

12-13.007 Grounds for Reasonable Cause for Compromise of Penalties.

(1) The Executive Director or the Executive Director's designee will make a determination whether the taxpayer's noncompliance was due to reasonable cause and not to willful negligence, willful neglect, or fraud based on the facts and circumstances of the specific case. The standard used in this determination is whether the taxpayer exercised ordinary care and prudence and was nevertheless unable to comply.

(a) When evaluating the facts and circumstances relevant to penalties assessed as a result of an audit, the Department shall consider information provided by the taxpayer in relation to the following:

1. Whether the taxpayer has been audited previously, and, if so, whether the penalties which are the subject of the compromise request result from taxpayer actions that resulted in a specific issue-related deficiency assessment during one or more of the previous audits. It is not the intent of this subparagraph to apply to infrequent occurrences of human error;

2. The materiality of the tax deficiency assessed in an audit when considered within the context of taxes correctly reported and timely remitted by the taxpayer for the same tax during the same audit period;

3. Whether the taxpayer has initiated controls or other actions that will promote proper future reporting with respect to those activities which contributed to the audit deficiency and related penalties; and,

4. Whether the tax was collected and not remitted to the state by the taxpayer.

(b) When evaluating the facts and circumstances relevant to penalties imposed pursuant to a billing not resulting from an audit, the Department shall consider:

1. The timeliness of payments made by the taxpayer during previous reporting periods;

2. The materiality of the tax deficiency to which the penalty relates within the context of the amount of the same taxes correctly reported and remitted;

3. Whether the taxpayer has initiated controls or other actions related to the errors that resulted in the billing and related penalties in order to promote better compliance in the future; and,

4. Whether the tax was collected and not remitted to the state by the taxpayer.

(2) Reasonable cause is indicated by the existence of facts and circumstances which support the exercise of ordinary care and prudence on the part of the taxpayer in complying with the revenue laws of this state. Depending upon the circumstances, reasonable cause may exist even though the circumstances indicate that slight negligence, inadvertence, mistake, or error resulted in noncompliance. Consideration will be given to the complexity of the facts and the difficulty of the tax law and the issue involved, and also to the existence or lack of clear rules or instructions covering the taxpayer's situation.

(3) Ignorance of the law or an erroneous belief as to the need to comply with a revenue law constitutes reasonable cause when there are facts and circumstances which indicate ordinary care and prudence was exercised by the taxpayer.

(a) For example, ignorance of the law or an erroneous belief held by the taxpayer is a basis for reasonable cause when the taxpayer has a limited knowledge of business, a limited education, limited experience in Florida tax matters, or advice received from a competent advisor was relied upon in complying with the provisions of a revenue law.

(b) A good faith belief held by a taxpayer with limited business knowledge, limited education, or limited experience with Florida tax matters is a basis for reasonable cause when there is reasonable doubt as to whether compliance is required in view of conflicting rulings, decisions, or ambiguities in the law.

(4) Reliance upon the erroneous advice of an advisor is a basis for reasonable cause when the taxpayer relied in good faith upon written advice of an advisor who was competent in Florida tax matters and the advisor acted with full knowledge of all of the essential facts. Informal advice, advice based upon insufficient facts, advice received in cases where facts were deliberately concealed, or obviously erroneous advice are not grounds for reasonable cause. To establish reasonable cause based upon reliance on the advice of a competent advisor, the taxpayer shall demonstrate:

(a) That the taxpayer sought timely advice of a person who was competent in Florida tax matters;

(b) That the taxpayer provided the advisor with all of the necessary information and withheld nothing; and,

(c) That the taxpayer acted in good faith upon written advice actually received from the advisor.

(5) Reasonable reliance upon the express terms of written advice given by the Department establishes reasonable cause when the taxpayer shows that the advice was timely sought from a departmental employee and that all material facts were disclosed, and that the express terms of the advice were actually followed. "Written advice" for purposes of establishing reasonable cause as a basis for compromise of penalties includes a writing issued to the same taxpayer by the Department in response to that taxpayer's request for advice. The determination whether the taxpayer has reasonably relied on such written advice will be made in accordance with the

criteria for determining if a taxpayer has reasonably relied on a written determination for purposes of compromise of tax and interest as set forth in subsection 12-13.005(2), F.A.C.

