

Cite as Det. No. 18-0052, 37 WTD 108 (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>
	)	
	)	No. 18-0052
	)	
...	)	Registration No. . . .
	)	

[1] RCW 82.45.100, RCW 82.32.105, and WAC 458-20-228: WAIVER OF PENALTIES - LACK OF KNOWLEDGE. A taxpayer is not eligible for a waiver of the delinquent penalty associated with the late payment of real estate excise taxes based on a lack of knowledge of the tax liability.

[2] RCW 82.45.100; RCW 82.32.105; WAC 458-20-228: TWENTY-FOUR MONTH PAYMENT HISTORY WAIVER. The waiver of delinquent penalties for 24 months of timely filing and payment of taxes does not apply to penalties assessed against delinquent real estate excise taxes.

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.

Fisher, T.R.O. – An out of state transportation company protests penalties assessed when it failed to timely pay real estate excise tax (REET) on its controlling interest transfer. The taxpayer alleges that the Department should waive the penalties because it did not know it was subject to REET and that it is eligible for the twenty-four month waiver provision in RCW 82.32.105. The petition is denied.<sup>1</sup>

ISSUES

1. Under RCW 82.45.100, RCW 82.32.105, and WAC 458-20-228, is a business eligible for waiver of penalties based on a lack of knowledge of a tax liability?
2. Under RCW 82.45.100, RCW 82.32.105, and WAC 458-20-228, may a REET delinquent penalty be waived . . . under the twenty-four months waiver provision for a good payment history?

---

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

## FINDINGS OF FACT

. . . (“Purchasing Company”) acquired . . . (“Acquired Company”) on or about October 31, 2015. At the time, Acquired Company had a fully owned subsidiary called . . . (“Taxpayer”).<sup>2</sup> Taxpayer owned two parcels of real property in Washington State.

On February 8, 2017, Taxpayer filed a Real Estate Excise Tax Affidavit (“Affidavit”) indicating a controlling interest transfer of Taxpayer occurred. The Affidavit stated that Taxpayer owned two parcels of real property in . . . Washington, worth a total of \$8 . . . , and owed \$ . . . in REET; Taxpayer paid \$ . . . in REET.

On February 15, 2017, the Department of Revenue’s (“Department”) Special Programs Division (“Special Programs”) issued an assessment against Taxpayer for \$ . . . . Special Programs determined that the \$ . . . in REET was delinquent because it was due on October 31, 2015, the date of the controlling interest transfer (when the Purchasing Company acquired the Acquired Company and its subsidiary, Taxpayer). The \$ . . . assessment is comprised of \$ . . . in interest (from October 31, 2015, to February 8, 2017), a REET delinquent penalty of \$ . . . , a substantial underpayment penalty of \$ . . . , and extension interest of \$ . . . .

Taxpayer timely sought administrative review and requests cancellation of only the \$ . . . REET delinquent penalty. Taxpayer explains it did not know transferring stock in a company that owned a company that owned real property in Washington would subject Taxpayer to REET. Taxpayer further explains that Purchasing Company and Acquired Company are not in the business of real estate or acquiring new companies, and the consultants they paid to review this deal did not recognize the acquisition of Acquiring Company would result in a taxable event. Taxpayer further states that it did not intend to evade taxes and paid the REET as soon as it became aware of the tax liability.

## ANALYSIS

RCW 82.45.100(1) states that REET is “due and payable immediately at the time of sale . . . .” RCW 82.45.100(2) imposes a REET delinquent penalty for failing to timely pay REET:

. . . if the payment of any tax is not received by the county treasurer or the department of revenue, as the case may be, within one month of the date due, there is assessed a penalty of five percent of the amount of the tax; if the tax is not received within two months of the date due, there will be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within three months of the date due, there will be assessed a total penalty of twenty percent of the amount of the tax.

*See also* WAC 458-61A-306(4). Taxpayer does not assert that the REET delinquent penalty was improperly assessed; rather, Taxpayer requests waiver of the REET delinquent penalty because it

---

<sup>2</sup> Following Purchasing Company’s acquisition of Acquired Company, Taxpayer was renamed to . . . . For the purposes of this petition for administrative review, “Taxpayer” means . . . , formerly known as . . . .

was unaware that REET was due and immediately paid the REET upon learning that it owed the tax.

