

810-14-1-.31 Penalty for Underpayment Due to Negligence.

(1) If any part of an underpayment of any tax is due to negligence or disregard of rules and regulations, but without intent to defraud, a 5 percent penalty on the underpayment attributable to negligence or disregard shall be added.

(a) The term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of Title 40, and the term "disregard" includes any careless, reckless, or intentional disregard.

(2) The "negligence" penalty may be imposed for, but is not limited to, the following situations:

(a) failure of the taxpayer to keep or maintain adequate records as required by law and/or Department rules and regulations;

(b) a significant discrepancy between actual and reported taxable measures in the absence of an adequate explanation by the taxpayer;

(c) the omission of a specific item of income for income tax purposes;

(d) the significant overstatement of deductions, exemptions, and/or credits;

(e) failure by the taxpayer to provide all pertinent data to his/her agent for preparing tax returns. Even if all data is furnished to the tax return preparer, the taxpayer still has a duty to read the return for accuracy; or

(f) a mistake of law or fact not made in good faith or based on reasonable grounds.

(3) The following are examples of situations in which the negligence penalty shall not be imposed:

(a) a minor discrepancy due to a clerical error,

(b) a minor understatement of reported taxable measure,

(c) a minor overstatement of deductions, exemptions, and/or credits.

(4) The negligence penalty will not be imposed if the essential facts are disclosed on the return to allow for full disclosure of transactions in such a manner that the facts are sufficient to enable an auditor to spot any possible discrepancies.

(5) The negligence penalty will generally not be imposed where failure to report income or to overstate a deduction is in good faith reliance on advice of a competent tax expert.

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