

Cite as Det. No. 99-249, 20 WTD 426 (2001)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 99-249
)	
...)	Registration No. . . .
)	FY. . . /Audit No.. . .
)	

RCW 82.32.045: RULE 228; ACTIVE NON-REPORTING—LATE-PAYMENT PENALTIES—QUALIFICATIONS. When a taxpayer is either erroneously placed on active nonreporting status because of the taxpayer's errors in reporting or no longer qualifies for the status, late-payment penalties can be assessed for the periods of nonreporting.

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:

Taxpayer who did not file returns for several years after being notified of active non-reporting status protests the imposition of late-payment penalties.¹

FACTS:

Mahan, A.L.J. – The taxpayer is a construction contractor. It was incorporated in Washington in 1994, but did not do any business in Washington until late 1995. After forming the Washington corporation, the taxpayer's owner continued to work in California. In March of 1997, the owner closed down his California operations and began concentrating on work in Washington.

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

The Department of Revenue (Department) originally assigned the taxpayer a quarterly reporting period. Effective July 1, 1996, the Department informed the taxpayer that it was being placed on an “active nonreporting” business status. The notice of the change stated:

To qualify [for active nonreporting status] **all** of the following requirements must be met:

1. business activity does not require the collection of retail sales tax or the payment of use tax
2. gross proceeds of sales, gross income, or value of products is less than \$24,000 for all business and occupation tax classifications per year . . .

The Department’s review of the taxpayer’s July 1995 through June 1996 returns indicated that, based on those returns, the taxpayer qualified for the change in status to active nonreporting.

In early 1998, the Department audited the taxpayer’s books and records for the January 1, 1994 through December 31, 1997 period. As a result of the audit, the Department issued a deficiency assessment in the amounts of \$. . . in retail sales tax, \$. . . in retailing B&O tax, \$. . . in late-payment penalties, and \$. . . in interest. A 50% evasion penalty was not assessed with respect to the collected but unremitted retail sales tax. The assessment included \$. . . in retail sales tax for 1996 on income of \$. . .

The taxpayer appealed the assessment of the late-payment penalties. He contends that he was unaware of tax reporting obligations, having previously worked where retail sales tax was not charged. However, he admits that from late 1995 through 1998 he did collect retail sales tax and did not report those collections to the state. He further states that, with trying to start up a business in this state while still operating a business in California, tax reporting was not something to which he paid much attention. In this regard, he continued to use his California accountant, who did not alert him to specifics about Washington tax reporting requirements. He also states he understands a “gray” area exists with respect to late-payment penalties when a taxpayer is placed on active nonreporting status.

ISSUE:

When a taxpayer is either erroneously placed on active nonreporting status or no longer qualifies for the status, should late-payment penalties be assessed for the periods of nonreporting?

DISCUSSION:

RCW 82.32.045 states when returns are due, as follows:

- (1) Except as otherwise provided in this chapter, payments of the taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW, along with reports and returns on

forms prescribed by the department, are due monthly within twenty-five days after the end of the month in which the taxable activities occur.

(2) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. For these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

...

(4) Notwithstanding subsections (1) and (2) of this section, the department may relieve any person of the requirement to file returns if the following conditions are met:

(a) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than twenty-four thousand dollars per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twenty-four thousand dollars per year; and

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect.

Similarly, WAC 458-20-101 (Rule 101) provides for a registered taxpayer status called "active nonreporting." It reads, in part:

(3) **Requirement to file tax returns.** Persons registered with the department must file tax returns and remit the appropriate taxes to the department, unless they are placed on an "active nonreporting" status by the department.

(a) The department may relieve any person of the requirement to file returns by placing the person in an active nonreporting status if all of the following conditions are met:

(i) The person's value of products (RCW 82.04.450), gross proceeds of sales (RCW 82.04.070), or gross income of the business (RCW 82.04.080), from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is less than twenty-four thousand dollars per year;

(ii) The person's gross income (RCW 82.16.010) from all business activities taxable under chapter 82.16 RCW (public utility tax), is less than twenty-four thousand dollars per year; and

(iii) The person is not required to collect or pay to the department retail sales tax or any other tax or fee the department is authorized to collect.

In this case, the taxpayer was not eligible for the active nonreporting status because of the retail sales tax obligations. Had the taxpayer correctly reported retail sales tax in 1995 and the first half of 1996, the Department would not have placed the taxpayer on active non-reporting status. Even without the retail sales tax obligation, the taxpayer in 1996 quickly became ineligible for active nonreporting status, because gross income had risen beyond the maximum level before

reporting was again required. Throughout the audit period, the taxpayer had the obligation to report and remit the collected retail sales tax to the state.

