



Department of Treasury and Finance Office of State Revenue

COMMISSIONER'S PRACTICE TAA 3.1

REMISSION OF PENALTY TAX FOR FAILURE TO LODGE RETURNS AS REQUIRED

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
TAA 3.0	1 July 2003	1 July 2003	22 December 2003
TAA 3.1	23 December 2003	23 December 2003	30 June 2008

This Commissioner's practice outlines how penalty tax incurred as a result of the late lodgement of a return will be notified and remitted.

Background

Returns are required to be lodged in accordance with the following sections of the taxation Acts:

TAXATION ACT	LODGEMENT REQUIREMENT	LODGEMENT TIME PERIOD
Pay-roll Tax Assessment Act 2002 ("PTAA")	Sections 26, 27, 28 and 29	Monthly - 7 days after end of month Annual - 21 days after end of assessment year
Debits Tax Assessment Act 2002 ("DTAA")	Section 9	14 days after end of month
Stamp Act 1921 ("Stamp Act")	Section 112K(1)(a) and (2)(a)	Monthly - 15 days after end of month Annual - 31 August following end of assessment year
Taxation Administration Act 2003 ("TAA")	Section 52	Monthly - 15 days after end of return period

Section 26(1)(b) of the TAA creates a liability to pay penalty tax where a taxpayer does not lodge an instrument as required by section 17B of the Stamp Act. "Instrument" is defined in the TAA Glossary to include a return. This Commissioner's practice adopts the TAA definition.

Section 26(2) of the TAA authorises the Commissioner to assess an amount of penalty tax where reasonable grounds exist for suspecting that a taxpayer is liable to penalty tax.

Section 26(3) of the TAA provides that the amount of penalty tax payable is equal to 100% of the primary tax liability.

Section 29 of the TAA provides the Commissioner with the power to remit penalty tax wholly or in part.

Commissioner's Practice

Circumstances where no remission is to occur

1. Where an assessment of tax is made in circumstances that involved an attempt to evade tax or mislead the Commissioner, an investigator will report accordingly to the Assistant Commissioner (Compliance). If the Assistant Commissioner (Compliance) is satisfied that such action has been attempted, no remission of the penalty tax will occur.

Remission of penalty tax

2. Penalty tax will be remitted where an assessment is made as a result of late or non-lodgement of returns.

MONTHLY RETURNS	
Transgression	Penalty tax remitted to:
First occurrence in 12 months	5% of the tax payable
Second occurrence in 12 months	10% of the tax payable
Third or greater occurrence in 12 months	20% of the tax payable

ANNUAL RETURNS	
Each occurrence	10% of the tax payable

3. A single penalty is payable once in respect of each transgression under this Commissioner's practice and Commissioner's Practice TAA 5.1 (eg.

where penalty tax has been assessed as a result of a failure to lodge returns, penalty tax will not be assessed as a result of late payment).

4. Each "occurrence" of a transgression is covered by this Commissioner's practice and Commissioner's Practice TAA 5.1. An "occurrence" will be determined by reviewing the previous 12 month period and ascertaining the number of transgressions that have occurred. The 12 month period is a "rolling" period which extends back and is viewed from the most recent occurrence.
5. Where exceptional or serious circumstances are considered to warrant penalty tax remissions to amounts greater than the percentage specified in paragraph 2, an investigator or other officer may report the circumstances and make a recommendation for determination to the Assistant Commissioner (Compliance) or the Assistant Commissioner (Revenue Services), who may jointly approve an alternative remission.

Further remission of penalty tax

6. As a general rule, the remission of penalty tax will not be allowed on the basis of a liable party's claim to have been ignorant of a liability to taxation, as this factor is already taken into account in the remission under paragraph 2.
7. Where a return was inadvertently lodged with another authority (eg. Australian Taxation Office, Department of Land Information or another State or Territory revenue office), the penalty tax will be further remitted to the amount (if any) which would have applied had it been received at the Office of State Revenue on the date on which it was received by the other authority.
8. The further remission of penalty tax below the amounts specified in paragraph 2 will be considered only in exceptional circumstances, which may include, but are not limited to:
 - 8.1 where the late or non-lodgement of a return occurred as a result of advice issued by the Office of State Revenue;
 - 8.2 where the late or non-lodgement of a return was occasioned by the death or serious illness of the liable party or responsible party;
 - 8.3 where an investigator or other officer reports that there are other exceptional reasons which may warrant a further remission of the penalty tax and recommends to the Manager Self Assessments that the penalty tax be remitted in part or in full.
9. Where other circumstances are given in support of requests for the further remission of penalty tax that do not fall within paragraph 8, the request must be referred to the Manager Self Assessments with a recommendation for determination.
10. All determinations of requests for further remission of penalty tax should be supported by a file note giving reasons for the allowance or refusal.

11. The remission of penalty tax to nil may not remove the occurrence of the transgression for the purposes of determining whether a transgression has occurred in the previous twelve month period.
12. The penalty tax payable will be included in the taxpayer's assessment advice and must be paid on or before the due date for payment of the return in the month following such notification.
13. If full payment of the tax and penalty tax is not received, or an instalment arrangement or extension of time has not been granted under section 47 of the TAA within 7 days after the specified due date in the assessment advice, legal action to recover the outstanding amounts will be commenced.

Date of Effect

This Commissioner's practice takes effect from 23 December 2003.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

23 December 2003