

## §187-B. Penalties

**1. Failure to file return.** A person who fails to make and file any return required under this Title at or before the time the return becomes due is liable for one of the following penalties if the person's tax liability shown on that return or otherwise determined to be due is greater than \$25.

A. If the return is filed before or within 60 days after the taxpayer receives from the assessor a formal demand that the return be filed, or if the return is not filed but the tax due is assessed by the assessor before the taxpayer receives from the assessor a formal demand that the return be filed, the penalty is \$25 or 10% of the tax due, whichever is greater. [PL 2011, c. 644, §2 (AMD); PL 2011, c. 644, §33 (AFF).]

B. If the return is not filed within 60 days after the taxpayer receives from the assessor a formal demand that the return be filed, the penalty is \$25 or 25% of the tax due, whichever is greater. The period provided by this paragraph must be extended for up to 90 days if the taxpayer requests an extension in writing prior to the expiration of the original 60-day period. [PL 2011, c. 644, §3 (AMD); PL 2011, c. 644, §33 (AFF).]

C. If the return is not filed and the assessor makes a determination of jeopardy pursuant to section 145, the penalty is 25% of the tax due. [PL 2011, c. 380, Pt. K, §1 (AMD); PL 2011, c. 380, Pt. K, §2 (AFF).]

This subsection does not apply to a return required pursuant to chapter 459 that is administered pursuant to the International Fuel Tax Agreement.

[PL 2011, c. 644, §§2, 3 (AMD); PL 2011, c. 644, §33 (AFF).]

### 1-A. Failure to file information return.

[PL 2013, c. 424, Pt. A, §22 (RP).]

**2. Failure to pay.** The following penalties apply.

A. Any person who fails to pay, on or before the due date, any amount shown as tax on any return required under this Title is liable for a penalty of 1% of the unpaid tax for each month or fraction of a month during which the failure continues, to a maximum in the aggregate of 25% of the unpaid tax. [PL 1999, c. 708, §10 (AMD).]

A-1. Any person who fails to make and file any return required under this Title at or before the time the return becomes due against whom the assessor has made an assessment of tax pursuant to section 141 and who has not paid the tax on or before the date specified in that assessment is liable for a penalty of 1% of the unpaid tax for each month or fraction of a month during which the tax remains unpaid, calculated retroactively from the original due date of the unfiled return, to a maximum in the aggregate of 25% of the unpaid tax. [PL 1999, c. 708, §11 (NEW).]

B. Any person who fails to pay a tax assessment for which no further administrative or judicial review is available pursuant to section 151 and the Maine Administrative Procedure Act is liable for a penalty in the amount of 25% of the amount of the tax due if the payment of the tax is not made within 10 days of the person's receipt of notice of demand for payment as provided by this Title. This penalty must be explained in the notice of demand and is final when levied. [PL 1995, c. 281, §8 (AMD).]

This subsection does not apply to taxes due pursuant to chapter 459 and administered pursuant to the terms of the International Fuel Tax Agreement.

[PL 2001, c. 396, §9 (AMD).]

### 3. Negligence; fraud.

[PL 1991, c. 873, §5 (NEW); PL 1991, c. 873, §9 (AFF); MRSA T. 36 §187-B, sub-§3 (RP).]

**3-A. Negligence; fraud.** A person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to negligence or intentional disregard of this Title or rules adopted pursuant to this Title, but is not attributable to fraud with intent to evade the tax, is liable for a penalty in the amount of \$25 or 25% of that portion of the underpayment, whichever is greater. A person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to fraud with intent to evade the tax, is liable for a penalty in the amount of \$75 or 75% of that portion of the underpayment, whichever is greater. For the purposes of this section, "negligence" means any failure to make a reasonable attempt to comply with the provisions of this Title.

[PL 2007, c. 627, §7 (AMD).]

**4. Substantial understatement.**

[PL 1991, c. 873, §5 (NEW); PL 1991, c. 873, §9 (AFF); MRSA T. 36 §187-B, sub-§4 (RP).]

**4-A. Substantial understatement.** A person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to a substantial understatement of tax, without negligence or intentional disregard of this Title or rules adopted pursuant to this Title and without fraud with intent to evade the tax, is liable for a penalty of \$5 or 1% of that portion of the underpayment, whichever is greater, for each month or fraction of a month during which the failure to pay that portion of the underpayment continues, up to a maximum in the aggregate of \$25 or 25% of the underpayment, whichever is greater.

