



## BALDWIN COUNTY COMMISSION

POLICY #8.16	
<b>Subject</b>	Taxpayer Installment Agreement/Payment Plan Agreement
<b>Date Adopted</b>	October 1, 2019
<b>Agenda Item</b>	BD5
<b>Obsolete Versions</b>	October 15, 2013 – Agenda Item BD2

### **POLICY STATEMENT**

This policy adopts procedures and guidelines for Baldwin County Sales & Use Tax/License Inspection Department to enter into an agreement (**Taxpayer Installment Agreement**) with a taxpayer who is delinquent. As set forth in §40-2A-4(b)(6), Code of Alabama (1975), as amended, a written agreement will be allowed if the taxpayer is in arrears on a delinquent tax. The term of the agreement should not exceed twelve (12) months, but can be renewed at the discretion of the Budget Director of Baldwin County for succeeding periods not to exceed twelve (12) months.

This agreement may be offered, at the discretion of the Budget Director of Baldwin County, to delinquent taxpayers and/or taxpayers who have been audited for compliance.

Upon the execution of the Taxpayer Installment Agreement between the taxpayer and Baldwin County Sales & Use Tax/License Inspection Department, tax lien(s) shall be recorded with the Judge of Probate office where the business is located in accordance with applicable state law.

### **PROCEDURAL REQUIREMENT**

In order to carry out this policy, the following steps must be taken:

1. Adopt the “Taxpayer Installment Agreement” as allowed under §40-2A-4(b)(6), Code of Alabama, 1975, as amended, to assist taxpayers who are delinquent in taxes collected by the Baldwin County Sales & Use Tax Department/License Inspection Department.

2. Adopt the attachments to “Taxpayer Installment Agreement”:

Attachment A – Delinquency Notice: Shows number of payments, monthly payment amount, additional interest, and final payment amount, etc.

Attachment B – Collection Information Statement: To be completed by taxpayer.

3. Taxpayers that are delinquent in taxes are contacted by the staff either by a phone call, email and/or by preliminary or final assessments issued. If the taxpayer requests assistance and asks for relief, a payment plan may be considered.
4. Under certain circumstances, no payment plan will be considered if the taxpayer makes no contact to pay delinquent taxes, avoids phone calls, does not accept preliminary or final assessments, or if court proceedings have begun.
5. The Budget Director of Baldwin County is hereby authorized to sign Taxpayer Installment Agreements on behalf of the Baldwin County Commission/Baldwin County Sales & Use Tax/License Inspection Department.

#### **FORMS/ATTACHMENTS/EXHIBITS**

1. Taxpayer Installment Agreement
2. Attachment A to Agreement – Delinquency Notice
3. Attachment B to Agreement – Collection Information Statement
4. §40-2A-4(b)(6) – Taxpayers’ Bill of Rights/Installment Payments

**STATE OF ALABAMA  
COUNTY OF BALDWIN**

**TAXPAYER INSTALLMENT AGREEMENT**

**KNOW ALL MEN BY THESE PRESENTS THAT THIS “AGREEMENT”** is made by and between \_\_\_\_\_ Taxpayer Id \_\_\_\_\_ (hereafter collectively known as the “Taxpayer”) and the Baldwin County Commission, Baldwin County, Alabama, Baldwin County Sales & Use Tax/License Inspection Department (hereafter the “County”).

**WITNESSETH:**

**WHEREAS**, Baldwin County is a “Self-Administered County” according to Title 40 of the Code of Alabama (1975) and is, therefore, responsible for the administration of its own sales and use taxes; and

**WHEREAS**, the County has properly given notice that a certain amount of taxes are due and have not been timely paid by the Taxpayer; and

**WHEREAS**, the Taxpayer hereby acknowledges their liability for the tax as identified in such delinquency notice; and

**WHEREAS**, § 40-2A-4(b)(6), Code of Alabama (1975), authorizes the payment of tax installments if there has been a determination that such agreement will facilitate collection of a tax liability; and

**WHEREAS**, the County has determined that this Agreement with this respective Taxpayer will facilitate the collection of the taxes owed as identified within the delinquency notice (Attachment “A”); and

**WHEREAS**, the Taxpayer agrees to be bound by the terms found within this Agreement and applicable state laws, rules and regulations.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained within this Agreement between the County and the Taxpayer, the sufficiency whereof is hereby acknowledged, the Parties do hereby agree as follows:

**I. Recitals.**

The recitals stated above are incorporated herein by reference, as if fully set forth.

