

Cite as Det. No. 05-0040, 24 WTD 407 (2005)

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. 05-0040
)	
)	Registration No. . . .
)	Document Nos. . . .
)	Docket No. . . .

- [1] RULE 101, RULE 228; RCW 82.32A.030: PENALTY – WAIVER -- NOTIFICATION OF ADMINISTRATIVE CLOSING OF ACCOUNT IS NOT INSTRUCTION; TAXPAYER OBLIGATION TO REQUEST THAT ACCOUNT REMAIN OPEN. The Department’s notification that it has administratively closed a tax account is not an instruction that the taxpayer does not owe taxes. The taxpayer is responsible for knowing whether it still has a tax reporting obligation and, if the account should remain active, must request that it remain open.
- [2] RULE 228; RCW 82.32A.020: PENALTY – WAIVER – REGISTERING OR BEING REGISTERED IS NOT A REQUEST FOR FORMS. A taxpayer has the right to receive, upon request, current tax forms. The Department will consider a waiver of penalties when a taxpayer has made a timely application in writing for the proper tax forms and the Department has not furnished them in sufficient time for the taxpayer to timely file. Registering or being registered is not a request for tax forms, and the Department is not obligated to send a registered taxpayer tax forms unless the taxpayer specifically requests the forms.

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.

Prusia, A.L.J. – A taxpayer, who was registered with the Department of Revenue (DOR) and did not report or pay excise taxes because it was unaware it owed taxes, requests cancellation and refund of delinquency penalties and interest assessed for 2000 and 2001, contending its delinquencies were due to DOR’s failure to make it aware of its tax obligation by sending it excise tax forms. We conclude we are without authority to cancel the interest and penalties assessed, under the circumstances of this case. We deny the petition for refund.¹

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

ISSUES

- [1] Does DOR's notification that it has administratively closed a taxpayer's account constitute written instructions that the taxpayer does not owe tax or can delay payment of tax due?
- [2] Is DOR obligated to send all registered taxpayers tax forms and instructions prior to the taxpayers' reporting deadlines, whether or not the taxpayers have requested such forms?
- [3] Does registering with DOR constitute a timely application for tax forms under WAC 458-20-228(9)(a)(ii)(G)?
- [4] Has Taxpayer shown any circumstance that qualifies for a waiver or cancellation of interest or penalties assessed for 2000 and 2001?

FINDINGS OF FACT

. . . ("Taxpayer") is a limited liability company engaged in business in Washington since January 1998. In January 1998, Taxpayer contacted various state offices regarding registration and taxes. On January . . . , 1998, DOR assigned Taxpayer Unified Business Identifier ("UBI") No. [1] for its tax reporting account, with an annual reporting status. On February 20, 1998, the Secretary of State's office assigned Taxpayer UBI No. [2].

During the years 1998 through 2002, Taxpayer received tax forms from the Internal Revenue Service and from several state agencies, including Labor and Industries and Employment Security. Taxpayer states it timely filed the forms and paid the applicable taxes. The state agencies dealt with Taxpayer under UBI No. [2]. Taxpayer does not recall ever receiving tax forms or information from DOR during those years. Taxpayer was unaware it owed any taxes to DOR, and did not report or pay taxes to DOR. It assumed it was reporting and paying all taxes that applied to its business.

DOR records show that in November 2001, DOR closed Taxpayer's taxpayer account under UBI No. [1]. It is DOR's practice to notify taxpayers in writing when it closes an account. Taxpayer does not recall being notified by DOR that its account had been closed.

In December of each year, DOR mass-mails annual tax return forms and instructions to taxpayers who have been assigned an annual reporting requirement and have open tax reporting accounts. Whether DOR mailed tax forms and instructions to Taxpayer in the mass mailing for 2000 is undeterminable. DOR would not have mailed tax forms to Taxpayer for 2001, because Taxpayer's tax reporting account was closed.

In June 2002, DOR obtained information from some source that Taxpayer had changed the name under which it was doing business, and that Taxpayer's industry classification code had changed. On June 2, 2002, DOR reopened taxpayer's account under UBI No. [1], and modified the

account records to reflect the new information. DOR's records do not show any contact between DOR and Taxpayer at that time.

