



SALES AND USE TAX COMMISSION
FOR REMOTE SELLERS

Policy and Procedure Memorandum (PPM)

<Insert Number>

Subject: Tax Processing

Effective Date: TBD

Subject: Penalty Waivers

The Commission may make exceptions to this policy when it is deemed to be in the best interest of the State and Local Governments.

A. Purpose

- a. This PPM provides guidelines and procedures for approving or denying requests to waive payment of the whole or any part of the specific penalty that is assessed due to delinquent filing or delinquent payment. However, it does not apply in any case where the penalty waiver request relates to a Voluntary Disclosure Agreement.
- b. Tax penalties exist for purposes of encouraging voluntary compliance with sales and use tax law and regulations. To emphasize those purposes and in the interest of equitable treatment of all taxpayers and enforcement of tax laws, all waivers of payment of the whole or any part of a delinquent filing or payment penalty shall be consistent with the provisions set forth in this PPM.

B. Statutory or Regulatory Authority

- a. La. R.S. 47:340
- b. La. R.S. 47:1603
- c. LAC 61:III.2101

C. Definitions

- a. "Commission" means the Louisiana Sales and Use Tax Commission for Remote Sellers. La. R.S. 47:339(B)(1).
- b. "Executive Director" means the executive director of the Commission. La. R.S. 47:339(B)(2).
- c. "Sales and use tax(es)" and "tax(es)" shall mean the sales and use taxes levied by the state of Louisiana under the provisions of Title 47 of the Louisiana Revised Statutes of 1950, and the sales and use taxes levied by local taxing authorities in Louisiana under the provisions of the Constitution of Louisiana, statutory laws authorizing the imposition of such taxes, and local sales and use tax ordinances. La. R.S. 47:339(B)(8).
- d. "Taxpayer(s)," as used in this PPM, shall mean those taxpayers who are "remote sellers." The term "remote seller" means a seller who sells for sale at retail, use, consumption, distribution, or for storage to be used for consumption or distribution any tangible personal property, products transferred electronically, or services for delivery within Louisiana, but does not have physical presence in Louisiana. The term "remote seller" includes "marketplace facilitators" as defined by R.S. 47:340.1. La. R.S. 47:339(B)(7).

- e. Waiver of Payment of Penalty: the phrase “waiver of payment of the penalty” shall be construed and understood to include waiver of payment of the whole or any part of a penalty that applies to a delinquent return filing or delinquent payment, or both.

D. General Procedures

~~a.~~ When any taxpayer fails to make and file any sales and use tax return required to be made under La. R.S. 47:340(6)(c)

~~i.~~ ~~b.~~ Before the time that the return become delinquent; or

~~ii.~~ ~~a.~~ When any taxpayer fails to timely remit to the Commission the total amount of tax due on a return that the taxpayer filed ~~then;~~

~~iii.~~ ~~i.~~ The specific penalty provided for the failure to timely file a tax return or pay the tax due shall be imposed, in addition to any other penalties provided, and added to the tax;

~~iv.~~ ~~ii.~~ Imposing this penalty is mandatory, not discretionary.

b. Pursuant to La. R.S. 47:1603(A), the Commission may waive payment of the whole or any part of a penalty that is imposed for delinquent filing or delinquent payment if

i. The failure to timely file the return or pay the tax is due to reasonable cause, other than the taxpayer’s negligence, and

ii. ~~The request is made is set forth~~ in written form.

c. All penalty waiver requests must be submitted ~~on~~

i. ~~On a~~ RSC Request for Waiver of Penalties Form, or

ii. Affidavit executed before a notary public in the presence of two witnesses;

iii. With all of the facts alleged as a basis for reasonable cause set forth on the form or in the affidavit;

iv. ~~The~~ ~~With supporting documentation accompanying the~~ waiver form or affidavit, ~~must be accompanied by supporting documentation.~~

d. Before a penalty waiver can be considered:

i. The taxpayer must be current in filing all tax returns.

ii. ~~Additionally,~~ ~~a~~ All taxes, penalties not being considered for waiver, and fees and interest due for any fees or tax administered by the Commission must be paid.

e. Each penalty waiver shall be considered on an individual basis. ~~Waiver of payment of the delinquent filing and delinquent payment penalties shall be considered separately in making this determination.~~

~~f.~~ If the amount of payment of the penalty to be waived is \$5,000 or less,

~~i.~~ ~~f.~~ ~~t~~he Executive Director is authorized to approve or deny the penalty waiver request ~~up to \$5,000.~~

g. If the amount ~~of payment~~ waived exceeds \$5,000,

i. Upon the written recommendation of the Executive Director, the penalty request shall be forwarded to the Commission for approval or denial.

ii. Penalty waivers exceeding \$25,000 are subject to oversight by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs. All approved waivers that exceed \$25,000 must be tracked.

iii. Subpart (b) shall not apply to any penalty that the Commission remits or waives in accordance with rules and regulations promulgated pursuant to the Administrative Procedure Act regarding the remittance or waiver of penalties under the Commission Voluntary Disclosure Program.

h. In all penalty waiver matters, the Commission staff shall notify the taxpayer of the approval or denial of the penalty waiver request.