## **II. Taxes Owed.**

The Parties agree that the total and correct amount of monies owed for taxes, penalties, and interest are as follows:

Sales Tax	\$
Penalties	\$
Interest	\$
Total Amount Due	\$
*Additional Interest @ _____ % per month of this 12 month agreement	\$
Total Amount Due with Additional Interest for the 12 months of this Agreement	\$

\*The applicable interest rate is determined per Section 40-1-44, Code of Alabama (1975), as amended, which links interest to the underpayment rate established quarterly by the United States Secretary of the Treasury under the authority of 26 U.S.C. Section 6621. Interest rate history can be found at <https://revenue.alabama.gov/assessments/quarterly-interest-rates/>

Said total shall be paid according to the installment schedule provided for herein.

## **III. County's Obligation.**

With the exception of filing any liens deemed necessary, the County will temporarily refrain from further enforcement actions against the Taxpayer for the delinquency identified in the Delinquency Notice attached hereto (Attachment A).

In addition, the County will, upon the receipt of full and timely payment in accordance with the terms of this an Agreement, release any liens based upon the subject tax liability paid and satisfied pursuant to this Agreement.

Notwithstanding the statements herein, nothing shall prohibit the County from resuming its enforcement efforts at any time should the Taxpayer refuse to, fail to, or otherwise not abide this Agreement as determined by the Budget Director of Baldwin County.

## **IV. County Does Not Forfeit its Rights.**

Taxpayer understands and agrees that, by refraining from further enforcement action, the County in no way forfeits or waives its rights to collect said tax liability by any and all methods that were available prior to the execution of this Agreement including, without limitation, those rights pursuant to Section 40-2A-4, et seq., Code of Alabama (1975).

Taxpayer further acknowledges and agrees that, as further consideration and inducement to enter into this Agreement, the Taxpayer waives any and all rights to use this Agreement as a defense in any lawsuit or claim involving the underlying tax liability.

**V. Agreement Period.**

The term of this Agreement is for a period of twelve (12) months. Upon the expiration of this Agreement, all rights of the Taxpayer under this Agreement shall cease, unless this Agreement is renewed for succeeding periods not to exceed 12 months in the discretion of the Budget Director of Baldwin County.

Any and all rights of the County shall continue past the expiration of this Agreement.

**VI. Taxpayer's Commitments.**

A. The Taxpayer shall remain personally liable for the total amount of monies due and identified herein, and said liability shall continue until such time as the debt is completely satisfied notwithstanding any provision herein.

B. The Taxpayer shall timely pay any and all amounts identified herein that are either currently due, or will become due in the future, based upon the subject tax liability.

C. The Taxpayer will strictly adhere to the following installment schedule while paying the subject tax liability:

Installment	Due Date	Amount (including interest)
1 <sup>st</sup> payment	Upon the signing this Agreement	\$
2 <sup>nd</sup> through 11 <sup>th</sup> Payments	15 <sup>th</sup> of each month	\$
12 <sup>th</sup> Payment Balloon Payment due if liability not paid in full	15 <sup>th</sup>	\$

D. The Taxpayer shall accurately complete a Collection Information Statement (Attachment "B", included herein as if fully set forth). Failure to accurately complete said forms shall void this Agreement and will authorize the County to proceed with collection actions without further notice to the Taxpayer.

E. The Budget Director of Baldwin County shall be entitled to terminate, alter or modify this Agreement for any reason set forth in Section 40-2A-4(b)(6)b.1. through 6., Code of Alabama (1975), as amended.

**VII. Form and Timeliness of Payments.**

In order to be properly and timely received, the Taxpayer shall:

- A. Make and include the first payment upon the signing of this Agreement; and
- B. **Make all payments either by cash, check or credit card** payable to the order of the **Baldwin County Sales & Use Tax Department**; and
- C. Each and every installment payment made shall be physically received by the County at the address set forth in Section XII below no later than 1:00 p.m. on the designated date of the corresponding installment.

In the event that any payment is not properly or timely received, the County may, without any further notice, immediately proceed to collect any portion of the tax liability identified herein still outstanding by any means currently available and/or existing prior to the execution of this Agreement.

**VIII. Additional Warranties.**

The Taxpayer hereby warrants that they have full authority to execute this agreement and shall be liable for the same, and furthermore, all attachments and supporting documents are completed accurately and completely.