In September 2002, Taxpayer moved from [Washington City 1] to [Washington City 2]. Taxpayer provided notice of its change of address to the state agencies to which it had been reporting under UBI No. [2]. DOR's records show that in October 2002, DOR obtained information from some source of Taxpayer's new address, and changed the address for UBI No. [2]. DOR's records do not show any contact between DOR and Taxpayer at that time.

At the end of 2002, Taxpayer received excise tax return forms and instructions for 2002 from DOR. Taxpayer filed a return for 2002 in early 2003. At that time, Taxpayer contacted DOR, informed DOR that it had not previously received tax forms from DOR, and asked if it owed back taxes. Taxpayer understood DOR to say DOR would look into the matter.

In December 2003, DOR's Compliance Division contacted Taxpayer regarding Taxpayer's failure to file Washington excise tax returns for past years. In March 2004, Taxpayer filed excise tax returns for 1999, 2000, and 2001, and remitted a partial payment, which was less than the taxes reported. Upon receiving the returns, DOR added interest and penalties to past due taxes for 2000 and 2001. On March 29, 2004, DOR issued notices of balance due for 2000 and 2001, in the following amounts

Taxpayer requested a waiver of the penalties and interest assessed for 2000 and 2001. DOR denied the waiver request. Taxpayer subsequently paid the assessments (balance due notices) in full, including additional interest. Taxpayer requests refund of the penalties and interest assessed for 2000 and 2001.

ANALYSIS

Taxpayer contends the penalties and interest assessed for 2000 and 2001 should be cancelled and refunded, because it was unaware it had an excise tax obligation due to DOR's failure to send it excise tax forms for those years. Taxpayer argues that if DOR had timely sent it tax forms and instructions for 2000 and 2001, like other state and federal agencies did, it would have known it had an excise tax obligation, and would have timely reported and paid the taxes. Taxpayer suggests DOR may have been confused by the fact Taxpayer had two UBI numbers.

For tax periods 2000 and 2001, Taxpayers who were on an annual reporting schedule were required to report and pay excise taxes by the last day of January of the following year. If a taxpayer fails to timely file excise tax returns, RCW 82.32.090(1) requires DOR to assess a late payment of return penalty. Late payment penalties have been mandated since 1965, when the Legislature specifically amended the law to limit DOR's authority to waive penalties. The amount of the late payment penalty varies depending on how long a return is delinquent. For tax returns that are filed after July 1, 2003, late payment penalties start at 5% of the amount of the tax, increasing to a maximum of 25% if the tax has remained unpaid after the last day of the second month following the due date.

DOR also is required to add interest on the tax due, when a taxpayer fails to timely pay taxes. RCW 82.32.050.

DOR is an administrative agency, and its authority to waive or cancel interest and penalties is restricted to that granted by the Legislature. DOR has no discretionary authority to waive or cancel penalties or interest. Det. No. 98-85, 17 WTD 417 (1998); Det. No. 99-285, 19 WTD 492 (2000).

DOR is authorized to waive interest only if the failure to timely pay the taxes was due to written instructions from DOR, or was for the sole convenience of DOR. RCW 82.32.105; RCW 82.32A.020; WAC 458-20-228(10) (Rule 228(10)).

[1] There is no record of any written instruction or advice from DOR to Taxpayer between 1998 and the end of 2002. It is likely DOR did notify Taxpayer that it had closed Taxpayer's tax reporting account in November 2001. However, that would not be material to the delinquency for 2000. Nor would it constitute an instruction that Taxpayer did not owe tax, or that Taxpayer could delay payment of tax owed, for 2001. All taxpayers have an obligation to "[k]now their tax reporting obligations, and when they are uncertain about their obligations, seek instructions from the department of revenue." RCW 82.32A.030. A taxpayer who is notified that DOR has administratively closed its account thus has an obligation to know whether it still has a tax reporting obligation. If the account should remain active, the taxpayer may request that it remain open. WAC 458-20-101(14) (Rule 101(14)). If an account is closed, a taxpayer may request that it be reopened when its business activities require the taxpayer to report. Rule 101(15). We conclude there is no basis for canceling the interest assessed for 2000 or 2001.

RCW 82.32A.020(2) gives taxpayers the right to have penalties waived where they have detrimentally relied on specific, official written advice or instructions from DOR. As we discussed in the previous paragraph, Taxpayer has not shown, nor do DOR records show, any written advice or instructions from DOR to Taxpayer that it did not owe tax, or could defer payment of tax owed. Therefore, RCW 82.32A.020(2) does not provide a basis for relief from penalties in this case.

