

Cite as Det No. 13-0085, 32 WTD 243 (2013)

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 and the Denial of Waiver from	)	
Electronic Filing of	)	
	)	No. 13-0085
...	)	
	)	Registration No. . . .
	)	BAS # . . . and BAS #. . .
	)	Docket No. . . .
	)	

[1] RULE 228; RCW 82.32.105(1): PENALTY WAIVER – “CIRCUMSTANCE BEYOND THE CONTROL” – PERSONNEL CHANGE. Penalty waivers are appropriate for immediate or unexpected events in the nature of emergencies that cause late filing and/or payment of returns, and the loss of an office manager is not such a circumstance.

[2] RCW 82.32.080(2) – ELECTRONIC FILING REQUIREMENT – WAIVER – “GOOD CAUSE.” Taxpayer’s concern that his accounts and funds would be at risk if he paid electronically is not “good cause” for the purpose of waiving the electronic filing requirement.

Bauer, A.L.J. – A taxpayer petitions for waiver of the late payment penalties imposed because it failed to file and pay its excise taxes electronically and also objects to the Department’s disallowance of a waiver from the electronic filing requirements. Taxpayer’s petition is denied.

ISSUES

1. Were late payment penalties correctly imposed for 3<sup>rd</sup> and 4<sup>th</sup> Quarters of 2011 when a quarterly filer did not pay electronically by the due date provided by RCW 82.32.085?
2. Should late payment penalties be waived under RCW 82.32.105 because of circumstances occurring well before the payment due dates?
3. Did the Department correctly deny a company’s application for waiver from electronic filing in accordance with RCW 82.32.085?

## FINDINGS OF FACT

. . . (Taxpayer) sells trucks, farm equipment, and parts as well as repairs truck and farm equipment. Taxpayer files its Washington excise taxes quarterly. RCW 82.32.085 requires quarterly filers to file and pay their taxes electronically. Taxpayer has not been granted a waiver from the electronic payment requirement.

On May 12, 2011 and on June 2, 2011, the Department notified Taxpayer in writing that it was required to file and pay its taxes electronically. Taxpayer did not comply with this requirement, but instead filed its 3<sup>rd</sup> Quarter 2011 return electronically on October 31, 2011, and mailed a check. The check was received by the . . . field office on November 2, 2011. Taxpayer similarly filed its 4<sup>th</sup> Quarter 2011 return electronically on January 31, 2012, and delivered a check to the . . . field office on January 31, 2012. The Department did not consider either payment to be timely.

On November 18, 2011, the Department of Revenue's (Department's) Taxpayer Accounts Administration Division (TAA) issued Notice of Balance Due . . . imposing a 5% delinquent payment penalty in the amount of \$. . . for the 3<sup>rd</sup> Quarter 2011. On February 27, 2012, TAA issued Notice of Balance Due . . . imposing a 5% delinquent payment penalty in the amount of \$. . . for the 4<sup>th</sup> Quarter 2011.

On February 17, 2012, Taxpayer's owner wrote to [TAA] requesting a waiver of the 3<sup>rd</sup> and 4<sup>th</sup> Quarter 2011 delinquent payment penalties [on the grounds that Taxpayer's] long-time office manager had died in 2010 and had not been successfully replaced; and because . . . of [Taxpayer's owner's] family matters that predated that event. [Taxpayer's owner] stated that he inherited Taxpayer in late 2011 without an active checking account and so had paid Taxpayer's tax liability to the Department with Money Gram checks.

Taxpayer also requested a waiver from the requirement to file and pay excise taxes electronically, stating a number of reasons for this request. Taxpayer's owner claims: he has been the victim of theft and electronic fraud 14 times in the past; three individuals had forged checks and stolen from him; he has concerns about the security of his credit cards; he has had experiences where he has made a payment to a vendor electronically, but the amount that was actually withdrawn from his account was greater than authorized and the financial institution could not prove where the excess amount went and so he could not collect insurance because nothing was proven; in 1996, a bank from which unauthorized amounts were withdrawn from a sweep account would not repay any of the overdrawn amounts; and, neither the internet nor the Department's account is hermetically sealed, and so it falls to individuals to protect themselves. Taxpayer's owner states that, although he was paying taxes out of sweep accounts, he has stopped doing even that. Now he uses only checks. He does not believe the State of Washington adequately protects life or property, and that he, as a prudent individual, chooses to reduce his risk by any means possible.

