

Cite as Det. No. 99-320, 19 WTD 512 (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. 99-320
)	
...)	Registration No. . . .
)	Notice of Balance Due No. . . .D
)	
)	

[1] RULE 228; RCW 82.32.105: LATE-PAYMENT PENALTY – CIRCUMSTANCES BEYOND THE TAXPAYER’S CONTROL – SERIOUS ILLNESS -- CANCER. Colon cancer, requiring surgery, radiation and chemotherapy is a serious illness, and a circumstance beyond the taxpayer’s control. Because a letter from the taxpayer’s doctor verified the taxpayer was unable to work, it was found the illness caused the delinquency.

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:

A taxpayer, suffering from colon cancer, requests the Department cancel a late-payment penalty.¹

FACTS:

M. Pree, A.L.J. – . . .(taxpayer) operated a restaurant as a sole proprietorship in Washington. [Taxpayer] filed the combined monthly excise tax returns with the Department of Revenue (Department).

In 1998, [Taxpayer] became seriously ill. He had colon cancer. He traveled across the state for treatment. On July 6, 1998, [Taxpayer] underwent surgery. He was bedridden and could not work. He had to close the restaurant in August of 1998. He was not cured. Following radiation

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

and chemotherapy, a second surgery was required in November of 1998. He remained in chemotherapy. According to a letter written by his doctor on April 29, 1999, [Taxpayer] was unable to work throughout this period.

Then [Taxpayer] recovered. He filed and paid the taxpayer's July 1998 combined excise tax return on March 1, 1999. The Department's Taxpayer Account Administration Division (TAA) assessed a 20% late payment penalty of \$. . . on April 15, 1999.

The taxpayer requested TAA waive the penalty because of his illness. TAA denied the request, explaining:

Your penalty waiver request has been denied. The circumstances outlined in your request were not considered to be beyond your control. A 24-month penalty waiver was also considered. However, your request did not meet the 24-month criterion that requires no other delinquent returns within the last 24 months.

TAA has not elaborated on why it did not consider the circumstances beyond the taxpayer's control.² A review of the taxpayer's filing history indicates four of its returns due for 1998 periods were late.³ We presume the other four were filed and paid timely because no penalties were assessed.

The taxpayer explained that he was ill and undergoing chemotherapy and radiation treatment in the Spring of 1998, but he was only appealing the denial of the penalty waiver for July of 1998. After the surgery he was bedridden. Because he was unable to work, he could not file or pay the taxes for July of 1998. His illness caused the delinquency for that period.

ISSUE:

Was [Taxpayer] colon cancer a serious illness beyond his control causing the tax delinquency?

DISCUSSION:

A twenty percent late-payment penalty is assessed if a tax is not received on or before the last day of the second month following the due date of the tax. RCW 82.32.090. The taxpayer's July 1998 return was due August 25, 1998, but not filed and paid until March 1, 1999. *See* RCW 82.32.045. However, if Department finds the taxpayer's failure to pay the tax by the due date

² A copy of the taxpayer's petition was made for TAA. Prior to the hearing, a copy of the hearing letter was also sent to TAA. TAA did not respond to either the petition or the hearing letter.

³ A five percent penalty was assessed on the 1998 returns for February and April indicating they were filed and paid within thirty days; while the maximum penalty of 20% was assessed for the July and August periods indicating they were over two months late.

was the result of circumstances beyond the control of the taxpayer, the Department must waive or cancel the penalty. RCW 82.32.105(1).⁴

The Department's Rule 228 (WAC 458-20-228) specifies situations considered by the Department to be circumstances beyond taxpayers' control. Subsection (6)(b)(iii) of Rule 228 provides:

(iii) 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.

The doctor's letter confirmed the colon cancer prevented the taxpayer from working. The taxpayer was unable to manage any of his business affairs. TAA did not consider this circumstance beyond the taxpayer's control. We disagree. We find the colon cancer to be a serious illness over which the taxpayer had little control.

The colon cancer prevented the taxpayer from working. The illness and the first surgery occurred prior to the filing date. The colon cancer caused the delinquency for the July 1998 return, which was due August 25th. When the taxpayer recovered, he filed and paid the delinquent return. The taxpayer's situation matches the circumstance specified in Rule 228(6)(b)(iii). We must cancel the penalty.

DECISION AND DISPOSITION:

We grant the taxpayer's petition.

Dated this 2nd day of December 1999.

⁴ We note TAA correctly determined the taxpayer was ineligible for a penalty waiver under subsection (2)(b) of RCW 82.32.105 because all returns due the prior 24 months had not been timely filed.