

Penalties and Interest

Carbon Tax Act, Motor Fuel Tax Act, Provincial Sales Tax Act and Tobacco Tax Act

Latest Revision: The revision bar (|) identifies changes to the previous version of this bulletin dated October 2017. For a summary of the changes, see Latest Revision at the end of this document.

This bulletin explains how penalties and interest apply to assessments that are issued for missing tax returns, late payments or underpayments, and for not charging, collecting and remitting tax as required.

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Overview

The Ministry of Finance administers the carbon tax, motor fuel tax, tobacco tax and provincial sales tax (PST), including the municipal regional district tax. We use a number of tax compliance tools to ensure all security and taxes due to the province are paid and remitted in full and on time.

We may assess you for tax or security if:

- you do not file a tax return as required
- you do not remit tax as required

- we determine you have not paid security or tax as required
- you receive a refund of tax or security you are not entitled to

If we determine that you have not charged or collected tax as required, we may impose a penalty that is equal to the tax you did not charge or collect (a penalty equivalent).

In addition to assessing you or imposing a penalty equivalent, we may assess interest, impose additional penalties and, if applicable, disallow any commission claimed.

We will issue you a notice of assessment identifying the security, tax, penalty (including penalty equivalent) and interest owing.

If you continue to not file tax returns, make payments, remit tax or otherwise not comply with the relevant legislation, we may suspend or cancel your authorization or appointment.

Definitions

Audit

A formal examination of an individual's or business' financial records (may include tax returns) to ensure:

- taxes have been charged, collected, paid or remitted as required,
- security has been paid as required, and
- tax or security claimed or received as a refund was done correctly.

We conduct some audits from our desks (desk audits), while others are conducted at business locations (field audits).

Notice of Assessment

A written notice from the ministry of any amount of security, tax, penalty and interest owed to the province.

Security

Security is payable by sellers of fuel and tobacco and is an amount equal to the amount of tax that would have been payable if the fuel or tobacco was sold to an end-purchaser.

Tax Assessment

For the purpose of this bulletin, a tax assessment means any of the following:

- an assessment for security not paid or tax not paid or remitted
- an assessment for an amount of tax or security refunded in situations where no refund was payable

- the application of a penalty equivalent to tax not charged (PST)
- the application of a penalty equivalent to tax not collected (motor fuel tax, carbon tax and tobacco tax)

Tax assessments may result from a missing return, a review of a return or an audit.

Interest Charges

Interest generally applies on all tax assessments, late payments or underpayments of tax or security, and late or under remittances of tax. Interest is calculated and compounded monthly on the amount that was late or is due.

Additional interest does not apply on an amount included in the *Notice of Assessment* (tax assessment, interest and penalty) if you pay the amount in full within 30 days of the issue date on the *Notice of Assessment*.

Fuel Sellers

If you are a fuel seller and you do not pay security on fuel you sell in BC, and we later determine that the purchaser would have been entitled to a refund of the security or tax, you will not be assessed for the amount of security you did not pay. However, we may still apply interest on the security amount for 60 days from the date you should have paid the security.

Example

An audit discovers that you did not pay the security amount due (\$1,000) for one of your sales and you did not receive security or collect tax on the sale from your customer. Upon further investigation, the audit determines that the purchaser would have been entitled to a refund of security or tax had it been paid. In this case, you would not be assessed for the \$1,000 you did not pay, but you could be assessed interest on that \$1,000 for 60 days from the date of the sale.

We may issue a warning the first time we identify this error and will generally assess 60 days interest only on second and subsequent errors under each tax type.

Penalty Charges

The references to penalty in this section do not apply to tax assessments of penalty equivalent amounts explained above.

No Penalty - Unintentional Errors

Unless we have evidence to indicate that an error was wilful, we generally will not apply a penalty on tax assessments if you have not previously been assessed for the same error, or there is no indication you knew of the liability.

The following are examples of tax assessments where we would generally not apply a penalty.

- You remitted tax or paid security late for the first time within 12 months (24 months for bi-annual and annual tax return filers).
- We issue you a tax assessment as a result of a first audit or inspection of your business because the auditor found an invoice where you had correctly charged tax, but you unintentionally posted the tax collected to a revenue account. We found no indication you intended to avoid remitting the tax, and you have never been assessed for the same error (e.g. failing to remit tax).
- We issue you a tax assessment for security or tax that was not, but should have been paid on a purchase and there is no evidence you wilfully avoided payment (e.g. you have had no previous warning, investigation or assessment for tax due on your purchases).
- We issue you a tax assessment for tax you did not pay on goods (includes fuel) imported for your own use and there is no indication you wilfully avoided the tax (e.g. you have had no previous warning, investigation or assessment for tax due on goods imported for your own use).
- We issue you a tax assessment for tax you did not charge but should have, and there is no indication that you willfully failed to charge the tax (e.g. you have had no previous warning, investigation or assessment for the penalty equivalent to tax).
- We issue you a tax assessment for a refund amount you deducted from your return in error and there is no indication you willfully claimed a refund you were not entitled to (e.g. you have had no previous warning, investigation or assessment for a refund amount claimed in error).

