

Cite as 5 WTD 213 (1988)

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

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u>
<u>N</u>	
For Correction of Assessment and)	
Refund of)	No. 88-158
)	
)	Registration No. . . .
. . .)	Tax Assessment No. . . .
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)	
)	
and)	
)	
. . .)	Registration No. . . .
)	Tax Assessment Nos. . . .
.	
)	

- [1] **RULE 228, RCW 82.32.050, AND RCW 82.32.105:**
PENALTIES -- WAIVER -- CIRCUMSTANCES BEYOND
TAXPAYER'S CONTROL -- CONFUSION CAUSED BY
COMMUNICATION WITH DEPARTMENT. Where assessments
were issued, then cancelled due to Department error,
then re-issued; and where taxpayer reasonably
believed, after communication with the Department,
that still another corrected assessment would be re-
issued, the 10% penalty for late payment of the
assessment may be waived.
- [2] **RULE 228, RCW 82.32.050, AND RCW 82.32.105:**
INTEREST -- DELAY IN ISSUANCE OF DETERMINATION --
ADMINISTRATIVE LAW JUDGE AND DIRECTOR'S LEVEL
APPEAL. Post-audit interest may be waived if the
delay in issuance of an initial or Final
Determination is for the sole convenience of the
Department. Det. 87-102, 2 WTD 425 (1987).

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: January 28, 1988

NATURE OF ACTION:

Petition for refund of post-audit interest which accrued during pendency of petitions first to Administrative Law Judge, then to Director; and petition for waiver of penalty for late payment of a corrected assessment.

FACTS AND ISSUES:

Normoyle, A.L.J. -- This is a consolidated appeal by two related businesses. Both seek a refund of post-audit interest while their joint appeals were pending before the Department. One of the taxpayers (. . .) also petitions for waiver of a late payment penalty.

Both businesses were audited in 1984. Both appealed to the Department, on February 21, 1985. Each petition was denied at the ALJ level on September 25, 1985. The taxpayers then appealed to the Director, on October 16, 1985. A Final Determination was issued on November 7, 1986. It reversed the ALJ's Determination, in part, and required the Audit Section to issue revised assessments, consistent with the Final Determination.

The Department did issue revised assessments, but, because of errors, they were withdrawn and re-issued a number of times from November, 1986, to February 26, 1987. On the latter date, the two taxpayers were sent individual assessments, with due dates of March 23, 1987. One of them turned out to be correct -- the other incorrect.

On March 11, 1987, the taxpayer's representative and the auditor met to discuss errors in these assessments. At that meeting, according to the representative, the auditor told him that both assessments were incorrect and would have to be revised still again. The representative also claims that he was told not to pay either assessment until they were re-issued.

The auditor recalls the meeting, and remembers that he told the taxpayer not to pay one of the assessments because it was to be re-issued, but does not recall saying that the other should not be paid by the due date. He does believe, though, that the taxpayer could have reasonably believed that the auditor's instructions to wait for a corrected assessment applied to both of the February 26 assessments. Throughout the audit, the appeals, and the issuance of the various revised assessments, whenever one assessment was revised, the other was as well. This was because the two businesses were interrelated and an increase in the tax assessment of one often meant a corresponding decrease of the assessment of the other.

The March 23, 1987, due dates came and went, without any action by either the taxpayers or the Department. On April 16, 1987, the Department re-issued an assessment for one of the businesses. On April 22, 1987, the Department told the taxpayer that the other February assessment was past-due and that interest from the due date, plus a 10% penalty, were being added to that assessment. Shortly thereafter, the taxpayer paid both assessments, but not the 10% late payment penalty.

The questions presented are whether, as to . . . , the penalty should be waived; and, as to both taxpayers, should refunds be issued for post-audit interest.

DISCUSSION:

PENALTY.

RCW 82.32.050 provides for a 10% late payment penalty, where a taxpayer does not pay an assessment by the due date. RCW 82.32.105, however, requires the Department to waive that penalty where the failure to pay on time was due to circumstances beyond the control of the taxpayer. Washington Administrative Code 458-20-228 (Rule 228) provides for a penalty waiver when the failure to pay was due to confusion caused by communication between a taxpayer and the Department.¹

¹ Rule 228 limits the use of this provision to taxpayers who have not had a prior tax delinquency. . . . , the taxpayer petitioning for a penalty waiver, had not been delinquent prior to this assessment.

The facts of this case lead us to conclude that . . . 's failure to pay the February 26, 1987, assessment by the March 23 due date should be waived. We concur with the taxpayer and the auditor that there was enough confusion generated by the various re-issuances of assessments, particularly in light of the fact that the assessments were interrelated and, to large extent, inter-dependent, to justify the taxpayer's belief that both of the February 26 assessments would be revised.

The 10% penalty for late payment of Tax Assessment No. . . . is hereby cancelled.²

INTEREST.

Both taxpayers request a refund of the interest which accrued during the pendency of the joint appeals to both an administrative law judge and the Director. Specifically, both request that the post-audit interest should not have been assessed for the period beginning 120 days following receipt of the original petition for correction of assessment by the Department of Revenue on February 21, 1985, to the date of the Department's Final Determination, on November 7, 1986.

Rule 228 does provide for a waiver of interest where "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." The Department has interpreted that rule as requiring an interest waiver when the issuance of a Determination has been delayed, for the sole convenience of the Department, for more than a reasonable period of time after a taxpayer has petitioned for correction of an assessment. This policy applies to both ALJ and Director level appeals. Thus, in this case, there are two different interest free periods:

From June 21, 1985 through September 25, 1985 (date of ALJ Determination).

From February 13, 1986 through November 7, 1986 (date of Final Determination).

² We note that, other than the printed language on the assessment to the effect that a penalty of 10% would be added if the tax assessment was not paid by March 23, 1987, the taxpayer has not received an actual penalty assessment.

Because the delay in issuance of the Determination and Final Determination was not due to dilatory conduct by, or at the request of, the taxpayers, we conclude that the delay was for the sole convenience of the Department and that the taxpayers' petitions for refunds should be partially granted.

DECISION AND DISPOSITION:

. . . , Registration No. . . . , shall not be required to pay a late payment penalty of Tax Assessment No.

Both taxpayers' petitions for a refund of post-audit interest are granted in part. Refunds shall be issued by the Department for interest which accrued from June 21, 1985, through September 25, 1985; and from February 13, 1986, through November 7, 1986. These refunds are from the interest assessed under Tax Assessment Nos. . . . and This matter is referred back to the Audit Section for a computation of the interest to be refunded to these taxpayers.

DATED this 16th day of March 1988.