On February 24, 2012, TAA denied Taxpayer's request for waiver of the 3<sup>rd</sup> and 4<sup>th</sup> Quarter 2011 late payment penalties, concluding that neither of Taxpayer's late payments were beyond Taxpayer's control and neither were eligible for the 24-month penalty waiver.

On February 29, 2012, TAA mailed Taxpayer a "FINAL NOTICE" of the electronic filing and payment requirement, warning that this final notice constituted "specific written instructions," and advised that to avoid being assessed an additional penalty, Taxpayer would be required to begin filing and paying its excise tax returns electronically within 45 days of the date of the notice unless Taxpayer requested and received a waiver. The notice further advised that the penalty would be 10% of the tax, in addition to any delinquent penalties, and would apply even if Taxpayer were to mail a paper tax return and a check by the due date.

On March 5, 2012, TAA denied Taxpayer's request for a waiver from the electronic filing/payment requirement.

Taxpayer timely appealed, requesting that the penalties imposed for the 3<sup>rd</sup> and 4<sup>th</sup> Quarters of 2011 be abated. Taxpayer also appeals TAA's denial of a waiver from electronic filing/payment requirements.

On appeal, Taxpayer argues that it does not want to file electronically because of its concerns regarding security issues on the internet. Taxpayer cites numerous cyber-attacks against banks and other financial institutions whereby servers are crashed and data may be pulled, and argues that the Chinese have been threatening the US with cyber warfare, ping-ponging until they find a portal and go through the VPN (virtual private network).

Taxpayer has not claimed that it lacks an operating computer or software capable of making electronic payments, or that its computer is shared equipment. It has not claimed an inability to electronically pay through a bank account or credit card, or any other circumstance or condition that prevents it from being able to comply with the electronic funds transfer mandate.

#### ANALYSIS

Late Payment Penalties. RCW 82.32.090(1) provides for penalties when a tax is not paid timely on a return:

If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there is assessed a penalty of five percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there is 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 last day of the second month following the due date, there is assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added shall be less than five dollars.

RCW 82.32.080: provides:

(2)(a) Except as otherwise provided in this subsection, payment of the tax must be made by electronic funds transfer, as defined in RCW 82.32.085. As an alternative to electronic funds transfer, the department may authorize other forms of electronic payment, such as payment by credit card. . . .

(b) The department may waive the electronic payment requirement in this subsection for any taxpayer or class of taxpayers, for good cause or for whom the department has assigned a reporting frequency that is less than quarterly. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion

(Emphasis added.) Thus, all taxpayers with monthly or quarterly reporting frequencies who have not obtained a waiver from the Department for good cause are required by law to report and pay their taxes electronically.

RCW 82.32.085 provides specific payment due dates for electronic filers:

(2)(a) An electronic funds transfer using the automated clearinghouse credit method must be completed so that the state receives collectible funds on or before the next banking day following the due date.

(b) A remittance made using the automated clearinghouse debit method or any other method of electronic payment authorized by the department will be deemed to be received on the due date if the electronic funds transfer or other electronic payment is initiated on or before 11:59 p.m. pacific time on the due date with an effective payment date on or before the next banking day following the due date. . . .

(Emphasis added.) Thus, in order for a payment to be considered received timely, payment must be deposited and available in the Department's bank on or before the electronic payment due date. WAC 458-20-22802 discusses electronic payment methods and states in section (1):

The department will credit the taxpayer with the amount paid as of the date the payment is received by the department's bank. The proof of payment by the taxpayer will depend on the means of transmission.

(Emphasis added.) Payment sent by U.S. Mail on the return due date, or a paper check taken to a field office on the return due date, is not considered to have been received timely because collectible U.S. funds were not deposited and available on the electronic payment due date. Even though Taxpayer chose not to pay electronically, the electronic payment due dates still applied. The late payment penalties are therefore sustained.

Taxpayer's petition as to this issue is denied.

[1] Penalty Waiver. The Department is given the authority to cancel penalties when the late payment or nonpayment is due to “circumstances beyond the control of the taxpayer.” RCW 82.32.105(1) provides for the waiver of penalties in such circumstances:

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.

