

Cite as Det. No. 01-131, 21 WTD 42 (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. 01-131
	)	
...	)	Registration No. . . .
	)	Balance Due Notice No. . . .
	)	Docket No. . . .
	)	

RULE 228, RULE 22802: LATE-PAYMENT PENALTIES – INTEREST – WAIVER OF – EFT FILER – PAYMENT BY MAIL – TIMELINESS OF. Where a taxpayer is required to file its tax returns by electronic funds transfer (EFT), its payment must be credited to the Department’s bank account on the next banking day following the due date of the return. Where such a filer mails its payment instead of paying by EFT, the fact that the envelope bears a postmark date on or before the due date does not make the payment timely.

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.

EFT taxpayer appeals late-payment penalty.<sup>1</sup>

FACTS:

Dressel, A.L.J. -- . . . (taxpayer) is required to pay its Washington state excise taxes by electronic funds transfer (EFT). On June 13, 2000 the Department of Revenue (Department) issued a Notice of Balance Due for the late-payment of the taxpayer’s April, 2000 taxes. The penalty amount was \$ . . . , or five percent of the tax liability for that period of \$ . . . . Interest was also assessed in the amount of \$ . . . . The total demanded in said notice is \$ . . . . The taxpayer appeals.

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

Just six days earlier, on June 6, 2000, the Department had issued a late-payment penalty notice for the taxpayer's March, 2000 taxes. Subsequently, the taxpayer requested a waiver of that penalty, which was granted under the 24 month waiver provision of RCW 82.32.105. The Department declined, however, to waive the above-referenced penalty for April because a taxpayer is only eligible for one waiver in a two year period under the 24 month provision.

In its petition for correction of assessment, the taxpayer states that it was not aware that it was required to pay its tax by EFT. Had it known, it says, it would have done so. Nevertheless, the taxpayer states that it mailed both the March and April payments five to six days prior to the deadline for payment by mail, which is, for persons filing monthly returns, the 25<sup>th</sup> day of the month following the month for which the tax return is filed.<sup>2</sup> Neither check was deposited into the Department's bank until, approximately, ten days after it was mailed, according to the taxpayer. The taxpayer argues, by implication, that it shouldn't be penalized because the Department was so slow in depositing the checks. It further argues, by implication, that the situations for March and April are, exactly, the same, so if the penalty is waived for March, it, also, should be waived for April. Lastly, the taxpayer states that the person who, normally, takes care of Washington taxes has, recently, been away on maternity leave.

#### ISSUE:

1. May a late-payment penalty be waived for an EFT taxpayer whose payment was received after the EFT payment due date, if the taxpayer mailed a check instead of paying by EFT, and mailed the payment prior to the deadline for payment by mail?
2. May the Department waive the late-payment penalty for April, 2000 under the 24 month provision of RCW 82.32.105?

#### DISCUSSION:

WAC 458-20-22802 (Rule 22802) is the duly-promulgated regulation that applies to the payment of tax via electronic funds transfer. The version of the rule in force during the applicable period read, in part:

- (1) INTRODUCTION. Chapter 69, Laws of 1990, requires certain taxpayers to pay the taxes reported on the combined excise tax return with an electronic funds transfer (EFT). This EFT requirement for taxpayers with large monthly payments begins with the monthly tax return due January 25, 1991. EFT merely changes the method of payment and no other tax return procedures or requirements are changed.

(2)

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<sup>2</sup> See WAC 458-20-228.

. . . Each bank generally has its own transaction deadlines and it is the responsibility of the taxpayer to insure timely payment.

. . .

(8) COORDINATING RETURN AND PAYMENT. The filed return and the payment by EFT shall be coordinated by the department. A return shall be considered timely filed only if it is received by the department on or before the due date, or with a postmark on or before the due date. In addition, the payment by EFT must have been completed by the next banking day after the due date. If both events occur, there is timely filing and payment and no penalties apply.

. . .

(11) CREDITING AND PROOF OF PAYMENT. The department will credit the taxpayer with the amount paid as of the date the payment is received by the department's bank.

. . .

(13) PENALTIES.

(a) There are no special provisions for penalties when payment is made by EFT. The general provisions for all taxpayers apply. To avoid the imposition of penalties, it is necessary for both the filing of the tax return and the payment to be timely. Penalties may be waived only when the circumstances causing delinquency are beyond the control of the taxpayer. See: WAC 458-20-228.

