

Cite as Det. No. 14-0397, 34 WTD 332 (2015)

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. 14-0397
))	
. . .)	Registration No. . . .
))	

[1] Rule 228; RCW 82.32.090(1) and (4): WAIVER OF TAXES, INTEREST, AND PENALTIES – VOLUNTARY REGISTRATION; VOLUNTARY DISCLOSURE PROGRAM. Previously registered persons who engage in taxable activities in periods after their previously open tax reporting accounts have been closed, and who voluntarily reopen their accounts prior to being contacted by the Department, do not qualify for the Voluntary Disclosure Program and are not entitled to waiver of the late payment of return penalty imposed by RCW 82.32.090(1). Such persons, however, continue to be eligible for waiver of the unregistered taxpayer penalty imposed by RCW 82.32.090(4).

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.

LaMarche, A.L.J. – A taxpayer, who applied for a Voluntary Disclosure Agreement (VDA), protests the imposition of late payment penalties imposed after the Department of Revenue (Department) [cancelled] the VDA.¹

ISSUE

Under RCW 82.32.090, RCW 82.32.100,[and] WAC 458-20-228 . . . , is Taxpayer entitled to a waiver of late payment penalties after entering into a VDA with the Department that the Department [cancelled] upon discovering Taxpayer had registered its business in the past?

FINDINGS OF FACT

[Taxpayer] is an out-of-state business with its headquarters [out-of-state]. Taxpayer provides services in Washington State comprising revenue cycle solutions for businesses to improve cash collection, streamline workflow, accelerate claim filing and payment, and to improve productivity for large multi-hospital health systems and individual facilities.

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

Taxpayer's Controller contacted the Department in October 2009, after Taxpayer decided to hire a sales representative to work in this state. In conjunction with its enrollment of the new employee with the Department of Labor and Industries and other state-mandated programs, Taxpayer registered with the Department on October 28, 2009. Taxpayer claims that it registered with the Department in error, because registration was not necessary if Taxpayer was not engaging in business in the state. Seventeen days after registering its business, Taxpayer notified the Department that it had not made any sales and did not do business in the state, and closed its business tax account on November 16, 2009.

Taxpayer began making sales in Washington in June 2010, and neglected to re-register its business or otherwise notify the Department. Taxpayer did not file tax returns or pay taxes for its business activities in the state prior to 2014. At the end of 2013, Taxpayer discovered it had exposure for gross receipts tax in Washington, and came forward on January 8, 2014 to voluntarily register and pay prior taxes under the Department's Voluntary Disclosure Program.²

In response to questions the Department e-mailed to Taxpayer's representative on January 8, 2014, Taxpayer stated that it had never been contacted by the Department with respect to its business activities in the state, that it had never been registered to file Washington State Combined Excise Tax Returns, and that it had estimated annual gross income in Washington of \$. . . in 2010, \$. . . in 2011, and \$. . . in 2012.³

Taxpayer entered into VDA # . . . with the Department on January 30, 2014.⁴ The Department [cancelled] VDA # . . . when it discovered Taxpayer had previously registered its business in 2009. Subsequently, the Department issued an assessment on April 28, 2014, Document No. . . . , for the period of January 1, 2010 through December 31, 2013 (Audit Period), totaling \$. . . , consisting of \$. . . in Services and Other business and occupation (B&O) tax, \$. . . interest, and \$. . . in late payment penalties for years 2011 through 2013.⁵

Taxpayer paid \$. . . toward the assessment on May 22, 2014, and timely filed an appeal. Taxpayer argues that it qualifies for the penalty waiver benefits of a full VDA, and therefore should also receive a waiver of the late payment penalties of \$. . . for years 2011 through 2013.

ANALYSIS

The Washington tax system is based largely on voluntary compliance. The Revenue Act imposes on taxpayers the responsibility to inform themselves about applicable tax laws, register with the Department, and accurately and timely pay taxes. RCW 82.32A.

If the Department obtains information from which it appears a person has not paid the amount of tax properly due, the Department is required to assess against the taxpayer such additional

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⁵ The Department did not assess a five percent substantial underpayment penalty and waived the late payment penalty for 2010, because Taxpayer had no tax liability for the 24-month period prior to the date a tax liability first occurred. See RCW 82.32.105(2)(a) and (b). However, the Department did not waive the late payment penalties for 2011 through 2013.

amounts, and is also required to add interest to the tax due. RCW 82.32.050. The Department may generally assess up to four years after the close of the tax year, but may assess for up to seven years if the taxpayer has not registered as required by RCW 82.32.030. RCW 82.32.050(4).

RCW 82.32.090(1) provides for the assessment of a late payment of return penalty if payment of taxes due was not timely received. The amount of the late payment penalty varies from 5% to 25%, depending on how long payment is delinquent. At the time of the assessment, all of Taxpayer's taxes were at least 60 days overdue, and so the Department was required to assess the maximum 25% late payment penalty.

Assessment of the delinquent taxes, penalties, and interest is mandatory. Det. No. 01-193, 21 WTD 264 (2002); Det. No. 99-279, 20 WTD 149 (2001); Det. No. 87-235, 3 WTD 363 (1987). The Department has limited authority to waive or cancel the penalties set out in RCW 82.32.090. Generally, the Department will not cancel penalties unless the failure that triggered the penalty was due to "circumstances beyond the control of the taxpayer" in accordance with RCW 82.32.105(1).

The Department adopted WAC 458-20-228 (Rule 228), in part, to administer tax penalties. Rule 228 explains,

[c]ircumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay.

