

BALDWIN COUNTY COMMISSION

POLICY #8.17

SUBJECT: Waiver of Penalties for Late Filing

DATE ADOPTED

October 15, 2013

AGENDA ITEM

BD3

OBSOLETE VERSIONS

DATE ADOPTED

AGENDA ITEM

POLICY STATEMENT

This policy provides for the establishment of a waiver of penalties charged for failure to timely file and/or failure to timely pay based on criteria that are to be set under the procedural section of this policy.

PROCEDURAL REQUIREMENT

Adopt the “Waiver of Penalties” as allowed under §40-2A-11 (h), Code of Alabama (1975), as amended.

In order for a taxpayer to receive a waiver, one or more of the following criteria must be met, with the burden of proof resting on the taxpayer:

- Death or major illness in the taxpayer’s immediate family or of the person responsible for the remitting of the taxes
- Unavoidable absence
- Casualty and natural disaster
- Reliance on a competent tax advisor
- Inability to obtain documentation necessary for the remittance of the taxes
- New account and taxpayer was unsure of responsibilities
- Mistake made by Baldwin County employee
- No waiver of penalty requests have been granted for 24 months prior to the request

However, the above events are not all inclusive, and the taxpayer is not prohibited from providing other reasons sufficient to constitute this standard.

If the taxpayer meets one or more of the criteria listed above, a one-time waiver of penalties may be granted.

The request must be submitted to the Sales & Use Tax Coordinator in writing, and must include any supporting documentation.

The Sales & Use Tax Coordinator must:

- Review the written request and documentation in a timely fashion.
- Ascertain that the proper criteria have been met.
- Provide a response to the taxpayer of the decision in writing.
- A one-time courtesy waiver per taxpayer no greater than \$1,000.00 can be approved by the Coordinator.
- If penalties are greater than \$1,000, the penalty may be administratively waived by the Coordinator with subject to review and approval of the Clerk/Treasurer.
- If adjustments need to be made to the account, the Coordinator must perform the adjustments necessary to correct the account.
- In the event the requested waiver of penalties exceed \$10,000.00, the Baldwin County Commission shall review and approve such waiver.
- In addition, the Baldwin County Commission reserves its right to waive any penalties for any reason it determines appropriate and as approved in session assembled.

FORMS/ATTACHMENTS/EXHIBITS

1. §40-2A-11 (h), Code of Alabama (1975) – Civil penalties levied in addition to other penalties provided by law
2. Alabama Department of Revenue – Revenue Procedure 97-003

Section 40-2A-11

Civil penalties levied in addition to other penalties provided by law.

(a) Failure to timely file return. Except in the case of an individual income tax return filed with no tax due at the time of filing, if a taxpayer fails to file any return required to be filed with the department on or before the date prescribed therefore, determined with regard to any extension of time for filing, there shall be assessed as a penalty the greater of 10 percent of any additional tax required to be paid with the return or fifty dollars (\$50).

(b) Failure to timely pay tax.

(1) If a taxpayer fails to pay to the department the amount of tax shown as due on a return required to be filed on or before the date prescribed for payment of the tax, determined with regard to any extension of time for payment, there shall be added as a penalty one percent of the amount of the tax due if the failure to pay is for not more than one month, with an additional one percent for each additional month or fraction thereof during which failure to pay continues, not exceeding 25 percent in the aggregate. In lieu of the penalty provided in the immediately preceding sentence, for any tax for which a monthly or quarterly return is required, or for which no return is required, the department shall add a failure to timely pay penalty of 10 percent of the unpaid amount shown as tax due on the return or the amount stated in the notice and demand.

(2) If a taxpayer fails to pay to the department any amount of any tax required to be shown on any return, which is not so shown, within 30 calendar days from the date of the first notice and demand therefore, there shall be added as a penalty one percent of the amount of the tax due if the failure to pay is for not more than one month, with an additional one percent for each additional month or fraction thereof during which failure to pay continues, not exceeding 25 percent in the aggregate. In lieu of the penalty provided in the immediately preceding sentence, for any tax for which a monthly or quarterly return is required, or for which no return is required, the department shall add a failure to timely pay penalty of 10 percent of the unpaid amount stated in the notice and demand unless payment is received within 30 calendar days from the date of the first notice and demand.

(c) Underpayment due to negligence. If any part of any underpayment of tax is due to negligence or disregard of rules or regulations, there shall be added to the tax an amount equal to five percent of that part of the tax attributable to negligence or disregard of rules or regulations.

