

## CHAPTER 12 – SALES TAX CODE

### Sec. 12-540. Interest and civil penalties.

- (a) Any taxpayer who failed to pay any of the taxes imposed by this Chapter which were due or found to be due before the delinquency date shall be subject to and shall pay interest upon such tax until paid. From and after October 1, 2005, the interest rate shall be determined in the same manner and at the same times as prescribed by section 6621 of the United States Internal Revenue Code and compounded annually under the method described in Subsection (1) below. The rate of interest for both overpayments and underpayments for all taxpayers is the federal short-term rate, determined pursuant to Section 6621(b) of the Internal Revenue Code, plus three percentage points. The interest rate prior to October 1, 2005 shall be one percent (1%) per month. Said interest may be neither waived by the Tax Collector nor abated by the Hearing Officer except as it might relate to a tax abated as provided by Section 12-570.
  - (1) On January 1 of each year any interest outstanding as of that date that was accrued from and after October 1, 2005 is thereafter considered a part of the principal amount of the tax and accrues interest pursuant to this Section.
  - (2) Interest accrued prior to October 1, 2005 shall not be added to the principal.
  
- (b) In addition to interest assessed under subsection (a) above, any taxpayer who failed to pay any of the taxes imposed by this Chapter which were due or found to be due before the delinquency date shall be subject to and shall pay any or all of the following civil penalties, in addition to any other penalties prescribed by this Chapter:
  - (1) A taxpayer who fails to timely file a return for a tax imposed by this Chapter shall pay a penalty of five percent (5%) of the tax for each month or fraction of a month elapsing between the delinquency date of the return and the date on which it is filed, unless the taxpayer shows that the failure to timely file is due to reasonable cause and not due to willful neglect. This penalty shall not exceed twenty-five percent (25%) of the tax due.
  - (2) A taxpayer who fails to pay the tax within the time prescribed shall pay a penalty of ten percent (10%) of the unpaid tax, unless the taxpayer shows that the failure to timely pay is due to reasonable cause and not due to willful neglect. If the taxpayer is also subject to a penalty under subsection (b)(1) above for the same tax period, the total penalties under subsection (b)(1) and this subsection shall not exceed twenty-five percent (25%) of the tax due.
  - (3) A taxpayer who fails or refuses to file a return within thirty (30) days of having received a written notice and demand from the Tax Collector shall pay a penalty of twenty-five percent (25%) of the tax, unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect or the tax collector agrees to a longer time period.
  - (4) If the cause of a tax deficiency is determined by the Tax Collector to be due to negligence, but without regard for intent to defraud, the taxpayer shall pay a penalty of ten percent (10%) of the amount of deficiency. If the taxpayer is

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also subject to a penalty under subsection (b)(1) or (b)(2) above for the same tax period, the total penalties imposed under subsection (b)(1), (b)(2) and this subsection shall not exceed twenty-five percent (25%) of the tax due.

- (5) If the cause of a tax deficiency is determined by the Tax Collector to be due to civil fraud or evasion of the tax, the taxpayer shall pay a penalty of fifty percent (50%) of the amount of deficiency.
- (c) Penalties and interest imposed by this Section are due and payable upon notice by the Tax Collector.
  - (d) If, following an audit, penalties attributable to the audit period are to be assessed pursuant to subsection (b)(1) or (b)(2) above, the Tax Collector, before assessing such penalties, must take into consideration any information or explanations provided by the taxpayer as to why the return was not timely filed and/or the tax was not timely paid. If such information and/or explanations are provided by the taxpayer, and the Tax Collector nevertheless decides to assess penalties pursuant to subsection (b)(1) or (b)(2) above, then, at the time the penalties are assessed, the Tax Collector must provide the taxpayer with a detailed written explanation of the basis for the Tax Collector's determination that the information and/or explanations provided by the taxpayer did not constitute reasonable cause.
  - (e) The assessment of the penalties prescribed by subsections (b)(3) through (b)(5) above must be approved on a case-by-case basis by the Tax Collector prior to such assessment. In addition, any assessment which includes penalties based upon subsection (b)(3), (b)(4), or (b)(5) above must be accompanied by a statement signed by the Tax Collector setting forth in detail the basis for the Tax Collector's determination that the penalties are warranted under the circumstances.
  - (f) The Tax Collector shall waive or adjust penalties imposed by subsections (b)(1) and (b)(2) above upon a finding that:
    - (1) In the past, the taxpayer has consistently filed and paid the taxes imposed by this Chapter in a timely manner; or
    - (2) The amount of the penalty is greatly disproportionate to the amount of the tax; or
    - (3) The failure of a taxpayer to file a return and/or pay any tax by the delinquency date was caused by any of the following circumstances which must occur prior to the delinquency date of the return or payment in question:
      - (A) the return was timely filed but was inadvertently forwarded to another taxing jurisdiction.
      - (B) erroneous or insufficient information was furnished the taxpayer by the Tax Collector or his employee or agent.
      - (C) death or serious illness of the taxpayer, member of his immediate family, or the preparer of the reports immediately prior to the due date.
      - (D) unavoidable absence of the taxpayer immediately prior to the due date.

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- (E) destruction, by fire or other casualty, of the taxpayer's place of business or records.
- (F) prior to the due date, the taxpayer made application for proper forms which could not be furnished in sufficient time to permit a timely filing.
- (G) the taxpayer was in the process of pursuing an active protest of the tax in question in another taxing jurisdiction at the time the tax and/or return was due.
- (H) the taxpayer establishes through competent evidence that the taxpayer contacted a tax advisor who is competent on the specific tax matter and, after furnishing necessary and relevant information, the taxpayer was incorrectly advised that no tax was owed and/or the filing of a return was not required.
- (I) the taxpayer has never been audited by a city for the tax or on the issue in question and relied, in good faith, on a State exemption or interpretation.
- (J) the taxpayer can provide some public record (court case, report in a periodical, professional journal or publication, etc.) stating that the transaction is not subject to tax.
- (K) the Arizona Department of Revenue, based upon the same facts and circumstances, abated penalties for the same filing period.

A taxpayer may also request a waiver or adjustment of penalty for a reason thought to be equally substantive to those reasons itemized above. All requests for waiver or adjustment of penalty must be in writing and shall contain all pertinent facts and other reliable and substantive evidence to support the request. In all cases, the burden of proof is upon the taxpayer.

- (g) No request for waiver of penalty under subsection (f) above may be granted unless written request for waiver is received by the Tax Collector within forty-five (45) days following the imposition of penalty. Any taxpayer aggrieved by the refusal to grant a waiver under subsection (f) above may appeal under the provisions of Section 12-570 provided that a petition of appeal or request for an extension is submitted to the Tax Collector within forty-five (45) days of the taxpayer's receipt of notice by the City that waiver has been denied.
- (h) For the purpose of this Section, "reasonable cause" shall mean that the taxpayer exercised ordinary business care and prudence, i.e., had a reasonable basis for believing that the tax did not apply to the business activity or the storage or use of the taxpayer's tangible personal property in this City.
- (i) For the purpose of this Section, "negligence" shall be characterized chiefly by inadvertence, thoughtlessness, inattention, or the like, rather than an "honest mistake". Examples of negligence include:
  - (1) the taxpayer's failure to maintain records in accordance with Article III of this Chapter;
  - (2) repeated failures to timely file returns; or

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(3) gross ignorance of the law.  
(Code 1977, § 9A-540)  
(Ord. 03-17, 4/15/03, renumbered from Chapter 9A) SUPP 2003-2  
(Ord. 07-07, 3/20/07, Amended, (a)(1) and (2) ) SUPP 2007-1