The rule states that the tax return must be received or postmarked by the due date *and* payment must be received by the Department's bank no later than the next banking day following the due date. In the instant case, apparently, the first condition was satisfied but not the second. The taxpayer's check for payment of its April, 2000 tax return shows it was deposited into the Department's bank on May 31, 2000, six days after the return due date of May 25. The next banking day following May 25, incidentally, was May 26. Thus, payment was not "completed by the next banking day after the due date." *See* Rule 22802, *id.*

With respect to the filing of returns and payment of tax by means other than EFT, i.e., mailing a check with the corresponding tax return in an envelope, there are several published decisions to the effect that if the Department discards a postmarked envelope that might have demonstrated timely payment, if other circumstances indicate the payment was placed into the mail in a timely manner, the payment will be considered timely. *See* Det. No. 88-204, 5 WTD 383 (1988); Det. No. 87-182, 3 WTD 191 (1987); and Det. No. 87-115, 3 WTD 51 (1987). Indeed, in the instant case, there are such circumstances. The check in question bears the date May 22, 2000, and the corresponding tax return for April, 2000 bears the date May 19, 2000. Both dates precede the due date of May 25. If the envelope(s) bearing both was placed in the mail, no later than the date

indicated on the return, the filing and payment would have been timely. That is, it would have been timely *if* the taxpayer were a “conventional” filer, as opposed to an EFT filer.

The same criteria should not, necessarily, be applied to determine timeliness for both kinds of filers. RCW 82.32.080 requires EFT filing for high-liability taxpayers because the legislature deemed it desirable that the state have available large sums of money at the earliest possible moment so that it might more effectively carry on its business. Electronic filing makes it possible for those funds to be available on the next banking day after the due date. Postmarking one’s payment by the due date does not accomplish the same result. A payment postmarked on the due date may not be received by the state’s bank until several days after the due date and checks tendered in such a manner, in many cases, won’t clear to provide usable funds until several days after that. Thus, even though a mailed payment may be timely for conventional filing, if the same criteria are adopted for electronic filing, the purpose of electronic filing is thwarted. If the same criteria for timeliness are used, the EFT requirement of RCW 82.32.080 might as well not have been enacted. An EFT filer who mails its tax payment takes the risk that it may not be applied to the Department’s bank account on the next banking day following the due date.

We conclude, then, that this taxpayer, regardless of when the Department deposited the check, was not timely in its payment of excise taxes owed for April, 2000, because the funds were not available to the state on or before the next banking day after the return due date. Therefore, the assessment of a late-payment penalty is appropriate. RCW 82.32.090. The same penalty provisions that apply to non-EFT tax filings apply to EFT filings. Similarly, the same waiver provisions that apply to non-EFT filings apply to EFT filings. WAC 458-20-22802(13).<sup>3</sup> Those waiver provisions read as follows:

(9) **Waiver or cancellation of penalties.** RCW 82.32.105 authorizes the department to waive or cancel penalties under limited circumstances.

(a) **Circumstances beyond the control of the taxpayer.** The department will waive or cancel the penalties imposed under chapter 82.32 RCW upon finding that the underpayment of the tax, or the failure to pay any tax by the due date, was the result of circumstances beyond the control of the taxpayer.

...

Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following.

(A) The return payment was mailed on time but inadvertently sent to another agency.

(B) Erroneous written information given to the taxpayer by a department officer or employee caused the delinquency. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The

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<sup>3</sup> Based on the 1992 version of Rule 22802, the one that applies to the transactions under discussion in the instant matter. The same provision in the current version is found at ¶ 12.

reason for not cancelling the penalty in cases of oral information is because of the uncertainty of the facts presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

(C) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to obtain an extension or to otherwise arrange timely filing and payment is a circumstance eligible for penalty waiver.

(D) The delinquency was caused by the unavoidable absence of the taxpayer or key employee, prior to the filing date. "Unavoidable absence of the taxpayer" does not include absences because of business trips, vacations, personnel turnover, or terminations.

(E) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(F) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or other persons contracted with the taxpayer, which the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place. See subsection (9)(a)(iii)(E).

(G) The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office for proper forms and the forms were not furnished in sufficient time to permit the completed return to be paid before its due date. In this circumstance, the taxpayer kept track of pending due dates and reasonably fulfilled its responsibility by timely requesting replacement returns from the department.

Rule 228.<sup>4</sup> The taxpayer's circumstances do not fit those described immediately above. Pregnancy leave, incidentally, is something for which a taxpayer is expected to plan and is not considered a circumstance beyond a taxpayer's control, except in an emergency situation. Rule 228 also allows a penalty waiver if the taxpayer has timely filed its taxes in the previous 24 months. *Id.* at 9(b). The department, correctly, denied relief under this provision, based on the fact that the taxpayer's March, 2000 return was late as well.

Regarding interest, Rule 228<sup>5</sup> reads, in part:

(10) **Waiver or cancellation of interest.** The department will waive or cancel interest imposed under chapter 82.32 RCW only in the following situations:

(a) The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department; or

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<sup>4</sup> 2000 version.

<sup>5</sup> 2000 version.

(b) The extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department. RCW 82.32.105(3).

The quoted situations do not describe the taxpayer's. Therefore, interest cannot be waived, either.

Finally, although we have some sympathy with the taxpayer's situation in that its present accounting staff, apparently, wasn't aware of the EFT filing requirement, the law requires taxpayers to become familiar with their own tax reporting responsibilities. RCW 82.32A.030 and ETA 310.32.101.

#### DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 31<sup>st</sup> day of August, 2001.