

## Rule 003 - Waiver of Examination & Other Costs

Louisiana R.S. 47:337.75 states that "If any taxpayer fails to make any return required by this Chapter or makes a grossly incorrect report, or a false or fraudulent report, and the Collector, in performance of his duty to ascertain the amount of tax due, makes an examination of books, records, or documents, or an audit thereof, or conducts a hearing, or subpoenas witnesses, then there may be added to the amount of tax found to be due, a specific penalty, in addition to any other penalty provided, in an amount as itemized by the collector to compensate for all costs incurred in making such examination or audit, or in holding such hearing, or in subpoenaing and compensating witnesses."

After an assessment is made, the taxpayer has the right to request a waiver of penalty. Any request for waiver must be made in writing. This request becomes a permanent taxpayer record. Requests for waivers of penalties may be granted or denied in whole or part. In all cases, the goal of the Collector is to maintain a consistent and effective policy while treating all taxpayers fairly. The factors listed below are utilized, to the extent applicable, in making all decisions relative to penalty waivers.

The following are situations where, when an examination is conducted and the taxpayer does not show "that there was a reasonable cause for the underpayment ... and that the taxpayer acted in good faith," examination costs will not be waived:

- A. **Examination Necessary.** An examination was necessary to determine the taxpayer's true liability.
- B. **Taxpayer Registration.** A taxpayer that has not registered for sales/use taxes purposes with the Parish.
- C. **Taxes Collected but Not Remitted.** The taxpayer has collected, but not remitted taxes, to the Parish.
- D. **Grossly incorrect report filed.** The taxpayer files a report where there is a substantial understatement of tax for any taxable period. The understatement is substantial if it exceeds the greater of a. ten percent (10%) of the tax required to be shown on the return for the taxable period, or b. ten thousand dollars (\$10,000.00).
- E. **False or fraudulent report filed.** The taxpayer files a report with the intent to evade taxes, or willfully attempts to defraud or evade taxes that are due.
- F. **Level of Cooperation.** The taxpayer has imposed needless time delays in providing the necessary records to ascertain liability, uses abusive language, subjects Parish personnel to unnecessarily uncomfortable working conditions, or has provided incomplete records. Fraudulent refers to acts of deception or misrepresentation. Willful negligence or intentional disregard means willing failure to exercise the care that a prudent person usually exercises.
- G. **Previous Collection/Examination.** There have been previous collections for delinquencies or the tax issues in question have previously been the subject of an examination.

The following are situations where, absent the aforementioned circumstances, waiver of late penalties may be considered:

- H. **Level of Taxpayer Effort.** If a taxpayer is attempting to collect or accrue taxes properly and the errors made do not appear to be intentional, then the taxpayer is more likely to receive favorable consideration.
- I. **Taxpayer Payment History.** If a taxpayer has been paying his taxes timely in prior periods, his chances of receiving favorable consideration are enhanced.
- J. **Complexity of Tax Issue.** There may be circumstances in complex tax situations when it is not clear whether or not tax applies. If the tax issue in question is a complex one where the applicability of tax to the transaction is not clear, the taxpayer is in a better position to obtain favorable consideration.
- K. **Special or Unusual Conditions.** If the tax in question resulted from apparent inadvertent coding errors, the taxpayer is in a better position for obtaining favorable consideration than under other circumstances.
- L. **Prompt Payment.** If a taxpayer pays the tax and interest in a timely manner after being billed, he is in a better position to obtain favorable consideration.
- M. **Corrective Action.** Willingness of a taxpayer to take corrective action to prevent a recurrence of tax underpayment is an important consideration. If a taxpayer is willing to change his method of accounting and procedures in order to reduce the likelihood of the same error occurring again, he is more likely to obtain favorable consideration.