

TO: All County Treasurers and County Auditors

FROM: Rick L. Anthony, Executive Administrator, Property Taxes

RE: Procedural Changes for the Remission of Late Payment Penalties for Real Property, Manufactured or Mobile Home Property and Personal Property Taxes

DATE: July 7, 2003

Recent Legislation

The State budget bill (Amended Substitute House Bill 95, 125th General Assembly) made some significant changes to R.C. 5711.33 and 5715.39. These sections provide the procedures for remission of late payment penalties for real property (including hereinafter manufactured or mobile homes) and personal property taxes. Although the Department of Taxation (Department) is in the process of preparing a comprehensive bulletin to inform you about the details of these changes, there are new requirements that the Department needs to bring to your immediate attention.

Under the new law, which was effective June 26, 2003, applications for the remission of real property and personal property tax late payment penalties must be filed with the county auditor. **Applications received on or after June 26, 2003 should be forwarded to the county auditor for determination.** Another change to the remission of the late payment penalties is that reasonable cause can now be considered in the abatement of a late payment penalty.

Under the new law for real property, the county auditor, in consultation with the county treasurer, will first determine whether an abatement of penalty imposed on a late payment of real property taxes should be granted for one of the four reasons provided in R.C. 5715.39(B). The board of revision will determine if there should be remission of a penalty for reasonable cause provided in R.C. 5715.39(C).

Under the new law for personal property, the county auditor, in consultation with the county treasurer, will first determine whether an abatement of penalty imposed on a late payment of taxes should be granted for one of the five reasons in R.C. 5711.33(D), including the new reasonable cause provision.

Note: the new reason to remit late payment penalties for reasonable cause can be used to remit paid penalties if those penalties were paid on or after June 26, 2003. Penalties paid prior to June 26, 2003 do not have to be abated using the new reasonable cause provision.¹ The four reasons to remit that were in existence before June 26, 2003 can be used to remit paid penalties, whether those penalties were paid before or after June 26, 2003.

There continues to be no time limitation for a taxpayer to file a request for remission of the late payment penalties. However, if the board of revision or county auditor does not grant a remission of the late payment penalty for applications filed after June 26, 2003, the taxpayer has sixty days to appeal the denial of the late payment penalty remission request to the Department. The taxpayer should be notified of this appeal right.

¹ For additional information on this please contact Ed Samsel, Legal Counsel for Division of Tax Equalization and see *Outcalt v. Guckenberger* (1938), 134 Ohio St. 457.

Transition Issues

If there are any applications for abatement of late payment penalties assessed against real property that were filed prior to June 26, 2003, and that have not yet been forwarded to the Department for consideration, please do so as soon as possible. The Department will determine if the penalty should be abated by using any of the four criteria set forth by the statute in effect prior to June 26, 2003. If the penalty cannot be abated by using the criteria in effect at the time the application was filed, the Department will notify the taxpayer that the taxpayer may withdraw the request and re-file the request with the county auditor. This will allow the county auditor to determine the taxpayer's request under the new reasonable cause criteria.

For personal property tax late payment penalties, if a request for remission of penalty is received prior to June 26, 2003, the county auditor, in consultation with the county treasurer, should determine if the penalty should be granted for one of the four reasons provided in R.C. 5711.33(D). If the penalty cannot be abated using any of the four criteria in effect at the time the application was filed, the county auditor should notify the taxpayer that the taxpayer may withdraw the request and re-file so the new reasonable cause criteria can be considered.

Reasonable Cause

The Department is in the process of developing guidelines for the reasonable cause determination and would like to solicit your input before we finalize our policy. Tentatively, the Department is considering the following criteria to demonstrate reasonable cause for remission of late payment penalties:

- (1) The taxpayer has not made a late payment for any real property or personal property taxes owed by that taxpayer during the preceding three years and the tax liability (including interest) for the subject property is paid or, if applicable, a payment plan has been entered into with the county treasurer at the time application for remission of the penalty is made. If payment is not made at the time the application is filed, the taxpayer will be given ten days to make the payment or enter into a payment plan; or
- (2) The taxpayer demonstrates the late payment is due to extenuating circumstances beyond the taxpayer's control and the tax liability (including interest) for the subject property is paid or, if applicable, a payment plan has been entered into with the county treasurer at the time application for remission of the penalty is made. If payment is not made at the time the application is filed, the taxpayer will be given ten days to make the payment or enter into a payment plan.

If you would like to submit comments or suggestions for consideration as we finalize our reasonable cause criteria, please send them to my attention or to Shelley Wilson on or before July 18, 2003. Due to the immediate effective date for this provision, we plan to release the comprehensive bulletin and a revised application form for penalty remission requests by August 1, 2003. If you have questions about how to handle penalty remission applications during the interim period, please contact me at 614/752-8132 or by email at rick_anthony@tax.state.oh.us, or Shelley Wilson at 614/466-8014 or by e-mail at shelley_wilson@tax.state.oh.us.

cc: Fran Lesser, County Auditors' Association of Ohio
Tom Steenrod, County Treasurers' Association of Ohio