

Cite as 2 WTD 191 (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 Correction of Assessment)
) No. 87-37
)
 . . .) Registration No. . . .
)
)

RULE 228 AND RCW 82.32.105: PENALTIES -- LATE PAYMENT -- CANCELLATION -- TIMELY REQUEST FOR FORMS.
Late payment penalties will be cancelled where taxpayer made a timely request for forms but did not receive them until after the delinquency date.

TAXPAYER REPRESENTED BY: . . .

DATE OF HEARING: January 23, 1987

NATURE OF ACTION:

The taxpayer petitions for correction of a Notice of Balance Due to the extent that it includes a late payment penalty.

FACTS AND ISSUES:

Potegal, A.L.J.--The facts and the position taken by the taxpayer are succinctly stated as follows in the taxpayer's petition of September 17, 1986:

Enclosed is a notice of Balance Due for the third quarter of 1984 which we received today. This notice includes a penalty of \$. . . which we would appreciate your cancelling.

On September 7, 1984 [we] sent a letter to the State of Washington asking whether or not it would be required to collect Sales Taxes for sales of computer hardware and software within the State of Washington. On September 19, 1984 we received a letter from a Les Jaster indicating that we might be liable and enclosing information relative to the taxability. After receiving this information we requested an application for a certificate of Registration which was subsequently

received and filed on November 30, 1984. Forms were received some time in January 1985 and were filed as soon as possible on January 22, 1985.

Since the third quarter 1984 return was the first one filed by Computac and the forms were not received by us until after the end of the year it was impossible to file them by the due date. Because of these reasons we request that the penalty be abated.

DISCUSSION:

WAC 458-20-228 (Rule 228) is the Department of Revenue's duly adopted rule concerning, among other things, the waiver of late payment penalties. Rule 228 states in part:

The following situations will constitute the only circumstances under which a cancellation of penalties will be considered by the department:

. . .

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.

The taxpayer's situation is a circumstance under which Rule 228 permits the cancellation of late penalties. The taxpayer, completely on its own, wrote the Department to ask about its tax liability. We deem this to be a timely request for proper forms. As soon as those forms were received they were filed. For the third quarter of 1984 the forms were not received by the taxpayer until after the delinquency date and were therefore not furnished in time to permit timely payment.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. That portion of the Notice of Balance Due attributable to a late payment penalty is cancelled. The taxpayer will be notified in writing of the remaining balance due and its due date.

DATED this 6th day of February 1987.