For purposes of this subsection, the term "negligence" includes any failure to make a reasonable attempt to comply with Title 40, and the term "disregard" includes any careless, reckless, or intentional disregard.

(d) Underpayment due to fraud. If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of that portion of the underpayment which is attributable to fraud.

For purposes of this section, the term "fraud" shall have the same meaning as ascribed to the term under 26 U.S.C. Section 6663, as in effect from time to time.

(e) Frivolous return penalty. If a taxpayer files a "frivolous return," as that term is used in 26 U.S.C. Section 6702, that taxpayer may be liable for a penalty of up to two hundred fifty dollars (\$250).

(f) Frivolous appeal penalty. If any appeal to the administrative law division or circuit court is determined to be frivolous or primarily for the purpose of delay or to impede collection of any tax, a penalty of two hundred fifty dollars (\$250) or 25 percent of the tax in question, whichever is greater, shall be assessed in addition to any tax due.

(g) Penalties not exclusive. The penalties provided in this section for failure to timely file a return, failure to timely pay tax, filing a frivolous return, filing a frivolous appeal, or negligence may be asserted against the same taxpayer for the same tax period. If the fraud penalty is asserted, no other penalties shall be asserted.

(h) Waiver of penalties. Notwithstanding the foregoing, any penalty under this title or Section 10-2B-15.02 shall be waived upon a determination of reasonable cause. Reasonable cause shall include, but not be limited to, those instances in which the taxpayer has acted in good faith. The burden of proving reasonable cause shall be on the taxpayer.

(i) Discount sustained for just causes. All other provisions of tax laws notwithstanding, the Commissioner of the Department of Revenue, upon review of the circumstances involved, may authorize continuance of a statute-allowable discount when timely payment is made, but filing is delayed for just causes.

(j) Penalty and interest assessed as tax. All penalties and interest administered by the department shall be assessed and collected in the same manner as taxes.

(k) Penalty not to apply to registration and titling of motor vehicles. The penalties provided herein shall not apply to the registration or titling of motor vehicles.

(Acts 1992, No. 92-186, p. 349, §10; Acts 1995, No. 95-607, p. 1279, §2; Act 98-637, p. 1406, §1; Act 2009-144, p. 268, §11; Act 2012-378, §1.)

ALABAMA DEPARTMENT OF REVENUE
REVENUE PROCEDURE 97-003

DATE: November 13, 1997

SUBJECT: Circumstances that Constitute Reasonable Cause as it Relates to Waivers of Civil Penalties Pursuant to Regulation 810-14-1-.33.01

Scope. This revenue procedure is issued pursuant to Section 40-2A-5 to provide guidance as to the applicability of this state's taxing statutes in Section 40-1-1, et seq., Code of Alabama 1975, to define events and circumstances that constitute reasonable cause as it relates to requests by taxpayers for the waiver of civil penalties as prescribed by Regulation 810-14-1-.33.01. This revenue procedure does not apply to penalties abated under Regulation 810-14-1-.05 dealing with the failure of the Department to comply with Section 40-2A-4 of the Code of Alabama 1975.

Definitions. The following terms have the meanings ascribed to them for purposes of this revenue procedure.

Reasonable cause. The standard under which civil penalties may be waived. This standard is a facts and circumstances determination made on a case-by-case basis. The following events are sufficient to constitute reasonable causes:

- (1) death, major illness, unavoidable absence
- (2) casualty or natural disaster
- (3) inability to obtain necessary records
- (4) nonrecurring honest mistake
- (5) reliance on the advice of a competent tax advisor
- (6) reliance on erroneous advice of ADOR personnel

However, the above events are not all inclusive and the taxpayer is not prohibited from providing other reasons sufficient to constitute this standard.

Applicability of taxing statutes and regulations. This revenue procedure provides guidelines for situations whereby civil penalties may be waived pursuant to Regulation 810-14-1-.33.01.

Procedure. Pursuant to Regulation 810-14-1-.33.01, all taxpayers may provide documentation to the department that demonstrates reasonable cause. Such documentation may be provided to the department at any point during an audit or an assessment process. In the event that a taxpayer has appealed to the Administrative Law Division solely involving a request for penalty waiver, such appeals shall be referred to the Department's Associate Director of Taxpayer Advocacy for resolution.

Effective Date. This revenue procedure is effective immediately.

H. E. Monroe, Jr.
Commissioner of Revenue