

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. 86-206  
  )  
  )Registration No. . . . .  
  )  
  )

**RCW 82.32.050, RCW 82.32.105 AND RULE 228:** PENALTIES/INTEREST  
-- LATE PAYMENT OF TAX ASSESSMENT. Retirement of bookkeeper  
and time required for taxpayer's own post-assessment  
examination of its records are not waiver-justifying  
circumstances beyond the taxpayer's control.

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 penalty for late payment of audit  
assessment.

FACTS AND ISSUES:

David L. Dressel, Administrative Law Judge -- . . .  
(taxpayer) operates the . . . . An examination of the  
taxpayer's books and records by the Department of Revenue for  
the period of January 1, 1981 through March 31, 1985 resulted  
in the assessment of taxes and interest totaling \$. . . Tax  
Assessment No. . . . was issued in that amount on August 8,  
1985. The form sent to the taxpayer stated that payment was  
due September 2, 1985. Payment was not received until after  
that date, however. Upon receipt of the tardy remittance, the

Department on October 18, 1985 issued a balance due notice which included a 10% late-payment penalty plus interest. Said notice stated that the postmark on the envelope containing the payment was dated September 11, 1985. The taxpayer responded with its October 24, 1985 petition for correction.

In its petition, the taxpayer indicates its feeling that the penalty levied for its delinquency was unjust because of special circumstances. The taxpayer writes:

We were audited at a most inconvenient time, as the bookkeeper of 18 years had just retired in January. She had been working at certainly less than full capabilities for some time before her actual retirement, so when she left, there was quite a lot to straighten out.

However, we did our best to pull together the records and whatnot needed for the audit. Then when we were notified of the assessment to the tune of over \$3,000.00, all the records and whatnot had to be gone through and invoices found so we could cross-check just what we were getting billed for.

This took a considerable amount of time, and on top of other bookkeeping details pending that could not be postponed, we were a week late sending our payment in. We feel in view of the circumstances, this was not an unreasonable extension, and therefore don't think we should be charged the additional penalty.

The issue to be decided in this determination, then, is whether the above-stated are circumstances beyond the taxpayer's control so as to provide a basis for waiver of the late-payment penalty and interest.

#### DISCUSSION:

The pertinent statute is RCW 82.32.050 which reads:

Deficient and delinquent payments -- Penalties and interest -- Limitations. If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and as to assessments made on

and after May 1, 1965, including assessments for additional tax or penalties due prior to that date shall add thereto interest at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until date of payment. The department shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within ten days from the date of the notice, or within such further time as the department may provide. If payment is not received by the department by the due date specified in the notice, or any extension thereof, the department shall add a penalty of ten percent of the amount of the additional tax found due. If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to due shall be added. . . .

Although the legislature's use of the word "shall" indicates the mandatory nature of the penalties and interest, it has also provided for waiver of same in RCW 82.32.105 as follows:

Waiver or cancellation of interest or penalties. 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. Notwithstanding the foregoing the amount of any interest which has been waived, canceled or refunded prior to May 1, 1965 shall not be reassessed according to the provisions of this chapter.

As required by that statute, the Department has promulgated an administrative rule, WAC 458-20-228 (Rule 228), in which the circumstances justifying waiver are listed. The rule states 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:

1. The return was filed on time but inadvertently mailed to another agency.

2. The delinquency was due to erroneous information given the taxpayer by a department officer or employee.

3. The delinquency was caused by death or serious illness of the taxpayer or his immediate family, or illness or death of his accountant or in the accountant's immediate family, prior to the filing date.

4. The delinquency was caused by unavoidable absence of the taxpayer, prior to the filing date.

5. The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

6. The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office, in writing, for proper forms and these were not furnished in sufficient time to permit the completed return to be paid before its delinquent date.

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.

A request for a waiver or cancellation of penalties must be in letter form and should contain all pertinent facts and be accompanied by such proof as may be available. Petition for cancellation of penalties must be made within the period for filing under RCW 82.32.160 (within 20 days after the issuance of the original notice of the amount thereof or within the period covered by any extension of the due date thereof granted by the department). In all such cases the burden of proving the facts is upon the taxpayer.

The following situations will constitute circumstances under which a waiver or cancellation of interest upon assessments pursuant to RCW 82.32.050 will be considered by the department:

1. The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department.

2. Extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department. (Emphasis ours.)

Unfortunately, the retirement of a taxpayer's bookkeeper is not one of the circumstances listed for cancellation of either penalties or interest. Neither is there any provision for relief because of the time it took to cross-check invoices and other records. If that process could not have been accomplished by the due date, the taxpayer should have paid the tax as billed and then filed a claim for refund per WAC 458-20-100 (Rule 100) in the event the cross-check uncovered an error(s) by the auditor.

Inasmuch as the Department has no authority to cancel penalties or interest for any reason other than those listed in Rule 228, supra, the penalty and interest assessed in the instant case must stand. The circumstances described by the taxpayer are not deemed as "beyond the taxpayer's control." Only those named in the Rule qualify for that designation.

DECISION AND DISPOSITION:

For the reasons stated above, the taxpayer's petition is hereby denied.

DATED this 8th day of August 1986.