

Cite as Det. No. 17-0014, 36 WTD 364 (2017)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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 of )	
)	No. 17-0014
)	
... )	Registration No. . . .
)	

RCW 82.32.080; RCW 82.32.105; WAC 458-20-228(4) and (9): PENALTY WAIVER – CIRCUMSTANCES BEYOND CONTROL – PAYMENT NOT POSTMARKED ON SAME DAY PLACED IN MAIL. The fact that the United States Postal Service did not postmark payment on the same day taxpayer placed it in the mail is not a circumstance beyond the taxpayer’s control that caused the delinquent payment of taxes. WAC 458-20-228(4) requires taxpayers to mail payment “sufficiently in advance of the due date” to assure a timely postmark 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.

Stojak, T.R.O. – [Taxpayer] petitions for review of the Department of Revenue’s (“Department”) denial of its request for a waiver of the interest and penalties assessed on its late payment of a tax assessment. Taxpayer asserts that the fact that the United States Postal Service (“USPS”) did not postmark its payment on the same day it was placed in the mail is a circumstance beyond its control that caused its late payment. Taxpayer’s petition is denied.<sup>1</sup>

ISSUES

1. Was the [USPS’s] failure to postmark Taxpayer’s payment on the same day it was placed in the mail a circumstance beyond its control under RCW 82.32.105 and WAC 458-20-228?
2. Does a basis exist for waiving the interest assessed in this case under RCW 82.32.105 and WAC 458-20-228?

FINDINGS OF FACT

Taxpayer is a Washington based company that is subject to retail sales and use tax, as well as business and occupation (“B&O”) tax. On August 12, 2016, the Department’s Audit Division (“Audit”) issued an assessment against Taxpayer in the amount of \$ . . .

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

This amount represented \$ . . . in tax and \$ . . . in interest. The due date for paying the assessment was September 12, 2016.<sup>2</sup>

On September 12, 2016, Taxpayer cut a check to the Department for the total amount included in the August 12, 2016, assessment. On the same day, Taxpayer put the check in an envelope, postmarked the envelope with its own machine, and then placed the envelope in a USPS receptacle. However, the USPS did not postmark the envelope containing Taxpayer's payment until September 14, 2016. The Department assessed Taxpayer a fifteen percent assessment penalty of \$ . . . on its outstanding balance when it did not receive payment by the applicable due date.<sup>3</sup>

On September 29, 2016, Taxpayer requested a waiver of the interest and penalties assessed. [The Department's Taxpayer Account Administration Division (TAA)] reviewed the postmark date on Taxpayer's envelope and determined that the payment was untimely. On September 30, 2016, TAA sent Taxpayer a letter denying its request for a waiver of interest and penalties. Taxpayer wrote a letter to TAA dated October 3, 2016, seeking an administrative review of the denial of its request for a waiver of interest and penalties. TAA forwarded this letter to the Department's Administrative Review and Hearings Division on October 14, 2016, and it was treated as a petition for review under WAC 458-20-100.

Taxpayer contends that it timely placed its payment in the mail and the fact that the USPS did not postmark it on the same day is a circumstance beyond its control. In support of this contention, Taxpayer's October 3, 2016, letter relays an instance where one of its vendors did not receive a payment until more than three weeks after it was placed in the mail. Taxpayer relays this instance as an example of its lack of control over what happens once it places a piece of mail in a USPS receptacle.

### ANALYSIS

The Washington tax system is based largely on voluntary compliance. The Revenue Act imposes on taxpayers the responsibility to inform themselves about applicable tax laws, and accurately and timely pay taxes. Ch. 82.32A RCW.

RCW 82.32.080(7) explains when a payment is deemed received. It provides: "[a] return or remittance that is transmitted to the department by United States mail is deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it." WAC 458-20-228 ("Rule 228") further explains:

The postmark date as shown by the post office cancellation mark stamped on the envelope will be considered conclusive evidence by the department in determining if a tax return or payment was timely filed or received. RCW 82.32.080. It is the responsibility of the

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<sup>2</sup> Pursuant to RCW 82.32.050, tax, interest, and penalties included in an assessment are due "thirty days from the date of the notice."

<sup>3</sup> Pursuant to RCW 82.32.090(2), a fifteen percent penalty applies to any amount of tax that has been substantially underpaid. "Substantially underpaid" means that the taxpayer had paid less than eighty percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least one thousand dollars."

taxpayer to mail the tax return or payment sufficiently in advance of the due date to assure that the postmark date is timely.

Rule 228(4)(b).

The Department must impose interest and penalties when the conditions for imposing them are present. RCW 82.32.090; Det. No. 01-193, 21 WTD 264 (2002); Det. No. 99-279, 20 WTD 149 (2001). The Department has limited authority to waive or cancel penalties. RCW 82.32.105. The Department's authority to waive the assessment penalty, under RCW 82.32.090(2), is limited to situations where the penalties arose from "circumstances beyond the control of the taxpayer."

Rule 228, the same rule that unambiguously deems a payment received on the postmark date, explains when "circumstances beyond the control of the taxpayer" are present. It 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.

Rule 228(9).

The authority to waive interest is limited to two narrow circumstances: 1) where the failure to timely pay tax was the direct result of written instructions given to the taxpayer by the department; or 2) where 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. RCW 82.32.105(3); WAC 458-20-228(10).

Here, Taxpayer does not dispute that its payment was untimely. Instead, Taxpayer argues that the USPS's failure to postmark its payment envelope on the same day it was placed in the mail was a circumstance beyond its control. However, Rule 228(4)(b) specifically and explicitly contemplates this scenario and states that it is the taxpayer's responsibility to place a payment in the mail sufficiently in advance of its due date to assure a timely postmark. By directing taxpayers to place payments in the mail well in advance of the due date, Rule 228(4)(b) harmonizes with Rule 228(9) which limits the scope of circumstances considered to be "beyond the control of the taxpayer" to those that are "unexpected."<sup>4</sup> As stated in Rule 228(4)(b), the fact that a payment may not be postmarked on the same day it is placed in the mail is a circumstance that should be anticipated by a taxpayer.

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<sup>4</sup> As discussed, Taxpayer's letter relays a past experience with the USPS where a vendor did not receive its payment until three weeks after it was placed in the mail. Taxpayer does not state how long it took USPS to postmark the lost payment. For purposes of payments provided to the Department, as long as a payment is postmarked by the due date, it is considered timely. In this way, Washington law protects a taxpayer from the circumstances described by taxpayer regarding its lost payment. If it did take three weeks for the USPS to postmark taxpayer's payment, depending on all of the relevant facts, such a delay may be more consistent with a circumstance which is outside of the control of taxpayer.

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In summary, circumstances beyond the control of Taxpayer did not cause its late payment. As such, there is no basis for waiving the assessed penalty. In addition, the two narrow circumstances for waiving interest are not present in Taxpayer's case and there is no basis for waiving interest.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 20th day of January 2017.