



Baldwin County Commission

Legislation Text

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Meeting Type: BCC Regular Meeting

Meeting Date: 5/7/2019

Item Status: New

From: Donna Bryars, Interim Clerk/Treasurer

Submitted by: Jennifer M. Forsman, Audit Compliance Officer

ITEM TITLE

Taxpayer Audit Penalties Waiver Request

STAFF RECOMMENDATION

In accordance with Baldwin County Commission Policy #8.17 - Waiver of Penalties for Late Filing, take the following action related to rental and sellers use tax audit penalties owed to Baldwin County in the amount of \$62,533.88 by Taxpayer #17638:

1. Waive Rental Tax Audit Penalties in the amount of \$61,768.04; and
2. Waive Sellers Use Tax Audit Penalties in the amount of \$765.84.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: Taxpayer #17638, requested the waiver of penalties in the amount of \$62,533.88. See attached letter with explanation. The audit period was February 2015 through January 2018.

§40-2A-10, Code of Alabama 1975, Confidentiality, Disclosure, and Exchange of Tax Return and Tax Information. This section protects taxpayer's information.

The Baldwin County Commission established policy #8.17 to waive penalties for failure to timely file and/or failure to timely pay.

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

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 \$1,000.00, 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 exceeds \$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.

We recommend that the penalty be waived based on Code of Alabama §40-2A-11(h) which reads in pertinent part as follows: *(Waiver of penalties. Notwithstanding the foregoing, any penalty under this title or § 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.)*

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Sales & Use Tax Coordinator

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Heather Gwynn will provide response to the taxpayer.

Additional instructions/notes: N/A