

Cite as 4 WTD 101 (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. 87-300
)	
. . .)	Registration No. . . .
)	Notices of Balance Due
)	

[1] **RULE 228 AND RCW 82.32.090:** PENALTY -- LATE PAYMENT -- UNREGISTERED TAXPAYER -- SITUATION 2 -- ERRONEOUS INFORMATION -- SITUATION 3 -- ILLNESS IN TAXPAYER'S IMMEDIATE FAMILY. Rule 228's situation 2, the erroneous information exception, does not apply when taxpayer's employee or employment agency gives the erroneous information. Rule 228's situation 3, illness exemption, does not apply where the taxpayer was not registered for four months while the illness was for three weeks. Nonregistration indicated no intent to file timely tax returns and was the cause for the late payment, not illness.

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 20, 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 sale of material handling equipment. The taxpayer has two resident employees in Washington with a branch location in Seattle. The taxpayer is headquartered in . . . , Colorado. The taxpayer commenced business activity in Washington on June 30, 1986. The taxpayer filed an

Application for Certificate of Registration dated October 31, 1986 which was received by the Department of Revenue on November 3, 1986.

On December 10, 1986, the taxpayer filed monthly excise tax returns for June and July, 1986 which reported no taxable amounts but bore a handwritten notation: "Reported on the 8-86." The notation indicated that the taxable amounts would be reported on the August 1986 tax return.

On December 16, 1986, the taxpayer filed the monthly tax return for August 1986 (which was due September 25, 1986) reporting \$. . . taxes due and paid same. On February 13, 1987, the Department issued a Notice of Balance Due stating the tax due was \$. . . and imposed a 20% penalty of \$. . . for late payment. The balance due of \$. . . (\$. . . penalty plus \$. . . underpayment of tax) remains unpaid.

On December 16, 1986, the taxpayer filed the monthly tax return for September 1986 (which was due on October 25, 1986) reporting \$. . . taxes due and paid same. On February 13, 1987, the Department issued a Notice of Balance Due stating the tax was \$. . . and imposed a 10% penalty of \$. . . for late payment. The balance due of \$. . . (\$. . . penalty and \$. . . underpayment of tax) remains unpaid.

The taxpayer seeks waiver of the penalties on the following grounds:

1. It has acted in good faith, did not use the late tax money to benefit itself and was merely trying to catch up with its bookkeeping.
2. It hired an individual from an "economic disadvantaged employment agency" as its bookkeeper. It received the wrong information about this employee's ability to do the job. The person hired was unable to do the job and the bookkeeping went into an "unstable state." The taxpayer had to hire a C.P.A. to clear up the books.
3. The taxpayer's Secretary/Treasurer, . . . , had to go to Oregon for about 3 weeks, from about August 20 to about September 15, 1986, because his mother was having a blood problem and fainting condition for which the doctors were unable to find the cause. The bookkeeper was unable to handle the tax situation by herself in the absence of [the Secretary/Treasurer].
4. The taxpayer is experiencing financial hardship and the penalty amount is a real problem because of lack of money.

The issue is whether the penalty should be waived under the above described circumstances.

DISCUSSION:

[1] RCW 82.32.290 provides;

It shall be unlawful for any person to engage in business without having obtained a certificate of registration as provided herein;

. . .

Any person violating any of the provisions of this section shall be guilty of a gross misdemeanor.

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 inquiries 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 business to correctly inform itself of its obligations under the Act.

Thus, the taxpayer should have filed the Application for Certificate of Registration in June 1986, the month in which it commenced business activity in Washington. However, the taxpayer filed the application on October 31, 1986, a date which already made tax returns due for the months of June, July, August and September 1986 delinquent.

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

RCW 82.32.090 provides:

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.)

The monthly tax return for August 1986 has a due date of September 25, 1986. The taxpayer filed it on December 16, 1986. Thus, the more than 60 day penalty of 20% applied to the tax due for August 1986 as well as the taxes due for June and July which were incorporated in that return.

The monthly tax return for September 1986 has a due date of October 25, 1986. The taxpayer filed it on December 16, 1986. Thus, the more than 30 day penalty of 10% 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.)

Rule 228, . . . , states the only seven situations under which a cancellation of penalties will be considered by the Department.

The taxpayer pointed to situation 2 as applicable because it received the wrong information about the ability of a bookkeeper it hired to do the job. Situation 2 states:

2. The delinquency was due to erroneous information given the taxpayer by a department officer or employee.

The taxpayer received the alleged wrong information from the "economic disadvantaged employment agency" and/or the bookkeeper; not from a Department officer nor a Department employee. The word "department" as stated in Rule 228's situation 2 modifies both officer and employee. Accordingly, situation 2 does not apply to the taxpayer's situation.

The taxpayer pointed to situation 3 as applicable because its Secretary/Treasurer, . . . , who helped the bookkeeper because she could not do the job alone, had to go to Oregon for about 3 weeks, from about August 20 to September 15, 1986, because his mother was seriously ill with a blood problem and fainting condition for which the doctors were unable to find the cause. Situation 3 states:

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.

While [his] mother was seriously ill and she is "immediate family" to him, the question remains whether his absence from supervising or helping the bookkeeper caused the delinquency in filing the tax return timely. The taxpayer did not file its Application for Registration until October 31, 1986, about 6 weeks after [he] returned from his ill mother in Oregon and about 4 months after it should have filed the Application based upon its commencement of business activity in Washington on June 30, 1986.

RCW 82.32.030 in pertinent part states:

If any person engages in any business or performs any act upon which a tax is imposed by the preceding chapters, he shall, whether taxable or not, under such rules and regulations as the department of revenue shall prescribe, apply for and obtain from the department a registration certificate . . . No person shall engage in any business taxable hereunder without being registered in compliance with the provisions of this section, . . .

The Department recognizes that some businesses 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. However, it appears to us that regardless of Mr. . . . absence from his duties because of his mother's illness, the taxpayer failed to register and thus failed to receive tax return forms from the Department. Thus, it was solely the nonregistration of the taxpayer which caused the delinquency and it indicated that during the time in question there was no effort at all to file timely tax returns. Accordingly, situation 3 is not available to the taxpayer for relief from the penalty.

The taxpayer's good faith is not in question. The legislature, however, has not chosen good faith or financial hardship as a basis under the law for relief from the penalty. The taxpayer may apply for a partial payment plan to make installment payments plus interest to ease the financial burden by telephoning [the] Compliance Supervisor, at 206-

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 8th day of September 1987.