10% Penalty - Knowledge of Liability or Repeat Errors

We will generally apply a 10% penalty on first tax assessments if the facts indicate that you were aware of the obligation but did not charge, collect, pay or remit the correct amount as required. We will also generally apply a 10% penalty to all tax assessments where you were previously advised of an error (e.g. failing to charge, collect, pay or remit as required) and you are assessed again for the same error. In addition, if you were previously directly advised of how tax applies to a particular situation and make an error in applying tax in that same situation, we will apply a 10% penalty. The

exception to this is where we have evidence that the error was wilful (see 25% Penalty and 100% Penalty below).

The following are examples of situations where we would generally apply a 10% penalty on a first assessment if the facts indicate you were aware of your obligation but you did not comply.

- You did not file a tax return and we assess you for an estimated amount of tax owing.
- You posted tax collected to a revenue account and did not remit it.
- You reported incorrect volumes of fuel used on your tax returns and underpaid the required tax.
- You did not remit tax collected or payable that had accumulated in your records (e.g. the general ledger account, sales journal or other form of accounting record).
- You received specific advice from the ministry (e.g. a tax ruling) on your requirement to charge or pay tax or security and you did not take action to ensure you were charging or paying correctly.

The following are examples of repeat errors where we would generally apply a 10% penalty.

- You remitted tax or paid tax or security late for the second or subsequent time within 12 months (24 months for bi-annual and annual tax return filers).
- You did not fix tax remittance or payment procedure errors after a first audit assessment was issued for the same procedural errors.
- You did not pay tax or security correctly on your purchases or imports after receiving a previous warning letter (see Warning Letters below) regarding the requirement to pay tax or security on purchases or imports.
- You did not charge or collect tax on sales where you did not obtain the required documentation (e.g. exemption certificate) at or before the time of the sale after receiving a previous warning letter (see Warning Letters below) regarding the requirement to charge tax in these situations.
- You deducted a refund amount from your return in error after receiving a previous warning letter (see Warning Letters below) advising you that you were not entitled to deduct a refund amount in those situations.
- You made an error after being directly advised of how tax applies in that situation.

25% Penalty - Wilful Evasion or Fraud

We will generally apply a 25% penalty on tax assessments if there is evidence that you wilfully evaded the payment of tax or security by making a false or deceptive

statement, or through wilful default or fraud. This applies to situations where you made a conscious or wilful action to avoid the payment of the tax or security.

The following are examples of situations where we would generally apply a 25% penalty.

- You claimed and received an exemption (e.g. by signing an exemption certificate) but you knew the exemption did not apply.
- You paid a lower amount of tax as a result of signing a declaration or making a claim about the use of fuel (e.g. coloured fuel, marine diesel) and used the fuel for a higher taxed purpose.
- You wilfully misused your PST number to improperly acquire goods for your own use exempt from tax.
- You wilfully did not pay tax on out-of-province purchases of goods you used in BC.
- You wilfully did not report and pay the tax that is overdue on purchases that have been set up in your tax liability account.
- You purchased a vehicle and deliberately attempted to avoid tax (including paying a lower amount of tax) by making a false or misleading statement regarding the purchase price.
- You wilfully did not pay security on fuel you imported and sold in BC.
- You wilfully did not pay security on tobacco that you have brought or sent into BC, or had delivered to you in BC.
- You deducted a refund amount from your return but you knew you were not entitled to deduct that refund amount.
- You received a refund amount by making false statements or submitting false documentation in your refund application.

100% Penalty - Tax Collected but Wilfully Not Remitted or Security Wilfully Not Paid to the Province

Taxes collected are deemed funds held in trust for the province. We will generally apply a 100% penalty if you have wilfully collected tax and not remitted it. We will also generally apply a 100% penalty if you have collected tax or received security and wilfully not paid security to the province on fuel or tobacco.

The following are examples of situations where we would generally apply a 100% penalty.

- You have not registered as required, but you have collected tax and wilfully not reported and remitted the tax collected.

- You are registered to collect PST and have collected tax, but wilfully not reported and remitted the tax collected (e.g. you consciously understated the tax collected).
- You are registered as a retail dealer of natural gas and have collected tax, but wilfully not reported and remitted the tax collected (e.g. you consciously understated the tax collected).
- You are registered as a collector for motor fuel tax or carbon tax and you have collected tax or received security on fuel and willfully not paid security to the province on the sales of that fuel (e.g. you consciously understated the volume of fuel sold for the first time in BC after importation on which you collected tax or received security).
- You are a wholesale dealer of tobacco and you have received security on tobacco and willfully not paid security to the province on the tobacco you have brought or sent into BC, or had delivered to you in BC (e.g. you consciously understated the volume of tobacco you brought, sent or had delivered to you on which you received security).