(Emphasis added.) Circumstances beyond the control of a taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. In accordance with WAC 458-20-228(9)(a)(ii) (Rule 228), such circumstances must result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay, and must actually have caused the missed payment. Examples of such circumstances are listed in Rule 228(9)(a)(ii). Losing an office manager in 2010 is not an unforeseen circumstance in the nature of an emergency . . . . Family and business difficulties occurring even before losing the office manager in 2010 are likewise not immediate, unexpected, or in the nature of an emergency for purposes of determining whether the circumstances directly cause the late payment. Taxpayer has provided no information that would lead us to conclude there was an immediate or unexpected event in the nature of an emergency that caused the late filing and payment of its Q3 or Q4 2011 returns and payments. To the contrary, the facts indicate that Taxpayer’s payments were late because Taxpayer did not pay its taxes electronically.

RCW 82.32.105(2) also provides a late payment penalty waiver under the “24 month” rule, which provides:

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 . . . ; 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.

(Emphasis added.) Because Taxpayer had filed its 2<sup>nd</sup>Q 2011 return late, Taxpayer was ineligible for a waiver under the RCW 82.32.105(2) 24-month rule for its late 3<sup>rd</sup>Q and 4<sup>th</sup>Q 2011 returns and payments.

Taxpayer’s petition for waiver of its late payment penalties is denied.

[2] Electronic Filing/Payment Waiver. RCW 82.32.080(2) provides:

(a) Except as otherwise provided in this subsection, payment of the tax must be made by electronic funds transfer, as defined in RCW 82.32.085. As an alternative to electronic funds transfer, the department may authorize other forms of electronic payment, such as payment by credit card. All taxes administered by this chapter are subject to this requirement, except that the department may exclude any taxes not reported on the combined excise tax return or any successor return from the electronic payment requirement in this subsection.

(b) The department may waive the electronic payment requirement in this subsection for any taxpayer or class of taxpayers, for good cause or for whom the department has assigned a reporting frequency that is less than quarterly. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion. . . .

(3)(a) Except as otherwise provided in this subsection, returns must be filed electronically using the department's online tax filing service or other method of electronic reporting as the department may authorize.

(b) The department may waive the electronic filing requirement in this subsection for any taxpayer or class of taxpayers, for good cause or for whom the department has assigned a reporting frequency that is less than quarterly. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion. . . .

(8)(a) For purposes of subsections (2) and (3) of this section, "good cause" means the inability of a taxpayer to comply with the requirements of subsection (2) or (3) of this section because:

(i) The taxpayer does not have the equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section;

(ii) The equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section is not functioning properly;

(iii) The taxpayer does not have access to the internet using the taxpayer's own equipment;

(iv) The taxpayer does not have a bank account or a credit card;

(v) The taxpayer's bank is unable to send or receive electronic funds transfer transactions; or

(vi) Some other circumstance or condition exists that, in the department's judgment, prevents the taxpayer from complying with the requirements of subsection (2) or (3) of this section.

(b) "Good cause" also includes any circumstance that, in the department's judgment, supports the efficient or effective administration of the tax laws of this state, including providing relief from the requirements of subsection (2) or (3) of this section to any taxpayer that is voluntarily collecting and remitting this state's sales or use taxes on sales to Washington customers but has no legal requirement to be registered with the department.

(Emphasis added.) Thus, the Department may waive electronic filing in certain situations that are enumerated above. None of the circumstances listed above are included in Taxpayer's stated reasons for requesting the waiver. Taxpayer has, instead, argued that neither financial institutions nor the Department will be able to adequately protect his funds if he pays electronically. The Legislature, in enacting the provisions of RCW 82.32.080(2), undoubtedly took security into account, and concluded that adequate safeguards are in place. As an administrative agency, the Department has no waiver authority beyond that granted by the statute. See Det. No. 88-220, 6 WTD 27 (1988); Det. No. 96-097, 17 WTD 395 (1998); Det. No. 98-114, 18 WTD 37 (1999); Det. No. 99-062, 19 WTD 60 (2000); Det. No. 06-0267, 26 WTD 159 (2007).

We deny Taxpayer's petition as to its application concerning the denial of a waiver from electronic filing.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied

Dated this 27th day of March 2013.