

Cite as Det. No. 20-0087, 41 WTD 61 (2022)

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. 20-0087
)	
...)	Registration No. . . .
)	

[1] WAC 458-20-178; RCW 82.12.020; RCW 82.12.0251: EXCISE TAXES – USE TAX – EXEMPTIONS. When a Washington resident purchased a travel trailer in another state, drove it to Washington, and then subsequently sold it to a nonresident company, its temporary use of the travel trailer within Washington is not exempt from use tax.

[2] WAC 458-20-228; RCW 82.32.105: TAXES – PENALTIES – WAIVER OR CANCELLATION OF PENALTIES. When a taxpayer incurred both delinquent and substantial underpayment penalties due to its reliance on incorrect information obtained from an internet website, the penalties were not the result of circumstances that were beyond the taxpayer’s control and may not be waived.

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.

McCormick, T.R.O. – A taxpayer disputes the assessment of use tax and penalties on his purchase of a travel trailer claiming that, because the trailer was purchased in another state and was subsequently sold to a nonresident company from [out of state], the purchase should be exempt from use tax in Washington. . . . The taxpayer also claims that [we should waive penalties because] he relied on incorrect information obtained from an internet website. We deny the petition.¹

ISSUES

1. Under RCW 82.12.020, RCW 82.12.0251 and WAC 458-20-178, is a taxpayer’s out-of-state purchase of a travel trailer, which was driven to Washington and then subsequently sold to a nonresident company from [out of state], subject to use tax?
2. . . . Under RCW 82.32.105 and WAC 458-20-228, does a taxpayer qualify for a penalty waiver when it incurred the delinquent and substantial underpayment penalties because of its reliance on incorrect information obtained from an internet website?

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

FINDINGS OF FACT

During 2019, the Department's Compliance Division (Compliance) conducted an investigation of . . . (Taxpayer's) purchase of a 2019 . . . travel trailer (Vehicle). On December 5, 2018, Taxpayer purchased Vehicle from a dealership in [State A] and had it delivered to [State B], where Taxpayer took possession of Vehicle on December 21, 2018, and then drove it directly to Washington.

On March 15, 2019, Compliance mailed Taxpayer a Use Tax Inquiry Letter, instructing Taxpayer to return the completed form by April 5, 2019. On April 3, 2019, Compliance received Taxpayer's response in which he claimed that he was not subject to use tax on the purchase of Vehicle because he purchased Vehicle in [State B] and then sold it to a limited liability company located in [State C].

On May 29, 2019, Compliance mailed a Use Tax Commencement of Audit Letter to Taxpayer, requesting a copy of Vehicle's title and the Bill of Sale showing that Taxpayer sold Vehicle to the limited liability company. On June 6, 2019, Taxpayer submitted a copy of Vehicle's [State C] Title, listing . . . LLC (Buyer) as the registered owner, and a signed statement indicating that Taxpayer sold Vehicle to Buyer. According to the [State C] Secretary of State, Buyer was formed on February 4, 2019. The date of sale to Buyer listed on the [State C] Title is February 22, 2019. On August 9, 2019, Compliance concluded that as a resident of Washington, Taxpayer was liable for use tax for his purchase of Vehicle and issued Letter ID . . . , a notice of balance due (Assessment) to Taxpayer.² On September 11, 2019, Taxpayer paid the Assessment, including the penalties and interest.

Taxpayer petitioned for administrative review of the Assessment on September 11, 2019. Taxpayer admitted taking possession of Vehicle in [State B] on December 21, 2018, and driving it directly to Washington. Taxpayer did not dispute being a Washington resident at the time of the purchase and did not assert that Vehicle ever left Washington after arrival. Taxpayer further admitted that he believed that he had discovered a way to avoid taxability in Washington by purchasing Vehicle out-of-state and selling it to a nonresident company from [State C]. Taxpayer requested cancellation of the assessment because he believed that he was not liable for use tax on the purchase. Taxpayer conceded that he may not have properly executed the purchase and subsequent sale of Vehicle to Buyer to successfully avoid being subject to use tax. Taxpayer claimed that he had been misled by information he had obtained from an internet website, causing him to incur the delinquent and substantial underpayment penalties. . . . Taxpayer requested a waiver of the penalties at issue.

In its response, Compliance provided a copy of the purchase contract signed by Taxpayer on December 5, 2018, which listed [Taxpayer] as the buyer and did not name any other co-buyer. Compliance also provided a copy of the Statement of Delivery Outside [State A], which was signed by Taxpayer on December 21, 2018, and listed [Taxpayer] as the only purchaser.

² The Assessment included \$. . . in use tax, \$. . . in delinquent penalty, \$. . . in assessment penalty for substantial underpayment, and \$. . . in interest, for a total amount due of \$. . .

ANALYSIS

1. Taxpayer's out-of-state purchase of Vehicle was properly subject to use tax.

All sales of tangible personal property to consumers in the state of Washington are subject to retail sales tax unless there is a specific exemption. RCW 82.08.020(1)(a); RCW 82.04.050(1). In general, the use tax applies upon the first use within Washington of any tangible personal property, the sale or acquisition of which has not been subjected to the Washington retail sales tax. RCW 82.12.020(1)(a); WAC 458-20-178(1).

Excise Tax Advisory (ETA) 3079.2009 establishes that “[t]here is a presumption that a Washington resident purchases tangible personal property for possession and use within Washington, even though the resident purchases such property outside the state.” A taxpayer bears the burden to establish that it did not have possession of or use the property in the state. *Id.*

Here, Taxpayer asserted that because he purchased Vehicle out-of-state and subsequently resold it to nonresident Buyer, his purchase of Vehicle should not have been subject to use tax. However, Taxpayer was a resident of Washington at the time of purchase on December 5, 2018. Further, Buyer was not formed until February 4, 2019. Taxpayer has failed to overcome the presumption that he purchased Vehicle for possession and use in the state. *See* ETA 3079.2009.

Taxpayer's purchase of Vehicle became subject to use tax upon Taxpayer's first use in Washington. Taxpayer admittedly drove Vehicle directly to Washington immediately following receipt of the vehicle on December 21, 2018, constituting the first act within the state by which Taxpayer assumed dominion or control over the property. *See* RCW 82.12.010(6)(a). Although the exact date of arrival in Washington is not known, we conclude that first use in Washington must have occurred in either late December 2018 or January 2019. Thus, the Department properly assessed use tax on Taxpayer's purchase of Vehicle.

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2. Taxpayer does not qualify for a penalty waiver as a result of his reliance on incorrect information he obtained from an internet website.

Persons not required to be registered with the Department must submit a Consumer Use Tax Return to report and pay use tax liability by the 25th day of the month following the month in which the tax liability occurs. WAC 458-20-178(5)(b)(ii).

The Department operates under a progressive delinquent penalty scheme, outlined in RCW 82.32.090(1):

If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there is assessed a penalty of nine percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there is assessed a total penalty of nineteen percent of the amount of the tax under this subsection; and if the tax is not received

on or before the last day of the second month following the due date, there is assessed a total penalty of twenty-nine percent of the amount of the tax under this subsection.

Assessment of the delinquent payment penalty is mandatory. Det. No. 01-193, 21 WTD 264 (2002); Det. No. 99-279, 20 WTD 149 (2001); Det. No. 87-235, 3 WTD 363 (1987). Here, Taxpayer's first use of Vehicle in Washington occurred in either late December 2018 or January 2019. Thus, Taxpayer's payment of use tax for its purchase of Vehicle was due no later than February 25, 2019. When the Department did not receive payment of the use tax by the last day of the second month following the due date, it was required to impose a delinquent penalty of 29 percent.

Additionally, if the Department determines that a tax has been substantially underpaid, the Department is required to assess a five percent penalty on the amount that was underpaid. RCW 82.32.090(2). "Substantially underpaid" under RCW 82.32.090(2) "means that the taxpayer has paid less than eighty percent of the amount of tax determined by the department to be due . . . and the amount of underpayment is at least one thousand dollars." Because Taxpayer failed to pay any use tax determined by the Department to be due for his purchase of Vehicle and the amount was greater than one thousand dollars, the Department was required to assess a five percent assessment penalty for substantial underpayment on the purchase.

Having determined that the Department properly imposed the assessed penalties, we now turn to whether the Department can waive them.