Other Penalties

We may also apply penalties in the following situations.

- You sold fuel within BC for the first time after it was manufactured in or imported into the province, prior to being appointed a collector.
- You sold tobacco products within BC without a retail dealer or wholesale dealer permit.
- You purchased or used coloured fuel for an unauthorized purpose.
- You wilfully failed to register for PST.
- You did not remit PST electronically when required (e.g. [mandatory electronic filers](#)).

Dishonoured Payments

You will be charged a \$30.00 administrative fee on all dishonoured payments. This fee is in addition to any fees your financial institution may charge.

Warning Letters

There are situations where you may receive a warning letter for filing a tax return late, making a late payment or remittance, not remitting tax in the method required or for an error discovered in an audit.

Tax Returns, and Associated Payments and Remittances

If you have a good history (12 months for monthly and quarterly filers and 24 months for bi-annual and annual filers) of filing your tax returns and paying security or tax, or remitting tax in full, on-time and in the remittance method required (e.g. **mandatory electronic filers**), you may receive a warning letter the first time you:

- file your return late
- make a late payment or remittance
- under pay or remit
- take a deduction on your return for a refund you are not entitled to
- use an incorrect remittance method

If you receive a warning letter, you will generally not be charged a penalty for the error described in the letter (e.g. late payment or remittance or incorrect payment method) and you may be able to retain your commission, if applicable, on that return. Interest charges will generally still apply.

In the future, if you do not pay or remit amounts owing in full, on-time and in the method required, you will generally be subject to 10% penalty, interest and, if applicable, loss of commission.

Audits

For audits, we will generally issue a warning letter when there is no penalty imposed on a tax assessment (see Penalty Charges above). The warning letter advises you of the correct application of tax or security and warns of the penalties for repeat errors.

In addition, we may issue a warning letter to fuel sellers who do not pay security on fuel where it is determined that the purchaser would have been entitled to a refund of security or tax on that fuel if it had been paid. The warning letter advises you of the correct application of security and warns of the potential for a 60 day interest charge on repeat errors (see Interest Charges above).

A warning letter previously addressed to a senior officer of your corporation who, by the time of the second assessment, is no longer with your corporation, is still valid. In this situation, the corporation would be liable for a 10% penalty imposed if the same type of error is found during a later audit.

A warning letter issued to one division of a legal entity applies to the entire legal entity. Therefore, if a later audit of another division of the same legal entity results in an assessment for the same type of error as in the first audit, the 10% penalty will generally apply.

A warning letter only applies to the legal entity it has been issued to. If a business becomes a new legal entity, any warning letter issued as a result of a previous audit will not apply to the new legal entity, even if the new legal entity retains the original management staff. A new legal entity is formed when, for example, a business incorporates or its existing assets and operations are purchased by another corporation or individual.

If there is an amalgamation between two corporations, a warning letter issued to either of the original corporations applies to the amalgamated corporation.

Voluntary Disclosure

If you identify an error, you are required to disclose and pay any amounts arising from that error as soon as possible. This is referred to as a voluntary disclosure.

If you make a voluntary disclosure of a tax or security liability, you will not be subject to penalty (other than a penalty equivalent, as described in the Overview above) or prosecution if all of the following conditions are met:

- it is the first time you have made a voluntary disclosure of the tax or security due (e.g. the tax or security payable, the amount of tax collected but not remitted or the amount of tax not collected or charged as required) under the relevant tax act,
- you pay the overdue amount, plus interest, or make satisfactory arrangements for payment,
- we have not already identified the liability, issued you a previous warning relating to the type of error, or contacted you regarding an upcoming audit or inspection or in relation to the respective tax return filing requirements prior to making this disclosure, and
- you do not have any outstanding debt on your account.

If any of these conditions are not met, we will generally apply penalties in accordance with the information outlined in this bulletin.

How to Disclose an Error

If you have a motor fuel tax or carbon tax account with an established filing frequency (i.e. monthly, quarterly, or annual) and you identify an error in a tax return from a previous reporting period, you must file an amended return for that reporting period correcting the error, and pay or remit any additional amounts.

For all other disclosures, please contact us to find out how to disclose the error.

Associated Corporations

A disclosure made by a corporation after we have been in contact with an associated corporation for audit, inspection or in relation to the respective tax return filing requirements, may not qualify as a voluntary disclosure. We will generally accept the disclosure without penalty only where the facts indicate that enforcement action with respect to the associated corporation did not lead to the disclosure. An example of clear evidence that the disclosure would have been made, even if the associated corporation had not been contacted, could be an external audit by a public accounting firm identifying a liability that was not related to a transaction with the corporation contacted by us.

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The information in this bulletin is for your convenience and guidance and is not a replacement for the legislation.

Latest Revision

April 2018

- Clarified that a 10% penalty may be applied to a tax application error that a taxpayer was previously directly advised of and made a subsequent error in applying tax in that same situation
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