

Cite as Det. No. 17-0300, 37 WTD 099 (2018)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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>
Assessment of )	
)	No. 17-0300
)	
... )	Registration No. . . .
)	

RCW 82.32.105; WAC 458-20-228; CIRCUMSTANCES BEYOND CONTROL: Where a taxpayer fails to timely pay an assessment because the assessment was mailed to its address of record but not timely routed [internally] to the person responsible for payment, this does not constitute a circumstance beyond the control of the taxpayer that would allow the Department to waive penalties for late payment of the assessment.

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.

NATURE OF THE CASE

Gabriella Herkert, T.R.O. – A company that failed to timely pay an assessment of interest for additional tax owed on its reconciliation return and was subsequently assessed an additional penalty, requests refund of the penalty on the basis that the assessment was mailed to its sales office and not timely routed to the person, in its corporate tax office, responsible for filing and paying excise taxes. We deny Taxpayer’s petition.<sup>1</sup>

ISSUES

1. Under RCW 82.32.105(1) and WAC 458-20-228 (Rule 228), does a taxpayer’s untimely, internal routing of an assessment to the person responsible, constitute a circumstance beyond the control of the taxpayer that caused the imposition of interest and penalty where the notification was mailed to the taxpayer’s address of record?
2. Is Taxpayer entitled to a waiver of penalty under RCW 82.32.105(2)?

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

## FINDINGS OF FACT

. . . (Taxpayer) provides home financing through a variety of mortgage types, including FHA, VA, USDA Rural Development, fixed-rate, and adjustable rate mortgages. Taxpayer's mortgage headquarters is [out-of-state]. Taxpayer's corporate headquarters are [out-of-state].

Taxpayer registered with the Department of Revenue (Department) using its [mortgage headquarters'] address. Taxpayer timely filed its excise tax return for the tax period January 1, 2015, through December 31, 2015. Taxpayer filed its [Annual Reconciliation of Apportionable Income] . . . for January 1, 2015, through December 31, 2015, on October 31, 2016. On the reconciliation return, Taxpayer owed additional tax, which it paid with the reconciliation return. Taxpayer's reconciliation return was completed by . . . who is also the contact name on the return. . . . signed the reconciliation return. Both . . . work in the corporate tax department located [out-of-state].

On April 28, 2017, the Department assessed Taxpayer \$ . . .<sup>2</sup> due on May 30, 2017. The Department mailed the assessment to Taxpayer at its registered [mortgage headquarters'] address. The Department's online excise tax system allows only one address and contact person per business. The Department did not send a secure message including the assessment because the signature on the reconciliation return ( . . . ) did not match the secure messaging profile linked to Taxpayer ( . . . ) in the Department's system.

Taxpayer's internal processes delayed delivery of the assessment to its [out-of-state] corporate tax offices until after the May 30, 2017, due date. Taxpayer paid the assessment on June 30, 2017. The Department added an additional penalty of \$ . . .<sup>3</sup> because Taxpayer did not pay the assessment until thirty-one days after the due date. Taxpayer requested a waiver of that additional penalty on June 30, 2017. On July 11, 2017, the Department denied Taxpayer's request for waiver of the additional penalty. On September 15, 2017, Taxpayer paid \$ . . . for the additional penalty. Taxpayer timely requested refund of the penalty. Taxpayer's request for refund was denied. Taxpayer timely requested review of the denial of its refund claim.

## ANALYSIS

The Department is required by law to add interest to assessments for tax deficiencies and overpayments. WAC 458-20-228(7). If payment of any tax determined by the Department to be due is not received by the due date specified in the notice, there is assessed a total penalty of fifteen percent. RCW 82.32.090(2). 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, there is assessed a total penalty of twenty-five percent of the amount of the tax due. *Id.*

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<sup>2</sup> Document No. . . . includes \$ . . . in service and other activities B&O tax, \$ . . . in interest, and \$ . . . in interest [penalty] due May 30, 2017, with a credit for \$ . . . , which Taxpayer had paid on October 31, 2016. Taxpayer paid \$ . . . in interest and \$ . . . in interest [penalty] on June 30, 2017.

<sup>3</sup> An additional penalty of \$ . . . and additional interest of \$ . . . was included in the demand for payment sent to Taxpayer on June 20, 2017, with a due date of June 30, 2017. Taxpayer's petition requests refund of \$ . . . for the penalty. We consider Taxpayer's request for refund to include the entire \$ . . . imposed as penalty and interest for failing to timely pay the interest assessed in Document No. . . .

Taxpayer filed its reconciliation return on October 31, 2016, showing a tax deficiency for amounts originally reported for the tax period January 1, 2015, to December 31, 2015. Although Taxpayer paid the amount of tax owed on the reconciliation return, Taxpayer did not pay interest at that time. Under RCW 82.32.050 and Rule 228(7), the Department must add interest. The Department appropriately assessed interest on the tax deficiency shown on Taxpayer's return.

The Department sent Taxpayer its assessment subject to a May 30, 2017, due date for payment. Taxpayer paid the assessment on June 30, 2017, thirty-one days after the due date on the assessment. Under RCW 82.32.090(2), the Department properly imposed an additional penalty of twenty-five percent of the amount due.

The Department has limited authority to waive or cancel penalties or interest, set out in chapters 82.32 and 82.32A RCW. As an administrative agency, the Department is given no discretionary authority to waive or cancel taxes, interest, or penalties. Det. No. 98-85, 17 WTD 417 (1998); Det. No. 99-285, 19 WTD 492 (2000). The Department has only the authority granted by statute.

1. Circumstances beyond its control

If the Department finds that 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 shall waive or cancel any penalties imposed under this chapter with respect to such tax. RCW 82.32.105(1). The rule governing waiver or cancellation of penalties is Rule 228. "Circumstances beyond the control of the taxpayer" is defined in Rule 228(9), as follows:

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) 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, mistakes on the part of employees, are not considered a circumstance beyond the control of the taxpayer. WAC 458-20-228(9)(a)(iii)(B), (E); Det. No. 90-205, 11 WTD 55 (1990) (Error of an employee is not one of the seven circumstances listed in Rule 228 which will justify the waiver or penalties). Further, taxpayers have a duty to know their tax reporting obligations. RCW 82.32A.030.

Here, Taxpayer has not shown that circumstances beyond its control caused it to pay its assessment late. Further, Det. No. 15-0166, 34 WTD 511 (2015) specifically concluded that slow internal mail routing does not constitute a circumstance beyond Taxpayer's control when notification is mailed to Taxpayer's address of record. Therefore, we deny Taxpayer's request for refund of its penalty due to circumstances beyond its control.

2. 24-month waiver

Taxpayer asserts that even if it does not meet circumstances beyond the control of the taxpayer standard, it nevertheless qualifies for waiver under RCW 82.32.105(2). This is incorrect. That subsection provides:

(2) 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, 82.14B.061, 82.32B.020, 82.27.060, 82.29A.050, or 84.33.086; 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.

*Id.* (Emphasis added.)

RCW 82.32.105(2) applies only to penalties imposed by RCW 82.32.090(1), which is the penalty imposed on the late payment of any tax due on a return to be filed by a taxpayer. The penalty imposed in this case was the penalty under RCW 82.32.090(2), which is the penalty for late payment of a tax assessment. Accordingly, because the RCW 82.32.105(2) 24-month waiver does not apply to RCW 82.32.090(2) penalties for the late payment of assessments, we have no authority under the law to waive Taxpayer's additional assessment penalty.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 8th day of December 2017.