**IX. Balloon Payment.**

The Taxpayer understands and agrees that the final payment under this Agreement will be treated as a balloon payment with any outstanding balance payable in full at the end of the Agreement Period.

**X. Exhibits and Attachments.**

Additional provisions set forth on all attachments as specifically noted herein or otherwise signed by all parties are hereby made a part of this Agreement as if fully set forth and agreed to herein.

**XI. Entire Agreement.**

This Agreement constitutes the entire agreement between the County and the Taxpayer and supersedes all prior discussions, negotiations and agreements between the Parties, whether oral or written. Each party waives their future right to claim, contest or assert that this Agreement was

modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppels unless provided for herein.

**XII. Notice.**

Any notices to be given under this Agreement shall only be effectuated either by personal delivery in writing or by registered or certified mail with postage prepaid and return receipt requested. Notices delivered personally shall be deemed delivered as of the date of actual receipt, and notices sent by registered or certified mail shall be delivered on date of mailing. Any notices given hereunder shall be delivered only to the following addresses of the Parties:

Taxpayer:


County:

Baldwin County Sales & Use Tax/License Inspection Department
P. O. Box 189
Robertsdale, AL 36567

**XIII. Remedies Not Exclusive.**

No remedy herein conferred upon or reserved to the County is intended to be exclusive of any other remedy or remedies, and the County retains each and every such remedy, now or hereafter existing, at law or in equity or otherwise.

**XIV. Severability.**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**XV. No Waiver of Default.**

No delay or omission of the County to exercise any right, power or duty arising upon the occurrence of any event of default shall impair any such right, power or duty, nor shall it be construed to be a waiver of any such default or acquiescence therein. Every power and remedy given, by this Agreement and Alabama law, to the County shall be exercised from time to

time and as often as may be deemed expedient in the sole discretion of the County or its designee.

**XVI. ADDITIONAL PROVISIONS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF YOU DO NOT UNDERSTAND THE LEGAL EFFECT OF ANY PART OF THIS CONTRACT, SEEK LEGAL ADVICE BEFORE SIGNING.**

**IN WITNESS WHEREOF**, the Taxpayer has caused this Agreement to be executed with full authority to do so, and the County has caused the same to be executed by its duly authorized officer and representative.

**County**

BALDWIN COUNTY COMMISSION  
BALDWIN COUNTY, ALABAMA  
BALDWIN COUNTY SALES & USE  
TAX/LICENSE INSPECTION DEPARTMENT

By: \_\_\_\_\_  
Its Duly Authorized Budget Director

Attest:

\_\_\_\_\_  
County Administrator

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, \_\_\_\_\_, a Notary Public, in and for said County in said State, hereby certify that Ronald J. Cink and Wayne Dyess, whose names are signed above as Budget Director and County Administrator of the Baldwin County Commission, respectively, and who are known to me, acknowledged before me on this day, that being informed of the contents of this instrument, executed the same voluntarily on the day the same bears date or behalf of said Baldwin County Commission.

GIVEN under my hand and seal on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, Baldwin County, Alabama

My Commission Expires: \_\_\_\_\_



**Taxpayer**

By: \_\_\_\_\_

By: \_\_\_\_\_

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, \_\_\_\_\_, a Notary Public, in and for said County in said State, hereby certify that \_\_\_\_\_, whose name(s) is/are signed above as Taxpayer to the foregoing instrument and who is/are known to me, acknowledged before me on this day, that being informed of the contents of same, he/she/they, executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, Baldwin County, Alabama

My Commission Expires: \_\_\_\_\_

## ATTACHMENT "A"

## DELINQUENCY NOTICE

The following tax reporting payments are listed as delinquent and become part of this attached TAXPAYER INSTALLMENT AGREEMENT between Baldwin County Sales & Use Tax Department and

\_\_\_\_\_ Taxpayer Id. \_\_\_\_\_ dated \_\_\_\_\_.

The taxpayer further agrees that the following information represents the tax amounts owed to Baldwin County for the periods listed with no examination or audit by the taxing authority. Any misrepresentation by the taxpayer of these numbers will immediately void the TAXPAYER INSTALLMENT AGREEMENT upon which the information below is based and the full balance due at the point of discovery of misrepresentation *SHALL BECOME DUE AND PAYABLE*.

