



Ohio Revised Code

Section 5711.28 Unreasonable accumulation of profits by corporation - accumulation of trust income - assessment by commissioner.

Effective: June 30, 2005

Legislation: House Bill 66 - 126th General Assembly

Whenever the assessor imposes a penalty prescribed by section 5711.27 or 5725.17 of the Revised Code, the assessor shall send notice of such penalty assessment to the taxpayer by mail. If the notice also reflects the assessment of any property not listed in or omitted from a return, or the assessment of any item or class of taxable property listed in a return by the taxpayer in excess of the value or amount thereof as so listed, or without allowing a claim duly made for deduction from the net book value of accounts receivable, or depreciated book value of personal property used in business, so listed, and the taxpayer objects to one or more of such corrections in addition to the penalty, the taxpayer shall proceed as prescribed by section 5711.31 of the Revised Code, but if no such correction is reflected in the notice, or if the taxpayer does not object to any such correction made, the taxpayer shall proceed as prescribed herein.

Within sixty days after the mailing of the notice of a penalty assessment prescribed by this section, the taxpayer may file with the tax commissioner, in person or by certified mail, a petition for abatement of such penalty assessment. If the petition is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the petition is presented shall be treated as the date of filing. The petition shall have attached thereto and incorporated therein by reference a true copy of the notice of assessment complained of, but the failure to attach a copy of such notice and incorporate it by reference does not invalidate the petition. The petition shall also indicate that the taxpayer's only objection is to the assessed penalty and the reason for such objection.

Upon the filing of a petition for abatement of penalty, the commissioner shall notify the treasurer of state or the auditor and treasurer of each county having any part of the penalty assessment entered on the tax list or duplicate. The commissioner shall review the petition without the need for hearing. If it appears that the failure of the taxpayer to timely return or list as required under this chapter, or to file a complying report and pay tax under Chapter 5725. of the Revised Code, whichever the case may be, was due to reasonable cause and not willful neglect, the commissioner may abate in whole or in



part the penalty assessment. The commissioner shall transmit a certificate of the commissioner's determination to the taxpayer, and if no appeal is taken therefrom as provided by law, or upon the final determination of an appeal which may be taken, the commissioner shall notify the treasurer of state or the proper county auditor of such final determination. If the final determination orders abatement of the penalty assessment, the notification may be in the form of an amended assessment certificate. Upon receipt of the notification, the treasurer of state or county auditor shall make any corrections to the treasurer's or auditor's records and tax lists and duplicates required in accordance therewith and proceed as prescribed by section 5711.32 or 5725.22 of the Revised Code.

The decision of the commissioner shall be final with respect to the percentage of penalty, if any, the commissioner finds appropriate, but neither the commissioner's decision nor a final judgment of the board of tax appeals or any court to which such final determination may be appealed shall finalize the assessment of such property.