

BEFORE THE DIRECTOR  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition	)	<u>F</u> <u>I</u> <u>N</u> <u>A</u> <u>L</u>
For Refund of	)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
	)	
	)	No. 85-283A
	)	
. . . CORPORATION	)	Registration No. . . .
	)	
	)	
	)	

[1] RULE 228: PENALTY - NONREGISTERED TAXPAYER - WAIVER.  
If a taxpayer fails to pay taxes as required, the Department shall assess the tax and shall add interest and penalties due. RCW 82.32.050; RCW 82.32.090; RCW 82.32.100. Lack of knowledge of a tax obligation or voluntary compliance once an obligation is known are not identified by statute or rule as a basis for abating interest or penalties.

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:

The taxpayer seeks the cancellation and refund of amounts assessed as penalties, in the amount of \$1,074 in connection with Tax Assessment No. . . . . An original appeal of the tax assessment, on merit, was resolved by provisionally granted the taxpayer's petition and referred the tax assessment to the Department's Audit Section for confirmation of tax payments and adjustments, as appropriate, according to the guidelines contained in the Determination. The Determination did not address the question of penalty assessment. By petition dated December 2, 1985, the taxpayer has appealed only the penalties assessed.

FACTS AND ISSUES:

Faker, Sr. A.L.J. -- The pertinent facts are disclosed in Determination No. . . . . In summary, they reveal that the taxpayer was engaged in taxable business activity in this state, without being registered or reporting tax, from February 15, 1980 and throughout an audit period ending March 31, 1985. Back taxes,

interest, and penalties were assessed under various tax classifications.

Determination . . . reclassified much of the income in question from the Service business tax classification, at the rate of .01, to the lower retailing classification at the rate of .0044.

#### Issue

Is the assessment and payment of penalties, under RCW 82.32.100, appropriate where a taxpayer cooperates with the Department to determine its true and proper tax deficiency liability which is ultimately reclassified by the Department?

#### TAXPAYER'S EXCEPTIONS:

The taxpayer does not challenge the findings and conclusions of Determination. . . . on the merits of its correct tax liability. Rather, the taxpayer argues that its initial confusion about whether it had any tax liability at all and the subsequent confusion of both the taxpayer and the Department about the appropriate tax reporting classifications should obviate the assessment of any penalties.

The taxpayer's petition, in pertinent part, includes the following:

The Corporation protests the imposition of penalties. The penalties are unjustifiable in light of the Corporation's attempts to respond to the Department's inquiries in a full and timely manner. The fact that the Department, let alone the Corporation, has been confused as to what sort of tax, if any, is applicable to the Corporation's activities in Washington clearly indicates that the penalties asserted against the Corporation ought to be eliminated.

No other arguments or authorities supporting the taxpayer's position were submitted.

#### DISCUSSION:

Clearly, where the results of Determination . . . were to effectively reduce the taxpayer's liability for tax by reducing the tax classification rate from the higher, Service rate, to the lower, Retailing rate, the base or measure upon which penalties should have been calculated was reduced correspondingly. This should have resulted in an actual penalty reduction if the other qualifying requirements of the Determination were satisfied, viz: the Audit Section confirms that sales tax was reported and paid on the Retailing income in question. Assuming such factual confirmation, the taxpayer is entitled to a refund of any proportional penalty amounts it overpaid.

However, the assessment and payment of penalties was appropriate, under the law, and the penalties cannot be abated because of claimed confusion about tax liability or appropriate classifications.

[1] If the 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 the assess against such person the tax and penalties due, . . . To the assessment the department shall add, the penalties provided in RCW 82.32.090." RCW 82.32.100. (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.

The only authority to cancel penalties or interest if found in RCW 82.32.105 which allows the Department to waive or cancel interest or penalties if the failure to pay any tax on the due date was the result of circumstances beyond the control of the taxpayer. That statutory provisions 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 (WAC) 458-20-228 (Rule 228). Rule 228 lists the only situations under which a cancellation of interest or penalties will be considered. Rule 228 states that the Department will waive or cancel the penalties imposed under RCW 82.32.090 or the interest imposed under RCW 82.32.050 only upon the 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. 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. A copy of Rule 228 is enclosed.

None of the circumstances relied on by the taxpayer are identified by statute or rule as a basis for abating interest or penalties. As an administrative agency, the Department does not have the discretion to change the law and grant relief.

Impositions of the late penalty is viewed primarily 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 an additional penalty of 50 percent of the additional tax found due. RCW 82.32.050. No such penalties were assessed in this case. Rather, the taxpayer was statutorily deficient in failing to register and timely report and pay its true tax liability, which deficiencies incur mandatory nonwaivable penalty assessment.

Any confusion which appeared to exist on the Department's behalf concerning the appropriate tax classifications for reporting was completely overcome by records and information within the possession and control of the taxpayer. Such claimed confusion did not cause the failure to register and report taxes. It may have temporarily resulted in misclassification of taxable income, but that problem and the penalty amounts assessed because of it were correctly resolved by Determination . . . . There is no evidence or reason supporting further penalty reduction or refund.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 24th day of December 1986.