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Commented [RR2]: Question received: Should the information about the penalties be a separate section from the general procedures?

E. Disaster, Emergency, Extraordinary Circumstance

- a. Except when the failure to timely file any return or pay any tax is due to the taxpayer's negligence, reasonable cause may exist under the following circumstances to waive payment of the whole or any part of the penalty:
 - i. The delinquency was directly attributable to a significant disaster or emergency declared by the President or a governor.
 - ii. The delinquency was directly attributable to an extraordinary circumstance beyond the taxpayer's control such as, but not limited to, the following:
 - 1. An actual or threatened event, other than a presidential or gubernatorial declared disaster or emergency, such as fire or casualty.
 - 2. An action against the taxpayer's tax preparer or legal representative for acts constituting fraud, theft, embezzlement, fraudulent conversion, or misappropriation of the taxpayer's property.

F. Commission Errors

- a. Payment of any portion of the penalty assessed due to any error made by the Commission in computing or assessing the penalty shall be waived when it can be shown that the taxpayer did in fact comply with the law and the Commission did not initially recognize that fact.
- b. Payment of any portion of the penalty assessed due to erroneous written informal advice given by an employee of the Commission acting in their official capacity may be waived if the following conditions are satisfied:
 - i. The written formal advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer; and
 - ii. The portion of the penalty to be waived did not result from the taxpayer's failure to provide adequate or accurate information.
- c. Waiver of payment of any portion of the penalty due to the taxpayer's reliance on erroneous Commission informal written informal advice given by an employee of the Commission acting in their official capacity shall be limited to the penalty phase of the assessment. *See, St. Pierre's Fabrication and Welding, Inc. v. McNamara*, 495 So. 2d 1295 (La. 1986)(The Supreme Court recognized the equitable situation warranting the taxpayer relief from penalties, but not the taxes or interest due, where the Louisiana Department of Revenue specifically informed the taxpayer that it was not liable for the state sales tax in question.)

Commented [RR3]: Question received: Does the inclusion of "any portion" here and below suggest that paying a portion of a penalty is an option?

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G. Evaluation of Requests

- a. The Commission may consider any of the following factors for allowance or disallowance of a request for a waiver of penalties:
 - i. **Previous compliance record.** The taxpayer's previous compliance record with respect to all of the taxes and fees collected and enforced or administered by the Commission shall be considered in determining whether to waive payment of the whole or any part of the delinquent penalty.
 - ii. **Prior Waiver of Penalties.** Prior penalty waivers shall also be considered in assessing the taxpayer's compliance record. At a minimum, the previous 12 months should be reviewed.
 - iii. **Level of Cooperation with Auditors.** If a taxpayer has imposed needless time delays in providing the necessary records to conduct an audit, uses abusive language, subjects auditors to unnecessarily uncomfortable working conditions, or has provided incomplete records;

- iv. **Previous Audits.** If the tax issues in question have previously been the subject of a previous audit with the taxpayer;
- v. **Taxpayer Payment History.** If a taxpayer has historically failed to timely remit taxes in prior periods;
- vi. **Taxpayer Registration.** Failure to properly register for sales and use taxes the business with the Department;
- vii. **Taxes Collected but Not Remitted.** If taxes have been collected, but not remitted;
- viii. **First Offense.** If a taxpayer has a history of prompt payment and the assessment of penalties is a first offense;
- ix. **Complexity of Tax Issue.** There may be circumstances in complex tax situations when it is not clear whether or not tax applies. The Commission may consider if the tax issue in question is a complex one where the applicability of tax to the transaction is not clear;
- x. **Special or Unusual Conditions Relative to Audit Findings.** If the tax in question resulted from apparent inadvertent coding errors, documentable clerical error, etc.;
- xi. **Prompt Payment.** If a taxpayer pays the tax, penalties and interest in a timely manner after receiving a notice of intent to assess, the Commission may refund the penalties remitted;
- xii. **Corrective Action.** Willingness of a taxpayer to take corrective action to prevent a recurrence of tax underpayment where the taxpayer has changed his method of accounting and procedures in order to reduce the likelihood of the same error occurring again.
- xiii. **Any other factors which the Commission deems significant related to any of the above.**