

Cite as 4 WTD 429 (1987)

BEFORE THE INTERPRETATION AND APPEALS DIVISION
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. 88-8
)	
)	
. . .)	Registration No. . . .
)	Notice of Balance Due

[1] **RCW 82.32.090, RCW 82.32.105 AND RULE 228:** PENALTY
-- LATE PAYMENT OF TAX DUE -- CORPORATE
RESTRUCTURING -- NEW ACCOUNTING STAFF --
CIRCUMSTANCES BEYOND CONTROL OF TAXPAYER. Where
taxpayer failed to pay taxes in a timely manner
because corporate restructuring caused massive
paperwork to be handled by a newly formed accounting
staff, it is not a circumstance beyond the control
of the taxpayer that excuses late payment 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.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

Petition for cancellation of penalties assessed because of
late payments of taxes due.

FACTS AND ISSUES:

Krebs, A.L.J. -- . . . (taxpayer) is engaged in the business
of manufacturing and selling chemicals. The taxpayer has a
number of business locations in Washington. The taxpayer,
incorporated in Delaware on December 27, 1985, commenced
business activities in Washington on June 1, 1986 and
registered with the Department of Revenue in June 1986. The

taxpayer then filed on November 17, 1986 past due monthly excise tax returns with payment of the taxes for the monthly periods of June 1986 through September 1986.

The Department assessed late payment penalties as tabulated below and issued on May 8, 1987 a Notice of Balance Due:

<u>Tax Return</u>	<u>Due</u>	<u>Penalty Applied</u>	<u>Amount of</u>
<u>Penalty</u>			
June 1986	7-25-86	20%	\$ [X]
July 1986	8-25-86	20%	[X]
August 1986	9-25-86	10%	[X]
Sept. 1986	10-25-86	5%	[X]
		Total	\$ [X]

In requesting cancellation of the penalties assessed, the taxpayer reports that the late filings of the tax returns were caused by the following circumstances. During 1986, the taxpayer became a separate business entity resulting from a complex spin-off This sudden shift in corporate structure and subsequent reorganizations created a significant administrative burden to fully ensure proper identification and classification of sales taxes as they relate to the new organizations. To ensure that complete and accurate returns were filed, additional time was needed by the taxpayer to file the subject returns. The taxpayer's newly formed accounting staff was faced with a massive influx of paperwork and resulting confusion that has since been corrected. The taxpayer points out that the late filing occurrence was a unique situation.

The issue is whether the late payment penalties can be waived under the above-described circumstances.

DISCUSSION:

[1] The statute as recited below makes mandatory the assessment of penalties upon delinquent payment of taxes.

RCW 82.32.090 provides in pertinent part:

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 . . . (Emphasis supplied.)

In this case, the taxpayer filed the monthly excise tax returns after the due dates for the four monthly periods of June 1986 through September 1986 delinquent on November 17, 1986. Accordingly, the statutory penalty provisions of RCW 82.32.090 applied.

The legislature, through its use of the word "shall" in RCW 82.32.090, has made the assessment of the penalty mandatory. The mere fact of nonpayment within a specified period of payment requires the penalty provisions of RCW 82.32.090 to be applied.

As an administrative agency, the Department of Revenue is given no discretionary authority to waive or cancel penalties. The only authority to waive or cancel penalties is found in RCW 82.32.105 which in pertinent part provides:

If the department of revenue finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department of revenue shall waive or cancel any interest or penalties imposed under this chapter with respect to such tax. The department of revenue shall prescribe rules for the waiver or cancellation of interest or penalties imposed by this chapter. (Emphasis supplied.)

Administrative Rule WAC 458-20-228 (Rule 228), . . . , states the only seven situations under which a cancellation of penalties will be considered by the Department. None of the seven situations apply to the taxpayer. Essentially, the failure of a taxpayer to pay any tax by the due date must be the result of circumstances beyond the control of the taxpayer to warrant waiver or cancellation of the penalties. RCW 82.32.105.

We are sympathetic to the taxpayer's problem that the tax payment delinquency was caused by corporate restructuring and ensuing massive paperwork and information required to properly complete the tax returns by a newly formed accounting staff. However, they are circumstances strictly within the control of the taxpayer and have been uniformly so held by the Department of Revenue.

The Department as an administrative agency cannot properly extend relief beyond that authorized by law or by administrative regulation. The situations must be such as to warrant a finding that the failure of a taxpayer to pay any tax due by the due date resulted from circumstances beyond the control of the taxpayer. The circumstances in this case do not fall within any of the enumerated situations in WAC 458-20-228. Accordingly, we find that the delinquent payments of taxes did not result from circumstances "beyond the control of the taxpayer."

It may assuage the taxpayer to recognize that it has not been charged interest upon monies due the state earlier which by reason of nonpayment have been at the use and disposal of the taxpayer.

For the reasons stated and the applicable law, we conclude that the assessed late payment penalties were proper and cannot be waived.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 19th day of January 1988.