

The second sentence of former Art. 56, § 137(f), which required the Comptroller to waive a motor fuel tax penalty if the taxpayer established, by a fair preponderance of evidence, that the failure "was due to reasonable cause and was not intentional or willful", is deleted to reflect the intent of the General Assembly, by enactment of Chapter 125, Acts of 1987, to create a uniformly applicable provision for the waiver of the penalty in this section. Willfulness and intent are no longer determinative factors as a result of the deletion but may be considered as an element of "reasonable cause".

Former Art. 81, § 128B(e)(3) and the fifth clause of the third sentence of § 133, which provided for a 5% penalty, are deleted as obsolete in light of the later enacted provisions of former Art. 81, § 473(a) -- now subsection (a) of this section. The first sentence of § 344(a) and the second sentence of § 345(a), as they related to penalties, and § 407(a)(1), as it related to a penalty of 10% for failure to pay tax, § 473(b), which listed exceptions to the general penalty, and § 399, as it extended §§ 344 and 345 to the former use tax, are deleted as surplusage.

Former Art. 81, § 407(d), which related to the distribution of interest and penalties, is deleted as unnecessary in light of Title 2 of this article.

The Tax - General Article Review Committee notes, for the consideration of the General Assembly, that, under subsections (a) and (b)(1) and (2) of this section, the assessment of penalty is mandatory, but, in subsection (b)(3) of this section, assessment is permissive although the taxpayer "willfully" fails to pay tobacco tax. It would seem that the assessment would be mandatory on a finding of willfulness. In any event, the assessment may be waived.

Defined terms: "Financial institution  
franchise tax" § 1-101  
"Governmental unit" § 13-101 "Income tax" § 1-101  
"Inheritance tax" § 1-101  
"Motor carrier tax" § 1-101 "Motor fuel tax" § 1-101  
"Person" § 1-101 "Tax collector" § 13-101  
"Tobacco tax" § 1-101

13-702. UNDERESTIMATION OF FINANCIAL INSTITUTION FRANCHISE OR INCOME TAX.

(A) FINANCIAL INSTITUTION FRANCHISE TAX.

A TAX COLLECTOR SHALL ASSESS A PENALTY NOT EXCEEDING 25% OF THE AMOUNT UNDERESTIMATED, IF A PERSON WHO IS REQUIRED TO ESTIMATE AND PAY FINANCIAL INSTITUTION FRANCHISE TAX UNDER § 8-216 OF THIS ARTICLE: