

Cite as Det. No. 94-016, 14 WTD 184 (1995).

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. 94-016
)	
. . .)	Registration No. . . .
)	Notices of Balance Due

- [1] RULE 22802; RCW 82.32.085: ELECTRONIC FUNDS TRANSFER -
- DUE DATES. An electronic funds transfer (EFT) is to
be completed so that the state receives collectible
funds on or before the next banking day following the
tax return due date. Generally, tax return due dates,
for monthly filers, are the 25th of every month unless
the 25th falls on a Saturday, Sunday or holiday. In
that event, the tax return due date is the next banking
day. Therefore, the EFT payment due date is on or
before the banking day following the tax return due
date.
- [2] RULE 22802; RCW 82.32.085: ELECTRONIC FUNDS TRANSFER -
- EFT -- DUE DATE -- PENALTY. In order to avoid late
payment penalties, a return must be received by the
Department on or before the due date, or with a
postmark on or before the due date, and the EFT payment
must be completed by the next banking day after the
return's due date. If both events occur, there is
timely filing and payment and no penalties apply.
- [3] RULE 22802, RULE 228; RCW 82.32.080, RCW 82.32.090:
ELECTRONIC FUNDS TRANSFER -- EFT -- LATE PAYMENT
PENALTY. There are no special provisions for penalties
when payment is made by EFT. The general provisions
for all taxpayers apply. Penalties may be waived only
when the circumstances causing delinquency are beyond
the control of the taxpayer.

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:

Taxpayer petitioned for waiver of penalties imposed on several late electronic funds transfers (EFTs).¹

FACTS:

Danyo, A.L.J. -- Taxpayer began paying its monthly excise taxes by electronic funds transfer (EFT) in January 1992. Taxpayer's taxes for the reporting periods August, October and November 1992, were paid after the EFT due date. A 5% late penalty was imposed on each late transfer. Balance due notices were issued for each reporting period.

Taxpayer requested that the Department's Taxpayer Accounts Administration (TAA) Division waive the penalties imposed on the August and October taxes. Taxpayer explained that the September 1992 EFT payment, due for the August 1992 reporting period, was late because:

Your schedule of ETF [sic] Due Dates showed Sept. 27th as the due date. The 27th fell on a Sunday so we called it in on Sept. 28th. We are asking that you please waive the penalty as we did not realize that if the due date falls on a weekend that we must call on the Friday before.

According to Taxpayer, the November 1992 EFT payment, due for the October 1992 period, was late because:

Your schedule of ETF [sic] Due Dates showed November 28th as the due date. The 28th fell on a Saturday so we called it in on Monday the 30th. We are asking that you please waive this penalty as we did not realize that if the due date fell on the weekend that we must call in on the Friday before.

Both requests were denied.

Taxpayer appealed to the Interpretation and Appeals (I&A) Division requesting waiver of penalties imposed on late payments for the reporting periods August, October and November 1992.

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

In its petition, Taxpayer explained that the payments were late due to "some confusion as to when to call the funds transfer in." Taxpayer states that "the funds cleared one day after the due date, except for November, 1992, which was two days." Taxpayer surmised that "[t]he only possible reason for this is because of the way the holidays fell."

Taxpayer asks that we consider the fact that "[i]n all our years doing business, we have never been late on our taxes," and "[w]e have by no means paid intentionally late, and we have taken steps to make sure this doesn't happen again." Taxpayer asserts that payment of the penalties would cause a "severe financial hardship."

ISSUE:

Whether a taxpayer's confusion over the due dates for timely electronic funds transfer is a basis for waiving late payment penalties?

DISCUSSION:

[1]RCW 82.32.085 requires that an "electronic funds transfer² is to be completed so that the state receives collectible funds on or before the next banking day following the due date." The due date is the tax return due date. Generally, tax return due dates, for monthly filers, are the 25th of every month unless the 25th falls on a Saturday, Sunday or holiday. In that event, the tax return due date is the next banking day.³ Therefore, the EFT payment due date is on or before the banking day following the tax return due date.

²"Electric funds transfer" or "EFT" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. WAC 458-20-22802(2)(a).

³Legal holidays are determined under state of Washington law and banking holidays are those recognized by the Federal Reserve System in the state of Washington. Rule 22802(7)(b).

WAC 458-20-22802 (Rule 22802), the administrative rule implementing that statute, states: "`Collectible funds' actually means collected funds that have completed the electronic funds transfer process and are available for immediate use by the state." Rule 22802 explains that an EFT payment is timely when the state receives collectible U.S. funds on or before the EFT payment due date.

There are two methods for making EFT payments: Automated Clearing House (ACH) debit or ACH credit.⁴ Taxpayer elected to use the ACH debit method. Rule 22802 defines this method as:

the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the department's bank to charge the taxpayer's account and deposit the funds to the department's account.

Rule 22802 also explains that "[t]he ACH system . . . requires that the necessary information be in the originating bank's possession the banking day preceding the date for completion of the EFT." For Taxpayer, as an ACH debit user, the Department's bank is the originating bank. Taxpayer is required to initiate an EFT by "calling-in" the funds transfer information on or before 3:00 p.m. Pacific Time, the day before the EFT payment due date. The transfer will be completed on that day and the funds will be available to the Department on the next day. EFT filers, including Taxpayer, were notified of these requirements.

Rule 22802(13) states:

If the taxpayer has timely initiated the ACH debit, received a verification number, and shows adequate funds were available in the account, no penalties shall apply with respect to those funds authorized.

[2]A timely filed return and payment by EFT is required in order to avoid late payment penalties. Rule 22802 states:

A return shall be considered timely filed only if it is received by the department on or before the due date, or with a postmark on or before the due date. In addition, the payment by EFT must have been completed by the next banking day after the [return's] due date. If both events occur, there is timely filing and payment and no penalties apply.

