

Cite as 4 WTD 131 (1987)

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

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of)	
)	No. 87-306
)	
. . .)	Registration No. . . .
)	Tax Assessment No. . . .
)	

[1] & [2] **RULE 228:** LATE PAYMENT PENALTY -- WAIVER OF -
- ILLNESS OF FATHER. Where the late payment
of a tax assessment was caused by the serious
illness of the taxpayer president's father,
the penalty therefor, but not the interest, is
waived.

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: August 27, 1987

NATURE OF ACTION:

Petition for waiver of penalty and interest levied for the tardy
payment of a tax assessment.

FACTS AND ISSUES:

Dressel, A.L.J. -- . . . (taxpayer) builds and sells spec and
custom homes. Its books and records were audited for the period
January 1, 1982 through December 31, 1985. As a result, the
Department of Revenue (Department) on November 6, 1986 issued the
above-captioned tax assessment in the total amount of \$
The notice of assessment specified a due date of December 1, 1986.
Payment was not received, however, until December 10, 1986. The
Department then issued an additional notice in which they demanded
interest of \$. . . and a 10% late-payment penalty of \$
The taxpayer is appealing both items.

In its petition for correction the taxpayer states that the reason for the tardy payment, among other things, was that the president of this small, family-owned company and his wife had to go to Arizona to visit the former's father who was ill with pneumonia and in the hospital. The couple left Washington on November 29, 1986 and returned December 9, 1986. The day after returning they mailed their check in payment of the assessment. Prior to leaving for Arizona the assessment had been in the hands of the company's private accountant who was checking it to see if it was in order. The sole issue in this case is whether, under the above facts, the late payment penalty and the interest may be waived.

DISCUSSION:

RCW 82.32.050 mandates a 10% penalty when a tax assessment is not paid by its due date. Waiver of such a penalty is possible only where there are circumstances beyond the control of the taxpayer. RCW 82.32.105. The circumstances that qualify are specifically listed in the Department's administrative rule, WAC 458-20-228 (Rule 228) which reads in part.

The department will waive or cancel the penalties imposed under RCW 82.32.090 and interest imposed under RCW 82.32.050 upon 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. The department has no authority to cancel penalties or interest for any other reason.

The following situations will constitute the only circumstances under which a cancellation of penalties will be considered by the department:

. . .

3. 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. (Emphasis added.)

[1] Pneumonia is a serious illness. For purposes of applying this Rule, a father is considered to be in one's immediate family. The father's illness took place prior to the filing date and was undoubtedly a cause of the delinquent payment. While it could be argued that the payment might have been made in the several weeks after the assessment but prior to the father's illness, we do not think it unreasonable for the taxpayer to have the audit results checked by its accountant prior to paying such a large sum of money. In addition, the onset of the father's illness was apparently sudden and not capable of anticipation by the taxpayer principals such that they could tender payment prior to their

departure for Arizona. Finally, inasmuch as this is a small, family-run business, it was most probably neither practical nor reasonable to entrust to somebody else the responsibility for making the tax payment. Waiver circumstance number 3 as quoted above from Rule 228 is deemed satisfied. The penalty is hereby waived.

[2] Interest, however, is another matter. It is separately considered in Rule 228 as follows:

. . . .

The following situations will constitute circumstances under which a waiver or cancellation of interest upon assessments pursuant to RCW 82.32.050 will be considered by the department:

1. The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department.
2. 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.

. . . .

As is readily evident from reading Rule 228, there are even fewer circumstances that qualify a taxpayer for waiver of interest, and the serious illness of a family member is not one of the two, neither of which otherwise apply, considerations of illness aside. Waiver of interest, therefore, is necessarily denied.

DECISION AND DISPOSITION:

The taxpayer's petition is granted in part and denied in part.

DATED this 17th day of September 1987.