

## **421.27 Penalties.**

1. *Failure to timely file a return or deposit form.* If a person fails to file with the department on or before the due date a return or deposit form there shall be added to the tax shown due or required to be shown due a penalty of ten percent of the tax shown due or required to be shown due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:

- a. At least ninety percent of the tax required to be shown due has been paid by the due date of the tax.
- b. Those taxpayers who are required to file quarterly returns, or monthly or semimonthly deposit forms may have one late return or deposit form within a three-year period. The use of any other penalty exception will not count as a late return or deposit form for purposes of this exception.
- c. The death of a taxpayer, death of a member of the immediate family of the taxpayer, or death of the person directly responsible for filing the return and paying the tax, when the death interferes with timely filing.
- d. The onset of serious, long-term illness or hospitalization of the taxpayer, of a member of the immediate family of the taxpayer, or of the person directly responsible for filing the return and paying the tax.
- e. Destruction of records by fire, flood, or other act of God.
- f. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.
- g. Reliance upon results in a previous audit was a direct cause for the failure to file where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.
- h. Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.
- i. The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the internal revenue service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage.
- j. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.
- k. The failure to file was discovered through a sanctioned self-audit program conducted by the department.
- l. If the availability of funds in payment of tax required to be made through electronic funds transfer is delayed and the delay of availability is due to reasons beyond the control of the taxpayer. "*Electronic funds transfer*" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal telephone, computer, magnetic tape, or similar device for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.

2. *Failure to timely pay the tax shown due, or the tax required to be shown due, with the filing of a return or deposit form.* If a person fails to pay the tax shown due or required to be shown due, on a return or deposit

form on or before the due date there shall be added to the tax shown due or required to be shown due a penalty of five percent of the tax due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:

- a.* At least ninety percent of the tax required to be shown due has been paid by the due date of the tax.
- b.* The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department, except under a sanctioned self- audit program conducted by the department.
- c.* The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return which includes a copy of the federal document showing the final disposition or final federal adjustments within sixty days of the final disposition of the federal government's audit.
- d.* The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.
- e.* Reliance upon results in a previous audit was a direct cause for the failure to pay the tax required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.
- f.* Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.
- g.* The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the internal revenue service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage.
- h.* The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

3. *Audit deficiencies.* If any person fails to pay the tax required to be shown due with the filing of a return or deposit and the department discovers the underpayment, there shall be added to the tax required to be shown due a penalty of five percent of the tax required to be shown due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:

- a.* At least ninety percent of the tax required to be shown due has been paid by the due date.
- b.* The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.
- c.* Reliance upon results in a previous audit was a direct cause for the failure to pay the tax shown due or required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

d. Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.

4. *Willful failure to file or deposit.* In case of willful failure to file a return or deposit form with the intent to evade tax, or in case of willfully filing a false return or deposit form with the intent to evade tax, in lieu of the penalties otherwise provided in this section, a penalty of seventy-five percent shall be added to the amount shown due or required to be shown as tax on the return or deposit form. If penalties are applicable for failure to file a return or deposit form and failure to pay the tax shown due or required to be shown due on the return or deposit form, the penalty provision for failure to file shall be in lieu of the penalty provisions for failure to pay the tax shown due or required to be shown due on the return or deposit form, except in the case of willful failure to file a return or deposit form or willfully filing a false return or deposit form with intent to evade tax.

The penalties imposed under this subsection are not subject to waiver.

5. *Failure to remit on extension.* If a person fails to remit at least ninety percent of the tax required to be shown due by the time an extension for further time to file a return is made, there shall be added to the tax shown due or required to be shown due a penalty of ten percent of the tax due.

6. *Improper receipt of refund or credit.* A person who makes an erroneous application for refund shall be liable for any overpayment received plus interest at the rate in effect under section 421.7. In addition, a person who willfully makes a false or frivolous application for refund with intent to evade tax is guilty of a fraudulent practice and is liable for a penalty equal to seventy-five percent of the refund claimed. Repayments, penalties, and interest due under this subsection may be collected and enforced in the same manner as the tax imposed.

7. *Failure to use required form.* If a person fails to remit payment of taxes in the form required by the rules of the director, there shall be added to the amount of the tax a penalty of five percent of the amount of tax shown due or required to be shown due. The penalty imposed by this subsection shall be waived if the taxpayer did not receive notification of the requirement to remit tax payments electronically or if the electronic transmission of the payment was not in a format or by means specified by the director and the payment was made before the taxpayer was notified of the requirement to remit tax payments electronically.

86 Acts, ch 1007, § 20; 89 Acts, ch 6, §3; 90 Acts, ch 1172, § 6, 7, 1416; 90 Acts, ch 1232, § 6, 29; 91 Acts, ch 97, §45; 91 Acts, ch 159, §46; 94 Acts, ch 1165, §9; 96 Acts, ch 1167, § 2, 8