

Cite as 1 WTD 225 (1986)

BEFORE THE INTERPRETATION AND APPEALS SECTION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D E T E R M I N A T I</u>
<u>O N</u>		
for Correction of Assessment of)	
)	No. 86-262
)	
. . .)	Registration No. . .
.)	
)	Tax Assessment Nos. .
.á.)	

[1] **RULE 228:** PENALTIES -- LATE PAYMENT -- WAIVER -- SITUATION (7) -- UNREGISTERED TAXPAYER. Penalty waivers under situation (7) require that all three requirements must be satisfied. Situation (7) requirements are not in the alternative.

[2] **RULE 228:** PENALTIES -- WAIVER -- LACK OF KNOWLEDGE -- COOPERATION. Conditions for penalty waivers under Rule 228 do not include lack of knowledge or cooperation with registration.

These 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.

TAXPAYER REPRESENTED BY: . . .

DATE OF HEARING: January 8, 1986

NATURE OF ACTION

Petition for waiver of late-payment penalties.

FACTS AND ISSUES

David L. Dressel, Administrative Law Judge -- . . . (taxpayer) is a sales representative of sporting goods manufacturers and wholesalers. It is a Nevada corporation which has an office in Portland, Oregon. Three salespersons from the Portland office come to Washington periodically and make sales here. Although the taxpayer has been conducting business in this manner since 1978, it was unaware of its business and occupation tax liability so consequently was not registered with the Department of Revenue until 1985. At that time the Department's auditors learned of the taxpayer's Washington presence and advised it of its duty to register which it did. Following that after receiving figures on the volume of the taxpayer's Washington business, the Department issued the above-referenced tax assessments which included late payment penalties totalling \$5,096. It is that aspect of the assessments to which the taxpayer objects in this petition for correction.

TAXPAYER'S EXCEPTIONS

During the course of the subject audit, the taxpayer was cooperative. Once advised of its liability for Washington business and occupation tax, it promptly made a significant partial payment of \$26,144. It is argued that this positive attitude on the part of the taxpayer should be taken into consideration in making the decision whether to waive the penalties.

A more specific argument is made with respect to WAC 458-20-228 (Rule 228). The taxpayer suggests that it should be afforded relief under situation number 7 as described in the cited rule. In this regard the taxpayer's petition states:

. . . Item No. 7 contains three criteria: (1) the return and payment was made within 30 days of of (sic) the date due, (2) the taxpayer was never previously delinquent and (3) the delinquency was the result of an unforeseen and unintentional circumstance. The facts of this case are very similar: (1) once notified of the deficiency, the Corporation promptly (sic) paid the tax due; (2) the Corporation was never before delinquent with respect to other taxes due the State of Washington; (3) assuming that the forms were received from the Department, those persons responsible for handling such matters simply erred in not filing and paying the tax . . .

DISCUSSION

[1] There are seven situations listed in Rule 228 in which penalties may be abated. The taxpayer contends that it qualifies under number 7. The administrative rule reads in part:

The department will waive or cancel the penalties imposed under RCW 82.32.090 and interest imposed under RCW 82.32.050 upon finding that the failure of a taxpayer to pay any tax by the due date was due to circumstances beyond the control of the taxpayer. The department has no authority to cancel penalties or interest for any other reason.

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

. . .

7. 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 taxpayer has never been delinquent filing a tax return prior to this occurrence, unless the penalty was excused under one of the preceding six circumstances, and

c. 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, and delays or losses related to the postal service.

d. The delinquency will be waived under this circumstance on a one-time basis only. (Emphasis mine.)

The three substantive requirements for a number 7 waiver are set forth in sub-sections (a) - (c). Contrary to its petition, the taxpayer fails to satisfy at least two of the three. Regarding (a) the taxpayer states, "once notified of the deficiency, the Corporation promptly (sic) paid the tax due . . .". The problem with this explanation is that the taxes were due as far back as 1978. As indicated in Rule 228, tax returns and payments are to be filed monthly, quarterly, or annually. The returns are due no later than the last day of the month following the period covered by the tax return. Those received after the due date are delinquent and subject to penalties. Rule 228.

Thus, it is evident that numerous due dates have come and gone since 1978 when the taxpayer commenced doing business in Washington. Its first business and occupation tax payment ever was received September 27, 1985. The closing date for the subject assessments was June 30, 1985. It is clear that none of the payments were made within 30 days of the last day of the month following the period covered by a particular tax return. The only possible exception would be for tax due in 1985 if the taxpayer were assigned an annual reporting period.¹ A check with the Department computer, however, reveals the taxpayer has been assigned to report quarterly which fact makes the possible exception impossible.

Regarding sub-section (b) of situation number 7, the reason that requirement is not met mirrors the explanation given above for sub-section (a). Again, per Rule 228, if a taxpayer fails to pay by a due date, it is deemed delinquent. Inasmuch as this taxpayer has missed many due dates it has been delinquent many times. That circumstance renders it ineligible for penalty waiver under (b).

Although the taxpayer arguably meets requirement (c), that alone is not a sufficient basis for relief. The separation of the three requirements by the conjunctive word "and" indicates that all of them must be satisfied. Because they were not, abatement of the penalties will not be granted.

[2] The state appreciates the cooperative nature of this taxpayer and does not doubt that the taxpayer may have been ignorant of the business and occupation tax. Unfortunately, neither the taxpayer's cooperative attitude nor lack of

¹In that case 1985 taxes would be due January 31, 1986 per Rule 228.

knowledge about the business and occupation tax justifies the waiver requested. Neither of those circumstances is listed in situations one through six of Rule 228 as beyond the taxpayer's control. These are not defenses, because the taxes imposed by the Revenue Act are of a self-assessing nature and the burden is placed upon the taxpayer to correctly inform itself of its obligation under the Act. Indeed, the taxpayer here was engaged in business subject to taxation by Nevada, Oregon and probably other states so it is deemed to have sufficient notice to prudently make proper inquiry as to tax liability within the state of Washington.

DECISION AND DISPOSITION

The taxpayer's petition for correction is hereby denied. The balance of Tax Assessment No. . . . in the amount of \$1,421 plus statutory interest of \$48 for a total of \$1,469 is due for payment by October 30, 1986. The balance of Tax Assessment No. . . . in the amount of \$3,675 plus statutory interest of \$125 for a total of \$3,800 is also due for payment by October 30, 1986. Because this due date has been extended for the sole convenience of the Department, however, interest will be waived for the period from April 4, 1986 through the new due date.

DATED this 30th day of September 1986.