

Cite as 5 WTD 253 (1988)

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u>
<u>O</u> <u>N</u>	
For Refund of)	
)	No. 88-168
)	
)	Registration No. . . .
. . .)	Tax Assessment No. . . .
.	
)	
)	

[1] **RULE 228, RCW 82.32.050, RCW 82.32.090 AND RCW 82.32.105:** INTEREST -- PENALTY -- WAIVER -- UNREGISTERED TAXPAYER -- UNAWARE OF REQUIREMENT TO REGISTER -- CIRCUMSTANCES BEYOND CONTROL OF TAXPAYER. Taxpayer's unawareness of requirement to register and pay taxes is not a circumstance beyond its control to justify waiver of interest and penalty mandated by statutes.

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: . . .

NATURE OF ACTION:

Petition for waiver of interest and penalty assessed on taxes due during a period of time when the taxpayer was not registered.

FACTS AND ISSUES:

Krebs, A.L.J. -- . . . (taxpayer) is an Oregon corporation based in . . . , Oregon. The taxpayer is a publisher of a weekly periodical which has articles on . . . agricultural and

forest topics. The taxpayer has income from subscriptions to and classified advertising in its published weekly.

In 1982, the taxpayer began using a circulation manager based in Washington to solicit subscriptions. The circulation manager supervises independent contractors soliciting subscriptions. The taxpayer also employs three reporters and an ad salesman in Washington.

The taxpayer was not registered with the Department of Revenue until June 1987 when it learned of the requirement to register while participating in circulation sales at a fair in Washington.

The Department of Revenue examined the taxpayer's business records for the period from January 1, 1983 through March 31, 1987. As a result of this audit, the Department issued Tax Assessment No. . . . on September 17, 1987 asserting excise tax liability in the amount of \$. . . , interest due in the amount of \$. . . and penalty due in the amount of \$. . . for a total sum of \$. . . which has been paid in full.

The taxpayer requests waiver of the assessed interest and penalty totaling \$. . . for the following reasons. It cooperated fully with the Department. Lack of compliance was not due to malfeasance or neglect.

The issue is whether the assessed interest and penalty can be waived under the above described circumstances.

DISCUSSION:

RCW 82.32.290 provides in pertinent part:

(1)(a) It shall be unlawful:

(i) For any person to engage in business without have obtained a certificate of registration as provided in this chapter;

. . . .

(b) Any person violating any of the provisions of this subsection (1) shall be guilty of a gross misdemeanor in accordance with chapter 9A.20 RCW.

It is each individual's responsibility to be aware of any tax implications resulting from activities conducted within this

state. Department of Revenue personnel are available to answer any inquiries pertaining to such matters and information is readily available. The taxes imposed by the Revenue Act are of a self-assessing nature and the burden is placed upon a person to correctly inform himself of his obligations under the Act.

Thus, the taxpayer should have filed the Application for Certificate of Registration in 1982 and filed regular excise tax returns thereafter. Had this happened, the taxpayer would have avoided being delinquent and the resultant build-up of past due taxes and consequential interest and penalties.

[1] The assessment of interest is mandated by RCW 82.32.050 which in pertinent part provides:

If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and as to assessments made . . . shall add thereto interest at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until date of payment. . . . If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added. (Emphasis supplied.)

The assessment of penalties is mandated upon delinquent payment of taxes by RCW 82.32.090 which in pertinent part provides:

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 . . . (Emphasis supplied.)

The legislature, through its use of the word "shall" in RCW 82.32.050 and RCW 82.32.090, has made the assessment of

interest and penalties mandatory. The mere fact of a deficiency in the payment of taxes requires interest to be applied. RCW 82.32.050. The mere fact of nonpayment within a specified period of payment requires the penalty provisions of RCW 82.32.090 to be applied.

As an administrative agency, the Department of Revenue is given no discretionary authority to waive or cancel penalties. The only authority to waive or cancel penalties is found in RCW 82.32.105 which in pertinent part provides:

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. (Emphasis supplied.)

Administrative Rule WAC 458-20-228 (Rule 228), . . . , states the two situations under which a waiver of interest and the only seven situations under which a waiver of penalties will be considered by the Department. None of the situations apply to the taxpayer. Essentially, the failure of a taxpayer to pay taxes by the due date must be the result of circumstances beyond the control of the taxpayer to warrant waiver of the interest and/or penalties. RCW 82.32.105.

It is unfortunate that the taxpayer was not timely aware of the requirement to register. However, such proximate cause has never been held by the Department to be "circumstances beyond the control of the taxpayer."

The Department recognizes that some taxable persons do not register because of a misunderstanding or inadvertence. Where a misrepresentation, fraud or intent to evade taxes is found, an additional fifty percent evasion penalty is assessed under the provisions of RCW 82.32.050. In this case, there was no finding to warrant imposition of the evasion penalty.

For the reasons stated and the applicable law, we conclude that the assessment of interest and penalty was proper and cannot be waived.

DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied.

DATED this 30th day of March 1988.