

Cite as Det. No. 04-0006, 23 WTD 195 (2004)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In The Matter of the Petition For Refund of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 04-0006
	)	
...	)	Registration No. . . .
	)	Document No. . . .
	)	Audit No. . . .
	)	Docket No. . . .

RULE 228; RCW 82.32.090 -- BILLING PENALTY -- ASSESSMENT --  
EFFECTIVE DATE. The 5% assessment billing penalty that went into effect on  
July 1, 2003 applies to all assessments originally issued after June 30, 2003, and  
not just audit periods occurring after that date.

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.

Bauer, A.L.J -- Taxpayer objects to the imposition of the 5% billing penalty on underpaid taxes in a  
tax assessment issued after the penalty legislation's effective date, because the penalty provision was  
not in effect during the audit period. We hold the penalty correctly applies.<sup>1</sup>

ISSUE:

Must a Taxpayer pay the 5% billing penalty because the original assessment was not issued until  
after the effective date of that penalty's legislation?

FINDINGS OF FACT:

The Audit Division (Audit) of the Department of Revenue (Department) audited the business  
records of . . . (Taxpayer) from January 1, 1999 to March 31, 2003. As a result, the first above-  
referenced assessment was issued on October 10, 2003 in the total amount of \$ . . . , which amount  
included interest up September 12, 2003 and a 5% penalty in the amount of \$ . . . on the total amount

---

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

of tax owed. Taxpayer has paid the assessment in full, but requests a refund of the 5% assessment penalty.

The audit period in question predated, in its entirety, July 1, 2003, the effective date of the 5% billing penalty's legislation. The Department also began its audit before that date.

#### ANALYSIS:

The legislature of the State of Washington passed Engrossed House Bill 2269 (EHB 2269) on June 5, 2003, and the Governor signed the bill on June 20, 2003.<sup>2</sup> EHB 2269 provided for revenue enhancements. Among its provisions was a new five percent billing penalty automatically added to all assessments.<sup>3</sup> This billing penalty is imposed on top of any late penalties applied to tax returns contained within the billing.<sup>4</sup> If a billing is not paid in full by the due date specified, that penalty increases to 15% (1-30 days late) and 25% (31 or more days late).

The effective date of the new billing penalty was July 1, 2003.

Taxpayer argues that the new 5% billing penalty should be applied prospectively only to audit periods occurring after its July 1, 2003 effective date. Because the entire audit period and the beginning of the audit both predated July 1, 2003, and the actual assessment was not issued until after that date, the Taxpayer argues the 5% billing penalty should not apply.

The legislature, however, specifically provided in the EHB 2269: "The five percent penalty imposed in section 13(2) of this act applies to all assessments originally issued after June 30, 2003."<sup>5</sup>

Had the legislature wanted to apply the 5% billing penalty only to audit periods occurring, or examinations begun, after the effective date of the legislation, it could have done so. It did not.

The Department is without authority to grant an exemption not provided for by law. Therefore, because the assessment at issue was not originally issued until after June 30, 2003, we find the 5% billing penalty was properly assessed.

---

<sup>2</sup> Chapter 13, Laws of 2003, 1<sup>st</sup> Special Session.

<sup>3</sup> Accordingly, RCW 82.32.090(2) now provides as follows:

(2) If the department of revenue determines that any tax is due, there shall be assessed a penalty of five percent of the amount of the tax determined by the department to be due; and if payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there shall be assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if the tax is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, there shall be assessed a total penalty of twenty-five percent of the amount of the tax under this subsection.

<sup>4</sup> See Washington State Department of Revenue's Special Notice dated June 25, 2003.

<sup>5</sup> See Engrossed House Bill (EHB) 2269, 2003 1st sp.s. c 13 § 14 (emphasis added).

**DECISION AND DISPOSITION:**

Taxpayer's petition for refund is denied.

DATED this 16<sup>th</sup> day of January, 2004.