



TaxNewsFlash

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Massachusetts: Reasonable cause, penalty for failure to remit sufficient advance sales tax payment

The Massachusetts Department of Revenue released guidance containing updated information about a reasonable cause waiver from the assessment of a penalty for a failure to remit a sufficient advance sales tax payment.

Background

An advance tax payment regime for sales and use tax, room occupancy tax, and other taxes is effective April 1, 2021.

Beginning April 1, 2021, taxpayers whose cumulative liability for the subject taxes in calendar year 2020 exceeded \$150,000 will make their monthly tax remittances in two installments. By the 25th day of April (and each month thereafter), the vendor must remit the tax collected on gross receipts from taxable sales during the first 21 days of the month. Tax collections for the remainder of the month will be due by the 30th day of the month following the filing period (i.e., May 30 in the case of the April filing period).

A vendor or operator required to make an advance payment may be subject to a penalty of 5% of any underpayment (unless the underpayment is due to reasonable cause) if the advance payment made by the 25th day of the month is not at least equal to:

- The “tax collected” on sales for the first 21 days of the month; or
- 70% of the total tax due for the month as reflected on the return filed by the 30th day of the following month

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Reasonable cause

[Technical Information Release 21-4](#) (March 31, 2021) outlines a third method for receiving a time-limited, presumptive reasonable cause waiver from possible assessment of a penalty for a failure to remit a sufficient advance sales tax payment.

The guidance is intended to address concerns raised by taxpayers about not having the necessary sales data by the 25th day of the month to enable compliance with the advance payment requirement. The Department of Revenue in the updated guidance stated that for advance payments due from April 2021 through and including December 2021, it will presume that reasonable cause exists for the waiver of an otherwise applicable underpayment penalty when the taxpayer makes an advance payment on or before the 25th day of the month that is equal to 80% or more of the taxpayer's total tax or excise tax due for the immediately preceding month, provided that there was such a liability in the prior month.

Taxpayers may also demonstrate reasonable cause for a penalty waiver based on other applicable facts.

KPMG observation

One point that remains unclear is whether the penalty waiver based on the "total tax or excise due for the immediately preceding month" includes use tax on purchases (although it would seem inconsistent to include use tax here and not for purposes of calculating the amount of the advance payment or the threshold of \$150,000). Taxpayers need to note that the underpayment penalty waiver in the new guidance applies only through December 2021.

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