PAYMENT	TOTAL DUE	MONTHLY PAYMENT	NEW TOTAL	*INTEREST RATE	ADDITIONAL INTEREST
1	\$ -	\$ -	\$ -		\$ -
2	\$ -	\$ -	\$ -		\$ -
3	\$ -	\$ -	\$ -		\$ -
4	\$ -	\$ -	\$ -		\$ -
5	\$ -	\$ -	\$ -		\$ -
6	\$ -	\$ -	\$ -		\$ -
7	\$ -	\$ -	\$ -		\$ -
8	\$ -	\$ -	\$ -		\$ -
9	\$ -	\$ -	\$ -		\$ -
10	\$ -	\$ -	\$ -		\$ -
11	\$ -	\$ -	\$ -		\$ -
12	\$ -	\$ -	\$ -		

AMOUNT OF 12TH PAYMENT	\$ -
TOTAL ADDITIONAL INTEREST	\$ -
TOTAL PAID USING PAYMENT PLAN	\$ -

X \_\_\_\_\_  
Taxpayer Signature

\*The applicable interest rate is determined per Section 40-1-44, Code of Alabama (1975), as amended, which links interest to the underpayment rate established quarterly by the United States Secretary of the Treasury under the authority of 26 U.S.C. Section 6621. Interest rate history can be found at <https://revenue.alabama.gov/assessments/quarterly-interest-rates/>

Taxpayer \_\_\_\_\_ Baldwin County Taxpayer Id \_\_\_\_\_

DBA \_\_\_\_\_ FEIN \_\_\_\_\_

Mailing Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Physical Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email Address \_\_\_\_\_

Phone (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_ Cell (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

State Tax Account Number(s): Sales \_\_\_\_\_ Consumer Use \_\_\_\_\_

Legal Counsel's Name \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Accountant's Name \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Type of Organization:	Classification of Customers	Sales Method
<input type="checkbox"/> Corporation	<input type="checkbox"/> Ultimate Consumers	<input type="checkbox"/> Store Front
<input type="checkbox"/> LLC**	<input type="checkbox"/> Manufacturers	<input type="checkbox"/> Salesmen in taxing jurisdiction
<input type="checkbox"/> LLP**	<input type="checkbox"/> Wholesalers	<input type="checkbox"/> Salesmen outside taxing jurisdiction
<input type="checkbox"/> Partnership**	<input type="checkbox"/> Retailers	<input type="checkbox"/> Internet
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Contractors	<input type="checkbox"/> Mail Order
	<input type="checkbox"/> Owner/Consumer	<input type="checkbox"/> Other _____

Name \_\_\_\_\_

Title \_\_\_\_\_ SSN \_\_\_\_\_

Physical Address \_\_\_\_\_

City State Zip

Name \_\_\_\_\_

Title \_\_\_\_\_ SSN \_\_\_\_\_

Physical Address \_\_\_\_\_

City State Zip

Name \_\_\_\_\_

Title \_\_\_\_\_ SSN \_\_\_\_\_

Physical Address \_\_\_\_\_

City State Zip



## COLLECTION INFORMATION STATEMENT

Nature of Business \_\_\_\_\_

Date started business operation in Baldwin County \_\_\_\_\_

Gross Assets \$ \_\_\_\_\_ Gross Sales \$ \_\_\_\_\_ Other \$ \_\_\_\_\_

Location of Accounting Records \_\_\_\_\_

Does your business have a physical building (or Nexus) within this taxing authority? \_\_\_\_\_

Does your Legal Entity own property in the State of Alabama?

If yes, type of property: ( ) Real ( ) Personal

Do you lease tangible property for use in your business?

If yes, type of property: ( ) Real ( ) Personal

If yes, indicate nature of property \_\_\_\_\_

Name of lessor \_\_\_\_\_

Method of Accounting:

( ) Cash

( ) Accrual

( ) Other \_\_\_\_\_

Accounting Period:

( ) Calendar

( ) Fiscal-List Dates below

Has taxpayer been audited by

\*if yes indicate period covered

( ) IRS \_\_\_\_\_

( ) State of \_\_\_\_ - \_\_\_\_\_

( ) City of \_\_\_\_\_ - \_\_\_\_\_

Name and addresses of all banks in which you have deposited funds from the past six years.

Bank Name	Address	Account Number	Type
-----------	---------	----------------	------

_____	_____	_____	_____
-------	-------	-------	-------

City State Zip

_____	_____	_____	_____
-------	-------	-------	-------

City State Zip

_____	_____	_____	_____
-------	-------	-------	-------

City State Zip

Have you issued annual financial statements for the period under audit? ( ) Yes ( ) No

If yes, attach a copy.

