

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-13, FLORIDA ADMINISTRATIVE CODE
COMPROMISE AND SETTLEMENT
CREATING RULE 12-13.0074

12-13.0074 Willful Neglect and Willful Negligence.

(1) Scope and Definitions.

(a) Section 213.21, F.S., prohibits the Department from compromising a taxpayer's liability for penalty when the taxpayer's noncompliance is due to willful neglect or willful negligence. The Department will use the provisions of this rule to determine whether a taxpayer's noncompliance is due to willful neglect or willful negligence.

(b) For purposes of this rule, "willful neglect or willful negligence" means that the taxpayer was aware of the taxpayer's duties and obligations under the revenue laws of this state and possessed the ability to comply, but did not.

(2) If the taxpayer refuses to provide books and records or otherwise denies the Department reasonable access to the taxpayer's books and records, the Department will not compromise any penalty pursuant to this rule or Rule 12-13.0076, F.A.C.

(3) The Department will not compromise any penalty pursuant to this rule or Rule 12-13.0076, F.A.C., if there is evidence to clearly establish that the taxpayer had knowledge of the duties and requirements of the law, had the ability to comply, but failed to:

(a) register one or more locations after notification in writing by the Department of the requirement to register each business location;

(b) collect tax after being notified two times by the Department in writing of the requirement to do so;

(c) file a tax return after being notified two times by the Department in writing of the requirement to do so;

(d) remit tax after being notified two times by the Department in writing of the requirement to do so;

(e) pay tax after being notified two times by the Department in writing of the requirement to do so; or

(f) collect tax at the proper tax rate after being notified two times by the Department in writing of the requirement to collect tax at the proper rate.

(4) If the taxpayer has provided adequate books and records and the taxpayer's noncompliance is not described in paragraphs (3)(a) through (3)(f), the Department will compromise all penalty in excess of 25 percent, and the Department will use the provisions of Rule 12-13.0076, F.A.C., to determine whether to compromise any of the remaining 25 percent of penalty.

(5) If the death, illness, or incapacity of the taxpayer, a member of the taxpayer's family, a person solely responsible for maintaining information necessary to comply, or of a person with sole authority to prepare required returns or reports, directly prevents compliance, or if circumstances beyond the taxpayer's control, such as acts of war, natural disaster, or accidental destruction by fire or other casualty directly prevented compliance, the Department will compromise all penalty in excess of 25 percent, and the Department will use the provisions of Rule 12-13.0076, F.A.C., to determine whether to compromise any of the remaining 25 percent of penalty.

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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. The Department will use this rule to calculate the amount of penalty that the Department will compromise on the grounds of reasonable cause pursuant to Section 213.21, F.S. The Department will apply the provisions of this rule regardless of whether the taxpayer requests a compromise of penalty.

(b) The provisions of this rule do not apply to an issue when:

1. the Department determines that the taxpayer's noncompliance is due to willful negligence, willful neglect, or fraud;
2. a statute prohibits the Department from exercising discretion to assess or compromise the penalty (for example, under ss. 212.05(1)(a)2., 212.07(9), 212.085, 212.096(11), 212.097(14), 212.098(10), 212.11(5), 212.12(14), 213.21(10), F.S.; or

3. tax has been compromised upon grounds of doubt as to liability (see Rule 12-13.005, F.A.C.

(c) The provisions of this rule are not to be construed to prohibit the Department from exercising its authority to compromise tax, penalty, and interest to prevent an unreasonable result due to unique 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 the application of the same statutory provisions, rule provisions, and other applicable authority to substantially identical facts and circumstances, where there has been no change in the Department’s position as to the correct tax treatment subsequent to a prior assessment.

(2) Determination of the Amount of Penalty Compromise.

(a) If the issue relates to an assessment for sales or use tax, the Department will compromise all penalty when:

1. The Department determines that the taxpayer failed to collect tax due to a good faith belief that no tax was due;

2. As a result of that belief the taxpayer is now unable to charge and collect tax from the purchaser; and

3. The taxpayer has paid the tax and interest due on the transaction(s).

(b) 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 pursuant to Rule 12-13.0074, F.A.C. 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 Table provided in subsection (3). The Penalty

Scoring Table and the provisions of this rule will be applied to each issue to determine the percentage of the penalty related to that issue that will be compromised. If all issues under consideration involve the same responses to the Penalty Scoring Table, the Penalty Scoring Table and the other provisions of this rule will only be applied once, and the resulting penalty compromise percentage will be applied for all issues.