⁴ACH operates either privately or by a Federal Reserve Bank as a clearing house for the exchange of funds.

Taxpayer failed to make timely EFT payments for three reporting periods: August, October and November. Taxpayer claims that the EFT payments were late because the due dates fell on weekends and/or holidays and Taxpayer became confused as to when to initiate, i.e., call-in, the EFT. For clarity, we will discuss each late EFT individually.

1. Reporting Period: August 1992

The due date for the combined monthly excise tax return for August 1992, was Friday, September 25, 1992. The EFT payment due date, i.e., the date the funds must be available for the State's use ("collectible") was Monday, September 28, 1992. This date, September 28, 1992, was the first banking day following the tax return due date. As an ACH debit user, Taxpayer was required to initiate the EFT no later than 3:00 p.m. Pacific Time, Friday, September 25, 1992, which was the last banking day before the EFT payment due date.

Taxpayer did not initiate the transfer call until Monday, September 28, 1992. The funds, therefore, were not collectible by the Department until September 29, 1992. Thus, the EFT payment was late and penalties were properly imposed.

2. Reporting Period: October 1992

The due date for the combined monthly excise tax return for October 1992, was Wednesday, November 25, 1992. November 26 and 27, 1992, were Washington state holidays. November 26, 1992 was also a legal bank holiday. Whenever an EFT payment due date falls on a holiday or weekend, the first banking day after the return due date becomes the EFT payment due date. Rule 22802(7)(b).

For Taxpayer, the EFT payment due date was the first banking day after the holiday and weekend, i.e., Monday, November 30, 1992. Thus, Taxpayer was required to initiate the EFT by 3:00 p.m., Pacific Time, Friday, November 27, 1992. (November 27, 1992 was not a bank holiday).

Taxpayer's EFT, initiated on Monday morning, November 30, 1992, was not timely because it was not completed on the last banking day before the EFT payment due date. The funds, therefore, were not collectible until December 1, 1992. The EFT payment, therefore, was late and penalties were properly imposed.

3. Reporting Period: November 1992

The original due date for the combined monthly excise tax return for November 1992, was Friday, December 25, 1992. December 25th was a holiday. Therefore, the new return due date was Monday, December 28, 1992. The new EFT payment due date was December 29, 1992. This meant the funds had to be collectible, i.e., in the Department's bank and available for the Department's use on Tuesday, December 29, 1992. As an ACH debit user, Taxpayer had to have completed the EFT transaction by 3:00 p.m., Pacific Time, Monday, December 28th.

Thus, Taxpayer's EFT was not timely because it was not completed on the last business day before the EFT payment due date. The payment was late and penalties were properly imposed.

It is clear that Taxpayer was confused and misinterpreted the instructions provided to all EFT filers.⁵ The issue is, whether such confusion and misinterpretation justifies cancellation of the late payment penalties on each of the late payments in issue.

[3]RCW 82.32A.030 requires that a taxpayer accurately and timely report and pay taxes due. RCW 82.32.080 specifically provides that a taxpayer filing by EFT is subject to the procedures and penalty provisions found in RCW 82.32.090. RCW 82.32.090 prescribes the appropriate penalties for late filing and/or payment of taxes due. Rule 22802 places the responsibility on the taxpayer to insure timely payments. It states in pertinent part:

(a) There are no special provisions for penalties when payment is made by EFT. The general provisions for all taxpayers apply. To avoid the imposition of penalties, it is necessary for both the filing of the tax return and the payment to be timely. Penalties may be waived only when the circumstances causing delinquency are beyond the control of the taxpayer. See: WAC 458-20-228.

⁵In a letter to the Department dated June 23, 1992, Taxpayer stated:

I am writing to ask that the penalty on our . . . tax due . . . be waived. I misread the notice sent . . . on the taxpayer information. The column that reads "Date funds must be deposited in state's bank" I took to be the date I called in the transfer. I have now found out that I should call in the day before that date. I will in the future call in the day before that date

RCW 82.32.105 is the Department's statutory authority for waiving penalties. WAC 458-20-228 (Rule 228) is the administrative rule implementing the statute. Neither the statute nor the rule permits "lack of knowledge" or "lack of intent" to be a basis for waiving late payment penalties. Rule 228 list the only situations the Department will consider for cancelling penalties. None of the provisions of Rule 228(6) apply to taxpayer's situation.

Rule 228(6)(vii) does provide for a waiver where an unknown and unforeseen circumstance directly caused a taxpayer to file its return and/or pay its taxes after the due date and the taxpayer paid the taxes owed within 30 days of the due date. This waiver, is permitted only once.

In taxpayer's case, the late transfers, occurred within one or two days after the due date. However, Taxpayer had requested and received a prior waiver of penalties imposed for an EFT which occurred after the May 1992 due date. Taxpayer is, therefore, precluded a second waiver under Rule 228(6)(vii)(a) and (b).

Taxpayer also requests that the penalties be waived because Taxpayer did not intentionally withhold payment of the taxes. Intent to evade the payment of a known tax liability is not an issue here. If the Department had concluded that Taxpayer had acted with intent to evade a known tax liability, then the Department would have imposed a 50% evasion penalty. No such penalty was imposed here. Taxpayer was assessed penalties because the payment was received late. This is in strict compliance with the Department's statutory mandate. RCW 82.32.090.

Taxpayer has claimed that to sustain the penalties imposed would create a financial hardship. Financial hardship is not a basis for forgiving a taxpayer's tax liability, penalties and/or interest imposed thereon. Rule 228.

DECISION AND DISPOSITION:

Taxpayer's petition is denied in its entirety.

DATED this 27th day of January, 1994.