(6) Reliance upon another person to comply with filing requirements, or to obtain information, or to properly prepare returns or reports, is a basis for reasonable cause, depending upon the circumstances. Noncompliance due to nonperformance of a ministerial-type function, inadvertent misplacement of returns, reports, or information, or the failure of the taxpayer's agent to properly prepare or file returns or reports are each a basis for reasonable cause when the taxpayer establishes that adequate procedures or steps for complying existed; that the person responsible for performing the function ordinarily performed the task properly; or, that extenuating or unusual circumstances prevented compliance.

(7)(a) Death, illness, or incapacity of the taxpayer is a basis for reasonable cause when such circumstances directly prevented compliance or adversely affected the taxpayer's ability to comply. An unexplained or unsupported claim of noncompliance due to death, illness, or incapacity is not a basis for reasonable cause. It must be shown that the death, illness, or incapacity directly prevented compliance, in spite of reasonable efforts to comply.

(b) Death, illness, or incapacity of a member of the taxpayer's immediate family, or of a person solely responsible for maintaining information necessary to comply, or of a person with sole authority to prepare required returns or reports is a basis for reasonable cause when the noncompliance resulted directly from such a circumstance, in spite of reasonable efforts to comply.

(8) Circumstances beyond a taxpayer's reasonable control, such as acts of war, natural disaster, accidental destruction by fire or other casualty, or unavoidable absence are a basis for reasonable cause when the taxpayer demonstrates such circumstances directly prevented compliance, or adversely affected the taxpayer's ability to comply.

(9) Reasonable cause shall be presumed to exist whenever a taxpayer voluntarily self-discloses liability for tax, interest, or penalty by contacting the Department in writing to disclose and pay tax and interest due prior to any contact by the Department concerning such liability. The presumption does not apply when the taxpayer is registered with the Department or has routinely filed returns with the Department and the taxpayer's self-disclosure relates to a delinquency or deficiency that is obvious and would routinely generate a billing if not otherwise self-disclosed.

(10) Reasonable cause shall be presumed to exist whenever a taxpayer voluntarily and timely participates in completion of forms provided to the taxpayer by the Department as part of a self-audit or self-analysis program and promptly remits tax and interest due pursuant to such self-audit or self-analysis.

(11) Reasonable cause shall be presumed to exist whenever a person who is not otherwise required to register as a dealer pursuant to Chapter 212, F.S., purchases consumer goods for personal use pursuant to a remote sale and remits Florida use tax and interest, either voluntarily or in prompt response to a proposed assessment, assessment, or use tax billing issued by the Department.

(12) Reasonable cause shall be presumed to exist whenever a person who is not otherwise required to register as a dealer pursuant to Chapter 212, F.S., purchases tangible personal property and imports same into Florida for business purposes and remits Florida use tax and interest, either voluntarily or in prompt response to a proposed assessment, assessment, or use tax billing issued by the Department.

(13) Reasonable cause shall be presumed to exist whenever the penalty at issue relates to tax or interest which is compromised on the basis of doubt as to liability or doubt as to collectibility.

(14) Subsections (3) through (13) are intended to provide examples and guidance to taxpayers and Department employees, but should not be construed to limit penalty compromises to only those circumstances described in such subsections. Penalty may be compromised whenever the facts and circumstances demonstrate reasonable cause.

Rulemaking Authority 213.06(1), 213.21(5) FS. Law Implemented 213.21 FS. History—New 5-23-89, Amended 8-10-92, 5-18-94, 10-2-01, 10-29-13, 5-23-22.

12-13.0075 Guidelines for Determining Amount of Compromise.

(1) Tax and Interest.

(a) Doubt as to Liability. When determining the amount of a compromise of tax or interest based upon doubt as to liability, the following factors shall be considered by the Department:

1. Likelihood of prevailing on the issue in litigation;
2. Ambiguity in the applicable laws or rules, as evidenced by both the laws or rules themselves and the common interpretation and application of same among members of the taxpayer's industry;
3. Whether doubt as to liability is based upon reasonable reliance by the taxpayer on a written determination by the Department as provided in subsection 12-13.005(2), F.A.C.; and,
4. Whether tax was collected but not remitted to the state by the taxpayer.

(b) Doubt as to Collectibility. When determining the amount of a compromise of tax or interest based upon doubt as to collectibility, the following factors shall be considered by the Department:

1. Whether the financial problems of the taxpayer can be addressed, in whole or in part, through use of a stipulated payment arrangement, in lieu of reduction of the taxpayer's liability;
2. Whether a pattern of chronic tax delinquencies by the taxpayer exists to indicate that efforts to assist this taxpayer because of its financial problems will not ultimately serve the public interest but will simply afford this taxpayer a competitive advantage in the market; and,
3. Whether tax was collected but not remitted to the state by the taxpayer.