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

(d) Questions 3(a) through 3(i) of the Penalty Scoring Table 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 an issue, the Department will answer “yes” to that question and the corresponding point value will be assigned. When the facts and circumstances listed do not apply to an issue, the Department will answer “no” to that question and the corresponding point value will be assigned.

(e) When the Department determines that the correct answer to Question 3(a) through 3(i) is “yes,” but the specific reason is not listed in the question, the Department will select “other,” and assign points for a “yes” answer.

(f) 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.

(g) 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 will not provide the taxpayer with the results of the Penalty Scoring Table unless the results are requested by the taxpayer.

However, the Department shall provide the results of the Penalty Scoring Table when the application of this rule results in less than a full compromise of penalty subject to compromise on the grounds of reasonable cause.

(3) Penalty Scoring Table.

<u>Step</u>	<u>Decision Question</u>	<u>YES/NO</u>	<u>Pts. For YES</u>	<u>Pts. For NO</u>
<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 there been a final determination of this issue?</u>		<u>20</u>	<u>0</u>
<u>1.a</u>	<u>Has the Department issued at least two such assessments?</u>		<u>20</u>	<u>0</u>
<u>1.b.</u>	<u>Did the taxpayer take action that materially corrected this issue in a reasonable time after the taxpayer's appeal rights expired or the issue was finally determined?</u>		<u>-10</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>2.</u>	<u>For this issue, did the taxpayer collect but fail to send 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 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? For the purposes of this rule, the term "written advice" shall not include a "written determination" as provided in Rule 12-13.005, F.A.C. In addition, solely for the purposes of this rule, the term "written advice" shall include a Letter of Technical Advice.</u>		<u>-5</u>	<u>0</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>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>
	c.1.	<u>Yes. The taxpayer timely filed complete returns.</u>			
	c.2.	<u>Yes. Other. Explain:</u>			
	c.3.	<u>No.</u>			
	3.d.	<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>
	d.1.	<u>Yes. The applicable law changed. Explain:</u>			
	d.2.	<u>Yes. DOR's administration of the applicable law changed. Explain:</u>			
	d.3.	<u>Yes. Other. Explain:</u>			
	d.4.	<u>No.</u>			
	3.e.	<u>Are the tax issues, their application, or the taxpayer's operational or financial situation complex?</u>		<u>-2.5</u>	<u>0</u>
	e.1.	<u>Yes. The situation is complex. Explain:</u>			
	e.2.	<u>Yes. There is contradictory written information provided by the attorney general's office, the DOR, or a Florida court. Explain:</u>			
	e.3.	<u>Yes. Other. Explain:</u>			
	e.4.	<u>No.</u>			
	3.f.	<u>Has the taxpayer instituted remedies to correct this issue?</u>		<u>-5</u>	<u>0</u>
	f.1.	<u>Yes, and the taxpayer provided supporting documentation showing that the error has been corrected.</u>			
	f.2.	<u>Yes. Other. Explain:</u>			
	f.3.	<u>No.</u>			
	3.g.	<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>
	g.1.	<u>Yes. The taxpayer relied upon verifiable advice from a C.P.A., attorney, or trade association.</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>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 tax assessment not material when compared to taxes correctly reported/remitted?</u>		<u>-X</u>	<u>0</u>
	<u>h.1.</u>	<u>The amount of tax correctly reported/remitted was substantial compared to the assessment.</u>			
	<u>h.2.</u>	<u>The additional tax due is less than 5% of total tax reported/remitted during the audit period.</u>			
	<u>h.3.</u>	<u>The taxpayer underreported Florida taxable sales by less than 15%.</u>			
	<u>h.4.</u>	<u>The taxpayer over reported their Line 6 credits by more than 5%.</u>			
	<u>h.5.</u>	<u>Other:</u>			
	<u>h.6.</u>	<u>No.</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>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 ,

New .