Rule 228(9)(a)(ii). The same rule section gives examples of circumstances that are considered beyond the control of the taxpayer, including erroneous written information from the Department, an act of fraud or conversion by the taxpayer's employee or contract helper which the taxpayer could not immediately detect or prevent, and emergency circumstances around the time of the due date, such as the death or serious illness of the taxpayer or a family member or accountant, unplanned unavoidable absence, and destruction of the business or records by fire or other casualty.

Rule 228(9)(a)(iii) also gives examples of circumstances that generally are not considered beyond the control of the taxpayer, which include:

- A misunderstanding or lack of knowledge of a tax liability.

According to Taxpayer, it misunderstood or did not know that it was liable for Washington's excise taxes during the Audit Period. Misunderstanding or lack of knowledge does not constitute a circumstance beyond Taxpayer's control as that term is used in Rule 228. We conclude that Taxpayer's failure to pay B&O tax was not due to circumstances beyond its control, and the penalties imposed thereon cannot be waived on that basis.

The Department also may waive late penalties, if the taxpayer has a good payment history as specified in RCW 82.32.105(2) for the prior 24 months. RCW 82.32.105(2) provides taxpayers with a “24 month” provision under which:

The department shall waive or cancel the penalty imposed under RCW 82.32.090(1) when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under subsection (1) of this section if:

(a) The taxpayer requests the waiver for a tax return required to be filed under RCW 82.32.045, 82.14B.061, 82.23B.020, 82.27.060, 82.29A.050, or 84.33.086; and

(b) The taxpayer has timely filed and remitted payment on all tax returns due for that tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested.

Under Rule 228(9)(b)(i)(B), however:

If a taxpayer has obtained a tax registration endorsement with the department prior to engaging in business within the state and has engaged in business activities for a period less than twenty-four months, the taxpayer is eligible for the waiver if the taxpayer had no delinquent tax returns for periods prior to the period covered by the return for which the waiver is being requested. As a result, the taxpayer's very first return due can qualify for a waiver under the twenty-four month review provision. (See also WAC 458-20-101) for more information regarding the tax registration and tax reporting requirements.) This is the only situation under which the department will consider a waiver when the taxpayer has not timely filed and paid tax returns covering an immediately preceding twenty-four month period.

Here, the Department was required to assess taxes and interest under RCW 82.32.100, and late payment penalties under RCW 82.32.090(1). Taxpayer misunderstood or did not know about its registration and tax reporting obligations, which is not a circumstance beyond its control, therefore Taxpayer is not entitled to waiver of penalties under RCW 82.32.105(1) and Rule 228(9)(a). However, because Taxpayer had no delinquent tax returns for periods prior to the period covered by the return for which the waiver is being requested, Taxpayer was entitled to a waiver of the late payment penalty for year 2010 under Rule 228(9)(b)(i)(B); the Department took this into consideration, and did not assess late payment penalties for year 2010.

Alternatively, under the Department's Voluntary Disclosure Program, taxpayers can enter into an agreement whereby the taxpayer voluntarily discloses its taxable activities for the current year, plus the preceding four years and the Department agrees to limit its review to this period and partially or fully waive applicable penalties. This information is available on the Department's website.⁶ On the Voluntary Disclosure Program webpage,⁷ the Department sets out the following requirements for a taxpayer to be eligible for the Voluntary Disclosure Program:

⁶ See Department of Revenue webpage at http://dor.wa.gov/content/doingbusiness/registermybusiness/doingbus_vod.aspx#benefits (last accessed December 15, 2014).

⁷ *Id.*

To qualify for full voluntary disclosure benefits a business must have:

- Never registered with or reported taxes to the Department;
- Never been contacted by the Department for enforcement purposes (e.g., audit or compliance contacts regarding registration or reporting requirements); *and*
- Not engaged in evasion or misrepresentation in reporting tax liabilities.⁸

(Emphasis in original.) Taxpayer here did not meet the qualifications needed to be eligible for a VDA, because Taxpayer previously registered with the Department on October 28, 2009. Taxpayer stated incorrectly in its responses to the Department's questions on January 8, 2014, that it had never been registered to file Washington State Combined Excise Tax Returns. After Taxpayer applied for the Voluntary Disclosure Program, the Department discovered that Taxpayer was ineligible, and [cancelled] [the] VDA . . .

Rule 228(5) addresses the issue of persons that registered their businesses, closed their accounts, but then engaged in taxable activities during a period of time in which the person's previously open tax reporting account had been closed:

iii) . . . When a person voluntarily registers, the late payment of return penalty does not apply to those specific tax-reporting periods representing the time during which the person was unregistered.

(A) However, even if the person has voluntarily registered as explained above, the late payment of return penalty will apply if the person:

. . . .

. . . .

(III) Engaged in taxable business activities during a period of time in which the person's previously open tax reporting account had been closed.

Rule 228(5)(a)(iii) (underlined emphasis added).

Taxpayer here falls within the parameters of Rule 228(5)(a)(iii)(A)(III) as follows: Taxpayer was previously registered with the Department, closed its tax reporting account, engaged in taxable business activities during the period in which its tax reporting account had been closed, and came forward voluntarily. Under Rule 228(5)(a)(iii)(A)(III), Taxpayer is not entitled to waiver of the late payment penalty. Accordingly, we uphold the assessment, Document No. 201415504, and deny the petition.

DECISION AND DISPOSITION

We deny the taxpayer's petition.

Dated this 16th day of December, 2014.

⁸ *Id.*