Under chapter 82.32 RCW, late-payment penalties are mandatory. RCW 82.32.050 provides for the assessment of late penalties, as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer 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. No penalty so added shall be less than five dollars.

During the period covered by the assessment, RCW 82.32.105 provided that such penalties may be waived only under the following circumstances:

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.²

WAC 458-20-228(6)(b) (Rule 228) lists "the only circumstances under which a cancellation of penalties will be considered." None of those circumstances exist in this case.³ Rather, the

² Effective January 1, 1997, the statute was amended to include the following additional basis for waiver of a late-payment penalty:

(2) The department shall waive or cancel the penalty imposed under RCW 82.32.090(1) when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under subsection (1) of this section if:

(a) The taxpayer requests the waiver for a tax return required to be filed under RCW 82.32.045, 82.23B.020, 82.27.060, 82.29A.050, or 84.33.086; and

(b) The taxpayer has timely filed and remitted payment on all tax returns due for that tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested.

(3) The department shall waive or cancel interest imposed under this chapter if:

(a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

³ In relevant part, Rule 228 provides:

taxpayer in effect claims that the error in reporting was due to the lack of knowledge regarding tax reporting obligations. In this regard, RCW 82.32A.030 provides in part:

To ensure consistent application of the revenue laws, taxpayers have certain responsibilities under Chapter 82.32 RCW, including, but not limited to, the responsibility to:

...

(2) Know their tax reporting obligations, . . .

This statute codifies, for tax law purposes, the well-known common law principle that all persons are charged with knowledge of the laws of the state in which they do business. Our Supreme Court has stated: "Ignorance of the law excuses no one." Leschner v. Department of Labor & Industries, 27 Wn.2d 911, 185 P.2d 113 (1947). The Department has followed this rule for many years. For example, Excise Tax Advisory 310.32.101.230, initially issued on January 20, 1967, states:

The taxes imposed by the Revenue act are of self-assessing nature and the burden is placed upon the taxpayer to correctly inform himself of his obligation under this Act.

The following situations will be the only circumstances under which a cancellation of penalties will be considered by the department:

- (i) The return was filed on time but inadvertently mailed to another agency.
- (ii) The delinquency was due to erroneous written information given the taxpayer by a department officer or employee. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not canceling the penalty in cases of oral information is because of the uncertainty of the facts presented, the instructions or information imparted by the department employee, or that the taxpayer fully understood the information received. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of the penalty.
- (iii) 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.
- (iv) The delinquency was caused by unavoidable absence of the taxpayer, prior to the filing date.
- (v) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.
- (vi) The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office, in writing, for proper forms and these were not furnished in sufficient time to permit the completed return to be paid before its delinquent date.
- (vii) The delinquency penalty will be waived or canceled on a one time only basis if the delinquent tax return was received under the following circumstances:
 - (A) The return was received by the department with full payment of tax due within 30 days after the due date; i.e., within the five percent penalty period prescribed by RCW 82.32.090, and
 - (B) The delinquency was the result of an unforeseen and unintentional circumstance, not immediately known to the taxpayer, which circumstances will include the error or misconduct of the taxpayer's employee or accountant, confusion caused by communications with the department, failure to receive return forms timely, natural disasters such as a flood or earthquake, and delays or losses related to the postal service.

While every effort is made by the Tax Commission [now the Department of Revenue] to give broad distribution of copies of the Revenue Act, instructions, rule changes and other pertinent information, failure to notify a particular taxpayer of his correct tax liability for unreported taxes does not relieve him from the assessment resulting from a misunderstanding of his correct tax liability.

See also Det. No. 89-266, 7 WTD 349 (1989).

In accordance with these principles, the taxpayer's lack of understanding of tax reporting obligations does not provide a basis to waive the late-payment penalties. Further, the taxpayer's failure either to correctly report taxes in 1996 or to notify the Department that he was not eligible for the active nonreporting status precludes relief. Had the taxpayer correctly reported its retail sales tax collections, the Department would not have placed the taxpayer on active nonreporting status. The taxpayer also had an obligation to inform the Department that it was not eligible for such a status and to correctly report in a timely manner. The taxpayer's failure to report taxes due and owing gave rise to the imposition of the late-payment penalties. Accordingly, we affirm the Department's assessment of the late-payment penalties.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

Dated this 27th day of July 1999.