

Cite as Det. No. 03-0007R, 23 WTD 79 (2004)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In The Matter of the Petition For)	<u>D E T E R M I N A T I O N</u>
Reconsideration of)	
)	No. 03-0007R ¹
)	
...)	Registration No. . . .
)	Document No. . . .
)	Docket No. . . .

- [1] RULE 100: HEARING ON RECONSIDERATION -- REQUIREMENT. Neither RCW 82.01.060(4) nor WAC 458-20-228 (4)(a) requires a hearing on reconsideration.
- [2] RULE 228: LATE PAYMENT PENALTY AND INTEREST-- USE TAX ON IMPORTS -- FAILURE OF DEPARTMENT TO TIMELY ADVISE. The Department is not required to issue written instructions to individual taxpayers to pay a use tax prior to its being due, and the issuance of an assessment when a use tax deficiency is discovered is not an "extension of the due date" under RCW 82.32.105(3).

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.

Bauer, A.L.J – . . . (Taxpayer) objects to Det. No. 03-0007 holding him liable for the late payment penalties and interest that were assessed on goods he imported. We uphold the original finding that the penalties and interest are properly due.²

ISSUES:

1. Is an in-person hearing on reconsideration required under WAC 458-20-100?
2. Is the Department required to assess a taxpayer before the use tax becomes due, and does

¹ The original determination, Det. No. 03-0007, is published at 23 WTD 74 (2004).

² Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

RCW 82.32.105(3) excuse a taxpayer from penalties and interest accruing prior to the Department's issuance of a use tax assessment?

FINDINGS OF FACT:

The findings of fact as set forth in Det. No. 03-0007, issued on January 24, 2003, are unchanged and are incorporated herein. That determination addressed the following issues:

- (1) Did lack of knowledge that Taxpayer would have to pay use tax on logs he imported for his own use as a consumer justify a waiver of interest or penalties?
- (2) Did the Department's delay in assessing the use tax justify the waiver of penalties and interest?
- (3)

Determination No. 03-0007 answered all of the above questions in the negative. Taxpayer takes exception to these findings, and demands an in-person hearing, stating:

We are VERY VERY upset about your actions towards us. We are not CRIMINALS and resent very much being treated this way. I won't let it be until I get a face to face conference with you.

What you think you are doing to us is VERY VERY wrong.

(Emphasis in the original) Taxpayer, relying on RCW 82.32.105(3), further argues that interest and penalties should not be owed because:

- the use tax bill from the Department was paid immediately upon receipt,
- without that bill the amount owing could not have otherwise been determined, and
- it was not Taxpayer's fault that the bill did not arrive in a timely manner from the Department of Revenue (Department).

ANALYSIS:

Hearing. RCW 82.01.060(4) requires the Director of the Department to “[p]rovide by general regulations for an adequate system of departmental review of the actions of the department or of its officers and employees in the assessment or collection of taxes.” The statute on its face does not require a hearing, only a system of review. The Director has elected to fulfill this requirement for review by adopting a system of review that does not require hearings in all cases. See WAC 458-20-100(4)(a) (Rule 100), which provides:

When a petition for review is granted, the department may grant a hearing or issue a determination without conducting a hearing.

[1] (Emphasis added.) Neither the rule nor the statute requires a hearing on reconsideration. Instead, the taxpayer has the right to de novo hearings of assessments or denial of refunds in the Board of Tax Appeals (see RCW 82.03.190) or in Superior Court (see RCW 82.32.180). Therefore hearings by the Appeals Division are not compelled.

Because in this case the facts are undisputed and the law is clear, we are exercising the option not to conduct a hearing over and above the teleconference originally held in this matter . . . Taxpayer's request for a hearing on reconsideration is denied.

RCW 82.32.105(3). RCW 82.32.105(3) provides:

- (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.

RCW 82.32.105(3) concerns the waiver of interest, not penalties. Therefore, Taxpayer's late payment penalties may not be waived under this provision of the law.

[2] Further, RCW 82.32.105(3)(a) provides for the waiver of interest when a taxpayer does not pay a tax timely because he has received written instructions from the Department. In this case, Taxpayer had not received any written instructions from the Department that caused him not to pay the tax timely. Taxpayer's argument that he failed to pay the tax timely because the Department did not issue timely written instructions to pay the tax, i.e., a bill, is not well taken. The use tax is a tax that is, basically, self-assessing. A Consumer Use Tax Form is available online at the Department's web site (www.dor.wa.gov), and the only information a taxpayer needs before completing it are the time of purchase and the price. In the alternative, forms and information are available at all Department of Revenue offices, and advice is available by phone. It is the responsibility of taxpayers to know of their use tax liability and make the effort to pay it timely. RCW 82.32A.030. The law does not require the Department to bill a taxpayer before the tax becomes due.

Taxpayer's reliance on RCW 82.32.105(3)(b) is misplaced because it applies to the extension of due dates, and the Department did not extend Taxpayer's due date for payment. The Department's authority to waive late payment of return penalties is set out in subsections (1) and (2) of RCW 82.32.105. Det. No. 03-0007 explains why Taxpayer's late payment penalty may not be waived under RCW 82.32.105.

For the reasons stated above, we uphold the findings of Det. No. 03-0007.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 13th day of August 2003.