

BEFORE THE APPEALS DIVISION
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 Correction of Assessment of)	
)	No. 97-064
)	
. . .)	Registration No. . . .
)	FY. . . /Audit No. . . .
)	
)	

[1] RULE 228(6); RCW 82.32.090(4): PENALTY FOR FAILURE TO FOLLOW SPECIFIC WRITTEN REPORTING INSTRUCTIONS -- INADVERTENCE. Inadvertence is not a basis for canceling the 10% penalty imposed for failing to follow specific written reporting instructions.

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.

NATURE OF ACTION:

Taxpayer appeals the 10% penalty imposed because of its inadvertent failure to follow written instructions from the Department.¹

FACTS:

Munger, A.L.J. -- (The taxpayer) was audited by the Department of Revenue (the Department) for the period October, 1993 through June, 1996. During the audit it was determined by the Department that the taxpayer had been reporting its income under the wrong

¹Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

business and occupation (B&O) tax classification. The taxpayer had also been audited in 1993. That previous audit was also appealed by the taxpayer and, as a result, a determination was issued by this division. That determination described the correct B&O tax classification for the taxpayer.

After receiving the determination, the taxpayer continued to report its income under the wrong B&O classification. In the 1996 audit assessment the Department imposed the 10% penalty mandated by RCW 82.32.090(4) for disregarding the specific written instructions outlined in the determination.

The taxpayer explains the delay in implementing the 1994 determination as caused by a combination of personnel changes and logistical problems associated with the taxpayer's several offices located around the country. The taxpayer summarized those problems in its November, 1996 letter to the Department:

During 1993 the [district], which was responsible for the State of Washington taxes, was in the process of relocating [. . .]. At this time, the compliance function of the company's tax department was outsourced. Shortly thereafter, the [taxpayer's] Tax Compliance Manager left [. . .]. During the period 1994-1995, [the taxpayer] implemented a new billing system. Additionally, during 1995 the [district] was merged into a much broader region. As a result of the restructuring and reorganization within the company, the instructions relating to the new Selected Business Service classifications were overlooked. There was no deliberate intention of disregarding the written instructions.

ISSUE:

Must the Department cancel the penalty imposed under RCW 82.32.090(4) where the taxpayer's disregard of specific written reporting instructions was inadvertent rather than intentional?

DISCUSSION:

The 10% penalty for disregarding written reporting instructions is set forth in RCW 82.32.090(4) as follows:

(4) If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting or tax liabilities, the

department shall add a penalty of ten percent of the amount of the additional tax found due because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department of revenue has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department shall not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. Specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement, provided that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents. Any specific written instructions by the department of revenue shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

(Emphasis added.)

This penalty is also referenced in WAC 458-20-228(4)(d).

The taxpayer asserts that this penalty cannot be imposed because its failure to follow the Department's written instructions was inadvertent rather than intentional.

A review of RCW 82.32.090(4), however, clearly shows that the Department need not prove the taxpayer intentionally ignored the Department's written instructions for the 10% penalty to apply. The highlighted portion of the statute states that the penalty applies when the taxpayer fails to act in accordance with those instructions. Intent is not a consideration in the application of this penalty.² The taxpayer's intent may only be relevant if it has made a good faith effort to comply with the Department's instructions. In the present case, the taxpayer did not make any attempt to comply with the instructions and failed to follow them for almost two years.

² Intentionally ignoring instructions and not paying the required taxes would expose a taxpayer to the 50% evasion penalty under RCW 82.32.090(5), which does require proof of intent.

The Department's rules for waiving or canceling penalties are set forth in WAC 458-20-228(6) (Rule 228(6)) as follows:

(6) Waiver or cancellation of penalties. 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.

Business reorganization and personnel changes are not among the enumerated reasons in Rule 228(6) that would allow the Department to cancel the penalty. The penalty must, therefore, be upheld.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 31st day of March, 1997.