



S.C. REVENUE PROCEDURE #87-2

SUBJECT: Penalties - Waiver, Dismissal, Reduction

EFFECTIVE DATE: March 24, 1987

EXPIRATION DATE: N/A

SUPERCEDES: All previous documents and any oral directives in conflict herewith.

REFERENCE: Section 12-54-160

AUTHORITY: Sections 12-3-90, 12-3-130, 12-4-40, 12-35-1180, South Carolina Code of Laws As Amended.

SCOPE: A Revenue Procedure is a statement describing agency procedures and is applicable only to employees of the South Carolina Tax Commission.

PURPOSE: This Revenue Procedure is issued to describe procedures in the administration of Section 12-54-160 relating to the waiver, dismissal or reduction of penalties and the delegation by the Commission of authority to the necessary Commission personnel to carry out these procedures.

I. Guidelines

(A) Waiver or Dismissal of Penalties

If the taxpayer has exercised ordinary business care and prudence and was nevertheless unable to file the return or pay the tax within the prescribed time and the delay was due to reasonable cause and not to wilful neglect, then the penalty may be waived or dismissed. The following list shall serve as guidelines in the determination of reasonable cause.

1. The return was filed and the amount shown due thereon was paid within the time provided by law; however, the return was filed with the wrong state or federal agency.

2. In a case where the final due date falls on a Saturday, Sunday or a legal holiday and the return was postmarked or delivered the following business day.
3. The delay in filing the return was due to erroneous information given the taxpayer by an employee of the Tax Commission.
4. The delay was caused by the death or serious illness of the taxpayer or member of his or her immediate family.
5. The delinquency was caused by the destruction by fire, or other casualty, of the taxpayer's place of business or records.
6. Prior to the time for filing the return, the taxpayer made application to the Commission for proper forms on which to make a return and such forms were not furnished to the taxpayer in sufficient time to permit a proper return to be timely filed, provided the taxpayer applied to the Commission or its employee in sufficient time to permit the forms requested to reach the taxpayer in time for him to comply with the statute.
7. The taxpayer relied on the services of an accountant or attorney and such accountant or attorney failed to prepare and timely file the return. The taxpayer's request must be supported by a statement, in writing, from the accountant or attorney setting forth his/her reasons for the failure to prepare and file the return.
8. The delinquency was caused by an unavoidable absence of the taxpayer from this State.
9. The taxpayer's return was timely filed but due to an error in Tax Commission processing, the taxpayer did not receive proper credit for the payment.
10. The taxpayer's check was returned by the bank due to an error confirmed by the bank and due to no fault of the taxpayer.

In addition to the above, the following criteria has been accepted as reasonable cause in the Estate and Gift Tax area.

1. Difficulty in acquiring appraisals.
2. Litigation concerning property owned by the decedent, interpretation of will language, accidental death, etc.
3. Estate of nonresident decedents where property is later discovered in South Carolina.
4. Illness of Fiduciary.

5. Later discovery of additional assets that would increase decedent's estate to the point where a liability for a return existed.

It is impossible to predetermine all possible conditions or circumstances and express such in our criteria. The above list of recommended criteria should cover 95% of logical reasons advanced by the taxpayer. It should be recognized that there will be other good reasons with justifications that will come up from time to time.

(B) Reduction of Penalties

Penalties may be reduced when it is determined that such a reduction is in the best interest of the Commission to collect the assessment and to improve future compliance by the taxpayer.

The below factors should be considered in a penalty reduction case.

1. Taxpayer's filing and payment history. Generally, lower penalties may be in order for taxpayers with no history of filing or payment delinquencies or deficiency assessments when compared with taxpayers who are repeatedly delinquent or repeatedly assessed additional tax.
2. Relationship of penalty to tax due. Generally, the penalty should not exceed the tax or fee due, unless warranted by other circumstances.
3. Ignorance of the law may be grounds for penalty reduction in the case of first time filers. The taxpayer should evidence ordinary business care and prudence.
4. Change in Commission's interpretation or application of laws may be grounds for penalty reduction. The taxpayer should evidence ordinary business care and prudence.

(C) Fraud Penalties

In any case where a fraud penalty is recommended, the Divisions will refer the file to CID in order to determine whether or not civil fraud penalties should be applied. CID will then advise the taxing Divisions as to their recommendations. Once applied, civil fraud penalties may only be dismissed by the Commissioners of the South Carolina Tax Commission.

II. Procedures

- (A) Advise the taxpayer to send to the appropriate office a signed statement along with their notice, or on their notice, fully explaining all the facts and circumstances of the event which led to the noncompliance. This statement must be signed by the taxpayer or a representative having power-of-attorney.

- (B) Advise taxpayers that they may write their statement on the notice itself (turnaround document) or they may attach the statement to the notice, but that they should be sure to include a copy of their notice. This is because the use of the notice is more likely to cause a particular action to occur which prevents issuance of further notices.
- (C) Do not make any statement which would lead the taxpayer to believe that you are making a determination on their request for abatement. Avoid statements such as, "I see no reason why the penalty will not be abated" or "Your reasons sound good to me". Simply advise, "Your reasons for requesting abatement will be considered by Commission personnel upon receipt of your statement. If abatement is denied, you will receive a letter advising you of your appeal rights."
- (D) A log must be maintained by the Supervisors of each Section to document the reason for waiving, dismissing or reducing a penalty. The reason can be the numerical number assigned to the list of 10 reasonable causes listed. Other reasons must be written. They can be brief, but must be sufficient to explain why the penalty was waived or reduced.

III. Delegation of Authority

<u>(A) Penalty Amount</u>	<u>Personnel</u>
(1) \$0.01 - \$1,000	Division Managers, Supervisors and personnel as determined by the Director of Field Services, Office Services or Property Division.
(2) \$1,000.01 - \$10,000	Directors - Field Services, Office Services, Property Division and two highest designated managers in each Division.
(3) \$10,000.01 - \$25,000	Same as Item 2 except the Commission and Executive Director will be advised by memorandum
(4) \$25,000.01 - \$50,000	Requires the approval of the Executive Director
(5) \$50,000.01 – above	Requires approval by the Commission

(B) The following delegation of Authority involving penalty assessments of property.

<u>Penalty Assessments</u>	<u>Personnel</u>
(1) .01 - \$5,000	Division Managers, Supervisors and personnel as determined by the Director of Property Division.
(2) \$5,000.01 - \$50,000	Director - Property Division and his highest designated managers.
(3) \$50,000.01 - \$125,000	Same as Item 2 except the Commission and Executive Director will be advised by memorandum.
(4) \$125,000.01 - \$250,000	Requires the approval of the Executive Director.
(5) \$250,000.01 – above	Requires approval by the Commission.