Cite as Det. No. 91-313R, 12 WTD 45 (1993).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In The Matter of the Petition For Correction of Assessment and Refund of	)	D E T E R M I N A T I O N
	)	No. 91-313R
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .

[1] RULE 228: INTEREST -- PENALTIES -- IGNORANCE OF TAX OBLIGATION. Ignorance of a tax obligation is not an excuse that will justify waiving penalties and interest. Taxpayers who are doing business in a state have an obligation to inform themselves of the tax consequences of their actions.

[2] RULE 175: SALES/USE TAX -- SALES TO COMMON CARRIERS -- NECESSITY TO COLLECT. The provision in Rule 175 that allows vendors to take an exemption certificate from a common carrier for retail sales does not apply to the altering or repairing of real property. The contractor must collect retail sales tax on such work. **NOTE: THIS DETERMINATION OVERRULES A PORTION OF DET. NO. 91-313, 12 WTD ___ (1993).**

PORTIONS OF THIS DETERMINATION WERE NOT PRECEDENTIAL AND HAVE NOT BEEN PUBLISHED.

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:

Taxpayer requests reconsideration of Det. 91-313, 12 WTD ___ (1993), on the issues of interest and penalties and seeks clarification regarding part of the determination.

FACTS AND ISSUES:

Hesselholt, Chief A.L.J. -- The Department of Revenue (Department) issued assessments against taxpayer for the periods January 1, 1982 through August 31, 1989. Later the Department issued Notices of Balance Due against the taxpayer for the fourth quarter of 1989 and the first quarter of 1990. All were protested. The taxpayer paid the retailing B&O tax assessed but requested a refund of that as well. A determination was issued on November 15, 1991, granting the petition in part and denying the petition in part.

The taxpayer requested reconsideration of the determination on two issues: whether the assessment of interest and penalties should be sustained and for clarification of instructions given regarding WAC 458-20-175 (Rule 175.)

The taxpayer had originally not protested the assessment of interest or penalties but had requested that they be adjusted in light of its objections to the assessments. The determination did state that the interest and penalties would be adjusted to reflect the adjustments made in the assessment as a result of the findings of the determination.

The taxpayer now argues that

> Based on representations made to the Department of Revenue, [taxpayer] was unaware of its Washington excise tax obligations until it was contacted by the Department in April, 1989. [Taxpayer] believed that [its lessee] was responsible for all state excise taxes on the [leased] maintenance equipment. Throughout the years at issue, [taxpayer] acted in good faith when it did not collect the excise taxes.
>
> The Department of Revenue is imposing a penalty on [taxpayer] before [taxpayer] would have been in a position to know the amount of the tax. RCW 82.32.045 provides that taxes are due within 25 days after the end of the month in which the taxable activities occur. RCW 82.32.090 imposes a penalty of 20 percent if the tax is not paid within 60 days after the due date. RCW 82.12.010 provides that if a taxpayer brings property into Washington for less than 90 days in a period of 365 consecutive days, the tax is on the reasonable rental value whereas the tax is on the full fair market

> value if the 90 day period is exceeded. [Taxpayer] has no control over the amount of time its equipment would be in Washington. Therefore, even if [taxpayer] recognized an obligation to collect excise taxes, it would have been difficult to avoid the penalty because at the time the tax should have been reported, it could not be accurately computed and the penalty would already have been triggered.
>
> [Taxpayer] should not be subject to the penalty because of the complexity and novelty of the issues raised in the petition. Prior to its audit, [taxpayer] had no knowledge or belief that Washington excise tax law would be interpreted, or for that matter could be interpreted, to impose an excise tax on [its lessees'] use of its leased equipment in Washington. The fact that the Department of Revenue had to issue a [lengthy] opinion to support its audit imposing excise taxes and to distinguish countervailing authorities presented by [taxpayer] is an indication of the complexity of the issues raised. Accordingly, [taxpayer] respectfully requests the Department to waive all penalties and interest for the period prior to the date the Department of Revenue issued its Determination and concluded that [taxpayer] was subject to the excise tax for the years at issue.

