

810-14-1-.32 Penalty for Underpayment Due to Fraud.

(1) Any person who willfully filed a false or fraudulent return shall be assessed for the amount of tax as determined by the Department from the best available information with respect to such taxpayer. To the amount of tax due, the Department shall add a penalty in an amount equal to 50 percent of that portion of such underpayment which is attributable to fraud. This penalty is in lieu of all other civil penalties.

(2) The term "fraud" shall include instances where there is intentional wrongdoing, usually involving an element of deception. Where direct evidence of fraud is not available, fraud may be determined from the circumstances surrounding the taxpayer's acts or omissions. The burden of proof on the issue of fraud shall be upon the Department. To establish fraud, the Department must clearly and convincingly prove that a tax deficiency is due to fraud with a deliberate intent to evade taxes. Negligence, even if it is gross, does not necessarily establish fraud.

(3) The fraud penalty may be imposed for, but is not limited to, the following situations:

(a) the taxpayer devises a fictitious scheme to evade taxes (examples of this include setting up sham partnerships, doing business under a fictitious name, making fictitious sales of stock to claim a loss, etc.);

(b) the taxpayer deliberately conceals income with the intent to evade taxes;

(c) the taxpayer claims excessive deductions, exemptions, and/or credits (examples of this include claiming a false filing status, taking exemptions for nonexistent children, taking clearly personal expenses as business expenses, etc.).

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