

Section 40-29-72**Rules for application of assessable penalties; "person" defined.**

(a) Penalty assessed as tax. The penalties and liabilities provided by this article shall be paid upon notice and demand by the commissioner or his delegate, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this article.

(b) "Person" defined. The term "person," as used in this article, includes an officer of a corporation, or a member of a partnership, who as such officer, or member is under a duty to perform the act in respect of which the violation occurs.

(Acts 1983, 4th Ex. Sess., No. 83-891, p. 128, §23.)

Section 40-29-73**Failure to collect and pay over tax, or attempt to evade or defeat tax.**

(a) General rule. Any person required to collect, truthfully account for, and/or pay over any tax imposed by Sections 40-17-2, 40-17-220, 40-18-71, 40-21-82, 40-23-2, 40-23-61, 40-26-1 and any other local sales, use, and gross receipts taxes collected by the state Department of Revenue who willfully fails to collect such tax, or truthfully account for, and/or pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for a penalty up to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

(b) Extension of period of collection where bond is filed.

(1) IN GENERAL. If, within 30 days after the day on which notice and demand of any penalty under subsection (a) is made against any person, such person:

a. Pays an amount which is not less than the minimum amount required to commence a proceeding in court with respect to his liability for such penalty;

b. Files a claim for refund of the amount so paid; and

c. Furnishes a bond which meets the requirements of subdivision (3); no levy or proceeding in court for the collection of the remainder of such penalty shall be made, begun, or prosecuted until a final resolution of a proceeding begun as provided in subdivision (2).

(2) SUIT MUST BE BROUGHT TO DETERMINE LIABILITY FOR PENALTY. If, within 30 days after the day on which his claim for refund with respect to any penalty under subsection (a) is denied, the person described in subdivision (1) fails to begin a proceeding in the appropriate court for the determination of his liability for such penalty, subdivision (1) shall cease to apply with respect to such penalty, effective on the day following the close of the thirty-day period referred to in this subdivision.

(3) BOND. The bond referred to in subdivision (1) shall be in such form and with such sureties as the commissioner may by regulations prescribe and shall be in an amount equal to one and one-half times the amount of excess of the penalty assessed over the payment described in subdivision (1).

(4) SUSPENSION OF RUNNING OF PERIOD OF LIMITATIONS ON COLLECTION. The running of the period of limitations provided in Section 40-29-50 on the collection by levy or by a proceeding in court in respect of any penalty described in subdivision (1) shall be suspended for the period during which the commissioner is prohibited from collecting by levy or a proceeding in court.

(5) JEOPARDY COLLECTION. If the commissioner makes a finding that the collection of the penalty is in jeopardy, nothing in this subsection shall prevent the immediate collection of such penalty.

(Acts 1983, 4th Ex. Sess., No. 83-891, p. 128, §24.)