

Cite as 2 WTD 425 (1987)

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

In the Matter of the Petition)	<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>
For Correction of Assessment of)	
)	No. 87-102
)	
. . .)	Registration No. . . .
)	Assessment No. . . .
)	

[1] **RULE 228, RCW 82.32.050, .105:** PENALTY --
EMPLOYEE'S ILLNESS -- INTEREST. The absence of a
taxpayer's office manager because of illness does
not justify waiver of a penalty for late payment of
an assessment. Interest may be waived if the delay
in issuance of a determination is solely for the
convenience of the Department of Revenue.

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: March 11, 1986

NATURE OF ACTION:

The taxpayer petitioned for cancellation of a penalty
assessment dated Januaryá27, 1986.

FACTS AND ISSUES:

Normoyle, A.L.J. (successor to M. Clark Chandler, A.L.J.)--The
taxpayer had been assessed taxes which were due on
Decemberá31, 1985. The payment was not mailed until
Januaryá6, 1986. The taxpayer requests a waiver of the
penalty because its office manager was absent from the office
due to illness from Decemberá22, 1985 to Januaryá6, 1986.

DISCUSSION:

When, as here, a taxpayer is assessed taxes by the Department of Revenue and fails to pay those taxes by the due date, RCW 82.32.050 requires the Department to assess interest, at nine percent per annum, and a penalty of ten percent of the tax. The only authority the Department has to waive the penalty is RCW 82.32.105. That statute provides for a waiver only if the failure to pay on time "was the result of circumstances beyond the control of the taxpayer." The statute also directs the Department to enact an administrative rule to implement this law.

WAC 458-20-228 (Rule 228) sets forth seven situations which "constitute the only circumstances under which a cancellation of penalties will be considered by the department." Although none apply to this case, we will discuss briefly the only two which could even arguably allow us to waive the penalty.

Number 3 reads as follows:

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.

Number 7 reads as follows:

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.

Number 3 doesn't apply because it was the taxpayer's office manager, not accountant, who was ill.

Number 7 is in the conjunctive; the requirements of all four of the sub-parts must be met. Here, we find that paragraph c doesn't apply. Illness of an office manager for the period nine days before the due date may have been "unforeseen and unintentional," but it cannot be said that her illness and absence from work was "not immediately known to the taxpayer."

Although the penalty will not be waived, part of the interest will, pursuant to that part of Rule 228 which allows such a waiver when "Extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department." Here, the petition was postmarked February 14, 1986. The delay in issuing this Determination, over one year later, was for the sole convenience of the Department.

DECISION AND DISPOSITION:

The petition for waiver of the penalty is denied. Because the delay in the issuance of this Determination was solely for the convenience of the Department, extension interest will be waived from August 14, 1986 through the new due date. The amount remaining owing on Tax Assessment No. . . . of \$. . . , plus unwaived extension interest in the amount of \$. . . , for a total of \$. . . is due by April 20, 1987.

DATED this 31st day of March 1987.