

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

March 31, 1986

SUBJECT: Taxation And Revenue - Prepayment Of Sales
Taxes - Penalty For Late Payment.

SYLLABI: 1. The penalty for failure to prepay sales
tax is five percent per month until the tax
is paid, not however, exceeding twenty-five
percent. The penalty is upon the difference
in the amount of the prepayment that was due
and the amount actually paid.

2. The failure to make the prepayment or to
pay the same in full does not bar the
discount allowed for the full and timely
payment of the tax due on the regular sales
tax return.

TO: Mr. E. Gregorie Frampton
Executive Director

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTIONS: Section 12-35-580 under certain conditions
requires the prepayment of a portion of the
current month's sales taxes. The questions
are:

1. What are the appropriate penalties and
how are they applied?

2. Does the failure to prepay bar the
allowance of the discount?

APPLICABLE LAW: Sections 12-35-580, 12-35-570 and
12-35-1230, South Carolina Code of Laws, 1976.

DISCUSSION:

The applicable language of § 12-35-580 is that:

"When the estimated tax liability of any
person for a taxable period exceeds
... , such persons shall render to the

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Commission on or before the twentieth day of such taxable period on a form prescribed by the Commission, a true and correct statement showing the estimated tax liability for such taxable period, and at the time ... pay ... at least fifty percent of the estimated tax liability If any person fails to pay at least forty percent of the true 'estimated tax liability,' ..., or fifty percent of the tax for the same month of the preceding year on or before the twentieth day of the period covered by the return, the difference between the amount paid and the amount due to have been paid shall be increased by five percent per month or fraction of a month from the date the tax was originally due to the date of payment, such penalty not to exceed twenty-five percent of the underpayment."

The prepayment return and payment are separate and in addition to that regularly due. Credit, however, is to be given on the regular return for the amount of prepayment. The Commission has combined the two returns with space for the person to claim credit for the prepayment for the preceding month and to declare and pay the prepayment for the current month.

It should be noted that the liability for the tax arises at the time of sale, however, the General Assembly has extended the time for payment:

"There can be no doubt that the debt to the State arises upon each sale and the deferment of the time of payment until the 20th day of the next month is merely a grace period for payment." Stephens v. Hendricks, 228 S.C. 458, 90 S.E.2d 632.

That period was modified for those taxpayers who are required to pay a part of the tax in the month in which the sales occur. Such does not, however, accelerate the regular due date. The Legislature specifically provided that the amount of the prepayment was to be credited against the amount shown due on the regular return.

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QUESTION 1: The person by clear language is required to report and make the prepayment on or before the twentieth day of the month in which the sales that generate the tax occur. A failure to do so subjects the person to a five percent penalty for each month that the prepayment is unpaid to a maximum of twenty-five percent. The penalty is upon the difference in the amount of the prepayment that is paid and the amount of prepayment that was due. The penalty, however, ceases to be applied whenever the full tax liability for the month is satisfied.

There can be no prepayment of the tax after the same becomes due and payable on the regular monthly return.

"'Prepayment' is payment before maturity while 'acceleration' is change in date of maturity from future to present, and thus, once maturity date is accelerated to present, it is no longer possible to prepay debt before maturity since any payment made after acceleration of maturity date is made after maturity, not before." General Motors Acceptance Corp. v. Uresti, Tex.Civ.App. 553 S.W.2d 660, 663.

The penalty for the failure to make the prepayment, however, continues for each month the tax is unpaid to the maximum amount of twenty-five percent.

CONCLUSION:

The penalty for failure to prepay sales tax is five percent per month until paid, not exceeding, however, twenty-five percent. The penalty is upon the difference in the amount of the prepayment due and the amount paid.

QUESTION 2: Section 12-35-1230 provides in part that:

"When a return required by Article 5 or Article 7 of this chapter is filed and the taxes shown due thereon are paid in full on or before the final due date, ... the taxpayer shall be allowed a discount as follows:"

The regular monthly sales tax return is due on or before the twentieth day of the month following that in which the sales

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occur. Such a return with full payment entitles the taxpayer to the discount. Legislative intent for this result is evidenced by the language of the statute that allows a credit against the tax shown to be due on the return. If there is no credit, however, full payment satisfies the conditions of the statute.

CONCLUSION:

The failure to make the prepayment or to pay the same in full does not bar the discount allowed for the full and timely payment of the tax due on the regular sales tax return.

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