ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODE

CHAPTER 810-14-1
TAXPAYERS; BILL OF RIGHTS AND UNIFORM REVENUE PROCEDURES

810-14-1-.33.01 Assessment And Waive Of Civil Penalties.

(1) **SCOPE.** This regulation applies to the assessment and waiver of civil penalties and does not include cases of negligence or fraud. Additionally, this regulation does not apply to penalties abated under Regulation 810-14-1-.05 dealing with the failure of the Department to comply with Section 40-2A-4 of the Code of Ala. 1975.

(2) **PROCEDURE - Assessment.**

(a) The Department may not assess civil penalties in instances in which the taxpayer acted in good faith. For purposes of this regulation, good faith includes, but is not limited to the following:

1. instances in which the taxpayer has been cooperative during an audit and has a history of timely filing tax returns and timely paying tax due; or

2. instances in which the taxpayer relied upon erroneous written advice furnished to the taxpayer by an employee of the Department if:

(i) the employee provided the written advice in good faith while acting in an official capacity;

(ii) the written advice was reasonably relied on by the taxpayer;

(iii) the written advice was given in response to a specific written request of the taxpayer; and

(iv) the penalties did not result from the taxpayer's failure to provide adequate or accurate information.

(b) The Department may not assess civil penalties when, as the result of a change in regulations, change in law, or court decision, it makes adjustments to a tax return(s) for a prior year(s) resulting in additional tax liability.

(c) The Department may not assess civil penalties when, as the result of a change in regulations, change in law, or court decision, it realizes that a tax return(s) should have been filed in a previous year(s); and the taxpayer voluntarily

files the return(s) and pays the tax liability prior to being contacted by the Department or the taxpayer files the return(s) and pays the tax liability after notification.

(3) **PROCEDURE - Waiver.**

(a) If the Department assesses civil penalties, such Civil penalties shall be waived upon a determination of " reasonable cause." The burden of proving reasonable cause shall be on the taxpayer. The taxpayer should submit in writing a request that the civil penalty or penalties be waived for reasonable cause.

1. The taxpayer's written request for waiver of civil penalties should outline the "reasonable cause" basis of the request for waiver. The following events are sufficient to constitute "reasonable cause":

(i) death, major illness, unavoidable absence;

(ii) casualty or natural disaster;

(iii) inability to obtain necessary records;

(iv) nonrecurring honest mistake;

(v) reliance on the advice of a competent tax advisor, and

(vi) reliance on erroneous advice of ADOR personnel.

2. The above events are not be considered all-inclusive in establishing "reasonable cause." Taxpayers are not foreclosed from clearly establishing other reasons that constitute "reasonable cause."

3. The taxpayer's written request for waiver of civil penalties should be made to the supervisor of the appropriate assessing section or division. The written request for waiver of civil penalties should be attached to an audit or tax return when it is presented to the supervisor for assessment proceedings or when the audit is paid.

4. Appeals made to the Administrative Law Division solely involving a request for penalty waiver shall be referred to the Department's Director for Taxpayer Advocacy for disposition.

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