

§1225. Assessment of contributions, interest, penalties and filing fees

1. Assessment procedure. If any employer files reports for the purpose of determining the amount of contribution due, but fails to pay any part of the contribution, interest or penalties due thereon as prescribed by the commissioner, or fails to file the reports when due, or files an incorrect or insufficient report, the Director of Unemployment Compensation may assess the contribution and any interest or penalties due on the basis of the information submitted by the employer or on the basis of an estimate as to the amount due and shall give written notice of the assessment to the employer.

[PL 1993, c. 312, §3 (AMD).]

1-A. Liability of employer and certain individuals. The liability for contributions or fees and the interest or penalties due on contributions are enforceable by assessment and collection, in the manner prescribed in this section, against the employer and against any officer, director or member of that employer who, in that capacity, is responsible for the control or management of the funds or finances of that employer or is responsible for the payment of that employer's contribution.

[PL 1999, c. 464, §11 (NEW).]

1-B. Responsible individual. Each employer liable for contributions shall inform the commissioner or the commissioner's duly authorized representative, at the time an audit of that employer's account is performed, of the name and position of the individual who generally is responsible for the control or management of that employer's funds or finances and, if different, the individual who is specifically responsible for the collection and paying over of those contributions.

[PL 1999, c. 464, §11 (NEW).]

2. Jeopardy assessment. If the Director of Unemployment Compensation determines that the collection of any contribution, interest or penalty under this subchapter, as amended, will be jeopardized by delay, the director may immediately assess the contributions, interest or penalties, whether or not the time prescribed by law or any rules issued pursuant to section 1082, subsection 2 for making reports and paying the contributions has expired, and shall give written notice of the assessment to the employer. In these cases, the right to appeal to the Division of Administrative Hearings, as provided in section 1226, is conditioned upon payment of the contributions, interest or penalties so assessed, or upon giving appropriate security to the commissioner for the payment thereof.

[PL 2019, c. 585, §5 (AMD).]

3. Interest on past-due contributions. Contributions are due and payable on or before the last day of the month following the close of the calendar quarter to which contributions relate. Contributions that are unpaid on the date on which they are due and payable bear interest at the rate determined by the State Tax Assessor as established by Title 36, section 186, from and after the due date, until payment is received by the bureau. If it is shown to the satisfaction of the commissioner that the delinquency arose from reasonable questions of liability under this subchapter, the commissioner, in the commissioner's discretion, may abate part of the interest not to exceed 75% of the total interest. If it is shown to the satisfaction of the commissioner that the delinquency arose through no fault of the employer, an assessment of interest may not be made.

[PL 1995, c. 657, §4 (AMD); PL 1995, c. 657, §10 (AFF).]

4. Penalty on past-due contributions. If quarterly contributions are not paid when due, the commissioner shall assess a penalty of 1% of the amount of the unpaid contributions for each month or fraction of a month during which the failure continues, to a maximum in the aggregate of 25% of the unpaid contributions.

[PL 1995, c. 657, §4 (AMD); PL 1995, c. 657, §10 (AFF).]

5. Refunds. If, not later than 4 years after the date on which any contributions or interest thereon became due, an employer who has paid the contributions or interest thereon makes application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because that adjustment can not be made, and if the commissioner determines that the contributions or

interest or any portion thereof was erroneously collected, the commissioner shall allow the employer to make an adjustment, without interest, in connection with subsequent contribution payments by the employer, or if the adjustment can not be made, the commissioner shall refund that amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the commissioner's own initiative. Any adjustment or refund involving contributions with respect to wages upon the basis of which benefits have been paid for unemployment must be reduced by the amount of benefits paid. If the commissioner determines that contributions or interest were erroneously paid to this State on wages insured under the employment security law of some other state or of the Federal Government, refund or adjustment thereof may be made without interest, irrespective of the time limits provided in this subsection, on satisfactory proof that contributions or interest on the wages have been paid to the other state or to the Federal Government. Nothing in this chapter or any part of the chapter may be construed to authorize any refund or credit of money due and payable under the law and rule in effect at the time the money was paid.

[PL 1993, c. 312, §3 (AMD).]

6. Limitations on assessment. Limitations on assessments are governed by this subsection.

A. Notification of assessments must be mailed to the employer not later than 4 years after a report was due or filed, whichever is later. Before the expiration of the time prescribed in this subsection, the commissioner and the employer may consent in writing to an assessment after that time, and the notification of assessment must be mailed within the agreed-upon limitation. [PL 1993, c. 312, §3 (NEW).]

B. Exceptions to paragraph A are as follows.

(1) If, with willful intent to evade the liability imposed by this chapter, a report is not filed or a false report is filed, a notification of an assessment may be mailed to the employer at any time.

(2) The running of the period of limitations for assessment or collection of unemployment compensation contributions against an employer must be stayed for the period of time, plus 365 days, during which an assessment against that person is subject to administrative or judicial review or remains outstanding because that person is subject to bankruptcy proceedings under 11 United States Code. [PL 1993, c. 312, §3 (NEW).]

[PL 1993, c. 312, §3 (AMD).]

7. Filing fees. Any employer who fails to make and submit reports or pay any contributions or reimbursements, including interest and penalties, when due is liable to the commissioner for any filing fees, including recording lien fees, discharge lien fees and sheriff fees, incurred in collecting the amounts due or in obtaining the reports.

[PL 1993, c. 312, §3 (NEW).]

8. Reasonable cause. For reasonable cause, the commissioner shall waive or abate any penalty imposed by subsection 4 and section 1082, subsection 13. Reasonable cause includes, but is not limited to, the following:

A. The failure to file or pay resulted directly from erroneous information provided by the Department of Labor; [PL 1995, c. 657, §5 (NEW); PL 1995, c. 657, §10 (AFF).]

B. The failure to file or pay resulted directly from the death or serious illness of the taxpayer or a member of the taxpayer's immediate family; [PL 1995, c. 657, §5 (NEW); PL 1995, c. 657, §10 (AFF).]

C. The failure to file or pay resulted directly from a natural disaster; [PL 1995, c. 657, §5 (NEW); PL 1995, c. 657, §10 (AFF).]

D. The report was filed and paid less than one month late and all of the taxpayer's reports and payments during the preceding 3 years were timely; or [PL 1995, c. 657, §5 (NEW); PL 1995, c. 657, §10 (AFF).]

E. The amount subject to a penalty is de minimis when considered in relation to the amount otherwise properly paid and the number of employees for whom wages are being reported. [PL 1995, c. 657, §5 (NEW); PL 1995, c. 657, §10 (AFF).]

The burden of establishing reasonable cause for waiver or abatement is on the taxpayer. [PL 1995, c. 657, §5 (NEW); PL 1995, c. 657, §10 (AFF).]

SECTION HISTORY

PL 1975, c. 462, §9 (NEW). PL 1977, c. 460, §8 (AMD). PL 1979, c. 106 (AMD). PL 1979, c. 515, §18 (AMD). PL 1979, c. 579, §§33-37,44 (AMD). PL 1979, c. 651, §§34-38,45, 47 (AMD). PL 1981, c. 552 (AMD). PL 1983, c. 351, §§26-28 (AMD). PL 1983, c. 733 (AMD). PL 1985, c. 348, §12 (AMD). PL 1993, c. 312, §3 (AMD). PL 1995, c. 657, §§4,5 (AMD). PL 1995, c. 657, §10 (AFF). PL 1999, c. 464, §11 (AMD). PL 2019, c. 585, §5 (AMD).

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