

NOTICE OF RULE DEVELOPMENT WORKSHOP

DEPARTMENT OF REVENUE

COMPROMISE AND SETTLEMENT

RULE TITLE: RULE NO.:

Calculation of Penalty Subject to Compromise for Reasonable Cause 12-13.0076

PURPOSE AND EFFECT: The purpose of the rule development is to create Rule 12-13.0076, F.A.C. (Calculation of Penalty Subject to Compromise for Reasonable Cause), to incorporate the provisions of the Expert System for Determining Reasonable Cause for Penalty Compromise.

This system is currently under development by the Department for purposes of providing guidelines for determining the amount of compromise of penalty. The effect of the proposed amendments, when adopted, will be that the provisions of the Expert System for Determining Reasonable Cause for Penalty Compromise will be incorporated into the guidelines for determining the amount of compromise of penalty established in this administrative rule.

SUBJECT AREA TO BE ADDRESSED: The subject area to be addressed is the development of proposed Rule 12-13.0076, F.A.C., for purposes of including the provisions of the Expert System for Determining Reasonable Cause for Penalty Compromise currently under development by the Department.

SPECIFIC AUTHORITY: 213.06(1), 213.21(5) FS.

LAW IMPLEMENTED: 213.21(3) FS.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m., August 9, 2006.

PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE

DEVELOPMENT IS: Robert Babin, Senior Attorney, Technical Assistance and Dispute Resolution, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 922-4842, or e-mail (babinr@dor.state.fl.us).

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least 48 hours before such proceeding by contacting Larry Green at (850)922-4830. Persons with hearing or speech impairments may contact the Department using the Florida Relay Service, which can be reached at (800)955-8770 (Voice) and (800)955-8771 (TDD).

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-13, FLORIDA ADMINISTRATIVE CODE
COMPROMISE AND SETTLEMENT
CREATING RULE 12-13.0076

12-13.0076 Calculation of Penalty Subject to Compromise for Reasonable Cause.

(1) Scope and Definitions.

(a) Section 213.21, F.S., authorizes the Department to compromise a taxpayer's liability for penalty when the taxpayer's noncompliance is due to reasonable cause and not willful negligence, willful neglect, or fraud. In order to ensure consistency in the exercise of the authority to compromise penalty contained in Section 213.21, F.S., the Department will use the provisions of this rule to calculate the amount of penalty that will be compromised pursuant to Section 213.21, F.S. The Department will apply the provisions of this rule even when no request to compromise penalty is made by the taxpayer.

(b) The provisions of this rule do not apply when the taxpayer's noncompliance is due to willful negligence, willful neglect, or fraud, nor do the provisions of this rule apply when the assessment or compromise of penalty is mandated by Florida law. The provisions of this rule only apply when the department exercises its discretionary authority to compromise penalties on the grounds of reasonable cause.

(c) The provisions of this rule are not to be construed to prohibit the Executive Director, a Deputy Executive Director, the General Counsel, the Deputy General Counsel, the Program Director of the General Tax Administration, the Deputy Program Director of the General Tax

Administration, the designees of the Director or Deputy Program Director of the General Tax Administration, or the Director of Technical Assistance and Dispute Resolution from exercising his or her delegated compromise authority to prevent an unreasonable result due to the specific facts and circumstances that would affect the relative value of the factors under consideration.

(d) For the purposes of this rule, the term “issue” means a reason set forth in the Department’s work papers given to the taxpayer for any finding of a tax deficiency. A taxpayer’s total tax liability for an audit assessment or billing may result from one or more issues. For example, a sales tax audit may involve audit changes for “disallowed exempt sales” and “fixed asset purchases.” In this example, “disallowed exempt sales” and “fixed asset purchases” are separate and distinct issues.

(2) Determination of the Amount of Penalty Compromise.

(a) If the Department determines that a taxpayer’s noncompliance is not due to willful negligence, willful neglect, or fraud, the Department shall compromise all penalty in excess of 25 percent of the taxpayer’s tax liability. The Department shall determine the amount of compromise authority to exercise with regard to the remaining 25 percent of penalty by using the Penalty Scoring Matrix provided in subsection (3). The Penalty Scoring Matrix and the provisions of this rule will be applied to each issue to result in a percentage, which will be applied to the penalty amount related to that issue. If all issues under consideration involve the same responses to the Penalty Scoring Matrix, the Penalty Scoring Matrix and other provisions of this rule will only be applied once, and the resulting penalty percentage will be applied for all issues.

