

Cite as 2 WTD 197 (1986)

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. 87-41
)
 . . .) Registration No. . . .
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)

[1] **RCW 82.32.090, 82.32.105 and RULE 228:** PENALTIES -- LATE PAYMENT -- WAIVER -- DEATH OR SERIOUS ILLNESS -- BOOKKEEPER. Serious illness followed by death of bookkeeper's spouse, and resulting emotional distress, satisfactorily explains late filing of one return and failure to file two others such that penalties will be waived, even though minor and infrequent delinquencies occurred in the past.

[2] **RCW 82.32.090, 82.32.105 and RULE 228:** PENALTIES -- LATE PAYMENT -- WAIVER -- DEATH OR SERIOUS ILLNESS -- BOOKKEEPER RELIANCE. Penalties will be waived or cancelled where taxpayer relied on repeated assurances by bookkeeper, distraught over spouse's death, that the bookkeeper was managing the taxpayer's affairs in a competent manner and where taxpayer filed returns promptly upon learning of the bookkeeper's failure to do so.

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: October 10, 1986

NATURE OF ACTION:

Taxpayer petitions for refund of penalties paid on returns filed after their due date asserting that the delinquency was caused by illness or death in the taxpayer's accountant's immediate family.

FACTS AND ISSUES:

Rosenbloom, A.L.J.--The taxpayer, a provider of janitorial services, previously had a bookkeeper who saw to all financial matters relating to the business. This bookkeeper maintained the taxpayer's checking account, wrote the checks, and retained custody of cancelled checks. The bookkeeper also signed and filed the taxpayer's combined excise tax returns. In short, the taxpayer relied on this bookkeeper to make timely and accurate reports and payments to this Department.

Shortly after Thanksgiving of 1985, the bookkeeper's spouse suffered a heart attack. The spouse survived and seemed to be recovering satisfactorily, but then suffered a second heart attack and died in early April 1986. The bookkeeper, quite naturally, was deeply distressed by these events. Nevertheless, the bookkeeper expressed a desire to continue providing services as a bookkeeper to the taxpayer. The bookkeeper represented that the taxpayer's affairs would be competently managed despite this personal loss. The bookkeeper repeatedly assured the taxpayer that all was well.

In early August 1986, however, the bookkeeper's daughter called all of the bookkeeper's clients, including the taxpayer, to advise that the bookkeeper was in fact emotionally devastated and was therefore unable to handle their financial matters competently. The daughter advised the taxpayer and the other clients to come and get their business records.

The taxpayer went to the bookkeeper's home to collect the business records and was quite concerned about the bookkeeper's appearance. Upon examining the business records, the taxpayer confirmed that in fact all was not well. The taxpayer found that the fourth quarter 1985 return had been filed more than 60 days after the due date. (A 20 percent late payment penalty was remitted by the bookkeeper along with the tax due.) The taxpayer also discovered that returns for the first and second quarters of 1986 had not been filed at all. The taxpayer promptly prepared and filed these returns and included therewith penalties of 20 percent and five percent, respectively.

By letter dated August 15, 1986, the taxpayer has petitioned for a refund of the penalties.

TAXPAYER'S EXCEPTIONS:

The taxpayer requests that the penalties for late payment be waived on the grounds that the taxpayer relied in good faith upon representations by the bookkeeper that all obligations were being paid in a timely manner.

DISCUSSION:

RCW 82.32.050 mandates the assessment of penalties if payment of any tax due is not received by the Department by the due date. However, RCW 82.32.105 provides for the waiver or cancellation of penalties if the Department finds that the taxpayer's failure to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer.

The foregoing statutes are implemented by WAC 458-20-228 (Rule 228), an administrative regulation, which provides in part:

The department will waive or cancel the penalties imposed under RCW 82.32.090 and interest imposed under RCW 82.32.050 upon finding that the failure of a taxpayer to pay any tax by the due date was due to circumstances beyond the control of the taxpayer. The department has no authority to cancel penalties or interest for any other reason.

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:

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 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 third situation applies in this case. Though our examination of the taxpayer's account reveals that returns were filed after their due date even before the bookkeeper's spouse became ill, these prior delinquencies were relatively minor and infrequent (e.g. two days, ten days, and 34 days on one occasion). We are convinced that the serious illness of the bookkeeper's spouse satisfactorily explains why the fourth quarter 1985 return was filed more than 60 days after its due date. The subsequent death of the bookkeeper's spouse and the

resulting emotional disturbance explain the bookkeeper's failure to file returns for the first and second quarters of 1986.

[2] The taxpayer did not make other arrangements for the business's bookkeeping needs because of the bookkeeper's repeated assurances that all was well. There was no reason to suspect otherwise until August 1986 when the bookkeeper's daughter notified the taxpayer of the bookkeeper's difficulty. Furthermore, the taxpayer completed and filed the two missing returns promptly upon learning of the bookkeeper's failure to do so.

We conclude that delinquent penalties paid on tax returns for the fourth quarter of 1985 and the first and second quarters of 1986 should be waived for the reason that the taxpayer's failure to pay the taxes due thereunder was a result of circumstances beyond the control of the taxpayer.

DECISION AND DISPOSITION:

The taxpayer's petition for refund is granted. Penalties associated with the late filing and payment of taxes due for the fourth quarter of 1985 and the first and second quarters of 1986 are cancelled. The taxpayer is entitled to refund or credit, at the taxpayer's option.

DATED this 6th day of February 1987.