

## BERKS EARNED INCOME TAX BUREAU

### Interest, Penalty, and Late Fee Waiver Policy

1. **Policy Scope and Legal Authority.** The Local Tax Enabling Act (“LTEA”), 53 P.S. § 6924.509(i)(2), authorizes the Berks Earned Income Tax Bureau (the “Bureau”) to adopt a policy under which the Bureau may waive interest, penalties, and late fees. However, the Local Taxpayers Bill of Rights Act (“LTBR”), 53 Pa.C.S.A. § 8421 *et seq.*, significantly limits the circumstances under which the Bureau may grant waivers. The purpose of this Policy is to explain to individual taxpayers, entities, and employers the circumstances under which the Bureau is able to grant waivers.

For purposes of this Policy, “Taxpayers” include individuals, entities, and employers required to pay or withhold tax owed to any of the school districts and municipalities within the jurisdiction of the Bureau.

The LTEA provides in various sections for interest, penalties, and late fees owed by Taxpayers.

As to income tax, 53 P.S. § 6924.509(i)(1) provides that if income tax is not paid when due, the Taxpayer is required to pay interest plus a penalty on the unpaid amount. Concerning interest, interest is owed at the rate established under the Pennsylvania Fiscal Code, 53 P.S. § 806. Under 53 P.S. § 806, the Pennsylvania Secretary of Revenue in January of each year announces an interest rate applicable for that calendar year. For example, the interest rate applicable for calendar year 2017 is 3% per annum. Concerning penalty, a delinquent Taxpayer owes an additional civil penalty of 1% of the unpaid amount for each month or fraction of a month during which the tax remains unpaid, subject to a maximum additional penalty of 15% of the unpaid tax amount.

As to taxes other than income tax, 53 P.S. § 6924.706 authorizes establishment of any reasonable penalties for failure to pay tax when due.

In addition, 53 P.S. § 6924.509(j)(1) provides potential criminal penalties for Taxpayers of up to \$2,500 for each offense and imprisonment for failure to pay fines and costs, and 53 P.S. § 6924.509(j)(2) provides potential criminal penalties for employers who willfully fail to collect or account for and distribute income taxes up to \$25,000 or imprisonment up to 2 years, or both.

Moreover, 53 P.S. § 6924.707(a) authorizes tax collectors to impose and collect reasonable late fees from a delinquent Taxpayer to recoup the cost of identifying, pursuing, and notifying the delinquent Taxpayer.

2. **Penalty Waiver for Employer.** The Bureau shall waive civil penalty amounts owed by an employer for failure to withhold and remit employee tax if the employer establishes to the satisfaction of the Bureau that: (a) the employer employs less than 20 employees within school districts and municipalities that impose the tax; (b) the employer did not use a payroll service in connection with payments to employees at the time when the tax was

required to be withheld; (c) the earliest date on which a delinquent tax amount was owed is no more than 1 year prior to the date when the employer remits the tax in full to the Bureau; (d) the employer first established a place of business within the school district or municipality to which the tax is owed within the foregoing time period; and (e) at the time when the employer was obligated to withhold and remit, the employer was unaware of the tax. The Bureau shall waive the penalty amount but not interest or late fees owed by such employer.

3. **Penalty, Interest, or Late Fee Waiver.** The Bureau may waive civil penalty, interest, or late fees if: (a) the Bureau concludes that such waiver is necessary in order to obtain settlement and payment from a Taxpayer concerning a disputed tax amount, or that such waiver is appropriate as a result of Taxpayer hardship in connection with an installment payment plan agreed to between the Taxpayer and the Bureau; or (b) the waiver is pursuant to a Bureau-approved amnesty program.

In accordance with 53 Pa.C.S.A. § 8428(b)(1), the Bureau shall waive the portion of any penalty, interest, or late fees attributable to erroneous advice furnished to a Taxpayer in writing by the Bureau or the school district or municipality that imposes the tax if: (a) the written advice was reasonably relied upon by the Taxpayer and was in response to a specific written request of the Taxpayer; and (b) the portion of the civil penalty, interest, or late fee did not result from a failure of the Taxpayer to provide adequate or accurate information.

4. **Amnesty Programs.** The Bureau may from time to time after approval by the Executive Committee implement for limited periods of time an amnesty program that may involve penalty, interest, or late fee waivers for qualifying Taxpayers.
5. **Late Fees.** Waiver of civil penalty does not release a Taxpayer from the obligation to pay late fees assessed by the Bureau.
6. **Seeking and Obtaining a Waiver of Interest, Penalties, or Late Fees.** Under the LTEA and the LTBR, any Taxpayer that seeks a waiver of interest, penalties, or late fees must file a Tax Appeal Petition with the Tax Appeal Board. Under the Berks Earned Income Tax Bureau Tax Appeal Board Regulations, any Taxpayer seeking such a waiver must allege facts in the Petition that (if proven) would justify the waiver under the terms and conditions of this Policy. The Tax Appeal Board Regulations are posted on the Bureau's website. If a Taxpayer files a Tax Appeal Petition seeking waiver of interest, penalties, or late fees assessed by the Bureau and fails to allege facts in the Petition that (if proven) would justify the waiver under this Policy, the Petition will be deemed "incomplete" under the Tax Appeal Board Regulations. Due to the time and expense associated with addressing incomplete Petitions, the Board will not act on an incomplete Petition absent circumstances that the Board deems extraordinary.