(b) The penalty percentage is calculated based upon the response to each question listed within the Penalty Scoring Matrix. Point values are assigned to the questions based upon whether the question is answered “yes” or “no.”

(c) Questions 3(a) through 3(i) of the Penalty Scoring Matrix each list various facts and circumstances, which will be considered in answering those questions. If one or more of the facts and circumstances listed under each question are determined by the Department to apply to the issue(s), an affirmative response will be entered for that question and a corresponding point value will be assigned. When the facts and circumstances listed do not apply to the issue(s), a negative response will be entered and the corresponding point value will be assigned.

(d) When the Department determines that facts and circumstances exist that require an affirmative answer to any Question 3(a) through 3(i) but the specific fact or circumstance is not listed, the Department will identify that fact or circumstance and provide an affirmative answer to the relevant question.

(e) The percentage to be applied to the penalty amount under consideration is controlled by the following schedule:

1. If the sum of the point values assigned is not greater than 7 points, the Department will compromise all penalty that is subject to compromise on the grounds of reasonable cause.

2. If the sum of the point values assigned is greater than 7 points but not greater than 14 points, the Department will compromise all penalty in excess of 5 percent.

3. If the sum of the point values assigned is greater than 14 points but not greater than 22 points, the Department will compromise all penalty in excess of 10 percent.

4. If the sum of the point values assigned is greater than 22 points but not greater than 29 points, the Department will compromise all penalty in excess of 15 percent.

5. If the sum of the point values assigned is greater than 29 points but not greater than 36 points, the Department will compromise all penalty in excess of 20 percent.

6. If the sum of the point values assigned is greater than 36 points, the Department will only compromise penalty in excess of 25 percent pursuant to paragraph (2)(a) of this rule.

(f) If the application of this rule results in a full compromise of all penalty subject to compromise on the grounds of reasonable cause, the Department is not required to provide the taxpayer with the results of the Penalty Scoring Matrix. However, the Department shall provide the results of the Penalty Scoring Matrix when the application of this rule results in less than a full compromise of penalty subject to compromise on the grounds of reasonable cause, or when the results are requested by the taxpayer.

(3) Penalty Scoring Matrix.

	Step	Decision Question	YES/NO	Pts. For YES	Pts. For NO
	<u>1.</u>	<u>Has the Department previously assessed this issue against the taxpayer in an assessment for which the taxpayer's appeal rights have expired or has this issue been ultimately adjudicated against the taxpayer?</u>		<u>20</u>	<u>0</u>
	<u>1.a.</u>	<u>Has the Department issued at least two such assessments?</u>		<u>10</u>	<u>0</u>
	<u>1.b.</u>	<u>Has the Department issued at least three such assessments?</u>		<u>15</u>	<u>0</u>
	<u>1.c.</u>	<u>Did the taxpayer take action that would correct this issue in a reasonable time after the taxpayer's appeal rights expired or the issue was ultimately adjudicated against the taxpayer?</u>		<u>-10</u>	<u>0</u>
	<u>2.</u>	<u>For this issue, did the taxpayer collect but fail to remit tax to the Department?</u>		<u>30</u>	<u>0</u>
	<u>3.</u>	<u>Do one or more of the following apply to this issue in this audit?</u>			
	<u>3.a.</u>	<u>Did the taxpayer reasonably rely on</u>		<u>-5</u>	<u>0</u>

