

Cite as 9 WTD 043 (1989)

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 Correction of Assessment of)	
)	No. 89-555
)	
. . .)	Registration No. . . .
) . . . /Audit No. . . .)	. . . /Audit No. . . .

[1] RULE 193B -- RCW 82.04.4286 -- B&O TAX -- FEDERAL INTERSTATE INCOME TAX ACT -- APPLICABILITY. The federal interstate income tax act (15 U.S.C Sec. 381 et. seq.) does not apply to the business and occupation tax. Tyler Pipe v. Department of Rev., 105 Wn.2d 318 (1986). ACCORD: Det. 87-342, 4 WTD 229 (1987).

[2] RULE 228 -- RCW 82.32.050 -- PENALTY -- LATE PAYMENT -- WAIVER -- CIRCUMSTANCES BEYOND CONTROL OF TAXPAYER -- WHAT CONSTITUTES. If a taxpayer fails to pay taxes as required, the Department of Revenue shall assess the tax and add interest and penalties as required by the Revenue Act. Neither lack of knowledge of a tax obligation, hardship, nor voluntary compliance once an obligation is known is a basis for abating interest or penalties. ACCORD: Det. 86-226, 1 WTD 67 (1986); Det. 87-235, 3 WTD 363 (1987).

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 previously unregistered taxpayer protests the assessment of late payment penalties.

FACTS AND ISSUES:

Roys, Sr. A.L.J. -- The taxpayer is an out-of-state company which makes sales in this state. The taxpayer was unregistered until it received an inquiry from the Department requesting information on its activities in Washington. Based on the information provided by the taxpayer, primarily that it employed a salesperson in this state, the taxpayer was advised that it was subject to Washington's wholesaling B&O tax. An assessment of tax, interest, and penalties for the years 1982 through 1989 was issued on November 1, 1989.

The taxpayer made payment of the tax and interest assessed and requested abatement of the penalty. The taxpayer's corporate controller stated that the company believed Public Law 86-272, Section 101(A) made its sales exempt from Washington's business and occupation tax under federal law. The taxpayer noted that the failure to file was unintentional and that corrective steps have been taken to meet its Washington State tax liability in the future.

DISCUSSION:

[1] In Tyler Pipe v. Department of Rev., 105 Wn.2d 318, 715 P.2d 123 (1986), the Washington Supreme Court held that the federal interstate income tax act does not apply to Washington's B&O tax. The federal statute applies only to a "net income tax"; Washington's B&O tax is a gross receipts tax, not a net income tax. This case is dispositive.

[2] As an administrative agency, we do not have discretion to waive penalties except as provided by Washington's Revenue Act. We have published several Determinations sustaining the assessment of late payment penalties where the taxpayer alleged the late payment was due to a good faith lack of knowledge. Those Determinations are controlling. . . .

We note that the penalties in this case were \$ In Determination 86-226 we stated that one reason for the imposition of a late payment penalty is to compensate the state for the additional expense in collecting taxes that were late. Late payment penalties also are imposed to deter late payment. The fact that the penalties in this case may have exceeded the Department's expense in discovering and collecting the tax does not justify waiver of the penalty. The legislature provided that the late payment penalties are a percentage of the amount of tax owing. The Department has no

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authority to waive or reduce a penalty assessment because the amounts are substantial.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 28th day of December 1989.