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## Georgia Department of Revenue Policy Statement 2012-04-27 Penalty and Interest Waivers

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April 27, 2012

1) **Purpose/Subject:** This policy statement provides information regarding circumstances in which the Department may waive penalty and interest.

2) **Supersedes:** All previous documents and any oral directives in conflict herewith.

3) **Authority:**

O.C.G.A. § 48-2-41. The commissioner may waive the collection of any interest, in whole or in part, due the state on any unpaid taxes whenever or to the extent that he reasonably determines that the delay in payment of the taxes was attributable to the action or inaction of the department.

O.C.G.A. § 48-2-43. The commissioner may waive, in whole or in part, the collection of any amount due the state as a penalty under any revenue law of this state whenever or to the extent that he reasonably determines that the default giving rise to the penalty was due to reasonable cause and not due to gross or willful neglect or disregard of the law or of regulations or instructions issued pursuant to the law.

4) **Scope:** A policy statement is intended to provide procedural guidance to the general public and Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing procedural guidance that may be followed in order to comply with the law. A policy statement does not have the force or effect of law, and is not binding on the public. It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

5) **Issues:**

- a) When will the Department waive interest pursuant to O.C.G.A. § 48-2-41?
- b) When will the Department waive penalties pursuant to O.C.G.A. § 48-2-43?

6) **Discussion:**

- a) O.C.G.A. § 48-2-41 only allows the Commissioner to waive interest when there is action or inaction on the Department's part. The taxpayer must show that the Department either acted in a manner which caused the interest to accrue or the Department's failure to act caused the interest to accrue.
- b) O.C.G.A. § 48-2-43 allows the Commissioner to waive penalties when it is reasonably determined that the default giving rise to the penalty was due to reasonable cause and not due to gross or willful neglect or disregard of the law or of regulations or instructions issued

pursuant to the law. Below is a list of possible circumstances that may be considered with respect to penalty waivers. Documentation may be required to be provided to the Department to substantiate the circumstances. Cases are not necessarily limited to these circumstances:

- Delay was caused by erroneous information given the taxpayer by an employee of the Department of Revenue.
- Delay was caused by death or serious illness of the person or an immediate family member of that person who is responsible for preparing the return or making payment to the Department.
- Delay was caused by unavoidable absence of the taxpayer.
- Delay was caused by the destruction by fire or other casualty of the taxpayer's place of business/residence or business/personal records.
- Delay was caused by reliance on competent tax advisors where the advisor acted under clear mistake or misunderstanding of law.
- Delay was caused by the taxpayer encountering embezzlement or some other criminal act by the person responsible for filing and/or paying the taxes.
- Whether the taxpayer paid more than 90% of an income tax liability by the due date of the return with respect to the late payment penalty.
- Whether the taxpayer has a good filing history may be considered along with other factors.
- With respect to penalties assessed in the course of a sales tax audit, the following factors may also be considered:
  - Whether the audit includes new or expanded manufacturing facilities.
  - Whether the audit includes new or expanded warehouse or distribution facilities whose purchases of material handling equipment qualify for the exemption under O.C.G.A. § 48-8-3(34.1)(A).
  - Whether the audit includes the acquisition of exempt air or water pollution control machinery or equipment.
  - Whether the audit results in a net refund.
  - Whether the audit results in a tax liability that is less than 5% of the taxpayer's aggregate liability for the audit period.
  - Whether the audit includes a managed audit, managed compliance agreement or self audit.
  - Whether the issue was addressed in previous audits.
  - Whether the taxpayer's compliance has improved.
  - Whether there has been a change in the Department's position due to a court decision, legislation, or a policy change during the audit period or from prior audit to current audit.

#### **FOR MORE INFORMATION**

**For more information on this subject, contact the Taxpayer Services Division at 1-877-GADOR11 (1-877-423-6711), from 8:00 am to 4:30 pm EST, Monday through Friday, excluding holidays. Persons with hearing or speech impairments may call our TDD number at 404-417-4302. For forms and other information, visit our website ([www.dor.ga.gov](http://www.dor.ga.gov)).**

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