

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 Refund of)	
)	No. 87-353
)	
. . .)	Registration No. . . .
)	Tax Assessment No. . . .
)	Warrant No. . . .

[1] **RULE 228, RCW 82.32.050 AND RCW 82.32.105:** INTEREST WAIVER -- IGNORANCE OF TAX LAW. An interest assessment may only be waived, under Rule 228, if the failure to pay taxes when due was the result of written instructions from the Department, or if extension of the due date was for the sole convenience of the Department. Ignorance of tax laws does not constitute a circumstance beyond the taxpayer's control, for purposes of applying the interest waiver provisions of RCW 82.32.105.

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 petitions for waiver of an interest assessment.

FACTS AND ISSUES:

Normoyle, A.L.J. -- The audit and the taxpayer's petition contained sufficient information to enable us to decide this appeal without a conference.

The taxpayer, a corporation, was audited for the period from April 1, 1982, through December 31, 1985. The audit assessed use tax on materials purchased by the taxpayer to be used by it in construction work for the federal government. The supplier of the materials failed to charge the taxpayer sales tax. The auditor assessed use tax on the value of the materials, and assessed interest on the total assessment.

The taxpayer requests a waiver of the interest. Its petition states as follows:

Our appeal is this: We do not feel we should be penalized for the tax due on the lime purchased from (the cement company) for use on contract number Because (the cement company) did not include the tax due in their billing to us does not seem reasonable cause for us to be penalized for not paying a tax we did not know we owed.

DISCUSSION:

RCW 82.32.050 reads in part:

If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and . . . shall add thereto interest at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until date of payment.

The only statutory authority which the Department has to waive interest is RCW 82.32.105. That statute provides for a waiver only if the failure to properly pay taxes "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.

Washington State 458-20-228 states, in pertinent part:

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.

Because neither of the above circumstances are present, the interest cannot be waived under Rule 228.

Nor can the interest be waived under RCW 82.32.105. We do not find that failure to pay the sales tax to the supplier "was the result of circumstances beyond the control of the taxpayer." The law

imposing the use tax on government contractors was enacted in 1975. That same year, the Department issued an excise tax bulletin (ETB). ETBs are published by the Department and are available to anyone who subscribes. In this case, ETB 496.08.170 specifically advised federal contractors of their use tax liability. The taxpayer could have subscribed to this service. Each taxpayer is held to be knowledgeable of tax changes made by legislation.

DECISION AND DISPOSITION:

The petition for refund is denied.

DATED this 30th day of November 1987.