

§ 105-237.1. Compromise of liability.

(a) Authority. – The Secretary may compromise a taxpayer's liability for a tax that is collectible under G.S. 105-241.22 when the Secretary determines that the compromise is in the best interest of the State and makes one or more of the following findings:

- (1) There is a reasonable doubt as to the amount of the liability of the taxpayer under the law and the facts.
- (2) The taxpayer is insolvent and the Secretary probably could not otherwise collect an amount equal to or in excess of the amount offered in compromise. A taxpayer is considered insolvent only in one of the following circumstances:
 - a. It is plain and indisputable that the taxpayer is clearly insolvent and will remain so in the reasonable future.
 - b. The taxpayer has been determined to be insolvent in a judicial proceeding.
- (3) Collection of a greater amount than that offered in compromise is improbable, and the funds or a substantial portion of the funds offered in the settlement come from sources from which the Secretary could not otherwise collect.
- (4) A federal tax assessment arising out of the same facts has been compromised with the federal government on the same or a similar basis as that proposed to the State and the Secretary could probably not collect an amount equal to or in excess of that offered in compromise.
- (5) Collection of a greater amount than that offered in compromise would produce an unjust result under the circumstances.
- (6) The taxpayer is a retailer or a person under Article 5 of this Chapter; the assessment is for sales or use tax the retailer failed to collect or the person failed to pay on an item taxable under G.S. 105-164.4(a)(10) through (a)(15), and the retailer or person made a good-faith effort to comply with the sales and use tax laws. This subdivision applies to assessments for any tax due for a reporting period ending prior to July 1, 2020.
- (7) The assessment is for sales tax the taxpayer failed to collect or use tax the taxpayer failed to pay as a result of the change in the definition of retailer or the sales tax base expansion to (i) service contracts, (ii) repair, maintenance, and installation services, or (iii) sales transactions for a person in retail trade. The Secretary must determine that the taxpayer made a good-faith effort to comply with the sales and use tax laws. This subdivision applies to assessments for any reporting period beginning March 1, 2016, and ending December 31, 2022.
- (8) The assessment is for sales tax the taxpayer failed to collect or use tax the taxpayer failed to pay on repair, maintenance, and installation services provided by a real property manager under a property management contract. The Secretary must determine that the taxpayer made a good-faith effort to comply with the sales and use tax laws. Absent fraud or other egregious activities, a taxpayer that substantiated the time spent managing real property for a billing or invoice period as provided under G.S. 105-164.4K(c) will be determined to have made a good-faith effort to comply with the sales and use tax laws.
- (9) The taxpayer is an auctioneer licensed under Chapter 85B of the General Statutes, and the assessment is for sales tax that the taxpayer failed to collect for the sale of livestock at auction. The Secretary must determine that the taxpayer has made a good-faith effort to comply with the tax laws, including being registered as a retailer on or before July 1, 2020. This subdivision

applies to assessments for any tax due for a reporting period ending prior to July 1, 2020. This subdivision does not apply if the person received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period or for tax collected and not remitted to the Department.

(b) **Written Statement.** – When the Secretary compromises a tax liability under this section and the amount of the liability is at least one thousand dollars (\$1,000), the Secretary must make a written statement that sets out the amount of the liability, the amount accepted under the compromise, a summary of the facts concerning the liability, and the findings on which the compromise is based. The Secretary must sign the statement and keep a record of the statement. If the compromise settles a dispute that is in litigation, the Secretary must obtain the approval of the Attorney General before accepting the compromise, and the Attorney General must sign the statement describing the compromise. (1957, c. 1340, s. 10; 1959, c. 1259, s. 8; 1973, c. 476, s. 193; 1985, c. 114, s. 11; 1991 (Reg. Sess., 1992), c. 1007, s. 11; 2008-107, s. 28.16(f); 2013-316, s. 9(b); 2015-241, s. 32.18(f); 2016-94, s. 38.5(b); 2018-5, s. 38.10(c); 2019-169, s. 3.9(f); 2019-246, s. 7(a); 2020-6, s. 1(c).)