BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment	)	D E T E R M I N A T I O N
	)	
	)	No. 97-207
	)	
. . .	)	Registration No.. . .
	)	Notice of Balance Due
	)	. . .
	)	

RULES 197 AND 228; RCW 82.04.090: VALUE PROCEEDING OR ACCRUING --CASH RECEIPTS BASIS OF ACCOUNTING -- LATE PAYMENT PENALTY -- CANCELLATION. An out-of-state seller of tangible personal property who keeps her books on a cash receipts accounting basis is not subject to a 20% late-payment penalty if she pays her tax and files her excise tax return within twenty five days after the end of the month in which she receives payment. It is immaterial that the contract was performed, i.e. the goods were received by a customer in Washington, more than two months before payment was received.

Headnotes are provided for the convenience of 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:

A manufacturer's representative (the taxpayer) seeks cancellation of a 20% late-payment penalty assessed on a tax return.[1]

FACTS:

De Luca, A.L.J. -- The taxpayer is a manufacturer's representative with her place of business in California. The taxpayer explains her company received an order in May 1996, from a company's office in Washington. The taxpayer shipped the order to the buyer on May 22, 1996. On the same day, the taxpayer contacted the Washington Department of Revenue (the Department) to determine what she should do about sales tax. The taxpayer explained that the

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

sale to the buyer was a one-time event because the taxpayer "did not have a presence in Washington," did not conduct any other business in Washington; and did not expect any future sales activity in this state. Furthermore, the taxpayer billed the buyer at its Colorado address. The Department's response was to send the taxpayer a temporary registration certificate. Consequently, the taxpayer registered with the Department at that time. The taxpayer closed the account in September 1996, after the transaction was completed.

The buyer issued the taxpayer a check for payment on July 22, 1996. The taxpayer has provided the Department with a copy of the check stub. The taxpayer explains that she did not receive the check until August 1, 1996. The check cleared by a bank seven business days later. Thus, it was almost mid-August before the taxpayer had the money credited to her bank account and the sale was actually recorded in its books. The taxpayer is on a cash receipts basis of accounting. On August 31, 1996, the taxpayer sent a check for the collected retail sales tax to the Department. The Department received the check on September 6, 1996.

The Department's Taxpayer Account Administration section (TAA) then assessed a 20% late-payment penalty because it calculated that the tax return and payment were received more than 60 days after the due date, which it determined to be June 25, 1996 for the May 1996 reporting period when the goods were delivered to the buyer. TAA stated that it considered a one-time penalty waiver under WAC 458-20-228 (7), but decided it could not waive the penalty because the tax was remitted more than 30 days after its due date.

ISSUE:

Is the late-payment penalty applicable to the taxpayer when she did not receive payment for the sale until August 1996 and the Department received the sales tax by September 6, 1996?

DISCUSSION:

According to RCW 82.32.045 (1), the payment of taxes and tax returns are due monthly within twenty five days after the end of the month in which the taxable activities occur. Late-payment penalties are assessed as follows:

> (1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not received within thirty days after the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within sixty days after the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax.

RCW 82.32.090.

WAC 458-20-197 (Rule 197) provides that for determining the tax liability of persons making sales of tangible personal property, a sale takes place when the goods sold are delivered to a buyer in this state. The rule continues by stating:

> (3) CASH RECEIPTS BASIS.
>
> (a) When returns are made upon cash receipts and disbursements basis, value proceeds to a taxpayer at the time the taxpayer receives the payment, either actually or constructively. It is immaterial that the contract is performed, in whole or in part, during a period other than the one in which payment is received.

The present taxpayer is on a cash receipts basis of accounting. Pursuant to Rule 197(3), value did not accrue to the taxpayer until she received the check from its customer on August 1, 1996, although she shipped the products to the customer in May 1996. Therefore, the taxpayer was not obligated to remit the sales tax until September 25, 1996, which was twenty-five days after the end of the month in which the taxable activity occurred. The taxpayer remitted the sales tax on August 31, 1996 and the Department received it on September 6, 1996, which was nearly three weeks before it was due. Therefore, the late-payment penalty is not applicable.

We note that the present matter contrasts with a scenario where a taxpayer maintains her books of account on the accrual basis. Rule 197 (2) (a) provides that value accrues for a taxpayer reporting on the accrual basis when either, one, at the time the taxpayer becomes legally entitled to receive the consideration or, two, enters the amount of the consideration agreed upon as a charge against the purchaser, whether payable immediately or at a definitely determined future time.

Moreover, Rule 197 (2) (b) declares that:

> Amounts actually received do not constitute value accruing to the taxpayer in the period in which received if the value accrues to the taxpayer during another period. It is immaterial if the act or service for which the consideration accrues is performed or rendered, in whole or in part, during a period other than the one for which return is made. The controlling factor is the time when the taxpayer is entitled to receive, or takes credit for, the consideration.

Had the present taxpayer been on the accrual basis of accounting, her tax liability would have occurred when she would have been entitled to payment, presumably at the time of sale (delivery) in May, 1996. A 20% late payment penalty in such an instance would have been appropriate because the taxpayer, by paying the tax on August 31, 1996, would not have paid the tax and filed the return until more than 60 days after the tax due date of June 25, 1996.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. This matter is remanded to the Taxpayer Account Administration Division for cancellation of the notice of balance due.

Dated this 23rd day of October, 1997.