Cite as Det. No. 15-0151, 35 WTD 182 (2016)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Refund of	)	D E T E R M I N A T I O N
	)	
	)	No. 15-0151
	)	
. . .	)	Registration No. . . .
	)	

[1] RCW 82.04.067(6) – NEXUS. An independent sales representative's regular visits to Washington, establishes taxing nexus under RCW 82.04.067 because the representatives solicited sales and the visits established and maintained a market for Taxpayer's products.

[2] RCW 82.04.067; WAC 458-20-193(7) – DISSOCIATION. Taxpayer's assertion that internet sales were to individuals and representative's sales were to businesses, fails to meet the "heavy burden" of showing the absence of any connection between internet sales and the nexus-creating activity (independent sales representative's visits) under the standard articulated in *Avnet, Inc. v. State of Washington, Department of Revenue*, 1187 Wn. App. 427, 348 P.3d 1273 (2015), *petition for review pending*.

[3] RCW 82.32A.020 – TAXPAYER RIGHTS – ORAL ADVICE. Taxpayer is ineligible for waiver of tax based upon alleged oral advice from the Department because Washington law does not allow for waiver of tax when the alleged advice is oral, as the Department cannot confirm what facts Taxpayer presented to the Department and what instructions the Department provided to the Taxpayer.

[4] RCW 82.32.105(3) – WAIVER OF INTEREST. Taxpayer is ineligible for waiver of interest because it has not shown the failure to timely pay the tax was the direct result of written instructions given to the Taxpayer by the Department and the extension of a due date for payments of an assessment of deficiency was not at the request of the Taxpayer and was for the sole convenience of the Department.

[5] RCW 82.32.105(2); RCW 82.32.090(8); WAC 458-20-228(9) – WAIVER OF PENALTIES – CIRCUMSTANCES BEYOND CONTROL – EXCESSIVE PENALTIES – GOOD FAITH. Under RCW 82.32.105(2) the Department shall waive a penalty if the Taxpayer shows circumstances beyond his or her control caused the delinquency and neither alleged, excessive penalties nor good faith and absence of intent to defraud, constitute circumstances beyond the Taxpayer's

> control. Further, we note that RCW 82.32.090(8) specifically authorizes the application of the delinquent penalty, assessment penalty, warrant penalty, and unregistered business penalty, all upon the same tax found to be due.

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.

Anderson, A.L.J. – A previously unregistered, out-of-state, party supplies wholesaler and retailer disputes assessments of retail sales tax, retailing business and occupation ("B&O") tax, wholesaling B&O tax, litter tax, interest, and penalties on the basis that it did not have nexus with Washington, internet sales should be dissociated from those originating from a representative's visits to Washington, and it relied – to its detriment – on incorrect oral advice allegedly received from a Washington State Department of Revenue ("Department") agent [("Agent"]). In addition, Taxpayer requests abatement of penalties because it acted in good faith in relying on the alleged oral advice and did not intend to defraud. Petition denied.[1]

ISSUES

1. Did Taxpayer have substantial nexus with Washington during the periods at issue [under] RCW 82.04.067 and WAC 458-20-193? If so, may internet sales be dissociated from those made by an independent sales representative who visited Washington State?

2. [Under] RCW 82.32A.020, is the Department estopped from assessing tax, interest, and penalties because it allegedly provided Taxpayer with oral advice, in 2001, that it need not register, report, and pay taxes to the Department?

3. [Under] RCW 82.32.105, has Taxpayer shown that it is entitled to a waiver of interest?

4. [Under] RCW 82.32.105, has Taxpayer shown that its failure to report and pay taxes was due to circumstances beyond its control?

FINDINGS OF FACT

[Taxpayer], is [an out-of-state] corporation, based in . . . . It manufactures and sells decorations, party supplies, and fire awareness and education products. Taxpayer sells such products in Washington State via an independent sales representative – [Representative Company] – and the internet.

During the period at issue, [Representative Company] was based [outside of Washington] and was paid by Taxpayer to make regular visits to Washington and sell Taxpayer's products to commercial accounts. On or about January 1, 2013, [Representative Company] was acquired by a Washington resident and became a Washington corporation.

