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 proposed creation of Rule 12-13.0076, F.A.C. (Calculation of Penalty Subject to Compromise for Reasonable Cause), is 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 to be used in 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 these administrative rules.

SUBJECT AREA TO BE ADDRESSED: The subject area to be addressed is the development of proposed new 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. The Expert System for Determining Reasonable Cause for Penalty Compromise will be presented at the workshop and an opportunity for the public to ask questions and express concerns regarding the system will be provided.

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: 2:00 p.m., May 25, 2005.

PLACE: Department of Revenue Regional Training Center, 2301 Maitland Center Parkway, Maitland 200 Building, Suite 150, Maitland, Florida.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Robert Babin, 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) Definition and Scope.

(a) For the purposes of this rule, "issue" means the reason set forth by the Department 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.

(b) The provisions of this rule will be used by the Department in its determination of penalties imposed under chapters specified in Section 72.011(1), F.S., which are subject to compromise by the Department on the grounds of reasonable cause pursuant to Section 213.21, F.S. The Department will apply the provisions of this rule for all compromises of penalty due to reasonable cause, even when no request to compromise penalty is made by the taxpayer.

(c) The provisions of this rule do not apply to penalties imposed as a result of a taxpayer's willful negligence, willful neglect, or fraud.

(d) The provisions of this rule are not to be construed to prevent the Department from assessing penalty as required by provisions of the Florida Statutes, or to limit or expand the compromise authority of the Executive Director.

(2) Determination of the Amount of Penalty Compromise.

(a) A determination of the amount of penalty compromise due to reasonable cause will be made by the Department 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 facts and circumstances, the Penalty Scoring Matrix and other provisions of this rule will only be applied once, and the resulting penalty percentage will be applied to the total penalty amount 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 5(a) through 5(j) of the Penalty Scoring Matrix each list various facts and circumstances, which are to 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 5(a) through 5(j) 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) Special Circumstances.

1. If a “yes” answer is provided for Question 1, no other questions will be answered. The point value to be assigned to the penalty amount under consideration is 100 points.

2. If a “no” answer is provided for Questions 1, 2, and 4, no other questions will be answered. The point value to be assigned to the penalty amount under consideration is 0 points.

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

1. If the sum of the point values assigned is not greater than 15 points, no penalty shall be imposed.

2. If the sum of the point values assigned is greater than 15 points but less than or equal to 30 points, 5% penalty shall be imposed.

3. If the sum of the point values assigned is greater than 30 points but less than or equal to 45 points, 10% penalty shall be imposed.

4. If the sum of the point values assigned is greater than 45 points but less than or equal to 60 points, 15% penalty shall be imposed.

5. If the sum of the point values assigned is greater than 60 points but less than or equal to 75 points, 20% penalty shall be imposed.

6. If the sum of the point values assigned is greater than 75 points, 25% penalty shall be imposed.

(g) The Department will provide the taxpayer with a copy of the determination of the amount of compromise for each penalty amount, as determined by the Penalty Scoring Matrix.

(3) Penalty Scoring Matrix.

Level	**Step**	**Decision Question**	**YES/NO**	**Pts. For YES**	**Pts. For NO**
Issue	1.	Is the penalty determined for this issue a mandatory penalty not subject to abatement?		100	0
Audit	2.	Has the taxpayer been previously audited?		20	0
	2.a.	Has the taxpayer been previously audited at least twice?		5	0
	2.b.	Has the taxpayer been previously audited three or more times?		5	0
Issue	3.	Was this issue addressed in a previous audit?		15	0
Issue	4.	For this audit issue, did the taxpayer collect but fail to remit tax to the Department?		30	0
Issue	5.	***Do one or more of the following apply to this issue in this audit or issue?***			
Issue	a.	Did the taxpayer rely on a DOR determination?		-10	10
	a.1.	Able to verify the advice given from the DOR source.			
	a.2.	All the facts provided correctly by the taxpayer for the issue.			
	a.3.	Law change occurred after the advice was given.			
	a.4.	Subsequent advice given rescinded original position.			
	a.5.	Prior audit provided advice on the issue. Explain:			
	a.6.	Other:			
	a.7.	No.			
Audit	b.	Is the taxpayer relatively unsophisticated or inexperienced in Florida tax matters?		-5	10
	b.1.	The taxpayer attended a DOR educational seminar.			