(2) Penalty. When determining the amount of a compromise of penalty based upon a finding of reasonable cause, the following factors shall be considered by the Department:

(a) Factors that weigh against reduction of penalty include:

1. The tax deficiency assessed as a result of an audit exceeds 5% of the total liability for the same tax for the audit period.
2. Taxpayer has been audited previously and the current tax deficiency resulted from specific issue-related error(s) identified in previous audit(s). It is not the intent that this subparagraph apply to infrequent occurrences of human error.
3. Taxpayer has been repeatedly delinquent in remitting the tax.
4. Taxpayer failed to promptly remit tax and interest upon receipt of a billing or notice.
5. Tax was collected but not remitted to the state by the taxpayer.

(b) Factors that weigh in favor of reduction of penalty include:

1. Tax assessed as a result of an audit is less than 5% of the total liability for the same tax for the audit period.
2. Tax deficiency assessed is a result of a first-time audit, or is a result of an audit conducted subsequent to an audit in which the same specific issue-related errors by the taxpayer were not present or not identified by the Department. It is not the intent that this subparagraph apply to infrequent occurrences of human error.
3. Taxpayer has not been repeatedly delinquent in remitting the tax to the Department.
4. Taxpayer demonstrated to auditor prior to conclusion of the audit that action had been taken to improve future compliance by correcting or controlling activities which gave rise to the tax deficiency and related penalty.
5. Taxpayer promptly remitted tax and interest upon receipt of a billing or notice.

(3) Penalties Specific to Sales and Use Tax and Transient Rental Taxes.

(a) For purposes of this subsection:

1. "Sales tax or transient rental tax liability" means sales and use taxes, discretionary sales surtaxes, convention development taxes, tourist development taxes, and tourist impact taxes reported on a sales and use tax return and remitted to the Department.
2. "Noncompliant filing event" means the failure to timely file a complete and accurate sales and use tax return or failure to timely pay the amount of the tax reported on a sales and use tax return. Noncompliant filing events include:
 - a. Sales and use tax returns that are not timely filed;
 - b. Sales and use tax payments that are not timely remitted in full;
 - c. Incomplete or inaccurate sales and use tax returns; or,
 - d. Any sales tax or transient rental tax liability or delinquency that remains outstanding after 30 days from the date the Department issues notification to the taxpayer.

(b) The Department will settle or compromise penalty imposed under Section 212.12(1)(a) or (2)(a), F.S., for a noncompliant filing event without an oral or written request from the taxpayer under the following conditions:

1. For taxpayers who file sales and use tax returns and remit sales tax or transient rental tax liabilities monthly, or an alternative-period basis as provided in paragraph 12A-1.056(1)(d), F.A.C., such penalties will be settled or compromised when the taxpayer has:

a. No noncompliant filing event in the immediately preceding 12-month period and no unresolved sales tax or transient rental tax liability resulting from a noncompliant filing event; or

b. One noncompliant filing event in the immediately preceding 12-month period that was resolved through payment of tax and interest and the filing of a sales and use tax return within 30 days after notification by the Department, and no unresolved sales tax or transient rental tax liability resulting from a noncompliant filing event.

2. For taxpayers who file sales and use tax returns and remit sales tax or transient rental taxes quarterly, such penalties will be settled or compromised if the taxpayer has no noncompliant filing event in the immediately preceding 12-month period and no unresolved sales tax or transient rental tax liability resulting from a noncompliant filing event.

(c)1. The penalties under Section 212.12(1)(a) or (2)(a), F.S., imposed on any taxpayer who has had two or more noncompliant filing events in the immediately preceding 12-month period will be settled or compromised by the Department when the taxpayer demonstrates that the noncompliant filing event was due to extraordinary circumstances.

2. For purposes of this subsection, “extraordinary circumstances” means the occurrence of events beyond the control of the taxpayer, such as the death of the taxpayer, acts of war or terrorism, natural disasters, fire, or other casualty, or the nonfeasance or misfeasance of the taxpayer’s employees or representatives responsible for compliance with the taxpayer’s sales tax or transient rental tax liability. To demonstrate the nonfeasance or misfeasance of an employee or representative, the taxpayer must show that the principals of the business lacked actual knowledge of the noncompliance and that the noncompliance was resolved within 30 days after actual knowledge.

