However, RCW 82.32.105(1) provides that the Department will waive penalties if the circumstances surrounding the late-payment were the result of a circumstance beyond the taxpayer's control:

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 penalties imposed under this chapter with respect to such tax.

RCW 82.32.105(4) provides that:

The department of revenue shall adopt rules for waiver or cancellation of penalties and interest imposed by this chapter.

The Department published WAC 458-20-228 ("Rule 228") to administer the waiver of penalties. Rule 228(9) states:

(a) **Circumstances beyond the control of the taxpayer.** The department will waive or cancel the penalties imposed under chapter [82.32](#) RCW upon finding that the underpayment of the tax, or the failure to pay any tax by the due date, was the result of circumstances beyond the control of the taxpayer.

...

(ii) The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension. Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following.

(A) The return payment was mailed on time but inadvertently sent to another agency.

Thus, for a taxpayer to qualify for a penalty waiver because a payment was addressed incorrectly, the payment must not only have been mailed on time, but must have been sent to another agency. Taxpayer has provided documentation that it sent payment of the assessment timely to another agency, the Office of the Insurance Commissioner. Based on the evidence presented, we conclude that Taxpayer meets the requirements for cancellation of the delinquent penalty.

#### DECISION AND DISPOSITION:

Taxpayer's request for refund is granted.

Dated this 29th day of April, 2015.