#### Section 40-2A-4

### **Taxpayers' bill of rights.**

#### **(a) Rights of the taxpayer.**

(1) For purposes of this subsection and subsections (c) and (d), the term "department" shall include the Department of Revenue, a self-administered county or municipality, or a private examining or collecting firm, depending on whether the Department of Revenue, a self-administered county or municipality, or private examining or collecting firm is conducting the examination of the taxpayer.

(2) At or before the commencement of an examination of the books and records of a taxpayer, the department shall provide to the taxpayer the current version of Publication 1A. Publication 1A shall provide, in simple and non-technical terms, a statement of the taxpayer's rights. Those rights include the right to be represented during an examination, an explanation of their appeal rights, and the right to know the criteria and procedures used to select taxpayers for an examination.

(3) At or before the issuance of a preliminary assessment, the department shall provide to the taxpayer in simple and non-technical terms:

a. A written description of the basis for the assessment and any penalty asserted with respect to the assessment.

b. A written description of the method by which the taxpayer may request an administrative review of the preliminary assessment.

(4) At or before the issuance of a final assessment, the department shall inform the taxpayer by a written statement of his or her right to appeal to the Alabama Tax Tribunal or to circuit court.

(5) Except in cases involving suspected criminal violations of the tax law or other criminal activity, the department shall conduct an examination of a taxpayer during regular business hours after providing reasonable notice to the taxpayer. A taxpayer who refuses a proposed time for an examination on the grounds that the proposed examination would cause inconvenience or hardship must offer reasonable alternative times and dates for the examination.

(6) At all stages of an examination or the administrative review of the examination, and in any appeal to the Alabama Tax Tribunal, a taxpayer is entitled to be assisted or represented, at his own expense, by an authorized representative. The department shall prescribe a form by which the taxpayer may designate a person to represent him or her in the conduct of any proceedings, including collection proceedings, resulting from actions of the department. In the absence of this form, the department or the Alabama Tax Tribunal may accept such other evidence that a person is the authorized representative of a taxpayer as it considers appropriate. This provision shall not be construed as authorizing the practice of law before the department, Alabama Tax Tribunal, or any court in this state by a person who is not a licensed attorney.

(7) A taxpayer shall be allowed to make an audio recording of any in-person interview with any officer or employee of the department relating to any examination or investigation by the department, provided, however, the taxpayer must give reasonable advance notice to the department of his or her intent to record and the recording shall be at the taxpayer's own expense and with the taxpayer's own equipment. The department shall also be allowed to record any interview if the taxpayer is recording

the interview, or if the department gives the taxpayer reasonable advance notice of its intent to record the interview. The department shall provide the taxpayer with a copy of the recording, but only if the taxpayer provides reimbursement for the cost of the transcript and reproduction of the copy. The cost shall be reasonable as prescribed by regulations issued by the department.

(8) This section shall not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the department.

(b) Department responsibilities generally.

(1) The commissioner shall appoint a Taxpayer Advocate from among the employees of the department. This officer shall receive and review inquiries or complaints concerning matters that have been pending before the department for an unreasonable length of time, or matters where the taxpayer has been unable to obtain a reasonable response after several attempts to communicate with the department employee assigned to the taxpayer's case, or his or her immediate superiors. In addition, this officer shall review and have the authority to waive a penalty for reasonable cause as provided in subsection (h) of Section 40-2A-11, shall promptly review inquiries concerning release of property levied upon, the erroneous filing of liens, the failure to release a lien for good cause, or other matters complained of by a taxpayer or other affected party. The Taxpayer Advocate shall have no authority nor issue any ruling with regard to any taxes collected by or on behalf of a self-administered county or municipality.

a. The Taxpayer Advocate shall, subject to the approval of the commissioner or the assistant commissioner, issue taxpayer assistance orders in the form and manner prescribed herein and by department regulations.

b. Notwithstanding any statute of limitation or other provision in this title, a taxpayer assistance order may declare that any tax, including a final assessment, was erroneously assessed or reported and is not a liability due the state, or that a petition for refund was erroneously denied by the department.

c. A taxpayer assistance order shall grant relief as deemed appropriate, including the voiding of any erroneously issued final assessment for a tax which was not a debt due the state, granting of any refund due the taxpayer, or abating an assessment of interest that has accrued because of undue delay by department personnel.