Level	Step		Decision Question	YES/NO	Pts. For YES	Pts. For NO
		b.2.	The taxpayer has limited accounting knowledge.			
		b.3.	The taxpayer does not have a full-time accounting staff.			
		b.4.	Other:			
		b.5.	No.			
Audit		c.	Did the taxpayer exercise ordinary care and prudence and timely meet filing requirements?		-5	10
		c.1.	The taxpayer timely complied.			
		c.2.	The taxpayer did not file more than 5% of their tax returns in the audit period late.			
		c.3.	The taxpayer consistently completed the entire tax return (Front and Back).			
		c.4	Other:			
		c.5.	No.			
Issue		d.	Were there any law changes directly affecting compliance for this issue?		-10	5
		d.1.	The law changed during the audit period. Explain:			
		d.2.	The law change affected all or part of the entire audit period. Explain:			
		d.3.	The law change had a material impact on the assessment amount.			
		d.4	DOR's interpretation changed. Explain:			
		d.5.	A TIP was issued regarding the law change.			
		d.6.	The taxpayer received notification of the law change.			
		d.7.	Other:			
		d.8.	No.			
Issue		e.	Had the taxpayer taken action to improve compliance by correcting activities which gave rise to the previous audit deficiency?		-5	5
		e.1.	The taxpayer provided supporting documentation showing that the error has been corrected.			
		e.2.	Other:			

Level	Step		Decision Question	YES/NO	Pts. For YES	Pts. For NO
		e.3	No.			
Issue		f.	Are the tax issues, their application, or the taxpayers operational or financial situation complex?		-5	5
		f.1.	The situation is complex. Explain:			
		f.2.	This issue is NOT covered in the Tax Law Library			
		f.3.	There are contradictory pronouncements addressing this tax issue. Explain:			
		f.4.	The error(s) in the taxpayer's accounting system were inadvertent. Explain:			
		f.5.	The error was isolated or a rare occurrence in the taxpayer's reporting of tax.			
		f.6.	Other:			
		f.7.	No.			
Issue		g.	Has the taxpayer instituted remedies to correct this issue during the conduct of the audit?		-5	0
		g.1.	The taxpayer provided supporting documentation showing that the error has been corrected.			
		g.2.	Other:			
		g.3.	No.			
Issue		h.	Did taxpayer rely on others to comply?		-5	5
		h.1.	The taxpayer relied upon a C.P.A., attorney, or trade association to comply.			
		h.2.	The taxpayer relied upon an outside consultant or outside bookkeeping service.			
		h.3.	The advice given by an outside party was verified. Explain:			
		h.4.	Other:			
		h.5.	No.			
Audit		i.	Is the tax assessment not material when compared to taxes correctly reported/remitted?		-5	5
		i.1.	The amount of tax correctly			

Level	Step	Decision Question		YES/NO	Pts. For YES	Pts. For NO
			reported/remitted was substantial compared to the assessment.			
		i.2.	The additional tax due is less than 5% of total tax reported/remitted during the audit period.			
		i.3.	The taxpayer underreported Florida taxable sales by less than 15%.			
		i.4.	The taxpayer over reported their Line 6 credits by more than 5%.			
		i.5.	Other:			
		i.6.	No.			
Audit		j.	Did any extenuating or uncontrollable circumstances exist that prevented the taxpayer from complying?		-15	0
		j.1.	There was a disaster or catastrophic events beyond the control of the taxpayer.			
		j.2.	It was determined that such circumstances directly prevented compliance or affected the ability to comply.			
		j.3.	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.			
		j.4.	There was a significant turnover of employees or service providers that directly affected compliance.			
		j.5.	The taxpayer responded completely and timely to the auditors' requests.			
		j.6.	There were other facts that affected compliance. Explain:			
		j.7.	Other:			
		j.8.	No.			

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