

Penalty Policy for Assessments of Tax Due

Social Service Tax Act, Hotel Room Tax Act, Tobacco Tax Act, Motor Fuel Tax Act

The Consumer Taxation Branch is responsible for administering the *Social Service Tax Act*, the *Hotel Room Tax Act*, the *Motor Fuel Tax Act*, and the *Tobacco Tax Act*. Under these consumption tax statutes, all taxes and levies collected on sales and leases made to customers, and tax due on purchases and leases, must be remitted to the branch on a regular basis.

To ensure that all taxes due under these statutes are paid or remitted to the province, the Consumer Taxation Branch employs a number of tax compliance initiatives. Where it is found that tax has not been collected, paid, or remitted as required under the authority of these statutes, the branch issues an assessment for the tax due. The branch may also issue an assessment for failure to pay a security equal to the tax, as required under the *Motor Fuel Tax Act* and the *Tobacco Tax Act*.

In addition to assessing the taxpayer for the amount of tax which should have been paid or remitted but was not, the branch may also impose interest and a penalty. It is branch policy to charge interest on all assessments. However, a penalty is only imposed where the facts indicate that the taxpayer had knowledge of the liability, was previously advised of the proper tax application, or consciously decided not to pay or remit the tax.

This bulletin outlines the application of penalties to tax assessments that result from audit or inspection activities of the branch.

The information in this bulletin is provided for your convenience and guidance and is not a replacement for the legislation. The *Social Service Tax Act*, *Hotel Room Tax Act*, *Tobacco Tax Act*, *Motor Fuel Tax Act* and Regulations can be found on the web at www.gov.bc.ca/sbr

In this issue...

- **Definitions**
- **No penalty - warning letter issued**
- **10% penalty**
- **25% penalty**
- **100% penalty - tax collected but not remitted**
- **Voluntary disclosure of tax liabilities**

DEFINITIONS

Tax Assessment

A written notice from the Commissioner or Director of the amount of tax owed to the province. This notice represents tax that should have been remitted or paid to the province but was not, as well as any penalty or interest charges imposed by the branch.

Audit

A formal examination of an individual's or business's financial records or accounts to ensure that the taxes have been remitted or paid as required under the statutes.

NO PENALTY - WARNING LETTER ISSUED

Inadvertent Errors

No penalty is imposed on most first assessments where there is no previous history of the taxpayer having been assessed for the same error, or no indication that the taxpayer was aware of the tax liability.

A letter or notice will be issued to all persons who have received an assessment on which a penalty has not been imposed. The notice or letter will advise the taxpayer of the correct application of the tax and warn of the penalties for continued non-compliance.

The following are examples of tax assessments where a penalty **would not be** imposed:

- The assessment arises from a first audit or inspection of a business. There are no indications of intent to avoid tax, and the vendor has no previous history of non-compliance. For example, a registered vendor has recorded the tax collected on a sales invoice, but inadvertently posted the tax from this sale to a revenue account.
- The assessment is issued to an individual for tax that should have been paid on a single purchase, and there is no evidence of wilful evasion of tax.
- The assessment is issued for tax payable on the acquisition of assets on purchasing a business. There is no indication of wilful avoidance of tax, and no previous history of an assessment for tax due on the purchase of business assets.

10% PENALTY

Knowledge of the Liability

A 10% penalty will be applied on first assessments where the facts indicate that the taxpayer was aware of the tax liability but failed to remit or pay the tax.

The following are examples of circumstances which would result in a 10% penalty on a first assessment:

- Continual misposting of tax collected to a revenue account.
- Failure to remit the full amount of the tax due as indicated on the tax remittance form. Because the tax due is indicated on the form, the seller has consciously decided not to remit the full amount due.
- Failure to remit tax collected or payable which is accumulated in the business's records (e.g., the general ledger account, sales journal, or other form of accounting record).

Repeat Errors

A 10% penalty applies to all assessments where the taxpayer was previously advised of the correct application of tax, and as a result of a subsequent audit or assessment, is assessed for the same error. The taxpayer would have previously received a letter or notice informing them of the correct application of the tax and warning of the penalties for continued non-compliance. For example:

- A tax return and payment are submitted after the due date by a business that has already

received one warning notice within the 12 month rotating period.

