

Cite as 4 WTD 371 (1987)

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

In the Matter of the Petition)
O N
for Correction of Assessment of)

D E T E R M I N A T I

No. 87-371

. . .

Registration No. . . .

RCW 82.32.090, RCW 82.32.105 AND RULE 228: PENALTY
-- LATE PAYMENT OF TAX DUE -- UNREGISTERED TAXPAYER
-- INABILITY TO COPE WITH BUSINESS EXPANSION --
CIRCUMSTANCES BEYOND CONTROL OF TAXPAYER. Where a
taxpayer failed to register and pay taxes in a
timely manner because it did not have adequate and
knowledgeable personnel to cope with the situation
due to explosive business expansion, 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: . . .
. . .

DATE OF HEARING: December 10, 1987

NATURE OF ACTION

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

FACTS AND ISSUES

Krebs, A.L.J. -- . . . (taxpayer) is engaged in the business of selling computer memory boards. The taxpayer, headquartered in Massachusetts, has a business location in . . . , Washington where six employees conduct operations.

The taxpayer commenced business activities in Washington on July 1, 1986. One year later, the taxpayer registered with the Department of Revenue in July 1987. The taxpayer then filed on July 21, 1987 past due monthly excise tax returns with payment of taxes for the monthly periods of July 1986 through May 1987. The Department assessed late payment penalties and issued Notices of Balance Due tabulated below:

<u>Tax Return</u> <u>Issued</u>	<u>Due</u>	<u>Penalty Applied</u>	<u>Amount of Penalty</u>	<u>Notice</u>
July 1986 24-87	8-25-86	20%	\$ X	8-
August 1986 24-87	9-25-86	20%	X	8-
Sept. 1986 24-87	10-25-86	20%	X	8-
Oct. 1986 24-87	11-25-86	20%	X	8-
Nov. 1986 24-87	12-25-86	20%	X	8-
Dec. 1986 24-87	1-25-87	20%	X	8-
Jan. 1987 24-87	2-25-87	20%	X	8-
Feb. 1987 24-87	3-25-87	20%	X	8-
March 1987 18-87	4-25-87	20%	X	9-
April 1987 14-87	5-25-87	10%	X	8-
May 1987 14-87	6-25-87	5%	<u>X</u>	8-
			\$ X total	

In requesting waiver of the penalties assessed, the taxpayer states that the late filings of the tax returns were caused by the following circumstances. Its business activities rapidly expanded in many states in a few years. its backroom administrative functions failed to keep pace with escalating sales and marketing activities. Because of lack of staff and systems, many administrative tasks, such as accumulation of tax information, were put off or simply not done. The taxpayer's payroll grew from 20 employees in 1984 to 392 at

the end of 1986. In 1987, the taxpayer consolidated its headquarters and beefed up personnel, with many staff additions in the accounting and tax areas and with the intention of complying with regulations in all locations. The taxpayer voluntarily notified state and local authorities, had made full payment of all past due taxes, and remitted interest assessments. The taxpayer stresses that it was the initiator of the process and there obviously was no intent to defraud. The taxpayer points out that "it rectified the situation before being caught." The taxpayer did some other state tax returns earlier than others based on the volume of business in that state. The taxpayer was hampered by lack of knowledgeable and qualified personnel.

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

DISCUSSION

RCW 82.32.290 provides in pertinent part:

(1)(a) It shall be unlawful:

(i) For any person to engage in business without have obtained a certificate of registration as provided in this chapter;

. . .

(b) Any person violating any of the provisions of this subsection (1) shall be guilty of a gross misdemeanor in accordance with chapter 9A.20 RCW.

It is each individual's responsibility to be aware of any tax implications resulting from activities conducted within this state. Department of Revenue personnel are available to answer any inquires pertaining to such matters and information is readily available. The taxes imposed by the Revenue Act are of a self-assessing nature and the burden is placed upon a person to correctly inform himself of his obligations under the Act.

Thus, the taxpayer should have filed the Application for Certificate of Registration in July 1986 and filed regular excise tax returns thereafter. Had this happened, the taxpayer would have avoided being delinquent and the resultant build-up of past due taxes and consequential penalties.

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 delinquently after the due dates for the monthly periods of July 1986 through May 1987 in July 1987 and after registering with the Department in July 1987. 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 dynamic business expansion and lack of qualified personnel to handle the administrative tasks. However, they are circumstances strictly within the control of the taxpayer and have been uniformly so held by the Department of Revenue.

The Department recognizes that some taxable persons do not register because of a misunderstanding or inadvertence. Where a misrepresentation, fraud, or intent to evade taxes is found, an additional fifty percent evasion penalty is assessed under the provisions of RCW 82.32.050. In this case, there was no finding to warrant imposition of the evasion penalty.

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 28th day of December 1987.