	<u>Step</u>	<u>Decision Question</u>	<u>YES/NO</u>	<u>Pts.</u> <u>For</u> <u>YES</u>	<u>Pts.</u> <u>For</u> <u>NO</u>
		<u>and follow the express terms of written advice issued by the DOR after the DOR was apprised of all relevant facts, and is it now possible to verify such advice?</u>			
	<u>a.1.</u>	<u>Yes. The taxpayer was issued written advice unassociated with an audit.</u>			
	<u>a.2.</u>	<u>Yes. The taxpayer was issued advice on this issue during conduct of a prior audit. Explain:</u>			
	<u>a.3.</u>	<u>Yes. Other. Explain:</u>			
	<u>a.4.</u>	<u>No.</u>			
	<u>3.b.</u>	<u>Did the assessment result from the taxpayer's limited knowledge of business, limited education, or limited experience in Florida tax matters?</u>		<u>-2.5</u>	<u>0</u>
	<u>b.1.</u>	<u>Yes. The taxpayer has a limited knowledge of business.</u>			
	<u>b.2.</u>	<u>Yes. The taxpayer has limited education.</u>			
	<u>b.3.</u>	<u>Yes. The taxpayer has limited experience in Florida tax matters.</u>			
	<u>b.4.</u>	<u>Yes. Other. Explain:</u>			
	<u>b.5.</u>	<u>No.</u>			
	<u>3.c.</u>	<u>Did the taxpayer timely meet filing requirements?</u>		<u>-2.5</u>	<u>5</u>
	<u>c.1.</u>	<u>Yes. The taxpayer timely filed complete returns.</u>			
	<u>c.2.</u>	<u>Yes. Other. Explain:</u>			
	<u>c.3.</u>	<u>No.</u>			
	<u>3.d.</u>	<u>Were there any changes in law or the DOR's administration of law that directly affected compliance for this issue?</u>		<u>-5</u>	<u>0</u>
	<u>d.1.</u>	<u>Yes. The applicable law changed. Explain:</u>			
	<u>d.2.</u>	<u>Yes. DOR's administration of the applicable law changed. Explain:</u>			
	<u>d.3.</u>	<u>Yes. Other. Explain:</u>			
	<u>d.4.</u>	<u>No.</u>			
	<u>3.e.</u>	<u>Are the tax issues, their application, or the taxpayer's operational or financial</u>		<u>-2.5</u>	<u>0</u>

	<u>Step</u>	<u>Decision Question</u>	<u>YES/NO</u>	<u>Pts. For YES</u>	<u>Pts. For NO</u>
		<u>situation complex?</u>			
	<u>e.1.</u>	<u>Yes. The situation is complex. Explain:</u>			
	<u>e.2.</u>	<u>Yes. There is contradictory written information provided by the attorney general's office, the DOR, or a Florida court. Explain:</u>			
	<u>e.3.</u>	<u>Yes. Other. Explain:</u>			
	<u>e.4.</u>	<u>No.</u>			
	<u>3.f.</u>	<u>Has the taxpayer instituted remedies to correct this issue?</u>		<u>-5</u>	<u>0</u>
	<u>f.1.</u>	<u>Yes, and the taxpayer provided supporting documentation showing that the error has been corrected.</u>			
	<u>f.2.</u>	<u>Yes. Other. Explain:</u>			
	<u>f.3.</u>	<u>No.</u>			
	<u>3.g.</u>	<u>Did the taxpayer reasonably rely on written advice of a person competent in Florida tax matters, and did the taxpayer solicit the advice timely and with full disclosure of all relevant facts?</u>		<u>-2.5</u>	<u>0</u>
	<u>g.1.</u>	<u>Yes. The taxpayer relied upon verifiable advice from a C.P.A., attorney, or trade association.</u>			
	<u>g.2.</u>	<u>Yes. The taxpayer relied upon verifiable advice from an outside consultant or outside bookkeeping service.</u>			
	<u>g.3.</u>	<u>Yes. Other. Explain:</u>			
	<u>g.4.</u>	<u>No.</u>			
	<u>3.h.</u>	<u>Is the additional tax due less than 5% of the total tax reported/remitted during the audit period?</u>		<u>-2.5</u>	<u>0</u>
	<u>3.i.</u>	<u>Did any extenuating or uncontrollable circumstances exist that prevented the taxpayer from complying?</u>		<u>-10</u>	<u>0</u>
	<u>i.1.</u>	<u>Yes. There was a disaster or catastrophic events beyond the control of the taxpayer.</u>			
	<u>i.2.</u>	<u>Yes. There was a death, illness or incapacity of the taxpayer, the taxpayer's immediate family, or a key employee which had an effect on compliance.</u>			

	<u>Step</u>	<u>Decision Question</u>	<u>YES/NO</u>	<u>Pts.</u> <u>For</u> <u>YES</u>	<u>Pts.</u> <u>For</u> <u>NO</u>
	<u>i.3.</u>	<u>Yes. There were other facts that affected compliance. Explain:</u>			
	<u>i.4.</u>	<u>No.</u>			

Specific Authority 213.06(1), 213.21(5) FS. Law Implemented 213.21(3) FS. History _____.