

810-12-1-.02 Assessment Procedures - 100% PENALTY.

(1) (a) The procedures for imposing a 100% penalty assessment against a responsible corporate officer of a corporation or member of a partnership that has failed to pay over designated trust-fund taxes as set forth in Section 40-29-73, shall be the same as the usual provisions for assessment of taxes as provided in the Revenue Code, the Alabama Administrative Procedure Act, and the regulations promulgated by the Department of Revenue thereunder.

(b) If the Department determines that a 100% penalty assessment should be entered against a corporate officer(s) or a partner, the Department will so inform the person of the amount due and request payment of same by issuance of a formal Notice and Demand. This notice will require payment of the 100% penalty within 30 days. If the amount due is not paid within the 30 day period, the Department will enter a preliminary assessment and notify the corporate officer or partner of such assessment. The preliminary assessment will inform the person of the amount due and a date when a conference may be held with the Assessment Officer for the purpose of informally settling or resolving the assessment. If the person chooses to attend this conference, but does not agree with the Department's position, he may request a formal contested hearing with the Administrative Law Judge. If the person does not appear at the informal conference, he nevertheless may request a formal hearing with the Administrative Law Judge. In either case, in order to exercise his right to a formal contested hearing, the person must file notice of his request in writing with the Administrative Law Division within 15 days from the date of the conference as designated in the preliminary assessment notice, or 15 days from the date of determination of liability by the Department. If the Administrative Law Division conducts a contested case hearing in the matter, a final assessment will be entered in accordance with the decision and order of the Administrative Law Judge and an appeal therefrom may be made to an appropriate Circuit Court under §40-2-22, Code of Alabama 1975. If said person does not appeal to the Administrative Law Division within the designated time permitted, a final assessment of the penalty will be entered by the Department and an appeal therefrom may be made to an appropriate Circuit Court under §40-2-22, Code of Alabama 1975.

(2) (a) Alternatively, if within 30 days after the Notice and Demand is made, said person pays an amount which is not less than the minimum amount required to commence a proceeding in court with respect to his/her liability for such penalty and files a claim for refund, and furnishes a bond in an amount 1 1/2 times the amount of the excess penalty assessed over the amount of the penalty paid, he/she must begin a proceeding in the appropriate Circuit Court for a determination of his/her liability for the 100% penalty within 30 days of the date on which his/her claim for refund is denied. All assessment and collection procedures for the penalty are stayed pending final resolution of the suit, or until 30 days have expired during which time the person failed to begin the appropriate court proceedings. If the person fails to begin a proceeding in an appropriate Circuit Court within 30 days of the denial of the claim for refund of the penalty paid, such person will be deemed to have made such payment voluntarily and will waive any further right to recover the amount so paid.

(b) For income tax withholding, the definition of the "minimum amount" of the penalty required to be paid under (a) above is that amount not less than the total income tax withheld from one employee of the corporation or partnership which was not paid over for one reporting period. For any tax other than income tax withholding, the minimum amount of the penalty required to be paid is that amount not less than the total tax due for one reporting period.

(c) The bond required shall be a commercial bond from a bonding company qualified to do business in the State of Alabama.

(3) No process in court and no levy or other collection procedure for collection of the 100% penalty will be begun until after entry of a final assessment, although liens may be filed at any time.

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