

59-1-302 Penalty for nonpayment of certain taxes -- Jeopardy proceedings.

- (1) This section applies to the following:
 - (a) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
 - (b) a tax under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
 - (c) a tax under Chapter 10, Part 4, Withholding of Tax;
 - (d) a tax under Chapter 12, Sales and Use Tax Act;
 - (e) a tax under Chapter 13, Part 2, Motor Fuel;
 - (f) a tax under Chapter 13, Part 3, Special Fuel; and
 - (g) a tax under Chapter 13, Part 4, Aviation Fuel.
- (2)
 - (a) A person required to collect, truthfully account for, and pay over a tax listed in Subsection (1) who willfully fails to collect the tax, fails to truthfully account for and pay over the tax, or attempts in any manner to evade or defeat the tax or the payment of the tax, is liable for a penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over.
 - (b) The penalty described in Subsection (2)(a) is in addition to other penalties provided by law.
- (3)
 - (a) If the commission determines in accordance with Subsection (2) that a person is liable for the penalty, the commission shall mail a notice of the proposed penalty to the person.
 - (b) The notice of proposed penalty shall:
 - (i) set forth the basis of the assessment; and
 - (ii) be mailed:
 - (A) in accordance with Section 59-1-1404; and
 - (B) to the person's last-known address.
- (4) Upon receipt of the notice of proposed penalty, the person against whom the penalty is proposed may:
 - (a) pay the amount of the proposed penalty at the place and time stated in the notice; or
 - (b) proceed in accordance with the review procedures of Subsection (5).
- (5) A person against whom a penalty is proposed in accordance with Subsections (2) and (3) may contest the proposed penalty by filing a petition for an adjudicative proceeding with the commission.
- (6) If the commission determines that the collection of the penalty is in jeopardy, this section does not prevent the immediate collection of the penalty in accordance with the procedures and requirements for an emergency proceeding under Title 63G, Chapter 4, Administrative Procedures Act.
- (7)
 - (a) In a hearing before the commission and in a judicial review of the hearing, the commission and the court shall consider any inference and evidence that a person has willfully failed to collect, truthfully account for, or pay over a tax listed in Subsection (1).
 - (b) It is prima facie evidence that a person has willfully failed to collect, truthfully account for, or pay over a tax listed in Subsection (1) if the commission or a court finds that the person charged with the responsibility of collecting, accounting for, or paying over the taxes:
 - (i) made a voluntary, conscious, and intentional decision to prefer other creditors over the state government or utilize the tax money for personal purposes;
 - (ii) recklessly disregarded obvious or known risks that resulted in the failure to collect, truthfully account for, or pay over the tax; or
 - (iii) failed to investigate or to correct mismanagement, having notice that the tax was not or is not being collected, accounted for, or paid over as provided by law.

- (c) The commission or court is not required to find a bad motive or specific intent to defraud the government or deprive the government of revenue to establish willfulness under this section.
- (d) If the commission determines that a person is liable for the penalty under Subsection (2), the commission shall assess the penalty and give notice and demand for payment in accordance with Section 59-1-1411.

Amended by Chapter 212, 2009 General Session