

Cite as Det. No. 01-180, 21 WTD 175 (2002)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 01-180
...)	
)	Registration No. . . .
)	Notice of Balance Due . . .
)	Docket No. . . .

- [1] RULE 22802; RCW 82.32.080, RCW 82.32.085, RCW 82.32.090: LATE-PAYMENT PENALTY – EFT – DUE DATE -- CHECK. The Department must collect funds from the bank of a taxpayer required to pay by EFT by the EFT due date when the taxpayer delivers a check to the Department, rather than paying its taxes by electronic funds transfer.
- [2] RULE 228, RULE 22802; RCW 82.32.105: PENALTY -- WAIVER – EFT – BANK. A taxpayer's lack of knowledge of its bank's EFT program is not a circumstance beyond the taxpayer's control under which penalties may be waived.

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:

A taxpayer required to pay its taxes by electronic funds transfer, who paid its taxes by check, protests a late-payment penalty.¹

FACTS:

M. Pree, A.L.J. -- . . . (taxpayer) engaged in business in Washington. The taxpayer had taxes due of more than \$240,000 in a calendar year, and was required to pay its taxes to the Department of Revenue by electronic funds transfer (EFT). On Friday, February 23, 2001 the taxpayer hand delivered its January 2001 combined excise tax return together with a check for \$

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

. . . , the amount owed on the return, to the Department's Seattle office. The Department deposited the taxpayer's check that day. The taxpayer's check was not credited to the Department's account until Wednesday, February 28, 2001.

The Department's Taxpayer Account Administration Division (TAA) assessed a 5% late payment penalty of \$. . . against the taxpayer. The taxpayer requested a penalty waiver, which TAA denied. The taxpayer paid the penalty (plus interest) under protest and requests a refund.

The taxpayer states it signed up with the bank to pay its taxes via EFT, but the bank discontinued this feature in 1997 when it changed its electronic payment system. Therefore, the taxpayer began hand delivering its checks for the amount of tax owed to the Department. To verify its dilemma, the taxpayer obtained a letter from the bank, showing that after the bank changed its system, the taxpayer signed up for the bank's ". . ." feature in 1997. "[This feature]" only made Federal electronic tax payments at that time. According to the bank's letter, Washington EFT payments were not available at that time, but were in place as early as August 1999 when coding changed. The bank had no records of notifications sent out to Washington customers, such as the taxpayer, that Washington EFT was available.

The taxpayer signed up for the bank's EFT on March 6, 2001. The taxpayer requested TAA to waive the late-payment penalty. TAA denied the taxpayer's waiver request, stating the circumstances were not beyond the taxpayer's control. TAA also considered waiving the penalty under the 24-month rule,² but found not all returns had been timely filed within the prior 24 months.

ISSUES:

1. If the taxpayer was required to pay its taxes by EFT, did the taxpayer timely pay its taxes by delivering a check to the Department prior to the due date?
2. Was the taxpayer's failure to timely pay its taxes a circumstance beyond its control?

DISCUSSION:

[1] Certain taxpayers must pay their taxes by EFT under RCW 82.32.080. Under RCW 82.32.085, the Legislature charged the Department with the responsibility for adopting:

. . . rules necessary to implement the provisions of RCW 82.32.080 and this section. The rules shall include but are not limited to: (1) Coordinating the filing of tax returns with payment by electronic funds transfer; (2) form and content of electronic funds transfer; (3) voluntary use of electronic funds transfer with permission of the department; (4) use of commonly accepted means of electronic funds transfer; (5) means of crediting and recording proof of payment; and (6) means of correcting errors in transmission.

² See RCW 82.32.105(2).

The administrative rule implementing electronic funds transfers is WAC 458-20-22802 (Rule 22802). Subsection (3) of Rule 22802 requires taxpayers that have taxes due of \$240,000 or more in a calendar year pay by EFT. RCW 82.32.085 defines an “electronic funds transfer” as:

any transfer of funds, other than a transaction originated by check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

Because the taxpayer’s annual taxes exceeded \$240,000, it failed to comply with the requirement to pay by EFT, and continued to remit its taxes by check until March 2001.

Delinquency or late payment penalties are imposed under the authority of RCW 82.32.090, which provides:

(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

RCW 82.32.080 specifically provides that a taxpayer filing by EFT is subject to the procedures and penalty provisions found in RCW 82.32.090. Rule 22802(13) provides:

(a) There are no special provisions for penalties when payment is made by EFT. The general provisions for all taxpayers apply. To avoid the imposition of penalties, it is necessary for both the filing of the tax return and the payment to be timely. Penalties may be waived only when the circumstances causing delinquency are beyond the control of the taxpayer. . . . See: WAC 458-20-228.