(4) Penalties Specific to Failure to Collect Certain Taxes.

(a) Any penalty imposed under Section 212.12, F.S., for failure to collect sales tax, discretionary sales surtax, convention development tax, or rental car surcharge will be settled or compromised when:

1. The taxpayer’s failure to collect the tax, surtax, or surcharge was based on a good faith belief that the tax, surtax, or surcharge was not due on a transaction; and,

2. Because of the good faith belief that the transaction was not taxable, the taxpayer is now unable to charge and collect the tax, surtax, or surcharge from the purchaser.

(b) To request a compromise of penalties, the taxpayer must substantiate:

1. Why the taxpayer failed to collect the tax, surtax, or surcharge; and,

2. Why the taxpayer is unable to collect the tax, surtax, or surcharge due on the transaction from the purchaser.

(5) Administrative Collection Processing Fee.

(a) The Department will waive or reduce the administrative collection processing fee imposed under Section 213.24(3), F.S., when the taxpayer demonstrates that the failure to pay the full amount due on the initial notification of the collection event within 90 days was due to extraordinary circumstances.

(b) For purposes of this subsection, “collection event” means when a taxpayer fails to:

1. Timely file a complete return;

2. Timely pay the full amount reported on a return; or

3. Timely pay the full amount due resulting from an audit after all appeal rights have expired or the result has been finally determined.

(c) For purposes of this subsection, “extraordinary circumstances” means the occurrence of events beyond the control of the taxpayer, such as the death of the taxpayer, acts of war or terrorism, natural disasters, fire, or other casualty, or the nonfeasance or misfeasance of the taxpayer’s employees or representatives responsible for complying with the taxes and fees listed in Section 213.05, F.S., and the reemployment assistance tax. To demonstrate the nonfeasance or misfeasance of an employee or representative, the taxpayer must show that the principals of the business lacked actual knowledge of the collection event and any notification of the collection event.

(6) Service Fees for Returned Payments. When an unintentional error committed by the issuing financial institution, the taxpayer, or the Department results in a draft, order, or check being returned to the Department, and the unintentional error is substantiated by the Department, the service fee for returned payments imposed by Section 215.34(2), F.S., will be compromised by the Department. When the unintentional error is attributed to the issuing financial institution, the taxpayer will be required to submit

to the Department a written statement from the financial institution, providing details of the error.

(7) Voluntary Self-Disclosure of Liability.

(a) When payment of delinquent tax and interest results from a voluntary, written self-disclosure, the Department will compromise all penalties.

(b) If the taxpayer has collected, but failed to remit tax, the Executive Director or the Executive Director's designee has the authority to compromise penalties to no less than 5% of the delinquent tax, absent extenuating circumstances.

(8) Self Audits/Self-Analysis of Books.

(a) When a taxpayer timely responds to and complies with the Department's request that the taxpayer participate in a self-audit or self-analysis of books and records, the Department will compromise all penalties.

(b) If the taxpayer has collected, but failed to remit tax, the Executive Director or the Executive Director's designee has the authority to compromise penalties to no less than 5% of the delinquent tax, absent extenuating circumstances.

(9) Remote Sales. When a taxpayer who is not otherwise required to be registered pursuant to Chapter 212, F.S., purchases consumer goods for personal use pursuant to a remote sale and subsequently remits the tax and interest in response to a use tax billing issued by the Department for such goods, or voluntarily remits such tax and interest prior to any billing, the Department will compromise all penalties.

(10) Use Tax on Business Purchases. When a taxpayer who is not otherwise required to be registered pursuant to Chapter 212, F.S., purchases tangible personal property and imports same into the State of Florida for business purposes and subsequently promptly remits the tax and interest in response to a use tax billing issued by the Department for such tangible personal property, or voluntarily remits such tax and interest prior to any billing, the Department will compromise all penalties.

(11) Subsections (2) through (10) are intended to provide examples and guidance to taxpayers and Department employees but should not be construed to limit the compromise of penalties to only those circumstances described in such subsections. However, no compromise is authorized in situations involving fraud, willful negligence, or willful neglect on the part of the taxpayer.

Rulemaking Authority 212.07(9)(c), 213.06(1), 213.21(5), (9) FS. Law Implemented 212.07(9), 213.21, 213.24(3) FS. History—New 8-10-92, Amended 10-2-01, 10-29-13, 5-23-22.