

## Seattle Rule 5-007

Penalties.

<b>Penalty type</b>	<b>Rate</b>	<b>Related subsections listed below</b>
Late payment of a return - added when payment is not received by the due date and increases if the tax due remains unpaid.	9%, 19%, 29%	(1)(a)
Unregistered taxpayer - added against unpaid tax when the Director discovers a taxpayer who has taxable activity but is not registered.	5%	(1)(b)
Substantially Underpaid Deficiency Assessment - added when: (i) a notice of underpayment or tax assessment is issued by the Director, (ii) the taxpayer has paid less than 80%, and (iii) the amount of underpayment is at least \$1,000. This penalty increases if the tax due remains unpaid.	5%, 15%, 25%	(1)(c)
Issuance of a Notice of Violation or Criminal Complaint - added when a notice of 10% violation or criminal complaint is issued to collect unpaid tax.	10%	(1)(d)
Disregard of specific written instructions - added when the Director has provided specific, written reporting instructions and tax is underpaid because the instructions are not followed.	10%	(1)(e)
Evasion - added when tax is underpaid and there is an intentional effort to hide that fact.	50%	(1)(f)

## Nonassessable and assessable penalties.

Nonassessable penalties are penalties that the law imposes automatically when the facts giving rise to them occur. There is no right to contest the imposition of a nonassessable penalty. By contrast, assessable penalties must be assessed by the Director within the statute of limitations for assessments and taxpayers have the right to contest the assessment in the same manner as any other assessment, such as taxes. Penalties in 1(a) through (d) are nonassessable penalties.

Penalties in 1(e) and (f) are assessable penalties.

(a) Late payment of a return. SMC 5.55.110 A imposes a 9% penalty if the tax due on a taxpayers return is not paid by the due date. A 19% penalty is imposed if the tax due is not paid on or before the last day of the month following the due date, and a 29% penalty is imposed if the tax due is still not paid on or before the last day of the second month following the due date. The minimum penalty for late payment is \$5.

Various sets of circumstances can affect how the late payment of a return penalty is applied. See (a)(i) and (ii) of this subsection for some of the most common circumstances.

(i) Will I avoid the penalty if I file my return without the payment? The Director may refuse to accept any return which is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return. Failure to file the return can result in the issuance of a notice of underpayment (NOU) or an assessment for the actual, or an estimated, amount of unpaid tax. Any NOU or assessment issued will include a late payment penalty starting at five percent, which will increase the longer tax remains unpaid. If the tax return is accepted without payment and payment is not made by the due date, the late payment of return penalty will apply.

(ii) I didnt register and receive a business license tax certificate with the Director when I started it, and now I think I was supposed to be paying taxes! What should I do? You should fill out and send in a business license tax certificate application to

get your business license tax certificate. It is important for you to apply for and receive business license tax certificate before the department identifies you as an unregistered taxpayer without a business license tax certificate and contacts you about your business activities. Except as noted below, if a person engages in taxable activities without a business license tax certificate, but then applies for and receives a business license tax certificate prior to being contacted by the department, the business license tax certificate registration is considered voluntary. When a person voluntarily applies for and receives a business license tax certificate, the late payment of return penalty does not apply to those specific tax-reporting periods representing the time during which the person did not have a business license tax certificate.

(A) However, even if the person has voluntarily applied for and received a business license tax certificate as explained above, the late payment of return penalty will apply if the person:

(1) Engaged in evasion or misrepresentation with respect to reporting tax liabilities or other tax requirements; or

(2) Engaged in taxable business activities during a period of time in which the persons previously open tax reporting account had been closed.

(B) Even though circumstances, such as those listed in (5)(a)(iii)(A) above, may warrant retention of the late payment of return penalty, a person who has voluntarily applied for and received a business license tax certificate will not be subject to the unregistered taxpayer penalty (see subsection (b) below).

(b)Engaging in business without a business license tax certificate. SMC 5.55.110 D imposes a five percent penalty on the tax due for any period of time where a person engages in a taxable activity and does not voluntarily apply for and receive a business license tax certificate prior to being contacted by the Director. "Voluntarily apply for and receive a business license tax certificate" means to properly complete and submit a business license tax certificate application before any contact from the City of Seattle with respect to licensing or paying taxes.

(c) Substantially underpaid deficiency assessment. SMC 5.55.110(B) adds a five percent deficiency penalty to an assessment if the Director determines that any tax has been "substantially underpaid," as defined below.

As used in this section, "substantially underpaid" means that the taxpayer has paid less than eighty percent of the amount of tax determined by the Director to be due for all taxes contained in SMC chapters 5.35, 5.37, 5.40, 5.45, 5.48, and 5.52,

included in, and for the entire period of time covered by, the Directors examination, and the amount of underpayment is at least one thousand dollars.

If payment of the tax amount due and the five percent deficiency penalty due is not received by the due date specified in the notice, or any extension thereof, the deficiency penalty shall be increased to fifteen percent of the amount of the tax owing; and if payment of the tax amount due and the fifteen percent deficiency penalty due is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, the penalty shall be increased to twenty-five percent of the amount of the tax due. No penalty so added shall be less than five dollars.

