

Cite as Det. No. 00-018, 19 WTD 708 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 00-018
...)	
)	Registration No. . . .
)	Notice of Balance Due . . .

RULE 22801: PENALTY – LATE PAYMENT – ELECTRONIC FUNDS TRANSFER. Payments made by electronic funds transfer (EFT) are due on or before the banking day following the tax return due date, which is the 25th day of the following month for taxpayers required to file monthly. Where the next banking day was the 26th, a monthly EFT filer’s payment was due no later than the 26th.

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:

Appeal of late-payment penalty.¹

FACTS:

Dressel, A.L.J. -- . . . (taxpayer) files its monthly state excise tax returns via electronic funds transfer (EFT). The Department of Revenue (Department) sent the above-captioned Notice of Balance Due in the amount of \$. . . for the alleged late payment of the taxpayer’s July, 1998 (7/98) tax return. The taxpayer contests the penalty and states that its EFT payment was initiated on August 27, 1998, a day before the August 28, 1998 due date. In its appeal letter of March 3, 1999, the taxpayer stated that it had identified the EFT trace number and that it hoped to determine the exact time the payment was initiated, based on that number. Thinking that might be useful information, we scheduled a telephone conference with the taxpayer for October 20, 1999, at which time we intended to query the taxpayer on that point, as well as others relating to the subject of its appeal. At the appointed time, we made the telephone call. We were told the taxpayer’s representative was unavailable at that time. We left a message asking that he return

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

our call. When he had not done so by November 2, 1999, we called that day and left a similar message. To the date this is written, the taxpayer's representative has not returned our telephone calls.

ISSUE:

Was an electronic funds transfer tax payment late?

DISCUSSION:

In a request for a waiver or cancellation of penalties, the burden of proving the pertinent facts is on the taxpayer. *Det. No. 86-206*, 1 WTD 61 (1986). A taxpayer who fails to appear for a scheduled conference and who fails to communicate a reason for his failure to appear will have his/her appeal decided on the basis of the written record. *Det. No. 87-47*, 2 WTD 235 (1986).

The Department's records show that the taxpayer's 7/98 EFT tax payment was received August 27, 1998. In its November 9, 1998 letter to the Department, the taxpayer says that its bank "received the ACH initiation from the State on August 27, 1998, not the August 28 due date."

"The EFT payment is due on or before the banking day following the tax return due date." WAC 458-20-22802(7)(a). "For monthly reporting taxpayers, the tax returns are due on the 25th of the following month." WAC 458-20-228(3). Thus, this taxpayer's 7/98 return was due August 25th. Because, however, it was paying by electronic funds transfer, it is allowed until the next banking day to make its actual payment. August 25, 1998 fell on a Tuesday. The next banking day was Wednesday, August 26. Therefore, the taxpayer's EFT payment was due August 26.² It was not received until August 27. Because the payment was not made timely, a late-payment penalty was properly imposed. RCW 82.32.090.

Department records further show that the taxpayer's monthly tax payments for 12/97, 4/97, and 12/96 were late as well. In addition, the taxpayer had a late-payment penalty waived for the 9/93 period. Because of these facts, the taxpayer does not qualify for a waiver of the 7/98 penalty per the provisions of RCW 82.32.105 or WAC 458-20-228(7).

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 17th day of February 2000.

² The EFT payment was *not* due August 28, as stated in the taxpayer's letter of November 9, 1998.