

Cite as 5 WTD 103 (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. 88-36
)	
. . .)	Registration No. . . .
)	
)	

[1] **RCW 82.32.090 AND RULE 228:** PENALTIES -- WAIVER OF
-- LATE FILING --DISHONORED CHECK. Late payment
penalty applies where original check dishonored by
bank because of missing signature.

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: . . .

DATE OF HEARING: February 3, 1988

NATURE OF ACTION:

Petition for waiver of late-payment penalty.

FACTS AND ISSUES:

Dressel, A.L.J. -- . . . (taxpayers) operate a restaurant
known as the With their May 1987 state excise tax
return, they sent a five percent late payment penalty. They
are now requesting a waiver of the penalty based on reasons
explained in their petition for refund which reads in part:

To whom this may concern, this is regarding the
return due 6-25-87 for the This return was

mailed on time, as our previous returns have been, however our tax account requires two signatures on these checks our book keeper inadvertantly (sic) mailed the check with only her signature on it. The bank called me saying they were returning the check "Refer to Maker" because of the one signature. I promptly called the department of revenue and found out the correct thing to do in this instance. I sent a cashier check with a 5% penalty, under protest. I feel we should not have been assessed the penalty. This situation will not arise in the future.

Whether the penalty may be waived in this situation is the sole issue to be decided.

DISCUSSION:

WAC 458-20-228 (Rule 228) reads in part:

Remittances in payment of tax may be made by uncertified bank check, but if any such check or remittance, other than legal tender, is not honored by the bank on which drawn, the taxpayer shall remain liable for the payment of the tax and for all legal penalties thereon. The department may refuse to accept any check which, in its opinion, would not be honored by the bank on which such check is drawn. The remittance covered by any check which is so refused will be deemed not to have been made and the taxpayer will remain liable for the tax due and for the applicable penalties.

[1] In this case the taxpayer's return with the defective check was apparently received by the due date of June 25, 1987. Because the check was defective and dishonored, however, it is deemed, in accordance with the rule, as not having been received such that penalties apply until a proper check is tendered. Such a check was received by the Department within 30 days of the due date so a five per cent penalty was assessed pursuant to RCW 82.32.090.

Having established that payment was not timely made, we again look to Rule 228 which specifically describes the circumstances under which late-payment penalties may be waived. The rule further states in part:

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.

The following situations will constitute the only circumstances under which a cancellation of penalties will be considered by the department:

1. The return was filed on time but inadvertently mailed to another agency.
2. The delinquency was due to erroneous information given the taxpayer by a department officer or employee.
3. 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.
4. The delinquency was caused by unavoidable absence of the taxpayer, prior to the filing date.
5. The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.
6. The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office, in writing, for proper forms and these were not furnished in sufficient time to permit the completed return to be paid before its delinquent date.
7. The delinquent tax return was received under the following circumstances:
 - a. The return was received by the department with full payment of tax due within 30 days after the due date; i.e., within the five percent penalty period prescribed by RCW 82.32.090, and

b. The taxpayer has never been delinquent filing a tax return prior to this occurrence, unless the penalty was excused under one of the preceding six circumstances, and

c. The delinquency was the result of an unforeseen and unintentional circumstance, not immediately known to the taxpayer, which circumstances will include the error or misconduct of the taxpayer's employee or accountant, confusion caused by communications with the department, failure to receive return forms timely, and delays or losses related to the postal service.

d. The delinquency will be waived under this circumstance on a one-time basis only.

(Emphasis ours.)

Circumstance number one doesn't apply because payment of the tax due was not timely. In such a case the Department deems the return as not filed timely as well, because it was not accompanied by the proper remittance. Of the remaining six circumstances the only other with conceivable application is number seven. The taxpayers, however, are precluded from obtaining relief under that provision because, as evident from an examination of their file, they have been penalized five times previously for late filing.

DECISION AND DISPOSITION:

The taxpayer's petition is hereby denied.

DATED this 26th day of February 1988.