

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

In the Matter of the Petition ) D E T E R M I N A T I O N  
for Refund of )  
 ) No. 87-19  
 )  
 . . . ) Registration No. . . .  
 ) Tax Assessment No. . . .  
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- [1] RCW 82.32.100 -- PENALTIES -- UNREGISTERED TAXPAYER.  
RCW 82.32.100 provides that the Department shall add late payment penalties if a person fails to make any return required by the Revenue Act.
- [2] **RULE 228:** RCW 82.32.105 -- PENALTIES OR INTEREST -- WAIVER -- CIRCUMSTANCES BEYOND CONTROL OF TAXPAYER -- WHAT CONSTITUTES. Lack of knowledge of a tax obligation does not render failure to pay taxes "beyond the control" of the taxpayer within the meaning of RCW 82.32.105 and WAC 458-20-228 which allow the Department of Revenue to waive or cancel interest and penalties under limited situations.
- [3] B & O TAX -- INSURANCE COMMISSIONER -- DUTIES.  
The insurance commissioner's duties do not include disseminating information about this state's B & O taxes.
- [4] RCW 82.32.300 -- B & O TAX -- ADMINISTRATION OF B & O TAXES -- TAX LIABILITY -- DUTY TO INFORM.  
The administration of the B & O tax is vested in the Department of Revenue. Inquiries regarding tax liability must be directed to this Department to receive proper consideration.
- [5] **RULE 221, RCW 82.12.040:** BURDEN OF PROOF.  
Receipt showing payment of use tax to seller need not be in any particular form but **must** at a minimum show the identity of the property, date of sale, selling price, and amount of use tax collected and remitted by seller.

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 HEARING: December 3, 1986

#### NATURE OF ACTION

The taxpayer petitions for a waiver of interest and penalties added to an assessment of B&O tax on his insurance commissions. He also seeks a correction of use tax assessed on office supplies purchased from his insurance company on grounds he had already paid the tax to the insurance company.

#### FACTS

Frankel, A.L.J. -- The taxpayer's records were examined for the period January 1, 1982 through March 31, 1986. The audit disclosed taxes and interest owing in the amount of \$. . . . Penalties of \$. . . were added and Assessment No. . . . for the total amount due was issued on June 24, 1986.

The taxpayer protests the assessment of penalties and interest because he was unaware of his B&O tax liability. He stated he took over his father's business when his father was ill with Parkinson's disease. The taxpayer stated he had been living in Canada, working on a cattle ranch, and had no previous business experience. When he took over the insurance agency business, he paid income tax, license fees, Workmen's Compensation, and was not informed by the State or his insurance company of his B&O tax liability.

The taxpayer also protests the assessment of use tax on supplies purchased from the insurance company, (. . .). The taxpayer stated the company collects and pays use tax and that the invoices separately state the tax and selling price of the supplies. He contends he has already paid tax on these supplies; thus no further tax is due.

#### ISSUES

- 1) Whether the taxpayer's good faith lack of knowledge of his tax obligation is grounds for waiver of the interest and penalties added to the tax assessment.
- 2) Whether the use tax was improperly assessed if invoices separately state the tax and selling price of the supplies.

#### DISCUSSION

Washington's business and occupation tax is imposed on every person for the act or privilege of engaging in business activities in this state. The tax is measured by the application of rates against the

value of products, gross proceeds of sales, or gross income of the business. RCW 82.04.220.

The taxes were assessed under the Service and Other Activities classification for the periods prior to July 1, 1983. After that date, taxes were assessed under the Insurance Agents/Brokers classification. Although the taxpayer contends a tax on gross receipts is "unfair", he agrees the tax is due. Because of his lack of knowledge of his B&O tax obligation, though, he requests a waiver of the interest and penalties.

[1] The Department has limited authority to waive penalties and interest. RCW 82.32.100 provides that when a taxpayer fails to make any return as required, the Department shall proceed to obtain facts and information on which to base its estimate of the tax. As soon as the Department procures the facts and information upon which to base the assessment, "it shall proceed to determine and assess against such person the tax and penalties due, . . . To the assessment the department shall add, the penalties provided in RCW 82.32.090." (Emphasis added.)

RCW 82.32.090 provides that if any tax due is not received by the Department of Revenue by the due date, there shall be assessed a penalty. The penalty for returns which are not received within 60 days after the due date is 20 percent of the amount of the tax. RCW 82.32.050 provides that if a tax or penalty has been paid less than properly due, the Department shall assess the additional amount due and shall add interest at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the date of payment.

[2] The only authority to cancel penalties or interest is found in RCW 82.32.105. That statute allows the Department to waive or cancel interest or penalties if the failure of a taxpayer to pay any tax on the due date was the result of circumstances beyond the control of the taxpayer. The statute also requires the Department to prescribe rules for the waiver or cancellation of interest and penalties.