There is a substantial understatement of tax if the amount of the understatement on the return or returns for the period covered by the assessment exceeds 10% of the total tax required to be shown on the return or returns for that period or \$1,000, whichever is greater. For purposes of determining whether an understatement is substantial and calculating the amount of a substantial understatement that is subject to penalty under this subsection, the amount of an understatement is reduced by that portion of the understatement that is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for that treatment.

[PL 2007, c. 627, §8 (AMD).]

**4-B. Excessive refund.** A person who files a claim for refund or reimbursement under Part 5 that is the basis for the receipt of a refund or reimbursement that substantially exceeds the amount to which the person is legally entitled is liable for a penalty of \$5 or 1% of the excess amount, whichever is greater, for each month or fraction of a month during which the failure to repay that portion of the refund or reimbursement continues, to a maximum in the aggregate of \$25 or 25% of the overpayment, whichever is greater. For purposes of this subsection, a refund or reimbursement substantially exceeds the amount to which the person is legally entitled if the amount of the refund or reimbursement exceeds the amount to which the person is legally entitled by more than 10% of the corrected amount or \$1,000, whichever is greater. For purposes of this subsection, the amount by which a refund or reimbursement exceeds the amount to which the person is legally entitled and the excess amount that is subject to penalty under this subsection must be reduced by any portion of the excessive claim for which the person has substantial authority supporting its position.

[PL 2007, c. 437, §4 (NEW).]

**5. Insufficient funds.** Any person who makes payment of an amount due under this Title by means of a check or electronic funds transfer that is returned unpaid by the bank on which it is drawn because of insufficient funds or the closing or nonexistence of the account on which it is drawn is liable for a penalty of \$20 or 1% of the payment amount, whichever is greater.

[PL 1999, c. 708, §12 (AMD).]

**5-A. Electronic funds transfers.** Any person required by the assessor to remit taxes by electronic funds transfer that fails to remit electronically is liable for a penalty of the lesser of 5% of the tax due or \$5,000. For purposes of this section, a person fails to remit electronically when:

A. Two or more required payments in any consecutive 6-month period are either not made or are made by the person by means other than electronic funds transfer and the person has been notified in writing by the assessor of that person's noncompliance and of the fact that the penalty imposed by this section may be imposed; or [PL 1997, c. 668, §15 (NEW).]

B. The person makes 2 or more required electronic payments in any consecutive 6-month period that do not comply with the specifications set forth in a rule issued by the assessor pursuant to section 193. [PL 1999, c. 414, §10 (AMD).]  
[PL 1999, c. 414, §10 (AMD).]

**5-B. Electronic data submission.** Any person required by the State Tax Assessor to file returns by electronic data submission that fails to file electronically is liable for a penalty of \$50. For purposes of this subsection, a person fails to file electronically when:

A. Two or more required returns in any consecutive 6-month period either are not filed or are filed by the person by means other than electronic data submission and the person has been notified in writing by the State Tax Assessor of that person's noncompliance and of the fact that the penalty authorized by this subsection may be imposed; or [PL 2005, c. 332, §4 (NEW); PL 2005, c. 332, §30 (AFF).]

B. The person files 2 or more required electronic returns in any consecutive 6-month period that do not comply with the specifications set forth in rules adopted by the State Tax Assessor pursuant to section 193. [PL 2005, c. 332, §4 (NEW); PL 2005, c. 332, §30 (AFF).]  
[PL 2005, c. 332, §4 (NEW); PL 2005, c. 332, §30 (AFF).]

**6. Penalties not exclusive.** Each penalty provided under this section is in addition to any interest and other penalties provided under this section and other law, except as otherwise provided in this section. Interest may not accrue on the penalty. This section does not apply to any filing or payment responsibility pursuant to Part 2 except that this section does apply to a filing or payment responsibility pursuant to the state telecommunications excise tax imposed under section 457. The penalties imposed under subsections 1 and 2 accrue automatically, without being assessed by the State Tax Assessor. Each penalty imposed under this section is recoverable by the assessor in the same manner as if it were a tax assessed under this Title.

[PL 2013, c. 331, Pt. C, §7 (AMD).]

