

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 Refund of)	No. 89-481
)	
)	Real Estate Excise Tax
. . .)	
)	
)	

[1] RULE 228 and REAL ESTATE EXCISE TAX: INTEREST
PENALTY -- REAL ESTATE EXCISE TAX -- LATE PAYMENT --
LOSS IN MAIL. Loss of real estate excise tax
payment in mail will not excuse payment of interest
imposed by RCW 82.45.100.

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 concerning the imposition of interest to the late
payment of the real estate excise tax.

FACTS:

Bauer, A.L.J. -- The taxpayers transferred real estate on
which real estate excise tax was due. The taxpayer claims
that their attorney mailed a letter containing the deed, the
excise tax affidavit, a check for \$4,562.66 in payment of the
excise tax, and a check for the recording fee to the Clallam
County Courthouse on July 1, 1987. When neither the check for
the excise tax nor the check for the recording fee were
cashed, the taxpayer's attorney called the Clallam County's
office on or about October 30th and was advised that the mail

containing the deed and other items had never been received. The taxpayer claims it then stopped payment on the two checks which had not been received and forwarded a copy of the original cover letter, the deed and affidavits, and new checks in the same amounts¹ on November 18, 1987, which were received on November 23, 1987.

Because payment was received more than 30 days after the date of the deed, interest was charged at the statutory rate of 1% per month.

TAXPAYERS' EXCEPTIONS:

The taxpayers object to the imposition of the interest, arguing that they had done everything in their power to comply with the real estate excise tax requirements. They ask that the interest be refunded.

ISSUE:

The sole issue for resolution is whether interest imposed by RCW 82.45.100(1) may be excused when payment of the real estate excise tax is late because payment is lost in the mail and never received.

DISCUSSION:

RCW 82.45.100(1) provides for the imposition of interest when payment of the real estate excise tax is late:

(1) The tax imposed under this chapter is due and payable immediately at the time of sale, and if not paid within thirty days thereafter shall bear interest at the rate of one percent per month from the time of sale until the date of payment.

WAC 458-61-090 implements this section by providing:

(1) The tax imposed under RCW 82.45.070 is due and payable to the county treasurer as of the transaction date.

¹ In fact, the excise tax due and owing was \$3,845.26, and the penalty assessed was \$230.72, for a total of \$4075.98. The taxpayer was refunded \$486.68 on November 23, 1987.

(2) If the tax is paid within thirty days of the transaction date, the late payment penalty is not applied. If the tax is paid more than thirty days after the transaction date, a one percent penalty is applied to the amount of unpaid tax for each thirty-day period, or part thereof, beginning with the transaction date to date of final and complete payment.

(3) The tax is due as of the transaction date whether or not the contract or conveyance documents are recorded at that time. If the tax is not paid within thirty days of the transaction date, the late payment penalty in subsection (2) of this section, is applicable for the period which the tax remains unpaid.

WAC 458-61-030(14) addresses the term "transaction date":

(14) "Date of transfer," "date of sale," "conveyance date" and "transaction date" shall have the same meaning and may be used interchangeably for the purposes of these rules. This shall be the date shown on the conveyance instrument.

Thus, when payment of the real estate excise tax is not received within 30 days of the transaction date, interest at the rate of one percent per month is applied to the amount of unpaid tax for each thirty-day period, or part thereof, beginning with the transaction date to date of final and complete payment.

RCW 82.45.150 provides:

All of chapter 82.32 RCW , except [for sections not here applicable], applies to the tax imposed by this chapter, in addition to any other provisions of law for the payment and enforcement of the tax imposed by this chapter. The department of revenue shall by rule provide for the effective administration of this chapter....

RCW 82.32.105 provides in pertinent part:

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....

WAC 458-20-228 is the rule which addresses the waiver of interest:

The following situations will constitute circumstances under which a waiver or cancellation of interest upon assessments ... 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.

[1] Thus, the loss of a real estate excise tax payment in the mail will not excuse the payment of interest imposed by RCW 82.45.100. The taxpayer's petition must be denied.

There is, however, a question as to the "transaction date" to be used in this case. The taxpayer's Affidavit - prepared on May 29, 1987 - claimed the transaction date to be May 29, 1987. The taxpayer now claims that the effective date on the deed was July 1, 1987 (the day the documents and payments were first mailed to the Clallam County Treasurer). This office does not have a copy of the deed.

If the effective date of the deed was May 29, 1989, the 6% interest assessment was correct. If the effective date of the deed was July 1, 1989, however (indicating a mistake in the Affidavit), the interest assessed should have only been 5%.

If it can be established that the date on the deed is 1 July, 1987, a one percent refund may be in order.

DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied. However, a partial refund may be warranted in accordance with this determination.

DETERMINATION (Cont)
No. 89-481

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Real Estate Excise Tax

DATED this 6th day of October 1989.