

810-14-1-.30 Penalty for Failure to Timely Pay Tax.

(1) SCOPE.

(a) The provisions contained herein shall govern the application of the Failure to Timely Pay penalty to all taxes administered by the department, except for:

1. Penalties relating to registration and titling of motor vehicles; and

2. Penalties related to ad valorem taxes on real or personal property. Notwithstanding the preceding sentence, ad valorem taxes related to the property of public utilities are included within the scope of this regulation.

(b) This penalty shall be applied to the net tax liability (tax amount shown due on a return less any payments or credits) that remains unpaid after the due date prescribed for the payment of the tax.

(c) ~~For monthly or quarterly filed taxes, t~~ This penalty shall also be applied to tax due in a "Notice and Demand" notification sent to a taxpayer.

~~(d) Insufficient statutory authority exists to extend this penalty to additional tax due that resulted from an audit made by the department to an annual return (Final Order by the Administrative Law Division, Docket No. 95-448).~~

(2) DEFINITIONS.

(a) Return. Any form or return that is defined in Sections 40-1-1(2), 40-1-1(14) and 40-2A-3(19).

(b) Notice and Demand. Notification to a taxpayer of unpaid taxes stating the amount of tax due, the type of tax, the period for which tax is due, and demanding the payment thereof.

(3) PENALTY PROVISIONS. The Failure to Timely Pay Penalty shall be calculated on annual returns differently from monthly or quarterly returns, as follows:

(a) Annual Returns.

1. In the event a taxpayer fails to pay the tax shown as due on an annual return on or before the due date prescribed for the payment of the tax, a penalty of 1 percent of the tax per month or 1 percent of the tax for each fraction of a month thereof, shall be added. However, this penalty shall not exceed 25 percent of the tax. For example, where a taxpayer timely files an income tax return due on April 15, but fails to pay the amount shown as due on the return until September 30, a nonpayment penalty of 6 percent plus interest applies.

2. In the event a taxpayer fails to pay any amount of tax required to be shown on an annual return within 30 calendar days from the date of the first notice and demand, as defined in (2)(b), a penalty of 1 percent of the amount of tax due per month or 1 percent of the tax for each fraction of a month thereof, shall be added. However, this penalty shall not exceed 25 percent of the tax. For example, where a taxpayer receives a notice and demand on June 1, for tax which was required to be shown on a return, but was not so shown, a penalty of 4 percent plus interest will be added if the tax remains unpaid until October 16.

(b) Taxes for which Monthly or Quarterly Returns are Required.

1. In the event the taxpayer fails to pay the tax shown due on a monthly or quarterly return on or before the due date prescribed for the payment of the tax, a penalty of 10 percent of the amount of the tax not paid on or before the due date shall be added. For any tax for which no return is required until an event triggers a liability, there shall be a penalty of 10 percent of the tax not paid on or before the due date.

2. In the event the taxpayer fails to pay any amount of tax required to be shown on a monthly or quarterly return, or any amount of tax for which no return is required, within 30 days from the date of the first notice and demand, a penalty of 10 percent of the unpaid amount of tax stated in the notice and demand shall be added.

3. The following are examples of taxes which are subject to the 10 percent penalty:

- (i)** ~~4.~~ gasoline tax, Section 40-17-33, Code of Alabama 1975;
- (ii)** ~~2.~~ motor fuels tax, Section 40-17-5, Code of Alabama 1975;
- (iii)** ~~3.~~ lubricating oil excise tax, Sec. 40-17-186, Code of Alabama 1975;
- (iv)** ~~4.~~ tobacco tax, Section 40-25-4, Code of Alabama 1975;
- (v)** ~~5.~~ hazardous waste fee, Section 22-30B-5, Code of Alabama 1975;
- (vi)** ~~6.~~ dog race track pari-mutuel pool tax, Section 40-26A-3, Code of Alabama 1975;
- (vii)** ~~7.~~ horse wagering fee, Section 11-65-29, Code of Alabama 1975;
- (viii)** ~~8.~~ state sales tax, Section 40-23-7, Code of Alabama 1975;
- (ix)** ~~9.~~ state use tax, Section 40-23-68, Code of Alabama 1975;
- (x)** ~~10.~~ state rental or leasing tax, Section 40-23-7, Code of Alabama 1975;

- (xi) 11.** state utility gross receipts tax, Section 40-23-7, Code of Alabama 1975;
- (xii) 12.** state lodgings tax, Section 40-26-3, Code of Alabama 1975;
- (xiii) 13.** state contractors gross receipts tax, Section 40-23-7, Code of Alabama 1975;
- (xiv) 14.** mobile telecommunications services tax, Section 40-21-121, Code of Alabama 1975;
- (xv) 15.** state hospital tax, Section 40-26B-61, Code of Alabama 1975;
- (xvi) 16.** state nursing facility tax, Section 40-26B-22, Code of Alabama 1975;
- (xvii) 17.** state pharmaceutical providers tax, Section 40-26B-3, Code of Alabama 1975;
- (xviii) 18.** counties sales, use, and lodgings taxes, Section 40-23-7, Code of Alabama 1975;
- (xix) 19.** municipalities' sales, use, and lodgings taxes, Section 40-23-7, Code of Alabama 1975;
- (xx) 20.** utility license tax, Section 40-21-50, Code of Alabama 1975;
- (xxi) 21.** coal severance tax, Section 40-13-3, Code of Alabama 1975;
- (xxii) 22.** forest products severance tax, Section 9-13-86, Code of Alabama 1975;
- (xxiii) 23.** withholding tax, Section 40-18-74, Code of Alabama 1975;
- (xxiv) 24.** income tax estimate payments, Section 40-18-83, Code of Alabama 1975; and
- (xxv) 25.** oil and gas severance taxes, Sections 9-17-26(b) and 40-20-5, Code of Alabama 1975.
- (xxvi) 26.** international fuel tax agreement, Sections 40-17-270 through 40-17-275, Code of Alabama 1975.

(4) The "Failure to Timely Pay" penalty shall apply for any tax in which attempted payment is made via:

- (a) a check that is returned by the bank due to insufficient funds, or
 - (b) electronic media when the transaction is subsequently dishonored or invalidated as a result of actions or inactions by the taxpayer.
- (5) The “Failure to Timely Pay” penalty may be waived in whole or in part by the Department upon a determination of “reasonable cause” following the guidelines in Rule 810-14-1-.33.01, entitled Assessment and Waiver of Civil Penalties.

Author: **Ann F. Winborne**, Michael Mason
Authority: Section 40-2A-11(b), Code of Alabama 1975
History: Filed with LRS May 20, 1993. Certification filed with LRS July 16, 1993, effective August 19, 1993.
Amended: Filed April 2, 1996, effective May 7, 1996.
Amended: Filed December 4, 2007, effective January 8, 2008.