**7. Reasonable cause.** The assessor shall waive or abate or, in the case of those penalties that do not accrue automatically under subsection 6, refrain from imposing any penalty imposed by subsection 1, 2, 4-A, 4-B, 5-A or 5-B or by the terms of the International Fuel Tax Agreement if grounds constituting reasonable cause are established by the taxpayer or if the assessor determines that grounds constituting reasonable cause are otherwise apparent. Reasonable cause includes, but is not limited to, the following circumstances:

A. The failure to file or pay resulted directly from erroneous information provided by the Bureau of Revenue Services; [PL 1991, c. 873, §5 (NEW); PL 1991, c. 873, §8, 9 (AFF); PL 1997, c. 526, §14 (AMD).]

B. The failure to file or pay resulted directly from the death or serious illness of the taxpayer or a member of the taxpayer's immediate family; [PL 1991, c. 873, §5 (NEW); PL 1991, c. 873, §8, 9 (AFF).]

C. The failure to file or pay resulted directly from a natural disaster; [PL 1991, c. 873, §5 (NEW); PL 1991, c. 873, §8, 9 (AFF).]

D. A return that was due monthly was filed and paid less than one month late and all of the taxpayer's returns and payments during the preceding 12 months were timely; [PL 1995, c. 281, §9 (AMD).]

E. A return that was due other than monthly was filed and paid less than one month late and all of the taxpayer's returns and payments during the preceding 3 years were timely; [PL 1995, c. 281, §9 (AMD).]

F. The taxpayer has supplied substantial authority justifying the failure to file or pay; or [PL 1991, c. 873, §5 (NEW); PL 1991, c. 873, §8, 9 (AFF).]

G. The amount subject to a penalty imposed by subsection 1, 2, 4-A or 5-A is de minimis when considered in relation to the amount otherwise properly paid, the reason for the failure to file or pay and the taxpayer's compliance history. [PL 2011, c. 380, Pt. L, §1 (AMD).]

Absent a determination by the assessor that grounds constituting reasonable cause are otherwise apparent, the burden of establishing grounds for waiver or abatement is on the taxpayer. [PL 2011, c. 655, Pt. QQ, §3 (AMD); PL 2011, c. 655, Pt. QQ, §8 (AFF).]

For purposes of this section, the term "person" includes an individual, corporation or partnership or any officer or employee of a corporation, including a dissolved corporation, or a member or employee of a partnership who, as the officer, employee or member, is under a duty to perform the act in respect of which a violation occurs. [PL 1993, c. 395, §6 (AMD).]

#### SECTION HISTORY

PL 1991, c. 873, §5 (NEW). PL 1991, c. 873, §§6, 7 (AMD). PL 1991, c. 873, §§8, 9 (AFF). PL 1993, c. 395, §6 (AMD). PL 1995, c. 281, §§8, 9 (AMD). PL 1995, c. 395, §K1 (AMD). PL 1995, c. 639, §5 (AMD). PL 1995, c. 657, §7 (AMD). PL 1995, c. 657, §10 (AFF). PL 1997, c. 526, §14 (AMD). PL 1997, c. 668, §§14-16 (AMD). PL 1999, c. 414, §10 (AMD). PL 1999, c. 521, §§A2, 3 (AMD). PL 1999, c. 708, §§10-13 (AMD). PL 2001, c. 396, §§8-10 (AMD). PL 2005, c. 332, §§4, 5 (AMD). PL 2005, c. 332, §30 (AFF). PL 2007, c. 437, §§3-5 (AMD). PL 2007, c. 437, §22 (AFF). PL 2007, c. 438, §9 (AMD). PL 2007, c. 627, §§6-8 (AMD). PL 2007, c. 693, §6 (AMD). PL 2011, c. 380, Pt. K, §1 (AMD). PL 2011, c. 380, Pt. K, §2 (AFF). PL 2011, c. 380, Pt. L, §1 (AMD). PL 2011, c. 644, §§2-4 (AMD). PL 2011, c. 644, §33 (AFF). PL 2011, c. 655, Pt. QQ, §§2, 3 (AMD). PL 2011, c. 655, Pt. QQ, §8 (AFF). PL 2013, c. 331, Pt. C, §7 (AMD). PL 2013, c. 424, Pt. A, §22 (AMD).

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