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

Taxpayer sells individual items via the internet. In addition to its own website (. . .), Taxpayer made sales using two additional names, . . . (launched in 2002) and . . . (launched on February 4, 2013).

On July 3, 2013, the Compliance Division ("Compliance") of the Department mailed Taxpayer a Washington Business Activities Questionnaire [("Questionnaire")]; Taxpayer completed and returned the [Questionnaire]. After reviewing the completed [Questionnaire], Compliance advised Taxpayer that it had physical nexus with Washington State and was required to register, report, and pay taxes to the Department, and Compliance requested past sales figures.

On May 8, 2014, Compliance issued two tax assessments, based on provided past sales figures, against Taxpayer, as follows: (1) For January 1, 2007 through December 31, 2010, $ . . . , comprised of $ . . . in retail sales tax, $ . . . in retailing B&O tax, $ . . . in wholesaling B&O tax, $ . . . in litter tax, $ . . . in delinquent penalty, $ . . . in interest, $ . . . in 5% assessment penalty, and $ . . . in 5% unregistered business penalty; (2) For January 1, 2011 through September 30, 2013, $ . . . , comprised of $ . . . in retail sales tax, $ . . . in retailing B&O tax, $ . . . in wholesaling B&O tax, $ . . . in litter tax, $ . . . in delinquent penalty, $ . . . in interest, $ . . . in 5% assessment penalty, and $ . . . in 5% unregistered business penalty. Taxpayer appeals the assessments covering the period of January 1, 2007 through December 31, 2012.

Taxpayer concedes that it had physical nexus with Washington State beginning January 1, 2013 - when [Representative Company] became a Washington State corporation – but disputes nexus during the prior period. Taxpayer asserts that sales arising from the internet should be dissociated from those arising from [Representative Company's] Washington visits because internet sales were predominantly made to different market segments – individual consumers (internet) and commercial accounts ([Representative Company]).

Taxpayer also asserts that the Department is estopped under the Taxpayer Bill of Rights (RCW 82.32A.020) . . . from finding nexus because Taxpayer relied, to its detriment, on the alleged oral advice of [Agent]. As relevant here, on June 11, 2001, [Agent] sent Taxpayer a [Questionnaire], which Taxpayer completed and returned. Taxpayer alleges that it was contacted by [Agent], after he had reviewed the completed [Questionnaire], and [Agent] advised Taxpayer that if Taxpayer needed to register, he would send Taxpayer a letter. Taxpayer was not sent such letter. Taxpayer goes on to assert that its business activities reported on the 2013 [Questionnaire] are nearly identical to that reported on the 2001 [Questionnaire]; it detrimentally relied on alleged oral statements of [Agent] regarding nexus and its registration requirement; and the Department is estopped from now asserting nexus. In support of these assertions, Taxpayer has provided a copy of the completed 2001 [Questionnaire] and the handwritten notes of Taxpayer's former CFO of a telephone call from [Agent] dated June 26, 2001.

In addition, Taxpayer requests waiver of interest and penalties. Taxpayer asserts that assessing interest and penalties is unjust, inequitable, and disproportionate because Taxpayer relied on alleged oral advice that it need not register in 2001 and Taxpayer's business activities did not change. Taxpayer asserts this is reasonable cause for not registering and it has acted in good faith, without negligence, and with no intent to defraud.

ANALYSIS

Nexus & Dissociation

Washington imposes a B&O tax "for the act or privilege of engaging in business" in this state. RCW 82.04.220.[2] The tax is measured by applying particular rates against the value of products, gross proceeds of sale, or gross income of the business as the case may be. RCW 82.04.220. RCW 82.04.270 imposes the B&O tax on entities making sales at wholesale, and RCW 82.04.250 imposes the B&O tax on entities making sales at retail. In addition, persons making sales at retail must collect and remit retail sales tax RCW 82.08.020 and RCW 82.08.050.

WAC 458-20-193 (Rule 193) sets out administrative guidance regarding application of the B&O and retail sales taxes to interstate sales, and requires that the seller have nexus and the goods be received in Washington.[3] In this case, Taxpayer does not contest that the purchasers received goods in Washington. However, Taxpayer asserts that its representative's ([Representative Company's]) visits to customers in Washington are not sufficient to establish taxing nexus.

