

Cite as 2 WTD 375 (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 Notices of)	
Balance Due of)	No. 87-73
)	
. . .)	Registration No. . . .
)	
)	

[1] **RULE 228 AND RCW 82.32.090:** PENALTIES -- LATE
PAYMENT -- WAIVER -- CIRCUMSTANCES BEYOND CONTROL OF
TAXPAYER -- WHAT CONSTITUTES
Lack of knowledge of a tax obligation does not
render failure to pay taxes when due "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.

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 protests the assessment of late payment
penalties.

FACTS:

Frankel, A.L.J.--The taxpayer began a retail business in
February of 1986. The bookkeeper and partners in the business
did not have previous business experience. They thought they
had notified every governmental agency that would be sending
it tax statements when they opened.

Last June, after operating the business for several months and
not receiving any forms from the State to use to remit the
sales tax they had been collecting, one of the business

partners called the Department. The taxpayer was informed of the registration requirement, and applied for a certificate of registration. The taxpayer was sent the proper forms and paid the taxes owing for February through May. Because the returns were late, though, the Department sent notices of balance due for late payment penalties. Twenty percent penalties were added for the returns that were over sixty days due . . . ; a ten percent penalty for the return that was thirty days overdue . . . and a five percent penalty for the return that was less than a month overdue

The taxpayer requests a waiver of the late payment penalties on grounds it was simply a lack of experience in setting up a business that caused the delay--not a deliberate attempt to avoid payment of the taxes owing.

A telephone conference was scheduled for January 2, 1987. The taxpayer was advised of the time and date of the conference, but did not answer a call on the scheduled date or contact this office to schedule another conference. Because the taxpayer's petition sets forth the basis for the appeal, though, a Determination can be made without a hearing.

ISSUE:

Whether to waive late penalties where a taxpayer did not know of its need to register with the Department, and thus did not receive excise tax returns in time to remit the taxes when due.

DISCUSSION:

The taxpayer objects to the imposition of penalties for late payment of its excise tax returns, since it believed it would be receiving the proper forms to use to remit the taxes owing but did not do so. Also, it paid the taxes owing as soon as it did receive the proper forms.

The late payment penalty, however, does not hinge on deliberate or willful delinquency. Late payment penalties have been mandated since 1965 when the legislature specifically amended the law to limit the Department's discretion to waive penalties. RCW 82.32.090 provides for late payment penalties as follows:

If payment of any tax due is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount

of the tax; and if the tax is not received within thirty days after the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within sixty days after the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax. No penalty so added shall be less than two dollars.

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 its tax obligation earlier, it would have paid the amount owing. Lack of knowledge, 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. The state does try to provide accessible taxpayer information. 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 and education which can be reached by phone, toll-free, from anywhere in the United States (Instate 1-800-647-7706; Out-of-state 1-800-233-6349). 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 260,000 registered taxpayers in Washington, the burden must be on the taxpayer to determine if it has an obligation to pay taxes.

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.

DECISION AND DISPOSITION:

The taxpayer's petition is denied. The amounts remaining owing on the notices of balance due . . . are due by April 6, 1987.

DATED this 17th day of March 1987.