The administrative rule which implements the above law is found in the Washington Administrative Code 458-20-228 (Rule 228). Rule 228 lists the situations which are clearly stated as the only circumstances under which a cancellation of penalties and/or interest will be considered by the Department. None of the situations described in Rule 228 apply in the present case.

We have no reason to doubt that had the taxpayer known of his tax obligation earlier, he would have paid the amount owing. Lack of knowledge or a good faith belief that one is not conducting a taxable business, though, is not identified by statute or rule as a basis for abating interest or penalties. As an administrative

agency, the Department does not have discretion to change the law and grant relief.

Penalty provisions for the late payment of taxes are common. See, e.g., I.R.C. + 6651. Imposition of the late penalty is viewed as a means to partially compensate the state for the additional expense in collecting taxes that are late or not paid rather than solely as a punitive measure. The state does recognize the difference between nonpayment due to lack of knowledge of a tax obligation and tax evasion. In the case of intentional tax evasion, the Department is required to impose a penalty of 50 percent of the additional tax found due. RCW 82.32.050.

No evasion penalty is assessed unless misrepresentation or fraud is specifically found. No such intent was found in the present case. Interest is imposed on late payments because the state has not had the use of the money that was owed.

[3] We are unable to grant relief because the taxpayer was not informed by the Insurance Commissioner's office of an insurance agent's possible B&O tax liability. Title 48 of the Revised Code of Washington (RCW) deals with insurance. Two primary duties of the insurance commissioner are to obtain and publish life expectancy tables showing the values of annuities and of life and term estates and to disseminate information concerning the insurance laws of this state. RCW 48.02.160. Chapter 48.17 deals with the licensing requirements for insurance agents. The primary purpose for licensing is to protect the people of this state. RCW 48.17.070. The statutory provision states that the commissioner shall not issue or renew any license for any person found to be untrustworthy, incompetent, or unqualified. The duties of the commissioner's office do not include disseminating information about the state's business and occupation taxes.

[4] The administration of the business and occupation tax is vested in the Department of Revenue. RCW 82.32.300. Inquiries regarding tax liability must be directed to this Department to receive proper consideration. There are 17 regional offices around the state to assist taxpayers and answer questions without charge. The state also maintains an office of taxpayer information. The ultimate responsibility for registering with the Department and properly reporting taxes, however, rests on persons in business. The Department is not required to make sure that every business knows its tax obligations before it can assess taxes, interest or penalties. With over 275,000 registered taxpayers in Washington, the burden must be on the taxpayer to determine if it has an obligation to pay taxes.<sup>1</sup>

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<sup>1</sup>The State does recognize that many new businesses have had to register separately with the Department of Revenue, Licensing, Labor & Industries, Employment Security, and the Secretary of

[5] RCW 82.12.020 imposes an excise tax upon the privilege of using within this state any article of tangible personal property purchased at retail. RCW 82.12.040 requires certain retailers making sales of tangible personal property for use in this state to collect the use tax from their purchasers. WAC 458-20-221, the administrative regulation which implements this requirement, provides in part:

The use tax is computed upon the value of the property sold. At the time of making a sale of tangible personal property, the use of which is taxable under the use tax, the seller must collect the tax from the purchaser and upon request give to the purchaser a receipt therefor. This receipt need not be in any particular form, and may be an invoice which identifies the property sold, shows the sale price thereof and the amount of the tax.

If the taxpayer's evidence includes invoices from the insurance company which separately state the selling price for the supplies from the amount of the use tax collected, the assessment of use tax shall be deleted. A simple statement from the insurance company that it has collected and remitted the use tax, is not sufficient by itself to warrant a correction of the assessment or refund of use tax.

#### DECISION AND DISPOSITION

The taxpayer's petition for refund is denied with regard to the interest and penalties added to the tax assessment.

The taxpayer's petition is granted with regard to a refund or correction of use tax assessed (Schedule IV), if the invoices or other evidence from the insurance company identify the property sold, date of sale, selling price and amount of use tax collected. The taxpayer must provide such evidence within the time period allowed in RCW 82.32.060 for credits or refunds (four years). If such evidence is provided, the taxpayer shall also receive a refund of the interest and penalties added to the use tax assessment.

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State's office. This often requires visits to separate offices and imposes additional burdens for the business person. Because of this problem, the above five state agencies are joining together to provide new businesses with a "one-stop business registration" service. Beginning in January of 1987, a new business applicant, other than one requiring a special license endorsement, will be able to go to one location and get a common number to be used by all state agencies. Although this does not afford any relief to the taxpayer for the assessment at issue, the State is attempting to help businesses and make government more efficient.

DATED this 22nd day of January 1987.