

FAQs on Waiving Interest and Penalties on Late Property Tax Payments

By League of Wisconsin Municipalities
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Q. Where is the interest waiver provision in [Act 185](#), and what does it say?

A. The Interest on Late Property Tax Payments provision is item (25) in SECTION 105, Nonstatutory Provisions, on page 23 of [the Act](#). The relevant language is pasted below:

(25) INTEREST ON LATE PROPERTY TAX PAYMENTS. Notwithstanding ss. 74.11, 74.12, and 74.87, for property taxes payable in 2020, after making a general or case-by-case finding of hardship, a taxation district may provide that an installment payment that is due and payable after April 1, 2020, and is received after its due date shall not accrue interest or penalties if the total amount due and payable in 2020 is paid on or before October 1, 2020. Interest and penalties shall accrue from October 1, 2020, for any property taxes payable in 2020 that are delinquent after October 1, 2020. A taxation district may not waive interest and penalties as provided in this subsection unless the county board of the county where the taxation district is located first adopts a resolution authorizing such waiver and establishing criteria for determining hardship, and the taxation district subsequently adopts a similar resolution. A county that has adopted a resolution authorizing the waiver of interest and penalties under this subsection shall settle any taxes, interest, and penalties collected on or before July 31, 2020, on August 20, 2020, as provided under s. 74.29 (1), and settle the remaining unpaid taxes, interest, and penalties on September 20, 2020. The August 20, 2020, settlement shall be distributed proportionally to the underlying taxing jurisdictions.

Q. Must waivers be granted on a case-by case basis only?

A. No. The provision allows communities to make a “general or case-by-case finding of hardship” and on that basis provide that late installment payments due and payable after April 1, 2020, do not accrue interest or penalties as long as the total amount is paid by October 1, 2020. Accordingly, the decision to waive interest and penalties can be applied “generally” across the entire community or for individual taxpayers on a case-by-case basis.

Q. May a city or village unilaterally determine to waive interest and penalties on late property tax installment payments due after April 1?

A. No. A municipality can only choose to waive interest and penalties if the County Board [in which the municipality is located] first adopts a resolution that allows for such a waiver. The county resolution must identify criteria to determine hardship justifying the waiver. A city or village that wants to waive interest and penalties on a late installment payment must then adopt a similar resolution.

Q. May a community waive interest and penalties on any late installment payments that were due April 30 even if the county and the city pass the necessary resolutions authorizing the waiver after April 30.

A. Yes. Nothing in Act 185 prohibits the community from applying the waiver to the April 30th due date even if the local authorizations occur after that date. Act 185 states only that communities and counties may waive interest and penalties on late installment payments due after April 1.

Q. Do you recommend communities only waive interest and penalties on late installment payments on a community wide basis?

A. Yes. We strongly recommend against waiving interest and penalties on a case by case basis. We fear that doing so would place the community at risk of being sued over the standards it creates to determine which taxpayers are eligible for the waiver and/or over the application of those standards to different taxpayers. If your community decides to waive interest and penalties on delinquent property tax installment payments, the best course from a litigation avoidance perspective is to adopt a general waiver citing overwhelming economic hardship the community is experiencing as a result of the COVID-19 pandemic and the resulting safer at home order.

Q. In communities that have not adopted a multiple installment option under Wis. Stat. sec. 74.12, and a taxpayer has chosen to pay his or her taxes in two equal installments, one on January 31 and the remainder on July 31, does the waiver provision in Act 185 allow a community to waive interest and penalties if the taxpayer is late making the July 31 installment payment?

A. Yes. The provision allows a community and county to provide that an installment payment that is due and payable after April 1, 2020, and is received after its due date shall not accrue interest or penalties if the total amount due and payable is paid on or before October 1, 2020. This includes the July 31 installment payment that is authorized under Wis. Stat. sec. 74.11(2)(b).

Q. May a property taxpayer that missed or was late paying a property tax payment prior to April 1 have the interest and penalties that have accrued as a result of the delinquency waived or refunded?

A. No. The waiver allowance in Act 185 does not apply retroactively to late payments that occurred prior to April 1. The interest and penalties on those delinquencies cannot be waived and continue to accrue until the property tax bill is paid.

Q. If the county passes a resolution authorizing a city or village to waive interest and penalties on late property tax installment payments due after April 1, when does the county settle (distribute property tax revenues to the other taxing jurisdictions)?

A. A county that has adopted a resolution authorizing the waiver of interest and penalties must settle any taxes, interest, and penalties collected on or before July 31, 2020, on August 20, 2020, the usual settlement date, as provided under Wis. Stat. sec. 74.29 (1). The August 20, 2020,

settlement must be distributed proportionally to all the underlying taxing jurisdictions. The County must then settle the remaining *unpaid* taxes, interest, and penalties on September 20, 2020.

Q. Does the above answer mean that our city won't receive 100% of all property taxes owed to it from the county on August 20?

A. Correct. If your county adopts the appropriate resolution. Your city will receive only the taxes collected as of July 31 even if your city did not adopt the waiver resolution. The county won't pay the equivalent of any unpaid amounts until September 20, four weeks later. The one-month settlement delay for unpaid taxes could cause a cash flow issue for some communities.

More Information. The League, the Counties Association, and the Towns Association are working with the Department of Revenue on providing a unified interpretation of this provision. We will provide more information and guidance as soon as we receive it.