Nexus requirements flow from limits on a state's jurisdiction to tax found in the Due Process and Commerce Clause provisions of the United States Constitution. The limitations imposed by the two clauses are discussed in depth in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977); *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992); and in the Department's determinations.[4] *See, e.g.*, Det. No. 01-074, 20 WTD 531 (2001); Det. No. 96-144, 16 WTD 201 (1996). Nexus under the Due Process Clause is not at issue in this case. For purposes of the Commerce Clause, the nexus limitation requires that the activity taxed have "substantial nexus" with the taxing state. Consistent with this requirement, WAC 458-20-193 (Rule 193) defines "nexus" as "the activity carried on by the seller in Washington which is significantly associated

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[2] RCW 82.04.030 defines "person" to include corporations, limited liability companies, associations, and any group individuals acting as a unit, whether nonprofit, or otherwise. "Engaging in business" in Washington means "commencing, conducting, or continuing in business." RCW 82.04.150. "Business" is defined as including all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or another person. RCW 82.04.140.

[3] Rule 193 reads, in pertinent part:

> (7) Inbound sales. Washington does not assert B&O tax on sales of goods which originate outside this state unless the goods are received by the purchaser in this state and the seller has nexus. There must be both the receipt of the goods in Washington by the purchaser and the seller must have nexus for the B&O tax to apply to a particular sale. The B&O tax will not apply if one of these elements is missing.

[4] RCW 82.04.067 codifies the substantial nexus standard, providing in part:

> (6) . . . For purposes of the taxes imposed under this chapter on any activity not included in the definition of apportionable activities in RCW 82.04.460, a person is deemed to have a substantial nexus with this state if the person has a physical presence in this state, which need only be demonstrably more than a slightest presence. . . . A person is also physically present in this state if the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in this state.

[RCW 82.04.067 went into effect starting June 1, 2010.]

with the seller's ability to establish and maintain a market for its products in Washington." Rule 193(1)(f). This definition was cited with approval in *Tyler Pipe Industries, Inc. v. Dep't of Revenue*, 483 U.S. 232, 250 (1987). Therefore, Washington may not assert B&O tax on revenue from sales of goods which originate outside the state unless the purchaser receives the goods in this state and the seller has nexus. *See Lamtec Corp. v. Dep't of Revenue*, 170 Wn.2d 838, 246 P.3d 788 (2011); *cert. denied* ___ U.S. ___, 132 S.Ct. 95, 181 L.Ed.2d 24(2011).

The determination whether in-state activities create nexus looks to the entire collection of a taxpayer's different activities, the totality of which creates substantial nexus. *GMC v. City of Seattle*, 107 Wn. App. 42, 25 P.3d 1022 (2001); *see also General Motors Corp. v Washington*, 377 U.S. 436 (1964), *overruled on other grounds, Tyler Pipe*, 483 U.S. at 250 (1987) (holding that it is the bundle of corporate activity that determines whether a taxpayer has nexus with a state); Rule 193. Thus, establishing taxing nexus requires consideration of the entire bundle of a taxpayer's in-state activities.[5]

We note that the standard is not whether the in-state activity directly solicits a sale, but rather whether this activity is "significantly associated with establishing or maintaining a market within this state." WAC 458-20-193(7); *Standard Pressed Steel Co. v. Dep't of Revenue*, 419 U.S. 560 (1975); *National Geographic Soc. v. California Bd. of Equalization***,** 430 U.S. 551, 561 (1977); Det. No. 88-368, 6 WTD 417 (1988).[6] In *Standard Pressed Steel*, taxable nexus was established through the presence of a resident employee engineer who was not involved in sales, but only consulted with the customer regarding the customer's product needs. 419 U.S. at 560. For example, the Department has held infrequent visits to Washington customers by nonresident employees constituted sufficient nexus to allow the taxation of sales, even though the employees were not salespersons. Det. No. 88-368, 6 WTD 417 (1988). Where employees provided advice to customers regarding the safe handling of a product, such activity was also found to be important in maintaining sales into the state. Det. No. 91-213, 11 WTD 239 (1991).

