

October 6, 2008

ABATEMENT OF INTEREST ASSESSED ON DELINQUENT TAXES

Issue:

What guidelines will the Tax Commissioner use when considering whether to grant interest abatements?

Conclusion:

Interest on delinquent taxes will only be abated in very limited circumstances; generally when the interest is due to an error by the Department of Revenue, or in cases of extreme hardship.

Analysis:

Prior to 2008, abatement of interest on delinquent taxes was only authorized for the income tax or motor fuels tax programs. In 2008, LB 914 was enacted by the Legislature allowing for the abatement of interest on any tax programs administered under the Nebraska Revenue Act of 1967. These changes became effective on July 18, 2008.

Abatement of interest is *at the Tax Commissioner's discretion* for interest assessed on delinquent sales and use taxes, and other taxes and fees administered in the same manner as the sales tax (e.g., local option sales and use tax, lodging tax, other tobacco products tax, litter fee, tire fee), as well as the income tax programs. Abatement of interest for motor fuels programs was not affected by LB 914.

A request for abatement of interest will not be considered until the tax has been paid.

The following list includes statutory criteria that previously granted the Tax Commissioner authority to abate interest for the income tax programs. These criteria will continue to be considered by the Tax Commissioner for purposes of granting abatement of interest. In each case, the amount of interest requested to be abated shall be documented with appropriate backup information. Interest abatement will be considered when:

- Interest was assessed due to an error or unreasonable delay by the Department;
- Interest was assessed due to erroneous written advice by the Department when the advice was a direct response to a request from the taxpayer and the taxpayer reasonably relied upon the advice;
- Interest was attributable to an amount that was previously refunded for the period interest on such amount was not allowed by law;

- Interest was assessed because of an amount erroneously refunded to the taxpayer (interest would only be abated up to 90 days); or
- Interest on a related federal amount was abated by the Internal Revenue Service.

In addition to the items listed above, the following criteria may also be considered by the Tax Commissioner when deciding whether to grant a request for an abatement of interest:

- Situations where a taxpayer voluntarily complies with the tax laws by filing delinquent tax return(s) for prior period(s);
- Family illness or death where a taxpayer was unable to file returns timely. This could include the discovery after death of unfiled returns for a deceased taxpayer; or
- Destruction of taxpayer records due to natural disaster.

Neb. Rev. Stat. §§ 77-2711 and 77-2792 contain the provisions allowing for the abatement of interest by the Tax Commissioner for all tax programs other than motor fuels. Form 21A, Application for Abatement of Interest, will be modified to incorporate the above criteria. Meanwhile, taxpayers seeking to request an abatement of interest based on any of the above criteria should direct their request, in writing, to the Department.

APPROVED:



Douglas A. Ewald
Tax Commissioner

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