The authority to waive a REET delinquent penalty is found in RCW 82.32.105. RCW 82.45.150 explains that “[a]ll of chapter 82.32 RCW, except RCW 82.32.030, 82.32.050, 82.32.140, 82.32.270, and 82.32.090(1) and (10), applies to the tax imposed by this chapter, in addition to any other provisions of law for the payment and enforcement of the tax imposed by this chapter.” *See also* Det. No. 16-0174, 35 WTD 624, 627 (2016). RCW 82.32.105(1) requires the Department to waive penalties if a taxpayer’s failure to pay any tax by the due date “was the result of circumstances beyond the control of the taxpayer.” The Department adopted WAC 458-20-228 to provide guidance on “circumstances beyond the control of the taxpayer” within the meaning of RCW 82.32.105. RCW 82.32.105(4). The burden is on the taxpayer to show that the circumstances beyond its control directly caused the late payment. WAC 458-20-228(9)(a)(i), (ii).

WAC 458-20-228(9)(a)(ii) explains that “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)(a)(iii) lists several circumstances that are generally not considered circumstances beyond the control of a taxpayer for the purpose of waiving taxes. Relevant here, neither lack of knowledge of a tax liability nor mistakes on the part of persons contracted with the taxpayer are circumstances beyond the taxpayer’s control. WAC 458-20-228(9)(a)(iii)(B), (E); *see also* Det. No. 17-0075, 36 WTD 592, 599 (2017) (lack of awareness that activity gives rise to tax liability does not constitute a circumstance beyond a taxpayer’s control). A taxpayer acting in good faith and without intent to defraud Washington is not a circumstance beyond the control of a taxpayer for the purpose of waiving penalties. Det. No. 15-0151, 35 WTD 182, 190-1 (2016).

Here, Taxpayer requests waiver of the REET delinquent penalty because it did not know that the acquisition of the Acquired Company, which owned Taxpayer, would trigger a liability for REET. Taxpayer’s lack of knowledge of its tax liability is not a circumstance beyond Taxpayer’s control. WAC 458-20-228(9)(a)(iii)(B); *see also* 36 WTD at 599.

Taxpayer also requests waiver of the REET delinquent penalty because the consultants Taxpayer hired to execute the acquisition were unaware of the REET liability. However, WAC 458-20-228(9)(a)(iii)(E) specifically excludes mistakes on the part of persons contracted with a taxpayer from being a circumstance beyond a taxpayer’s control. Accordingly, the mistakes of Taxpayer’s consultants does not give rise to a circumstance beyond Taxpayer’s control.

Taxpayer also claims that it qualifies for the penalty waiver provision of RCW 82.32.105(2), which reads: “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 . . . .” (Emphasis added).

Here, the penalty at issue is a REET delinquent penalty, imposed by RCW 82.45.100(2), not RCW 82.32.090(1). As explained above, RCW 82.32.090(1) is one of the provisions that does not apply

to REET. *See* RCW 82.45.150. Thus, the penalty waiver provision of RCW 82.32.105(2) does not apply and the Department may not waive the REET delinquent penalty under RCW 82.32.105(2).

RCW 82.32.105(2)(a) and WAC 458-20-228 further support this outcome by explaining what kinds of returns are eligible for the twenty-four month waiver provision. Taxpayer must request the waiver for a tax return required to be filed under RCW 82.32.045 (business and occupation taxes, retail sales tax, use tax, local retail sales and use tax, and public utility tax), RCW 82.14B.061 (state and county enhanced 911 excise taxes), RCW 82.23B.020 (oil spill response tax), RCW 82.27.060 (tax on enhanced food fish), RCW 82.29A.050 (leasehold excise tax), and RCW 84.33.086 (tax on harvesting of timber). RCW 82.32.105(2)(a); WAC 458-20-228(9)(b)(i)(A). A return required to be filed under Chapter 82.45 RCW is ineligible for the twenty-four month waiver provision.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 16th day of February 2017.