The taxpayer next requests a clarification of the Department's statements regarding Rule 175:

> The Determination states "[w]here the taxpayer can show that [C, the lessee] is registered in Washington and can provide [proof of payment] for the time period at issue, the retail sales tax will be deleted from the assessment." Should [taxpayer] interpret this sentence to mean that [taxpayer] is not liable for the sales tax if it can provide [proof that the lessee] is registered in Washington for the years at issue? Does [taxpayer] also have to show that [the lessee] has paid an amount of use tax equal to the amount of retail sales tax that was in [taxpayer's] assessment notice? How can [taxpayer] determine how much use tax has been paid by [its lessee]?

(Brackets supplied.)

DISCUSSION:

RCW 82.32.105 provides that

> 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 (Rule 228), in effect during the audit period, provides the following circumstances for the waiver or cancellation of penalties:[1]

> The following situations will constitute the only circumstances under which a cancellation of penalties will be considered by the department:
>
> 1. The return was filed on time but inadvertently mailed to another agency.
>
> 2. The delinquency was due to erroneous information given the taxpayer by a department officer or employee.
>
> 3. The delinquency was caused by death or serious illness of the taxpayer or his immediate family, or illness or death of his accountant or in the accountant's immediate family, prior to the filing date.
>
> 4. The delinquency was caused by unavoidable absence of the taxpayer, prior to the filing date.
>
> 5. The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.
>
> 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.
>
> 7. The delinquent tax return was received under the following circumstances:
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> 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

[1]This section of Rule 228 was changed in form only.

> 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.

[1] The Department has repeatedly held that ignorance of one's tax obligation does not constitute a circumstance beyond the taxpayer's control. It is the taxpayer's responsibility to inform itself of its tax obligations. See, for example, Det. 89-266, 7 WTD 349 (1989); Det. 88-233, 6 WTD 043 (1988). The courts have likewise held that ignorance is no excuse. "Ignorance of the law excuses no one." Leschner v. Department of Labor and Industries, 27 Wn.2d 911 (1947); "It is a common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally. . . ." Barlow v. United States, 8 L.Ed 728, 731 (1833).

The taxpayer next argues that because of the due dates on the taxes, penalties are being imposed on it prior to its knowing whether it has a tax liability. In an audit, penalties are not imposed on a monthly basis. For this taxpayer, the penalties were imposed at the rate of 20% for all the years prior to the audit year; no penalty was imposed for that year. By the time the penalties were imposed, taxpayer clearly knew or should have known where its equipment had been.

Finally, in arguing that the penalties should be waived, the taxpayer argues that the length of the Determination means that the issues were so complicated that it could not have been expected to know of its obligation. This is essentially an ignorance of the law argument raised in a somewhat more novel fashion. For the most part, we believe that it is not the law involved that is so complicated but the manner in which the taxpayer has chosen to conduct its business. Further, the length of the Determination is directly related to arguments raised by the taxpayer's representatives and the necessity to address all of the arguments.

Taxpayer next requests a clarification of the instructions given regarding Rule 175. Det. No. 91-313, 12 WTD ___ (1993) stated that:

> Under WAC 458-20-175 (Rule 175), the Department allows a [common carrier] to directly pay sales or use tax when making purchases from a vendor. Where the taxpayer can show that the [common carrier] is registered in Washington and can provide a certificate as provided in the rule for the time period at issue, the retail sales tax will be deleted from the assessment.

In examining the Determination, the facts, and the rule, we have concluded that the Determination was in error on this point.

Rule 175 provides, in part, that:

> Due to the difficulty in many cases of determining at the time of purchase whether or not the property purchased or a part thereof will be put to use in this state and due to the resulting accounting problems involved, persons engaged in the business of operating as private or common carriers by air, rail or water in interstate or foreign commerce will be permitted to pay the use tax directly to the department of revenue rather than to the seller, and such sellers are relieved of the liability for the collection of such tax. This permission is limited, however, to persons duly registered with the department. The registration number given on the certificate which will be furnished to the seller ordinarily will be sufficient evidence that the purchaser is properly registered.

[2] We originally applied this language to this taxpayer's situation. In reexamining the issue to clarify the matter, we realize that this application was in error. The above language applies to the sale of tangible personal property and may apply to the retail sale of services related to tangible personal property. It does not, however, apply to the taxpayer's activities of repairing the real property of its lessees. Thus, taxpayer will be required to collect and remit the sales tax on the charges it makes to the lessees for the repair of real property in this state.

* * *

DECISION AND DISPOSITION:

Taxpayer's petition is denied in part. Det. No. 91-313, 12 WTD ___ (1993) is modified as required above.

DATED this 28th day of May, 1992.