

Cite as 1 WTD 209 (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 O N</u>
for Refund of )	
)	No. 86-261
)	
. . . )	Registration No. . . .
)	
)	

RULE 228 PENALTIES - LATE PAYMENT - WAIVER OR CANCELLATION - ILLNESS OF ACCOUNTANT. The taxpayer's claim that its bookkeeper's cocaine addiction was the cause for late payment of taxes did not suffice to waive or cancel late payment penalties. The taxpayer: did not relate the cocaine addiction to late payment; continued to make late payment after discovering the problem; failed to timely issue checks to cover its tax liability even though the returns were prepared by the bookkeeper prior to delinquency.

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: May 29, 1986

NATURE OF ACTION:

The taxpayer has petitioned for a refund of late payment penalties. The penalties were incurred because tax returns were not submitted timely and because payment did not accompany some tax returns.

FACTS AND ISSUES:

Gregory I. Potegal, Administrative Law Judge--The taxpayer corporation is engaged in the retail clothing business and has been for many years. It reports its Washington excise taxes on a

monthly basis. For all but two months during the period from October 1984 through September 1985 the taxpayer was delinquent in paying its taxes. A tax warrant was prepared to enforce collection of taxes, interest, and penalties for the months in question. After preparation of the warrant the taxpayer paid what it owed.

The taxpayer seeks a refund of late payment penalties on grounds that its bookkeeper was addicted to cocaine.

#### DISCUSSION:

RCW 82.32.090 states in part:

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. No penalty so added shall be less than two dollars. (Emphasis ours.)

This statute mandates that late payment penalties be assessed when taxes are not paid by the due date. Another statute permits the cancellation or waiver of penalties under certain conditions. RCW 82.32.105 provides in part:

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.

WAC 458-20-228 is the rule promulgated by the Department covering the waiver or cancellation of penalties. It states in part:

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

. . .

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 the accountant's immediate family, prior to the filing date.

If the taxpayer can demonstrate that its bookkeeper's cocaine addiction caused its delinquencies, it would be entitled to a cancellation of the late payment penalties. For a number of reasons the taxpayer has failed to meet this burden.

1. The taxpayer found out about the bookkeeper's cocaine abuse in February or March of 1985. She did not work for the taxpayer after March 1985. The delinquencies continued after that time. If the delinquencies were caused by the bookkeeper's illness, the removal of the bookkeeper would have solved the problem.

2. The taxpayer had been in a retail business for many years. It had collected sales tax from its customers and remitted that tax (plus others) to the state regularly and timely until recently. The tax was remitted by company check. The bookkeeper was not authorized to sign checks. Three persons, including the president, were so authorized. In the vast majority of months more than \$10,000 in tax was remitted. It is apparent from these facts that the taxpayer's management was aware of what this large monthly expenditure was for and that it was also aware that for a year it either was not writing checks for taxes at all or was writing them late. Even if the bookkeeper's problems played some role in this, which has not been proven, the action or inaction of management was also a cause for the delinquencies.

3. The taxpayer has not explained what the connection is between the bookkeeper's cocaine addiction and the late payment of taxes. In fact, the evidence is that the addiction played no part whatsoever in the delinquencies. In October and November 1984 a Department of Revenue auditor was conducting a routine audit of the taxpayer. He discussed the matter of untimely filing of tax returns with the bookkeeper (the taxpayer paid late payment penalties for many other months but has only sought a refund for penalties paid under the warrant). The bookkeeper advised him, and he confirmed, that the bookkeeper prepared the returns in an accurate and timely manner. She gave the returns to management in time for preparation of the checks and mailing prior to delinquency. Management failed to write the checks in time to avoid delinquency.

The laws and regulations governing excise taxes allow the cancellation of penalties only in very limited circumstances. Because the taxpayer has failed to show that it falls within those circumstances its petition must be denied. We understand that these penalties and economic conditions in general have put

a severe strain on the taxpayer. It has advised us that its survival is in question. The Department has no authority to cancel the penalties for those reasons.

DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied.

DATED this 24th day of September 1986.