

Cite as Det. No. 16-0039, 35 WTD 301 (2016)

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>
Interest and Penalty of )	
)	No. 16-0039
)	
... )	Registration No. . . .
)	

Rule 228; RCW 82.32.105; RCW 82.32.135: CANCELTION OF INTEREST AND DELINQUENT PENALTY – CIRCUMSTANCE BEYOND THE CONTROL OF THE TAXPAYER. Taxpayer's failure to look at its secure email account or inquire as to the status of a tax assessment is not a circumstance beyond the control of the taxpayer that allows for the cancellation of interest or penalties.

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.

Lewis, A.L.J. – Taxpayer requests refund of the extension interest and late-payment penalty paid on a tax assessment that was paid late. Taxpayer maintains that the assessment would have been paid timely and no extension interest or late-payment would have been assessed had the audit report and assessment been sent by United States Postal Service (“USPS”) rather than transmitted over the internet to his secure Department of Revenue [(Department)] account. Taxpayer’s petition for refund is denied.<sup>1</sup>

ISSUE:

May extension interest and late-payment penalty be cancelled, under the provisions of RCW 82.32.105 and WAC 458-20-228 (“Rule 228”), when the audit report and tax assessment is sent to Taxpayer’s secure [Department] internet account?

FINDINGS OF FACT:

Taxpayer operates a motel in Washington. The Department’s Audit Division audited Taxpayer’s business records for the period January 1, 2010 through December 31, 2013. On November 18, 2014, the Department issued a \$ . . . assessment, which was sent to Taxpayer by a secure email message.<sup>2</sup> The Department’s records show Taxpayer logged onto the account on November 25,

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

<sup>2</sup> The \$ . . . assessment consisted of \$ . . . tax, \$ . . . interest, and \$ . . . resale certificate/reseller permit misuse penalty.

2014 and December 3, 2014. The balance due for the tax assessment would have been displayed within Taxpayer's E-file account when he logged into the account on November 25, 2014 and December 3, 2014.

When Taxpayer did not pay the assessment by the December 18, 2014, due date, a fifteen percent late-payment penalty was assessed. On January 5, 2015, a Revenue Agent contacted Taxpayer to request payment of the assessment and the late-payment penalty. On January 15, 2015, Taxpayer paid the Department \$ . . . , which represented payment in full of the assessment (\$ . . . ), extension interest (\$ . . . ) and late-payment penalty (\$ . . . ).

On January 15, 2015, Taxpayer filed a petition requesting refund of the extension interest and late-payment penalty. Taxpayer's basis for relief was that he was unaware that the assessment had been issued because he expected to receive the audit report and assessment by USPS rather than as an electronic file in his secure [Department] internet account. Taxpayer's president explained that he had reason to believe the assessment notice would come by USPS because his prior communication with the Department regarding the audit, i.e., notification of the audit, was by USPS.

Taxpayer's president does not dispute that his account with the Department was logged into twice after the assessment was issued. He does explain that he was out-of-the country during this time and that his son accessed the account to file the monthly excise tax return.

Taxpayer asks for relief based on the fact that the late payment was a misunderstanding of expectations, rather than a purposeful delay in paying the assessment. Taxpayer cites the facts that; 1) he promptly paid the assessment once notified by the Department's representative; and 2) that prior obligations owed to the Department were paid timely show his on-going commitment to pay his obligations to the Department timely.

#### ANALYSIS:

RCW 82.32A.020(2) and RCW 82.32.105 provide the only statutory authority to cancel interest. RCW 82.32A.020(2) provides taxpayers with:

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 (2) does not apply because there were no written instructions to Taxpayer not to report tax.

RCW 82.32.105(3) allows for the cancellation of interest 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 payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

Taxpayer's failure to pay the tax timely was neither the result of written instructions, nor was the due date for payment of an assessment extended for the benefit of the Department. Thus, there is no basis for cancellation of interest.

Taxpayer also requested cancellation of the late payment penalty.

RCW 82.32.090(2) provides for the mandatory assessment of a late-payment penalty:

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 is assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due 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 is assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added may be less than five dollars. . . .

RCW 82.32.105(1) allows for cancellation of penalties:

If the department of revenue finds that the payment by a taxpayer of a tax less than that properly due . . . 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.

WAC 458-20-228 ("Rule 228"), the administrative rule that implements RCW 82.32.105 explains:

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.

Taxpayer received the assessment electronically before its due date. Since May 2009, Taxpayer has been required by the Department to Efile and Epay its tax returns. Taxpayer agreed, as part of the Efile and Epay agreement with the Department, to receive notifications via its secure internet account.

In this case, the assessment was sent electronically in accordance with RCW 82.32.135. Taxpayer's failure to thoroughly look at its secure email account with the Department or make inquiry as to the status of the assessment is not a circumstance beyond the control of the Taxpayer. Thus, there is no basis to cancel either the interest or late-payment penalty that Taxpayer requests. Accordingly, Taxpayer's request for relief is denied.

DECISION AND DISPOSITION:

Taxpayer's request for refund is denied.

Dated this 27th day of January, 2016.