

Cite as 4 WTD 111 (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. 87-303
)	
. . . )	Registration No. . . .
)	Notice of Balance Due
)	

- [1] **RULES 228 AND RCW 82.32.105:** PENALTY -- LATE PAYMENT OF TAX DUE -- BEYOND CONTROL OF TAXPAYER -- DEATH OF OFFICE MANAGER. Rule 228's situation 3 excuses penalty where there is a death of the taxpayer or his accountant prior to the filing date of a tax return. It is beyond the control of a taxpayer if its office manager dies before the filing date and cannot complete the tax return before the due date. Penalty cancelled.

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 waiver of five percent penalty assessed because of late payment of tax due.

FACTS AND ISSUES

Krebs, A.L.J. -- [The taxpayer] is engaged in the business of manufacturing, repairing and selling of springs for vehicles and machinery.

The taxpayer's monthly tax return for the period of November 1985 was due on December 25, 1985. The taxpayer completed the tax return on December 27, and it was received with payment of the tax on December 31, 1985 by the Department of Revenue. The Department imposed a five percent late penalty on the tax reported of \$ . . . . On April 3, 1986, the Department issued a Notice of Balance Due

in the amount of \$ . . . which represented the five percent penalty. This amount remains unpaid.

In seeking waiver of the five percent penalty, the taxpayer reports that the office manager died on December 22, 1985 which caused "pandemonium of reorganization." On discovery of the oversight relevant to the filing of the tax return, the taxpayer immediately finished completing the return and forwarded it with payment to the Department.

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

#### DISCUSSION

[1] The only authority to cancel penalties is found in RCW 82.32.105 which allows the Department to waive or cancel penalties if the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer. That statutory provision also requires the Department to prescribe rules for the waiver or cancellation of penalties.

The administrative rule which implements RCW 82.32.105 is WAC 485-20-228 (Rule 228), . . . . We find that situation 3 applies to the taxpayer's situation, and it 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.

In this case, the death of the taxpayer's office manager on December 22, 1985 was three days prior to the filing date of December 25. The taxpayer completed the tax return on December 27 which must be considered a prompt response under the circumstances of a loss of a key employee in the preparation of tax returns. Accordingly, the taxpayer's situation falls within Rule 228's situation 3 as a circumstance beyond the control of the taxpayer. This authorizes the penalty to be cancelled.

Furthermore, we take administrative notice that an Excise Tax Examiner in the Department's Office Account Audit Section wrote and initialled on the November 1985 tax return in question the following: "Penalty cancelled per Rule 228 #3."

#### DECISION AND DISPOSITION

The taxpayer's petition is granted. The Notice of Balance Due dated April 3, 1986 is withdrawn.

DATED this 11th day of September 1987.

