

Cite as Det. No. 01-037, 21 WTD 21 (2002)

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. 01-037
...)	Registration No. . . .
)	Docket No. . . .
)	FY. . .
)	

RULE 228, RULE 238, RULE 178; RCW 82.12.020, RCW 82.32.090, RCW 82.32.105: LATE PAYMENT PENALTY -- USE TAX -- YACHT -- UNREGISTERED TAXPAYER. A foreign corporation, which owned a yacht that was in Washington waters for more than 60 days in a twelve month period, incurred a use tax assessment on the value of the yacht and a 20% late payment penalty for failure to pay the use tax before the first day after the last day of the second month following the due date. Because the taxpayer was not registered with the Department of Revenue at the time it incurred its use tax liability and had not engaged in business activities in this state up to that time the taxpayer was not eligible for a waiver or cancellation of the penalty under RCW 82.32.105(2).

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 foreign corporation requests the waiver of a penalty resulting from a use tax assessment on a yacht it owns and used in Washington.¹

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

FACTS:

De Luca, A.L.J. -- The taxpayer is a foreign corporation having its principal place of business at [outside Washington]. The taxpayer owns the . . . motor yacht “. . . .” The Compliance Division of the Department of Revenue (the Department) determined, by reviewing the yacht’s logs, the yacht had been in Washington waters more than 60 days in 1999 before the end of September 1999.² Consequently, the Compliance Division on February 1, 2000 assessed use tax on the yacht in accordance with RCW 82.12.020 and WAC 458-20-238(6)(b) (Rule 238). The Compliance Division also registered the taxpayer with the Department on February 1, 2000. The amount of use tax was \$. . . , which was based on the value of the yacht. The Compliance Division assessed a 20% delinquent penalty and \$. . . in interest, for a total of \$. . . . The taxpayer does not dispute the tax and interest and timely paid \$. . . of the assessment. The taxpayer did not pay the \$. . . that equaled the amount of the 20% penalty.³

TAXPAYER’S EXCEPTIONS:

The taxpayer requests a waiver or cancellation of the 20% delinquent penalty. The taxpayer contends it is entitled to the penalty waiver or cancellation in accordance with RCW 82.32.105(2). Specifically, the taxpayer states it “has timely filed and paid all tax returns that were due (i.e., none were due) for a period of at least 24 months immediately proceeding [sic] the period covered by the February 1, 2000 use tax assessment.”

ISSUE:

Does the taxpayer qualify for a waiver or cancellation of a delinquent penalty resulting from a use tax assessment?

DISCUSSION:

Normally, use tax becomes due within twenty-five days after the end of the month in which the taxable activities occur. RCW 82.32.045(1). However, in cases where a person is not required to be registered with the Department, but owes use tax, the person must file the return and pay the tax on the fifteenth day of the month succeeding the period in which the tax accrued. WAC 458-20-178(16) (Rule 178). In this matter, the taxable activities occurred in September 1999 when the yacht, owned by the nonresident corporate taxpayer, exceeded 60 days in Washington in a twelve-month period, thereby triggering the use tax assessment. Rule 238(6)(b).⁴ Thus, the

²The logs revealed the yacht remained in Washington at least another 29 days in October 1999.

³ The Department applies the payment first to interest, next to penalties, and then to tax regardless of the taxpayer’s directions that the payment should be applied to the tax and interest. RCW 82.32.080 and WAC 458-20-228(8) (Rule 228). Failure to pay the assessment by the due date results in a 10% penalty added on the additional tax due, i.e. the amount of the assessment not paid. RCW 82.32.090(2).

⁴ Effective January 1, 1998, the authorized period of nonresident use in this state was extended to six months in any continuous twelve-month period for vessels owned by individuals. RCW 88.02.030(11). That provision is not applicable to this matter because a corporation owns the subject yacht.

use tax was due on or before October 15, 1999 because the taxpayer was not doing business in this state and not required to be registered with the Department. Otherwise, the use tax was due October 25, 1999. In either case, taxpayers incur delinquent penalties when they do not timely pay taxes properly owed. RCW 82.32.090, *infra*.

RCW 82.32.100 provides:

(2) As soon as the department procures such facts and information as it is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make a return, it shall proceed to determine and assess against such person the tax and any applicable penalties or interest due, but such action shall not deprive such person from appealing the assessment as provided in this chapter. The department shall notify the taxpayer by mail of the total amount of such tax, penalties, and interest, and the total amount shall become due and shall be paid within thirty days from the date of such notice.

In this matter the taxpayer failed to timely pay the use tax and file an accompanying use tax return. The applicable penalties are found in RCW 82.32.090(1), which provides in part:

...if the tax is not received on or before the last day of the second month following the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax.

Thus, a 20% penalty became effective January 1, 2000, which was the first day after the last day of the second month following the due date.

The taxpayer has cited RCW 82.32.105(2) as the basis for its request that the Department should waive or cancel the delinquent penalty. The statute provides:

(2) 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.

The Department has adopted Rule 228, in part, to administer the provisions of RCW 82.32.105. Rule 228(9)(b)(i) restates RCW 82.32.105(2) and adds:

If a taxpayer has obtained a tax registration endorsement with the department 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. (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.

In this matter, the taxpayer was not registered with the Department at the time it incurred its use tax liability and had not engaged in business activities in this state up to that time. Consequently, the taxpayer is not eligible for a waiver or cancellation of the penalty. *See also* Det. No. 99-342, 19 WTD 608 (2000), which held the Department has no authority under RCW 82.32.105(2) to waive or cancel a delinquent penalty if no tax returns were due during the twenty-four months immediately preceding the period covered by the return for which the waiver was being requested.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

Dated this 14th day of March, 2001.