RCW 82.32.105 is the only other statute that authorizes DOR to waive or cancel penalties. It provides, in pertinent part (emphasis added):

(1) If the department of revenue finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date **was the result of circumstances beyond the control of the taxpayer**, the department of revenue shall waive or cancel any penalties imposed under this chapter with respect to such tax.

RCW 82.32.105 does not define the term "circumstances beyond the control of the taxpayer," but DOR has explained the term, and given examples, in Rule 228(9). Rule 228(9)(a)(ii) states, in pertinent part: "Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay." The same subsection lists the following examples of "circumstances beyond the

control of the taxpayer”: A) the return was mailed on time but inadvertently sent to another agency; B) erroneous written information given the taxpayer by DOR caused the delinquency; C) the delinquency was caused by death or serious illness of the taxpayer, a family member, or tax preparer; D) the delinquency was caused by the unavoidable absence of the taxpayer or key employee prior to the filing date; 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 certain acts of fraud, embezzlement, theft, or conversion; and the following circumstance:

(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 forms from the department.

Rule 228(9)(a) also lists examples of circumstances that are generally **not** considered to be beyond the control of the taxpayer. One of those, example B of Rule 229(9)(a)(iii), is “[a] misunderstanding or lack of knowledge of a tax liability.”

The circumstance Taxpayer describes was not in the nature of an emergency. Moreover, the circumstance fits example B of generally non-qualifying circumstances. . . .

[2] Clearly, Taxpayer’s circumstance does not fit examples A through F of qualifying circumstances. Qualifying example G addresses a situation where DOR has failed to timely furnish forms to a taxpayer, but does not cover Taxpayer’s situation. Taxpayer did not keep track of pending due dates (it was not even aware it had an excise tax obligation). Taxpayer did not specifically request any tax forms from DOR before 2003. Registering with DOR in 1998 did not constitute a timely continuing request for tax forms. Det. No. 87-372, 4 WTD 375 (1987).

The situation example G addresses, and the reason it does not apply in Taxpayer’s case, are more clearly understood when we consider the obligations and rights of taxpayers set out in Chapter 82.32A RCW. RCW 82.32A.005 states, in pertinent part:

The legislature further finds that the Washington tax system is based largely on voluntary compliance and that taxpayers have an obligation to inform themselves about applicable tax laws. The legislature also finds that the rights of the taxpayers and their attendant responsibilities are best implemented where the department of revenue provides accurate tax information, instructions, forms, administrative policies, and procedures to assist taxpayers to voluntarily comply

Consistent with this legislative finding, RCW 82.32A.030 places on taxpayers the obligations to “[f]ile accurate returns and pay taxes in a timely manner,” and to “[k]now their tax reporting obligations, and when they are uncertain about their obligations, seek instructions from the department of revenue.” Taxpayers have a “right to receive, **upon request**, clear and current tax instructions, rules, procedures, forms, and other tax information.” RCW 82.32A.020(5) (emphasis

added). DOR attempts to send appropriate tax forms to registered businesses without waiting for a specific request, but is not statutorily required to do so.

Rule 228(9)(a)(ii)(G) is derived from the above statements of taxpayer obligations and rights. It relieves a taxpayer of penalties in the situation where the taxpayer has met its obligations under RCW 82.32A.030, and its right to receive tax forms “upon request,” has not been met. That is the only situation it addresses. It does not provide a basis for relief from the delinquency penalties assessed against Taxpayer. *See* Det. No. 87-372, *supra*, which similarly interpreted and applied the previous version of Rule 228.

The fact that the state issued two UBI numbers to Taxpayer is not a material fact in applying the above statutes and rule in this case.

We appreciate Taxpayer’s cooperation with DOR after it became aware of its tax obligation, but such cooperation is not a basis for DOR to cancel or reduce statutory penalties. Det. No. 01-165, 22 WTD 5 (2003); Det. No. 86-262, 1 WTD 225 (1986); Det. No. 87-159, 3 WTD 141 (1987).

Taxpayer has shown no circumstance that allows us to cancel either the interest or penalties assessed for 2000 and 2001. Accordingly, we deny the petition for refund.

DECISION AND DISPOSITION

The taxpayer’s petition for refund of penalties and interest is denied.

Dated this 10th day February of 2005.