The Washington Supreme Court recently found that Commerce Clause requirements were satisfied by "the presence of activities within the state." *Lamtec Corp. v. Dep't of Revenue*, 170 Wn.2d 838, 850-51, 246 P.3d 788 (2011) (sending sales [employees] to Washington [to answer questions and provide information about products] two or three times a year during the period at issue is significantly associated with its ability to establish and maintain its market). The Court's

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[5] For example, in Det. No. 96-144, 16 WTD 201 (1996), we concluded that, once the activities of a company go beyond purely mail order activities, and it has demonstrably more than the slightest presence in the state, substantial nexus is established. *Accord*, *Matter of Orvis Co. v. Tax Appeals Tribunal*, 86 N.Y.2d 165, 630 N.Y.S.2d 680, 686-87, 654 N.E.2d 954, 960-61 (N.Y. 1995), *cert. denied* 516 U.S. 989, 116 S.Ct. 518 (1995) ("While a physical presence of the vendor is required, it need not be substantial. Rather, it must be demonstrably more than a 'slightest presence' . . . . And it may be manifested by the presence in the taxing State of the vendor's property or the conduct of economic activities in the taxing State performed by the vendor's personnel or on its behalf.")

[6] As the U.S. Supreme Court emphasized in *National Geographic:*

> [T]the relevant constitutional test to establish the requisite nexus for requiring an out-of-state seller to collect and pay the use tax is not whether the duty to collect the use tax relates to the seller's activities carried on within the State, but simply whether the facts demonstrate "some definite link, some minimum connection, between the State and the person . . . it seeks to tax. "

430 U.S. at 561. (Internal quotations omitted.)

holding in *Lamtec* is consistent with the Department's longstanding position regarding nexus that is now codified in RCW 82.04.067(6). *See, e.g.*, Det. No. 00-003, 19 WTD 685 (2000) (taxpayer had substantial nexus in Washington when the activities included in-state dealer training, supporting promotional efforts at in-state trade shows, introducing and promoting new products, and establishing a network of independent contractors for repair work), and Det. No. 96-144, 16 WTD 201 (1996) (out-of-state manufacturer of motor homes had substantial nexus with Washington based on its visits to Washington between four and seven times per year to attend trade shows and provide in-state training of vendors).

In this case, Taxpayer argues that its representative's regular visits to Washington were insufficient to create nexus. We disagree. Not only did these visits establish and maintain a market for Taxpayer's products, but [the representatives] directly solicited sales. The activities of these visits clearly exceed the nexus standard set in *Lamtec*, consistent with that codified in RCW 82.04.067(6). Accordingly, these activities are sufficient to establish taxing nexus in Washington.

Taxpayer asserts that it is entitled to dissociate internet sales from those made by [Representative Company]. As relevant here, [WAC 458-20-193(7) (2010)] provides as follows:[7]

> (c) If a seller carries on significant activity in this state and conducts no other business in the state except the business of making sales, this person has the distinct burden of establishing that the instate activities are not significantly associated in any way with the sales into this state.

[Generally, nexus] for one sale is nexus for all sales. . . . . Det. No. 04-0208, 24 WTD 217 (2004), *citing*, Det. No. 94-209, 15 WTD 96 (1994). Recently, in *Avnet, Inc. v. State of Washington, Department of Revenue*, [*Avnet, Inc. v. Dept. of Revenue*, 187 Wn. App. 427, 348 P.3d 1273, 1278 (2015), review *granted*, ____*P.3d.*, Jan. 06, 2016 (No. 92080-0)], the Division II Court of Appeals addressed dissociation. Avnet conceded nexus, but sought to dissociate certain sales – where Washington employees played no significant role in the transactions – asserting that there must be substantial nexus between the activities establishing nexus and the sales at issue. The *Avnet* Court noted that several cases had ". . . expanded the range of activities relevant to the substantial nexus analysis." *Id.*, at 16. And went on to state, "They [precedents] show that a state need not demonstrate a direct connection between a taxpayer's nexus-creating activities and particular sales into the state in order to tax those sales." *Id.*, at 17. Although, "some connection" is required to sustain application of the B&O tax. *Id.* The court explained that the connection required is the substantial nexus standard articulated in *Tyler Pipe*, 432 U.S. at 250 (1987).

