

810-14-1-.04 Installment Payment Agreements.

(1) SCOPE. This regulation applies to the authority of the Department to enter into written agreements to allow a taxpayer to pay a tax in installment payments.

(2) DEFINITIONS. The following term has the meaning ascribed to it for purposes of this regulation:

(a) Jeopardy. A condition that would prohibit or impede collection of a tax assessment which is characterized by the concealment or transfer of assets or the attempt to flee the state with assets.

(3) PURPOSE. The purpose of this regulation is to provide guidelines necessary to implement installment payment agreements by the Department.

(4) PROCEDURE.

(a) The Commissioner or his delegate is authorized to enter into a written agreement to allow a taxpayer to pay any tax in installments if it is determined that the collection of the tax will be facilitated through the extension of such agreement.

(b) A written agreement providing for installment payments can only be extended where a final assessment has been entered and is not on appeal.

(c) Written payment agreements shall be limited to a period not exceeding 12 months, provided that, at the Commissioner's discretion, the agreement may be renewed for succeeding periods not to exceed 12 months.

(d) In order for a payment agreement to "facilitate the collection of the tax," the Department must determine that it can collect the tax liability more expeditiously, or the likelihood of collecting the entire tax liability is greater through the extension of a payment arrangement than without one.

1. In the case of employed individuals, the installment payment agreement should result in the monthly payment of an amount which would approximate 25 percent of gross wages; this represents the amount which would be available to the Department through garnishment proceedings.

2. In general, taxpayers whose financial statements indicate the availability of cash or cash equivalent assets available to pay their tax liability will not be entitled to the extension of an installment payment arrangement.

3. Taxpayers having property which may be sold or mortgaged will be looked at on a case by case basis to determine whether the extension of a payment agreement will "facilitate the collection of the tax."

4. Agreements extended to corporations for the payment of trust fund taxes require the personal guarantee of the responsible corporate officer(s) who have personal liability under Sections 40-29-72 and 40-29-73, Code of Alabama 1975, as amended.

(e) Any taxpayer requesting an installment payment agreement from the Department must complete a Collection Information Statement and submit proof of financial information using the forms prescribed by the Department. Such forms must be submitted disclosing all assets and expenses and must be signed under penalties of perjury. Should the taxpayer provide inaccurate or incomplete information, the Commissioner may terminate, alter, or modify the agreement at any time upon notice to the taxpayer.

1. The Department may request updated Collection Information Statements whenever it has reason to believe that the taxpayer's ability to pay has significantly changed.

(f) Any taxpayer receiving an installment payment agreement from the Department has responsibility for making the agreed payment according to the terms of the installment payment agreement. This agreement will specify the payment amount, the payment due date, the address to which the payment is to be directed, and the agreement termination date. Should the taxpayer fail to make a payment according to the terms of the agreement, the Commissioner may terminate the agreement and declare the agreement in default, upon notice to the taxpayer. In the event of default, the Department may collect the balance due by any method allowed by law.

(g) The Commissioner or his delegate may require that all subsequent tax returns for taxes administered by the Department which become due while this agreement is in effect be filed by the due date, and all taxes due in connection with the return be timely remitted, unless the taxpayer has contested the validity or amount of the tax pursuant to the terms of Chapter 2A of Title 40, Code of Alabama 1975.

(h) Any taxpayer who is making payments under the terms of an installment payment agreement must promptly notify the Department of any significant change in financial condition which would affect the ability to pay the liability. Since a payment agreement is extended due to the taxpayer's inability to pay the assessment in full, any change in circumstances which would increase the ability to pay the liability may result in the alteration, modification, or termination of the agreement.

(i) An installment payment agreement may be terminated by the Commissioner if there is reason to believe that the collection of the tax liability which is the subject of the agreement is in jeopardy.

(j) The extension of an installment payment agreement will in no way prevent the Department from recording liens with the Secretary of State, county probate offices, or any other location necessary to protect the state's interest in property of the taxpayer.

Liens may not be released until the final payment has been received and cleared, unless the Commissioner elects otherwise.

(k) Any refund which may be due from the Department while an installment payment agreement is in effect may be credited to the liability.

(l) During the period of an installment payment agreement, additional interest as provided by law will accrue on the total unpaid balance at the rate established under the authority of Section 40-1-44, Code of Alabama 1975.

(m) Except in the case of jeopardy, prior notice will be given should it become necessary to alter, modify, or terminate an installment payment agreement with a taxpayer. Notice may be provided by either of the following methods:

1. written notice to the taxpayer's last known address, or
2. delivery of written notice in person.

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Authority: Sections 40-2A-7(a)(5) and 40-2A-4(b)(6)b.3., Code of Alabama 1975

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