

Cite as Det. No. 00-185ltr, 20 WTD 391 (2001)

March 16, 2001

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Re: ...  
Registration No. ...  
FY. . ./Audit No. ...  
Refund Request  
Appeal of Determination No. ...  
Docket No. ...

RULE 228; RCW 82.32.105: PENALTY WAIVER -- CIRCUMSTANCES BEYOND TAXPAYER'S CONTROL. Rule 228 provides that an excise return will be considered timely if any late payment penalties on it were waived due to circumstances beyond the control of the taxpayer. The late payment penalty for Q4/98 was waived due to circumstances beyond the taxpayer's control and, therefore, was timely. Although taxpayer had been in business less than twenty-four months, a late payment penalty for Q1/99 was waived because taxpayer timely registered with the Department and had no delinquent tax returns for periods prior to Q1/99.

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 protests assessment of late payment penalty and interest.<sup>1</sup>

Dear Ms. . . . :

We have received your petition for reconsideration seeking a refund of late-payment penalties and interest, and have reviewed the petition, the file, and Det. No. . . . We are exercising the discretion given to us by WAC 458-20-100 (Rule 100) and RCW 82.32.160, and we deny holding another hearing on this matter.

Rule 100(5) provides:

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

If a taxpayer believes that an error has been made in the determination of the administrative law judge, the taxpayer may . . . request in writing a reconsideration of the decision.... The request for reconsideration shall indicate specific mistakes in law or fact and provide legal authority that would necessitate the reconsideration of the decision.

The legal issues and facts in this matter were addressed in the Det. No. . . . You argued the Department of Revenue (the Department) erred in not canceling or waiving two late-payment penalties and related interest that the Department assessed against your mother-in-law . . . (the taxpayer) despite her serious illness. You informed us she now resides in a retirement home due to her illness. In Det. No. . . ., we discussed why the Department could not waive the two penalties and interest and, therefore, refund the money. We stated in part:

The Forest Tax Section waived the late payment penalty for Q4/98 due to the taxpayer's illness, which the Forest Tax Section deemed to be a circumstance beyond her control consistent with RCW 82.32.105(1) and Rule 228(9)(a)(ii)(C). However, the Forest Tax Section declined to cancel or waive the late payment penalties for Q1/99 and Q2/99 because

the taxpayer's illness by then, although still serious, was no longer immediate, unexpected, or an emergency. That is, the situation that caused the delinquencies was no longer considered a circumstance beyond the taxpayer's control for purposes of waiving or canceling the penalties. Specifically, the tax and return for Q1/99 was not due until April 30, 1999, which was more than four months after the taxpayer's convulsions began. The due date for Q2/99 was July 31, 1999, which was more than seven months after the convulsions started. Consequently, the taxpayer and her family or business associates had sufficient time by those last two due dates to make arrangements to pay the tax timely. As Rule 228 states, a serious illness is not intended to have an indefinite application for canceling or waiving penalties. For these reasons, we agree with the Forest Tax Section. We cannot waive or cancel the late payment penalties for Q1/99 and Q2/99 as a circumstance beyond the taxpayer's control.

However, we have reconsidered whether we can waive or cancel the penalties for Q1/99 and Q2/99 under RCW 82.32.105(2). RCW 82.32.105(2) allows for a waiver if a taxpayer has timely filed and remitted payment on all tax returns due for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested. Rule 228(9)(b)(i)(B) permits a penalty waiver even if a taxpayer has engaged in business activities less than twenty-four months, providing the taxpayer has timely registered with the Department and had no delinquent tax returns for periods prior to the period covered by the return at issue.

In this matter, the taxpayer was timely registered with the Department. She registered on November 19, 1998, the day her Forest Practice Application was approved by the Department of Natural Resources and when she began harvesting. Furthermore, Rule 228(9)(b)(ii) declares "a return will be considered timely if any late payment penalties assessed on it were waived or canceled due to circumstances beyond the control of the taxpayer." Taken together, these subsections mean we can waive the penalty and interest for Q1/99, because the penalty for Q4/98

was waived due to circumstances beyond the taxpayer's control. That is, the return for Q4/98 is considered timely filed. Thus, there were no delinquent tax returns for periods prior to Q1/99. Therefore, we can waive the late-payment penalty and related interest for Q1/99.

However, we cannot waive the penalty for Q2/99 under the twenty-four month provision because the return and tax for Q1/99 were delinquent. Finally, we cannot waive interest under RCW 82.32.105(3) and Rule 228(10). The failure to pay the tax prior to issuance of the assessment was not the direct result of written instructions given by DOR to the taxpayer, and DOR did not extend the due date of the assessment for its own convenience.

The taxpayer's petition for reconsideration and refund is granted in part. The penalty for Q1/99 and related interest shall be refunded to the taxpayer. The remainder of the petition is denied.

Sincerely,

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David M. De Luca  
Administrative Law Judge