

Cite as Det. No. 03-0260, 23 WTD 26 (2004)

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. 03-0260
...)	
)	Registration No. . . .
)	Document No. . . .
)	Audit No. . . .
)	Docket No. . . .

RULE 228; RCW 82.32.080: PENALTY - RETURN -DUE DATE - ENVELOPE - POSTMARK. A return is deemed received on the date shown by the post office cancellation mark stamped on the envelope containing it, and not deemed received on the date of a postage meter mark.

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.

M. Pree, A.L.J. – A restaurant, which mailed its check to pay a tax assessment in an envelope with a meter stamp dated prior to the due date, but which had a post office cancellation mark after the due date, was properly assessed the late-payment penalty.

ISSUE

When is a tax payment submitted in a metered envelope deemed received?¹

FINDINGS OF FACT

. . . (taxpayer) operate a . . . restaurant in . . . , Washington. The Department of Revenue (DOR) audited the taxpayer's books and records and issued an assessment for \$. . . due on February 18, 2003. The taxpayer did not protest the assessment, and placed a check for \$. . . in an envelope addressed to DOR in Olympia. The taxpayer used a meter stamp to post the envelope. The taxpayer's business manager states she placed the envelope in the mailbox at the main . . . Post

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

Office on February 17, 2003 (President's Day holiday). DOR received the check on February 21, 2003.

In addition to the meter stamp, the envelope has a February 21, 2003 . . . post office cancellation mark. Under the post office cancellation mark is a similar, but not identical mark showing a date of February 17, 2003 within a ". . . WASH." circle.

The taxpayer obtained a statement from the United States Postal Service customer services supervisor. He indicates the main . . . Post Office did cancel mail on February 17, 2003, and that their normal standard is for two-day delivery to the Olympia (985XX) zip code area. We called him for clarification regarding the cancellation marks. He stated the . . . post office did make the February 21 mark, but the February 17 mark could have been made by a meter. The envelope could have been stuck or hung up in postal equipment. Double cancellation marks were unusual. The envelope could have been delivered to Olympia the same day as it was cancelled (February 21).

We examined our best copy of the envelope to determine who made the February 17 cancellation mark. The circle is in line with the taxpayer's meter stamp, and the spacing matches the spacing on envelopes holding other correspondence involving the taxpayer's appeal upon which the taxpayer also used the meter. Therefore, we find the taxpayer's postage meter, not the post office, made the February 17, 2003 mark.

ANALYSIS

If payment of assessed tax is not received by DOR within the date specified on the assessment, a 10% penalty is added. RCW 82.32.090(2). For the purpose of this late-payment penalty, we must determine when DOR received the payment under the law. RCW 82.32.080 states:

A return or remittance which is transmitted to the department by United States mail shall be deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it.

The language in the statute is clear and leaves no room for interpretation. The tax return shall be deemed filed on the date shown by the post office cancellation mark stamped upon the envelope containing it. Det. 87-182, 3 WTD 191 (1987). When envelopes have both postage meter marks and post office cancellation marks, we consider the date received as the post office cancellation mark, not the postage meter date. *See* Det. No. 87-242, 3 WTD 383, 384 (1987). Because the post office cancellation mark was February 21, 2003, three days after the February 18, 2003 due date, we conclude DOR properly assessed the 10% late-payment penalty.

DECISION AND DISPOSITION

We deny the taxpayer's petition.

Dated this 31st day of July 2003