RCW 82.32.085 explains that “[t]he electronic funds transfer is to be completed so that the state receives collectible funds on or before the next banking day following the due date.” Rule 22802(2)(f) defines “collectible funds” as actually meaning “collected funds that have completed the electronic funds transfer process and are available for immediate use by the state.”

Therefore, as long as the taxpayer’s payments by check cleared before the EFT payment due date, i.e., were collectible by the Department’s bank before the EFT payment due date, the taxpayer did not incur any late-payment penalties. For monthly filers, such as the taxpayer, tax returns are due “within twenty-five days after the end of the month in which the taxable activities occur.” RCW 82.32.045. Subsection (7) of Rule 22802 explains how the due date applies to EFT taxpayers:

The EFT payment is due on or before the banking day following the tax return due date. An EFT is timely when the state receives collectible U.S. funds on or before 3:00 p.m., Pacific time, of the EFT payment due date. The ACH system, either ACH debit or ACH

credit, requires that the necessary information be in the originating bank's possession on the banking day preceding the date for completion. Each bank generally has its own transaction deadlines and it is the responsibility of the taxpayer to insure timely payment The tax return due date shall be the next business day after the original due date if the original due date falls on a Saturday, Sunday or legal holiday.

The taxpayer's returns were due on the 25th of the month, except when, as here the 25th fell on a weekend. *See* Rule 22802 (7)(b). February 25, 2001 fell on a Sunday, therefore, the tax return was due on Monday, February 26, 2001. To be timely, the Department had to receive collectible funds (funds available for the State's immediate use) by 5:00 p.m., February 27, 2001. *See* Rule 22802(2)(f), (7); *See also* Det. No. 94-016, 14 WTD 184 (1994). The Department received collectible funds on February 28, 2001, one day past the due date prescribed by statute and rule. The Department must have timely received both the tax return and payment for a taxpayer to avoid late-payment penalties. Rule 22802(8). Because the January 2001 taxes were not collectible by the EFT due date, TAA properly assessed a delinquency penalty upon the late payment.

The taxpayer contends that it should not be assessed a penalty on its payment, because its check was timely made by the return due date, although late by the EFT payment due date. We must disagree with the taxpayer's contention.

Remittance of taxes due by EFT is mandatory. RCW 82.32.080. In accordance with the legislative mandate, the Department's Rule 22802 prescribes the proper methods and procedures for those taxpayers required to file by EFT. Rule 22802(8) states:

The filed return and the payment by EFT shall be coordinated by the Department. A return shall be considered timely filed only if it is received by the department on or before the due date, or with a postmark on or before the due date. In addition, the payment by EFT must have been completed by the next banking day after the due date. If both events occur, there is timely filing and payment and no penalties apply.

Thus, although the return was timely filed, and included the payment by check, the Department's records show that the payment was late because the funds were not collectible by the EFT payment due date. The late-payment penalty was properly imposed unless authority exists to waive it.

[2] Under RCW 82.32.105, the Department must waive or cancel late-payment penalties if the delinquency was caused by circumstances beyond the taxpayer's control. WAC 458-20-228 (Rule 228) is the administrative rule implementing RCW 82.32.105 for waiving penalties. Subsection (9)(a)(ii) of Rule 228 explains that circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay. Seven circumstance beyond the control of taxpayers are listed, none of which is applicable in this case. Subsection (9)(a)(iii) of

Rule 228 provides examples of circumstances that are generally not considered beyond the control of taxpayers and do not qualify for waiver of penalties. The specific examples of circumstances not beyond the control of taxpayers include a misunderstanding or lack of knowledge of a tax liability (*See* Rule 228 (9)(a)(iii)(B)) and mistakes on the part of persons with whom the taxpayer contracted (*See* Rule 228(9)(a)(iii)(E)).

The taxpayer suggests the bank may have been at fault, by not advising the taxpayer when its EFT program became available. Whether the bank caused the late payments is between the taxpayer and its bank. The Department had no control over the taxpayer's choice of banks. Each bank has different services and under Rule 22802(7), "it is the responsibility of the taxpayer to insure timely payment."

The Department sent a September 2000 document to all taxpayers required to file by EFT, entitled, "*Your Guide to the . . . Electronic Funds Transfer Program*," which states on page 5, "If your bank cannot send an ACH credit transaction, please contact an EFT representative at the Department of Revenue." The Department's EFT assistance phone number is provided. The letter from the taxpayer's bank states its electronic tax payments had been available as early as August 16, 1999. The Department's document advised taxpayers to call if there was a problem. The taxpayer failed to contact either the bank or the Department until after the penalty was incurred.

Under these circumstances, we find the taxpayer's lack of knowledge regarding its bank's EFT program was not beyond the taxpayer's control. The late-payment penalty was properly assessed and cannot be waived.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

Dated this 30th day of November 2001.