"The taxpayer carries a heavy burden in showing the absence of such a connection." *Avnet, Inc.*, at 18. Here, [Representative Company] visited Washington to sell Taxpayer's products and, in those visits, established and maintained a market for Taxpayer's products in Washington. This was Taxpayer's nexus-creating activity. While these visits may have focused on commercial accounts, this assertion alone is insufficient to show an absence of any connection between

[7] [WAC 458-20-193 was amended effective 8/7/15. This amendment removed the dissociation concept from the rule.]

Washington visits and internet sales. Accordingly, we decline to dissociate such sales and deny Taxpayer's petition as to this issue.

Estoppel

Taxpayer asserts the Department is estopped from assessing tax, interest, and penalties under common law principles of equitable estoppel and the Taxpayer Bill of Rights – RCW 82.32A.020.

. . . Taxpayer also argues that the Department is estopped from assessing taxes because Taxpayer relied on alleged incorrect oral advice. . . ..

In this matter, the only evidence that the Department made a statement inconsistent with a claim later asserted are Taxpayer's former CFO's alleged notes of a telephone call with [Agent]. While the notes do state, "Will review situation. If thinks we must register, he'll send me a letter and info.," they also state, "Could be subject to the gross receipts tax . . . if have sales exceeded $ . . .," and then goes on to list annual sales as follows: 2000 - $ . . . , 1999 - $ . . . , 1998 - $ . . . . Based solely on these notes, the contents of this alleged phone call are anything but clear. On the one hand, Taxpayer's notes reflect its assertion that [Agent] would contact Taxpayer if it needed to register. On the other hand, it appears Taxpayer was advised of the annual gross sales threshold for registering in Washington ($ . . .) and aware that, during the past three years, it had sales exceeding this threshold. Putting aside issues of authenticating these notes, the notes are insufficient to establish that the Department gave Taxpayer incorrect advice by advising it not to register and that it did not need to register unless contacted by [Agent].

Further, because the Washington tax system is based largely on voluntary compliance, the Washington legislature has placed upon taxpayers the responsibility to know their tax reporting obligations, and to seek instructions from the Department when they are uncertain about those obligations. RCW 82.32A.005(2), RCW 82.32A.030(2). The Department addressed whether oral instructions are binding in Excise Tax Advisory 3065.2009, which reads as follows:

> RCW 82.32A.020 provides that the taxpayers of Washington have:
>
> The right to rely on specific, official written advice and written tax reporting instructions from the department of revenue to that taxpayer, and to have interest, penalties, and in some instances, tax deficiency assessments waived where the taxpayer has so relied to their proven detriment.
>
> RCW 82.32A.020 does not authorize, nor does any other law permit, the Department to waive tax, interest, or penalties on the basis of a taxpayer's recollection of oral instructions by an agent of the department.
>
> The Department gives consideration, to the extent of discretion vested in it by law, where it can be shown that failure of a taxpayer to report correctly was due to written instructions from the Department or any of its authorized agents. The

> Department cannot give consideration to claimed misinformation resulting from telephone conversations or personal consultations with a Department employee.
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> There are three reasons for this ruling:
>
> > (1) There is no record of the facts which might have been presented to the employee for consideration.
> >
> > (2) There is no record of instructions or information imparted by the employee, which may have been erroneous or incomplete.
> >
> > (3) There is no evidence that such instructions were completely understood or followed by the taxpayer.

(Emphasis in original.) As explained in this ETA, Washington law does not allow for waiver of tax when the alleged advice is oral. This is because we simply cannot confirm what facts were presented to the Department and what oral instructions the Department provided to Taxpayer. See Det. No. 13-0059, 32 WTD 232 (2013). Therefore, we are unable to waive the assessment based upon the alleged oral advice that Taxpayer claims to have received.