d. At the request of the Alabama Tax Tribunal, the taxpayer advocate shall review a final order issued by the Alabama Tax Tribunal that was not appealed pursuant to Section 40-2B-2, if there is newly discovered evidence which by due diligence could not have been discovered in time to file an application for rehearing pursuant to Section 40-2B-2, and may propose relief as the taxpayer advocate deems appropriate and approved by the commissioner or the assistant commissioner.

e. All taxpayer assistance orders shall be dated and signed by the Taxpayer Advocate and approved either by the commissioner or the assistant commissioner, and shall state the underlying facts, the reasons for granting relief, and the relief granted. Any taxpayer assistance order may, for good cause, be modified or rescinded in writing by the Taxpayer Advocate and either the commissioner or the assistant commissioner.

f. The Taxpayer Advocate shall have full access to department personnel, books, and records subject, however, to the confidentiality restrictions imposed by this chapter.

g. Taxpayer assistance orders shall not be subject to the confidentiality provisions of this title, and shall be maintained by the secretary of the department and shall be open to review upon written request. The Taxpayer Advocate shall have no authority nor issue any ruling with regard to any taxes collected by or on behalf of a self-administered county or municipality.

h. The commissioner shall make an annual report to the Legislature of all taxpayer assistance orders approved in accordance with the provisions of this section and Sections 40-2A-2 and 40-2A-3. Such report shall contain the total amount of relief granted and the types of taxes for which relief was granted.

(2) The department shall maintain a continuing education program to train employees of the department and to provide them with a current knowledge of state and applicable federal tax laws.

(3) In addition to any other information provided by law, the commissioner shall include in the department's annual report information about the number or kind of audits or assessments conducted in the year covered by the report.

(4) The department shall not use the amounts of taxes assessed by an employee of the department as:

a. The basis of a production quota system for employees; or

b. The basis for evaluating an employee's performance.

(5) The department shall establish procedures for monitoring the performance of department employees which may include the use of evaluations obtained from taxpayers.

(6) **INSTALLMENT PAYMENTS.**

a. The commissioner is authorized to enter into written agreements to allow any taxpayer to pay any tax in installment payments if the commissioner determines that such agreement will facilitate collection of such tax. Notwithstanding the preceding sentence, such agreements shall be entered into only regarding a tax that has been finally assessed by the department and not appealed, and such agreements shall not extend for a period exceeding 12 months, provided, that any such agreement may be renewed at the discretion of the commissioner for succeeding periods not to exceed 12 months. The commissioner shall only be authorized to enter such an agreement with regard to a tax administered or collected by the department.

b. The commissioner may terminate, alter, or modify any agreement entered into hereunder if:

1. Information provided by the taxpayer to the commissioner prior to the date of such agreement was inaccurate or incomplete;

2. The taxpayer fails to pay any installment at the time such installment payment is due under such agreement;

3. The taxpayer fails to pay any other tax liability due the department at the time such liability is due, unless the taxpayer has appealed such other liability pursuant to the terms of this chapter;

4. The financial condition of the taxpayer has significantly changed;

5. The taxpayer fails to provide a financial condition update as requested by the commissioner; or

6. The commissioner believes that collection of any tax to which an agreement under this provision relates is in jeopardy.

c. The commissioner shall have sole authority or discretion to enter into or amend, modify, or terminate any installment payment agreement provided for herein. The commissioner shall promulgate regulations necessary for the implementation of this provision.

d. Any self-administered county or municipality shall have the same authority as provided to the commissioner by this subdivision relating to installment payments with respect to taxes administered or collected by the self-administered county or municipality.

(c) Department failure to comply with this section. The failure of the department to comply with any provision of this section shall not prohibit the department from assessing any tax as provided in this chapter, nor excuse the taxpayer from timely complying with any time limitations under this chapter. However, if the department fails to substantially comply with the provisions of this section, the commissioner shall, upon application by the taxpayer or other good cause shown, abate any penalties otherwise arising from the examination or assessment.

(d) Abatement of penalty. The department shall abate any penalty attributable to erroneous written advice furnished to a taxpayer by an employee of the department. However, this section shall apply only if the department employee provided the written advice in good faith while acting in his or her official capacity, the written advice was reasonably relied on by the taxpayer and was in response to a specific written request of the taxpayer, and the penalty did not result from the taxpayer's failure to provide adequate or accurate information.

*(Acts 1992, No. 92-186, p. 349, §3; Act 2000-233, p. 368, §1; Act 2014-146, p. 378, §3.)*