

Cite as Det. No. 92-191, 12 WTD 373 (1992).

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

In the Matter of the Petition	)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of	)	
	)	No. 92-191
	)	
. . .	)	Registration No. . . .
	)	Warrant No. . . .
	)	

[1] RCW 82.32.105 -- WAC 458-20-228 -- WAIVER OF INTEREST -  
- CIRCUMSTANCES BEYOND THE TAXPAYER'S CONTROL --  
FAILURE TO PAY TAXES BY DUE DATE. Where the taxpayer  
fails to pay taxes by the due date and then files a  
petition in bankruptcy, the failure to have paid those  
taxes in a timely manner is not due to circumstances  
beyond the taxpayer's control, therefore, interest  
assessed after the discharge will not be waived on  
those taxes.

[2] RCW 82.32.105 -- WAC 458-20-228 -- WAIVER OF INTEREST -  
- CIRCUMSTANCES BEYOND THE TAXPAYER'S CONTROL --  
FAILURE TO PAY TAXES BY DUE DATE. However, where the  
taxpayer files a petition in bankruptcy prior to the  
due date for payment of excise taxes, and the trustee  
fails to make timely payment of them due to conditions  
beyond the taxpayer's control, interest after the  
discharge will be waived on those taxes.

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 TELEPHONE CONFERENCE: . . .

NATURE OF ACTION:

The taxpayer protests the assessment of interest on a tax warrant  
between the date of his discharge under a chapter 7 bankruptcy  
and the distribution from the bankruptcy estate.

## FACTS:

Coffman, A.L.J. -- [Taxpayer] operated a sole proprietorship during the period of [March 1984] through March 1988. The taxpayer filed a petition in bankruptcy under chapter 7 [in April 1988]. Based on the January, February, and March 1988 tax returns filed by the taxpayer with the Department, the Revenue Officer in charge of his case issued tax warrant number . . . [in May 1988]. This tax warrant was for taxes in the amount of \$ . . . and delinquent penalties in the amount of \$ . . . . The assessed tax included collected retail sales tax in the amount of \$ . . . . The Department did not assess the full delinquent penalties or the 5% warrant penalty because of the automatic stay from the bankruptcy filing. He received his discharge [in July 1988]. Further, the tax warrant was not filed with the King County Superior Court until [November 1988]. The Department began assessing interest on the outstanding balance of the tax warrant as of the date of discharge.

While his case was in the Bankruptcy Court he became a beneficiary under the estate of his grandmother. There were a variety of problems concerning his grandmother's estate which delayed the distribution to the taxpayer and the bankruptcy estate. The Trustee in bankruptcy made a distribution to the Department [in June 1992] of the delinquent taxes only (\$ . . . ). The distribution did not include the delinquent penalties that were incurred prior to the taxpayer's filing bankruptcy nor did it include interest that accrued after the discharge.

No further payments have been received. The balance due according to the Department is \$ . . . .

## ISSUE:

Was the taxpayer's failure to pay the tax warrant due to conditions whereby the Department may waive the assessed interest?

## DISCUSSION:

The taxpayer conceded during the telephone conference that the delinquent penalties assessed in the tax warrant were due and owing. Thus, the sole issue is the imposition of warrant interest per RCW 82.32.210. RCW 82.32.105 states:

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. Notwithstanding the foregoing the amount of any interest which has been waived, canceled or refunded prior to May 1, 1965 shall not be reassessed according to the provisions of this chapter.

(Emphasis added.)

The Department has adopted WAC 458-20-228 concerning the waiver of interest, as well as other matters. It reads in part:

The following situations will constitute circumstances under which a waiver or cancellation of interest upon assessments pursuant to RCW 82.32.050 will be considered by the department:

1. The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department.
2. Extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department.

RCW 82.32.050 authorizes the Department to issue tax assessments and specifies that interest shall apply to delinquent amounts. We treat requests for waiver of interest on tax warrants in a similar manner.

[1] The taxpayer's situation does not meet either of the scenarios specified in the rule. Further, to the extent that the tax warrant assessed taxes for the months of January and February 1988, these taxes were not paid on their respective due dates. The failure of the trustee to distribute funds from the bankruptcy estate did not affect the previous delinquency. The statute makes it clear that only when the failure to pay the tax on or before its due date was due to circumstances beyond the taxpayer's control, the Department may waive interest.

[2] However, the taxpayer's failure to pay the March 1988 taxes on its due date was in a sense beyond his control. The taxpayer believed that there were sufficient assets in the bankruptcy estate to fully pay the March 1988 taxes. The trustee failed to pay the March 1988 taxes which came due after the filing of the petition. The taxpayer could not, after the filing of the petition, control the timing of the payments, therefore, we find

that the failure to pay the March 1988 in a timely manner was due to circumstances beyond the taxpayer's control. Interest on the March 1988 taxes in the amount of \$153.12 will be waived which is interest through the date of this determination.

DECISION AND DISPOSITION:

The taxpayer's petition is granted in part and denied in part. The taxpayer is encouraged to contact the Compliance Division to arrange the payment thereof.

DATED this 22nd day of July 1992.