- Failure to correct tax remittance or payment procedures after a first assessment and a warning letter have been issued. The subsequent assessment must be in relation to the same type of error as the subject matter of the warning letter.
- In the first audit, it was found that tax was not self-assessed on out-of-province purchases. The business was assessed and warned of the penalties. During a second audit, it is found that tax was not self-assessed on out-of-province and in-province purchases for business use. As the warning letter on the first assessment referred only to tax on out-of-province purchases, the assessment for the second audit will include a 10% penalty on all errors in self-assessing tax on out-of-province purchases.

Warning Letters

A warning letter previously issued to a senior officer of a company who, by the time of the second assessment, is no longer with the company, **is still valid**. In such a situation, the company is liable for a 10% penalty if the same error is found during a subsequent audit.

A warning letter issued as a result of an **audit of one division applies to the whole company**. Therefore, if a subsequent audit of another division results in an assessment for the same error as in the first audit, the 10% penalty will apply.

If a business becomes incorporated or operations are taken over by a new company, the business becomes a different legal entity. Therefore, any warning letter issued to the original company as a result of a previous audit would not apply, even if the new company retains the original management staff.

Where a merger between two companies occurs, a warning issued to either of the original companies would apply to the company that forms from the merger.

25% PENALTY

False or Deceptive Statement

A 25% penalty applies where there is documented evidence that a person wilfully evaded tax by making a false or deceptive statement or through fraud.

This applies to situations in which an individual has made a purchase for their own use, but has evaded paying tax by making a false statement. Examples

are as follows:

- The purchaser of an automobile declares a lower purchase price than was actually paid.
- The purchaser does not remit the tax payable even though the purchase agreement specifically addresses the payment of the tax by the purchaser.
- The purchaser claimed and received an exemption and the facts clearly show that the purchaser **knew** the exemption did not apply.

Wilful Default

A 25% penalty also applies where persons purchasing for their own use make a conscious or wilful decision not to pay the tax. The penalty applies if the facts show that the taxpayer knew of the liability and wilfully chose not to pay the tax.

For example:

- A person consistently misuses a tax registration number to improperly acquire goods for their own use exempt from tax, despite a previous warning and a 10% penalty.
- A business has failed to set up and remit tax on out-of-province purchases after being previously warned and previously assessed a 10% penalty for failing to remit tax on out-of-province purchases.
- Tax on purchases has been set up in the tax liability account, but, despite a previous penalty, the purchaser has not reported and remitted the tax which is overdue.

100% PENALTY - TAX COLLECTED BUT NOT REMITTED

Funds Held in Trust for the Province

Taxes collected are deemed to be funds held in trust for the province. A 100% penalty applies where a person has wilfully failed to remit tax collected for the province.

Examples of situations where a 100% penalty is appropriate include the following:

- A person, not registered under the appropriate statute, has consistently collected taxes and wilfully not reported and remitted the tax collected.
- A person, registered as a retailer under the appropriate statute, has consistently

collected taxes and wilfully not reported and remitted the tax collected, or consciously understated the tax which has been collected.

VOLUNTARY DISCLOSURE OF TAX LIABILITIES

Interest but no Penalties

A person who makes a voluntary disclosure of a tax liability will not be subject to penalty or prosecution provided the following conditions are met:

- the taxpayer makes a voluntary disclosure of the tax due,
- the taxpayer pays the overdue amount plus interest or makes satisfactory arrangements for payment, and
- the taxpayer has not been contacted by the Consumer Taxation Branch or Revenue Division for audit, inspection, or tax collection purposes prior to making this disclosure.

A disclosure made by a company after the branch has been in contact with an associated corporation for audit, inspection, or tax collection purposes may not qualify as a voluntary disclosure. The disclosure will be accepted without penalty only where the facts indicate that enforcement action with respect to the associated company did not lead to the disclosure. An example of clear evidence that the disclosure would have been made even if the associated corporation had not been contacted could be an external audit by a public accounting firm identifying a liability that was not related to a transaction with the company contacted by the branch.

NEED MORE INFO?

This bulletin is provided for convenience and guidance. If you still have questions call us at 604 660-4524 in Vancouver or toll-free at 1 877 388-4440 elsewhere in Canada or refer to the legislation.

Information is also on the web at www.gov.bc.ca/sbr While there, you can subscribe to our free electronic update service.

References: *Social Service Tax Act*, Sections 115, 117, 118, 119, 120, 123; *Hotel Room Tax Act*, Sections 17, 18, 19, 20, 21, 25, 27, 32; *Tobacco Tax Act*, Sections 22, 23, 24, 25, 26, 29, 35; *Motor Fuel Tax Act*, Sections 44, 45, 46, 47, 50, 51, 52