

BERKS COUNTY EARNED INCOME TAX COLLECTION BUREAU

Frequently Asked Questions Regarding Interest, Penalties, and Late Fees

1. If I mailed my tax return but the return was either not postmarked until after the due date or was not received on or before the due date by the Bureau, will the interest, penalty, and fee be waived by the Bureau?

No. Under the Local Taxpayers Bill of Rights Act, 53 Pa.C.S.A. § 8428, a taxpayer is only entitled to a waiver of interest, penalties, and fees under very limited circumstances. The Bureau's "**Interest, Penalty, and Late Fee Waiver Policy**" – which is available for review at www.berkseit.com – allows a taxpayer to obtain a waiver under circumstances that are a bit broader than those outlined under the Taxpayers Bill of Rights Act. However, despite the Waiver Policy being broader than the Taxpayers Bill of Rights Act, interest, penalty, and late fee waivers are nonetheless **extraordinarily rare** under the Policy. There is no legal basis under either the Taxpayers Bill of Rights Act or the Waiver Policy on which the Bureau is authorized to grant a waiver to a taxpayer who failed to ensure a return was postmarked on or before the due date or that the return was delivered on a timely basis.

2. If I have always filed my tax return on time and this year I was late or forgot to mail my return, will the Bureau waive interest, penalty, and fees?

No. The Bureau has no legal basis on which it is authorized to grant a waiver just because a taxpayer forgot to file his or her tax return on time. Ultimately, it is each taxpayer's responsibility to file and pay taxes by the due date.

3. I used tax preparation software to complete and file my taxes. Why didn't the Bureau receive my local tax return?

The Bureau is not aware of any publicly-available tax preparation software that completes the filing of local earned income tax returns. Accordingly, local earned income tax returns must be filed either through the Bureau's eFiling website or on paper using the form posted at www.berkseit.com.

4. I received notice that I did not file a tax return and was billed a \$25 fee. I did not owe any tax, so why do I still owe the fee?

Under the Local Tax Enabling Act, 53 P.S. § 6924.502, you are required to file an annual tax return if you received earned income or net profits subject to the tax – even if you do not owe any tax. The \$25 fee reimburses the Bureau for the costs it incurs in identifying, pursuing, providing notice of, and processing a late return. Such fees are expressly authorized under the Local Tax Enabling Act, 53 P.S. § 6924.707(a). Similar late fees are charged by other local earned income tax collectors throughout Pennsylvania.

5. I received a notice indicating that I did not file a tax return for a prior year and it indicates that this resulted from information received from the Pennsylvania Department of Revenue. What does this mean?

Under the Local Tax Enabling Act, 53 P.S. § 6924.509(g), the Bureau is required to enter into an agreement with the Pennsylvania Department of Revenue under which the Department provides the Bureau with a list of taxpayers who file annual Pennsylvania personal income tax

returns. You received the notice because you filed a personal income tax return with the Department showing you received earned income or net profits during the tax year referenced in the notice, but you did not file a local tax return with the Bureau.

6. Is there a process for me to obtain a waiver of interest, penalty, and late fees?

Yes, but waivers are very difficult to obtain. The Berks County Tax Appeal Board decides appeals from determinations made by the Bureau. Information about the appeals process is available at www.berkseit.com.

In order to ensure compliance with the Local Tax Enabling Act and the Local Taxpayers Bill of Rights Act and in order to guarantee a fair and uniform waiver request process for taxpayers, any taxpayer who seeks a waiver of interest, penalties, or late fees **must** file a completed Tax Appeal Petition. The Petition form can be found at www.berkseit.com. Neither the Bureau nor the Tax Appeal Board will consider a waiver request unless the request is made in a completed Tax Appeal Petition. Per the Tax Appeal Board Regulations, if you file a Tax Appeal Petition seeking waiver of interest, penalties, or late fees and you fail to allege specific facts that would (if proven) justify the waiver under the Bureau's Interest, Penalty, and Late Fee Waiver Policy, the Board will deem the Petition incomplete. Under the law, the Board is under no obligation to act on a Petition unless it is "complete and accurate." 53 P.S. § 6924.505(j)(3), *citing* 53 Pa.C.S.A. § 8433. In addition, the law gives the Board the authority to decide what constitutes a "complete and accurate" Petition. 53 P.S. § 6924.505(j)(3), *citing* 53 Pa.C.S.A. § 8431. **Absent extraordinary circumstances, the Board does not act on incomplete Petitions seeking waiver of interest, penalties, or late fees.**

As noted above, due to legal limitations, it is **extraordinarily rare** for the Tax Appeal Board to grant an appeal seeking a waiver of interest, penalties, or late fees – even when a "complete and accurate" Petition seeking a waiver is filed.

Examples of waiver requests that **do not meet** the justification to waive interest, penalties, or late fees include, but are not limited to, the following:

- My tax preparer was ill or not available to complete my return on time.
- The USPS did not deliver or postmark my return by the due date.
- My employer withheld the local earned income tax and I did not owe any additional amount.
- I or a family member was ill and I was not able to file the return on time.
- I thought my tax preparer had mailed my local tax return.
- I was out of the country on the filing due date.
- I did not know about the local earned income tax and the requirement to file an annual tax return.
- I was never notified by the Bureau that I was required to file a return.
- I have limited income and cannot easily afford to pay interest, penalties, or late fees.

Before spending the time and effort filing a petition seeking waiver of interest, penalties, or late fees, we strongly encourage you to review the Berks County Tax Appeal Board Regulations and the Bureau's Interest, Penalty, and Late Fee Waiver Policy – both of which are posted at www.berkseit.com.