(d) Issuance of a notice of violation or criminal complaint. If the Director issues a notice of violation or criminal complaint pursuant to SMC 5.55.110(C) for the collection of any fee, tax, increase, or penalty, an additional penalty will immediately be added in the amount of ten percent of the amount of the tax due, but not less than ten dollars.

(e) Disregard of specific written instructions. If the Director finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting of tax liabilities, an additional penalty of ten percent of the additional tax found due will be imposed because of the failure to follow the instructions pursuant to SMC 5.55.110(E).

(i) A taxpayer is considered to have received specific written instructions when the Director has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in the imposition of this penalty. The specific written instructions may be given as a part of a NOU, tax assessment, audit, determination, or closing agreement. The penalty applies when a taxpayer does not follow the specific written instructions, resulting in underpayment of the tax due. The penalty may be applied only against the taxpayer given the specific written instructions. However, the taxpayer will not be considered to have disregarded the instructions if the taxpayer has appealed the subject matter of the instructions and the Director has not issued its final instructions or decision.

(ii) The penalty will not be applied if the taxpayer has made a good faith effort to comply with specific written instructions.

(f) Evasion. If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax due, a penalty of fifty percent of the additional tax determined by the Director to be due will be added. The evasion penalty is imposed

when a taxpayer knows a tax liability is due but attempts to escape detection or payment of the tax liability through deceit, fraud, or other intentional wrongdoing. An intent to evade does not exist where a deficiency is the result of an honest mistake, miscommunication, or the lack of knowledge regarding proper accounting methods. The Director has the burden of showing the existence of an intent to evade a tax liability through clear, cogent and convincing evidence. The evasion penalty only applies to the specific taxes that a taxpayer intended to evade. To the extent that the evasion involved only specific taxes, the evasion penalty will be added only to those taxes. The evasion penalty will not be applied to those taxes which were inadvertently underpaid.

(2) Statutory restrictions on imposing penalties.

Depending on the circumstances, the law may impose more than one type of penalty on the same tax liability. However, those penalties are subject to the following restrictions:

(a) The penalties imposed for the late payment of a return, unregistered taxpayer without a business license tax certificate, substantial underpayment assessment, and issuance of a notice of violation or criminal complaint (see subsection (1)(a) through (d) of this rule) may be applied against the same tax concurrently, each unaffected by the others, up to their combined maximum rates. Application of one or any combination of these penalties does not prohibit or restrict full application of other penalties authorized by law, even when they are applied against the same tax.

(b) The Director may impose either the evasion penalty (subsection (1)(f) of this rule) or the penalty for disregarding specific written instructions (subsection (1)(e) of this rule), but may not impose both penalties on the same tax.

(3) Waiver or cancellation of penalties.

SMC 5.55.120 authorizes the Director to waive or cancel penalties under limited circumstances.

(a) Circumstances beyond the control of the taxpayer. The Director will waive or cancel any penalty imposed under SMC 5.55.110 if the failure to pay the tax by the due date was the result of circumstances beyond the control of the taxpayer.

A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The taxpayer bears the burden of establishing that the circumstances were beyond its control and directly caused the late payment. The request should be made in the form of a letter.

The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to timely file and pay. Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following.

(i) Erroneous written information given to the taxpayer by a department employee caused the delinquency. A penalty will not be waived when it is claimed that erroneous oral information was given by a department employee.

The reason for not cancelling the penalty in cases of oral information is because of the uncertainty of the facts presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

(ii) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to obtain an extension or to otherwise arrange timely filing and payment is a circumstance eligible for penalty waiver.

(iii) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(iv) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or other persons contracted with the taxpayer, which the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place.

(b) Waiver of the late payment of return penalty. The late payment of return penalty (see subsection (1)(a) above) associated with the first thirty days after the due date may be waived either as a result of circumstances beyond the control of the taxpayer or after a twenty-four month review of the taxpayer's reporting history, as described below. Late payment penalties due when the payment is more than 30 days late after the due date will not be waived under the twenty-four month review.

(i) If the late payment of return penalty is assessed on a return but is not the result of circumstances beyond the control of the taxpayer, the penalty will still be waived

or canceled if the taxpayer has timely filed and paid all tax returns and business license tax certificate renewals (regardless of type of tax or license) due for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested.

A taxpayer who applies for and receives a business license tax certificate to engage in business with the department, and engages in business activities for a period less than twenty-four months after licensing, is eligible for the waiver if the taxpayer had no delinquent tax returns for any periods prior to the period covered by the return for which the waiver is being requested. Therefore, the taxpayers very first return due can qualify for a waiver under the twenty-four month review provision.

(ii) A return will be considered timely for purpose of the waiver if there is no tax liability for the period for which the return is filed.

(iii) A twenty-four month review is only valid when considering waiver of the late payment of return penalty described in subsection (1)(a) above, and for those payments made within the thirty day period after the due date. The twenty-four month review process cannot be used as justification for a waiver of interest, assessment penalty, or any penalty other than the late payment of return penalty described above.

#### DIRECTOR'S CERTIFICATION

I, Glen M. Lee, Finance Director of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance and Administrative Services.

DATED this \_\_\_\_ day of July 2016.

CITY OF SEATTLE,

a Washington municipality

By: \_\_\_\_\_

Glen M. Lee, Finance Director

Department of Finance and Administrative Services

Effective date: July 14, 2016

