



Bulletin

2017-04B

PENALTIES FOR DISHONORED PAYMENTS

Supersedes IGR 80-210, IGR 90-203 and Inconsistent Prior Written Statements

TO: Collectors, Treasurers, Finance Directors and Accounting Officers

FROM: Kathleen Colleary, Chief, Bureau of Municipal Finance Law

DATE: April 2017

SUBJECT: Assessment and Waiver of Penalties Imposed for Dishonored Payments

This *Bulletin* explains changes made by the Municipal Modernization Act in the statutes that govern the imposition and waiver of penalties for dishonored payments. [G.L. c. 44, § 69](#) and [G.L. c. 60, § 57A](#), as amended by [St. 2016, c. 218, §§ 98-99 and § 165](#).

A. DISHONORED PAYMENTS

A penalty may be assessed whenever a payment tendered for municipal or district taxes, services, fees or charges is dishonored due to insufficient funds. [G.L. c. 60, § 57A](#); [G.L. c. 44, § 69](#). The penalty applies to payments made by check, and as a result of changes made by the Municipal Modernization Act, to payments made by electronic fund transfer. The penalty is in addition to any other penalty provided by law.

Dishonored checks or electronic transfers subject to this penalty are those tendered to:

- A tax collector to pay real and personal property taxes, motor vehicle excises, boat excises, farm animal and machinery excises, betterments, special assessments and overdue municipal charges committed to the collector, including accrued interest and collection costs on those taxes, excises, assessments and charges, and
- A municipal or district treasurer to pay for services rendered or fees or charges.

The penalty for a dishonored check or electronic funds transfer is 1% of the amount of the check or transfer, or \$25 dollars, whichever is greater.

B. ASSESSMENT AND APPEAL OF PENALTY

In order for a penalty to be assessed when a check or electronic fund transfer is not paid by the financial institution upon which it is drawn, the tax collector or treasurer must notify, in writing, the taxpayer, ratepayer or person who tendered it of the amount due with a demand for payment of that amount and the penalty. This notice and demand should be mailed to the person's last or usual place of business or residence, or to the address best known to the collector or treasurer.

The notice and demand should also explain the procedure to appeal the penalty. All appeals are now made to the officer who received the dishonored payment and assessed the penalty. Previously, appeals went to the Commissioner of Revenue. Appeals to treasurers must be made in writing and within 60 days of the date the penalty is imposed. [G.L. c. 44, § 69](#).

Tax collectors and treasurers should establish written procedures for these appeals to ensure the equitable treatment of persons assessed penalties who claim similar circumstances for the nonpayment. These procedures should be designed to promote a fair and prompt resolution of common and recurring situations. They might include, for example, the time and manner for seeking a waiver of the penalty, the documentation or information the person assessed should provide to support the request and the circumstances for which waivers will or will not be granted.

C. WAIVER OF PENALTY

A tax collector or treasurer who assessed a penalty may waive it upon a finding that the check or electronic funds transfer was tendered in good faith with reasonable cause to believe that it would be paid. Whether this statutory standard has been met requires a factual determination by the official hearing the appeal. The official's decision on whether to waive the penalty for a dishonored payment is final.

Collectors and treasurers with questions about these penalties should contact the Division's legal staff at 617-626-2400 or DLSLAW@dor.state.ma.us.