The Department has authority to waive or cancel penalties only in limited situations. RCW 82.32.105. One such situation is when the Department finds that the penalties incurred were the result of "circumstances beyond the control of the taxpayer." RCW 82.32.105(1).

WAC 458-20-228 (Rule 228) explains that "[c]ircumstances 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)(a)(ii). The circumstances must directly cause the late payment or substantial underpayment. Rule 228(9)(a)(i).

Rule 228(9)(a)(ii) lists examples of circumstances that are beyond a taxpayer's control sufficient to cancel penalties:

- Erroneous written information from the Department;
- An act of fraud or conversion by the taxpayer's employee or contract helper which the taxpayer could not immediately detect or prevent;
- Emergency circumstances around the time of the due date, such as the death or serious illness of the taxpayer or a family member or accountant; or
- Destruction of the business or records by fire or other casualty.

Rule 228(9)(a)(iii) also lists examples of situations that are generally *not* beyond the control of a taxpayer:

- Financial hardship;
- A misunderstanding or lack of knowledge of a tax liability; or
- Mistakes or misconduct on the part of employees or other persons contracted with the taxpayer.

Taxpayers are responsible to know their tax reporting obligations, and when they are uncertain about their obligations, seek instructions from the Department. RCW 82.32A.030(2); *see also* Det. No. 01-165R, 22 WTD 11, 15-16 (2003). Because of the nature of Washington’s tax system, the burden of becoming informed about tax liability falls upon the taxpayer, and it is the taxpayer who bears the consequences of a failure to be correctly informed. RCW 82.32A.030(2); 22 WTD at 15. In 22 WTD 11, we held that reliance on incorrect advice from private third parties was not grounds the Department could consider for waiving the penalty imposed in that case. Further, in Det. No. 01-165, 22 WTD 5 (2003), we reiterated that a lack of knowledge of a tax liability was also not grounds the Department could consider for waiving penalties.

Here, Taxpayer claimed that he relied on incorrect information he obtained from an internet website in believing that his purchase of Vehicle was exempt from taxability in Washington, which caused him to incur the delinquent and substantial underpayment penalties. Neither reliance on the internet website nor lack of knowledge of a tax liability is grounds upon which the Department may waive penalties. Taxpayer has not asserted any other circumstance that caused his failure to timely pay the use tax on his purchase of Vehicle. Taxpayer has failed to demonstrate circumstances beyond his control that caused him to incur the delinquent and substantial underpayment penalties.

Rule 228 also explains when a taxpayer can qualify for waiver of the delinquent penalty for having a good payment history under RCW 82.32.105(2). The rule explains that a taxpayer is eligible for this provision when it requests a penalty waiver and “has timely filed and paid all tax returns due for that specific tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested.” Rule 228(9)(b)(i)(B). Rule 228 explains that this provision allows waiver of the delinquent penalty on “the taxpayer’s very first return due” so long as they obtained a tax registration endorsement with the Department before conducting business in the state. *Id.*

However, the Department only applies the above waiver to the following situation:

If a taxpayer has obtained a tax registration endorsement with the department and has engaged in business activities for a period less than twenty-four months, the taxpayer is eligible for the waiver if the taxpayer had no delinquent tax returns for periods prior to the period covered by the return for which the waiver is being requested. . . . **This is the only situation under which the department will consider a waiver when the taxpayer has not timely filed and paid tax returns covering an immediately preceding twenty-four month period.**

Rule 228(9)(b)(i) (emphasis added). Thus, the Department will only waive the delinquent penalty related to a tax liability owed by an individual if that taxpayer has registered with the Department and has no prior delinquent tax returns. Because Taxpayer meets neither requirement, Taxpayer is not eligible for a waiver of the delinquent penalty under Rule 228(9)(b)(i), even if the taxable use in question is the first instance that requires any reporting. *See* Det. No. 05-0141, 25 WTD 35 (2006); Det. No. 01-037, 21 WTD 21 (2002) (holding that a taxpayer that purchased a yacht did not qualify for the 24-month waiver because the taxpayer was not registered and had not engaged in business activities in the state up to the time of the taxable use).

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 13th day of March 2020.