Interest

Under RCW 82.32.050(1), if a taxpayer pays less tax than properly due, the Department must assess the additional amounts found due and include interest. The Department has limited authority to waive or cancel interest; RCW 82.32.105 authorizes the following two circumstances:

> (3) The department shall waive or cancel interest imposed under this chapter if:
>
> (a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or
> (b) The extension of a due date for payments of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

Neither such circumstance is present, nor even alleged, in this case. Accordingly, we deny Taxpayer's petition for the waiver of interest.

Penalties

RCW 82.32.090(1) provides that the Department shall assess a delinquent penalty when it does not timely receive payment of tax due on a return to be filed by a taxpayer. The delinquent penalty is initially 5% of the tax; it increases to 15% of the tax when payment has not been received by the last day of the month following the due date, and increases to 25% of the tax when payment is not received by the last day of the second month following the due [date]. RCW 82.32.090(1). Taxpayer was unregistered and did not pay taxes for the periods covered by the assessments (January 1, 2007 – December 31, 2010; January 1, 2011 – September 30, 2013).

Because Taxpayer's delinquency exceeded two months following the due date of such taxes, the Department assessed a 25% delinquent penalty.

RCW 82.32.090(2) provides that the Department shall assess an assessment penalty when it determines that any tax has been substantially underpaid. A tax is "substantially underpaid" when a taxpayer has paid less than 80% of the tax due and the amount of the underpayment is at least $1,000.00. RCW 82.32.090(2). The assessment penalty is initially 5% of the tax; it increases to 15% of the tax when payment is not received by the due date specified in the notice of tax due, and increases to 25% of the tax when payment is not received by the 30th day following the due date specified in the notice of tax due. RCW 82.32.090(2). As Taxpayer had not paid any taxes for the periods covered by the assessments and the amounts of taxes due exceeded $1,000.00, the Department assessed a 5% assessment penalty.

RCW 82.32.090(4) provides that the Department shall assess an unregistered business penalty when it discovers a person engaging in any business or performing any act upon which a tax is imposed, and that person has not obtained a certificate of registration from the Department, but is required to have obtained such certificate of registration per RCW 82.32.030. The unregistered business penalty is equal to 5% of the amount of tax due for the period in which the person was unregistered. Here, Taxpayer was unregistered for both assessment periods and the Department assessed a 5% unregistered business penalty.

RCW 82.32.090(8) states, "The penalties imposed under subsections (1) through (4) of this section can each be imposed on the same tax found to be due." It goes on to state, "This subsection does not prohibit or restrict the application of other penalties authorized by law." RCW 82.32.090(8).

The Department is required to waive the delinquent penalty, assessment penalty, and unregistered business penalty where it finds that the underlying act giving cause to the assessment of the penalty, i.e., delinquent payment, substantial underpayment, failure to register with the Department, was due to circumstances beyond the control of the taxpayer. RCW 82.32.105.

The Department lacks the authority to waive or cancel penalties based upon the assertion that the penalties are disproportionate, inequitable, or unjust. And, we note, the cumulative imposition of such penalties is specifically authorized by RCW 82.32.090(8). *See also* WAC 458-20-228(6). Thus, we are unable to waive or cancel penalties based upon Taxpayer's assertion that such penalties are excessive.

As to Taxpayer's assertion that it acted in good faith, without negligence, and no intent to defraud, we look to see if this constitutes circumstances beyond the control of the taxpayer.

"Circumstances beyond the control of the taxpayer" is defined in WAC 458-20-228(9), which states:

> The circumstances beyond the control of the taxpayer must actually cause the late payment. 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.

WAC 458-20-228(9) goes on to provide a non-exclusive list of circumstances that generally will and will not be considered circumstances beyond the control of the taxpayer. As relevant here, a misunderstanding or lack of knowledge of a tax liability is generally not considered a circumstance beyond the control of the taxpayer and will not qualify for a waiver of the penalty. WAC 458-20-228(9)(a)(iii)(B). Det. No. 01-096, 22 WTD 126 (2003) ("'Lack of knowledge' is not a 'circumstance beyond the control of the taxpayer' because the law, regulations, and Department publications explaining all tax laws are publicly available . . ."). Accordingly, we sustain the assessment of penalties.

DECISION AND DISPOSITION

Petition denied.

Dated this 9th day of June, 2015.