

Cite as 1 WTD 107 (1986)

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

In the Matter of the Petition     ) D E T E R M I N A T I O N  
For Correction of Assessment of    )  
  )               No. 86-235  
  )  
  )     Registration No. . . .  
  )     Tax Assessment No. . . .  
  )

**RCW 82.32.090 AND RULE 228:** PENALTY -- LATE PAYMENT OF TAX DUE -- UNREGISTERED TAXPAYER -- RULE 228's SITUATION NUMBER 7 NOT APPLICABLE. Where taxes were assessed against a taxpayer for time period when not registered, Rule 228's situation number 7 is not applicable to excuse penalty. It applies only to late tax returns where payment is made within 30 days after the due date. Penalty sustained.

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: . . .  
NATURE OF ACTION:

Petition for waiver of penalties assessed because of delinquent payment of taxes due.

FACTS AND ISSUES:

Abraham J. Krebs, Administrative Law Judge -- . . . (taxpayer) is engaged in the business of wholesale sales of . . . shipped into Washington from out of state. The taxpayer's resident employees solicit the sales in Washington. These sales commenced on or about January 1, 1980. The taxpayer filed an Application for Certificate of Registration on October 17, 1985.

Based on a report of the taxpayer's Washington destination sales for the years 1980 through 1984 furnished by the taxpayer's letter dated October 9, 1985 (subject to verification by future field audit), Tax Assessment No. . . . was issued on December 10, 1985 stating excise taxes due in the amount of \$ . . . , interest due in the amount of \$ . . . , and penalty due in the amount of \$ . . . for a total sum of \$ . . . . The taxpayer made payment of \$ . . . on December 19, 1985 and the balance (which is the amount of the penalty) remains due.

The taxpayer requests that the penalty be waived under the provisions of WAC 458-20-228 (Rule 228) shown below as stated by the taxpayer in its petition:

7(B) "The taxpayer has never been delinquent in filing a return prior to this occurrence."

(C) "The delinquency was the result of an unforeseen and unintentional circumstance, not immediately known to the taxpayer."

#### DISCUSSION:

RCW 82.32.290 provides

It shall be unlawful for any person to engage in business without having obtained a certificate of registration as provided herein; .á.á.

Any person violating any of the provisions of this section shall be guilty of a gross misdemeanor.

It is each individual's responsibility to be aware of any tax implications resulting from activities conducted within this state. Department of Revenue personnel are available to answer any inquiries pertaining to such matters and information is readily available. The taxes imposed by the Revenue Act are of a self-assessing nature and the burden is placed upon a business to correctly inform itself of its obligations under the Act.

Thus, the taxpayer should have filed the Application for Certificate of Registration in 1980 and filed regular excise tax returns thereafter. Had this happened, the taxpayer would have avoided being delinquent and the resultant build-up of past due taxes and consequential penalties.

The statute as recited below makes mandatory the assessment of penalties upon delinquent payment of taxes.

RCW 82.32.090 provides:

If payment of any tax due 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; and if the tax is not received within thirty days after the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within sixty days after the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax. (Emphasis supplied.)

The legislature, through its use of the word "shall" in RCW 82.32.090, has made the assessment of the penalty mandatory. The mere fact of nonpayment within a specified period of payment requires the penalty provisions of RCW 82.32.090 to be applied.

As an administrative agency, the Department of Revenue is given no discretionary authority to waive or cancel penalties. The only authority to waive or cancel penalties is found in RCW 82.32.105 which in pertinent part provides:

If the department of revenue finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department of revenue shall waive or cancel any interest or penalties imposed under this chapter with respect to such tax. The department of revenue shall prescribe rules for the waiver or cancellation of interest or penalties imposed by this chapter. (Emphasis supplied.)

Administrative Rule 228, copy attached, states the seven situations under which a cancellation of penalties will be considered by the Department. Situation number 7, upon which the taxpayer relies as pertinent to its situation, states in full:

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 supplied.)

Situation number 7 applies only to penalties assessed because of a late tax return, not a late payment where the taxpayer, as in this case, had not filed any tax returns at all. Furthermore, in this case, full payment of taxes due was not made within 30 days after the due date, that is, the due dates during the years of 1980 through 1984.

The Department recognizes that some businesses do not register because of a misunderstanding or inadvertence. Where a misrepresentation, fraud or intent to evade taxes is found, an additional fifty percent evasion penalty is assessed under the provisions of RCW 82.32.050. In this case, there was no finding to warrant imposition of the evasion penalty.

For the reasons stated and the applicable law, we conclude that the delinquent penalty assessed was proper and cannot be waived.

#### DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 29th day of August 1986.