

Cite as Det. No. 04-0017, 23 WTD 328 (2004)

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. 04-0017
...)	
)	Registration No. . . .
)	Notice of Balance Due -- . . .
)	Docket No. . . .
)	

RULE 228; RCW 82.32.045, RCW 82.32.090(1): RETURN DUE DATE - LATE PAYMENT PENALTY. Effective August 1, 2003, payments of monthly business and occupation taxes, sales taxes, and various other excise taxes are due monthly within twenty days after the end of the month. If payment of any tax due on a return to be filed by a taxpayer is not received by the Department by the due date, the Department must assess a penalty of five percent of the amount of the tax.

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.

M. Pree, A.L.J. – A taxpayer, unaware the due date had changed to the 20th of the month, filed its July 2003 return with payment on August 25, 2003. The 5% late payment penalty applies to the late return.¹

ISSUE

May the Department waive the late payment penalty assessed on a July 2003 combined excise tax return, which the taxpayer mailed to the Department on August 25, 2003, if the taxpayer was unaware the due date had been changed to August 20, 2003?

FINDINGS OF FACT

. . . (taxpayer) operates a business in Washington as an LLC. The taxpayer regularly filed monthly combined excise tax returns with the Department of Revenue (Department), and with a few exceptions, paid them by the due date, the 25th day following the end of the month. The

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

taxpayer was unaware of any change in the due date until the taxpayer prepared its July, 2003 return on August 25, 2003. The taxpayer then noticed the due date had changed to August 20th instead of the 25th. The taxpayer called the Department's "800" number, and talked to a female employee.² According to the taxpayer, the employee explained that many businesses were surprised by the new due date. The taxpayer recalls the employee instructing the taxpayer to include with the return a note requesting a penalty waiver and the Department would waive the penalty.

The taxpayer mailed its July 2003 return on August 25, 2003 with a note requesting any penalty be waived. The Department's Taxpayer Account Administration Division (TAA) assessed a 5% late payment penalty against the taxpayer. TAA explained a notice of the earlier due date had been mailed to all taxpayers. Further, the taxpayer had not timely filed all of its returns for the prior 24 months.³ The taxpayer attempted to discuss the penalty with a supervisor in TAA, and then appealed the assessment of the penalty.

The taxpayer states it was unaware of the due date until August 25, 2003. The taxpayer asserts that the Department should have stamped the envelopes in red containing the July 2003 combined excise tax returns with notice of the earlier due dates. Had that been done, the taxpayer would have opened the envelope, and tried to file the return by the earlier due date. The taxpayer contends the Department should take responsibility for the August delinquency.

ANALYSIS

Effective August 1, 2003,⁴ payments of monthly business and occupation taxes, sales taxes, and various other excise taxes, along with reports and returns on combined excise tax forms prescribed by the Department, are due monthly within twenty days after the end of the month. RCW 82.32.045. The taxpayer's July, 2003 return was due August 20, 2003.

Under RCW 82.32.090(1) if payment of any tax due on a return to be filed by a taxpayer is not received by the Department by the due date, the Department must assess a penalty of five percent of the amount of the tax. We are not aware of any authority applicable to the taxpayer's situation, which would allow us to waive this penalty. *See e.g.* RCW 82.32.105; RCW 82.32A.020; WAC 458-20-228.⁵

² The taxpayer did not recall the name of the Revenue employee, but noted the call on a scrap of calculator tape.

³ The taxpayer does not allege that the prior delinquencies were due to circumstances beyond its control. The taxpayer was aware the returns had to be filed by the 25th of the month, but had other priorities.

⁴ *See* Laws of 2003, 1st sp.s. c 13 § 1: Sections 8 through 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect August 1, 2003. RCW 82.32.045 was amended in Section 8 of the act.

⁵ Had the taxpayer timely filed its tax returns with the tax for the preceding twenty-four month period, we would have authority to waive the penalty under RCW 82.32.105(2).

To ensure consistent application of the revenue laws, taxpayers have the responsibility to file accurate returns and pay taxes in a timely manner. RCW 82.32A.030(4). Taxpayers have the responsibility to know their tax reporting obligations. RCW 82.32A.030(2). We conclude the taxpayer was responsible to file and pay its July 2003 return by the August 20, 2003 due date.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 26th day of January 2004.