

**10.78(2) Tobacco.** The penalty imposed is not subject to waiver for reasonable cause. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code sections 453A.28, 453A.31, and 453A.46.

**701—10.79(453A) Request for waiver of penalty.** This rule is only applicable to tax due on or before December 31, 1984, and to penalty imposed by Iowa Code section 453A.31 for tax due on or after January 1, 1985. Any taxpayer who believes there is a good reason to object to any penalty imposed by the department for failure to timely file returns or pay the tax may submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to file the return, or pay the tax as required by law. The following are examples of situations that may be accepted by the director as being reasonable causes:

1. Showing that the delay in filing was caused by the death or serious illness of the taxpayer or the person charged by the taxpayer to prepare and timely file the report on the taxpayer's behalf.
2. Showing that the delay in filing was caused by destruction by fire or other casualty of the taxpayer's records.
3. Showing that the delay in filing was due to erroneous information given to the taxpayer by an authorized employee of the department.
4. Showing that the delay in filing was caused by a prolonged unavoidable absence of the taxpayer responsible for the filing.
5. Showing that the report or remittance was filed on time, but filed erroneously with another state agency or the Internal Revenue Service.
6. If the taxpayer has had no late filed reports or late payments in the past 36 months, the department will allow one late return to be filed without penalty. However, this does not apply to a penalty established by audit.
7. If the return is filed on time, but the face of the return contained a mathematical error and if the taxpayer has had no late filed reports including mathematical errors in the past 36 months. However, this does not apply to a penalty established by audit.
8. Showing that the delinquency existed even though the taxpayer exercised ordinary business care and prudence to ensure that the filing of the return or remittance of the tax would occur timely.
9. Where the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time. Failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that ordinary business care and prudence were exercised in providing for payment of the liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if the taxpayer paid on the due date. What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, *Armstrong's Inc. v. Iowa Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

Penalty which results from a check given in payment of tax not being honored because of insufficient funds in the account upon which the check is drawn shall not be waived.

This rule is intended to implement Iowa Code sections 453A.31 and 453A.46.

**701—10.80 to 10.84** Reserved.

## INHERITANCE

[Prior to 1/23/91, see 701—subrules 86.2(14) to 86.2(20)]

**701—10.85(422) Penalty—delinquent returns and payment.** This subrule only applies to returns and taxes due and payable prior to January 1, 1985. Effective for estates of decedents dying on or after January 1, 1981, a penalty of 5 percent per month, not to exceed 25 percent in the aggregate, is imposed for failure to file the return or failure to pay 90 percent of the tax required to be shown as due within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless failure is due to reasonable cause. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. A request for waiver of penalty must be in writing and submitted to the Iowa Department of Revenue and Finance, Hoover State Office Building, Des Moines, Iowa 50319 and must identify the estate and set forth the reasons for the failure. Delinquent returns draw interest at the rate of 8 percent per annum until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. All payments are first credited to penalty and interest and the balance, if any, to the tax due. For estates of decedents dying prior to January 1, 1981, all tax not paid within the time prescribed by law (taking into consideration any extensions of time to file and pay) shall draw interest at the rate of 8 percent per annum until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. There is no penalty for failure to file and pay the tax for estates of decedents dying prior to January 1, 1981.

**10.85(1) What constitutes reasonable cause.** This subrule only applies to returns and taxes due and payable prior to January 1, 1985. What constitutes reasonable cause for failure to timely file the return and pay the tax due depends on the facts and circumstances in each particular case. Factors which tend to establish reasonable cause are, but not limited to:

- a. When the return and payment of the tax was timely filed, but filed erroneously with the Internal Revenue Service or another state agency.
- b. When the return and payment were timely mailed, but were not received by the department until after the due date (if the due date falls on a Saturday, Sunday or holiday, the due date shall be the next day which is not a Saturday, Sunday or holiday).
- c. When the delay was caused by the death or serious illness of the taxpayer.
- d. When the delay was caused by the prolonged unavoidable absence of the taxpayer.
- e. When the delay was caused by the destruction of the taxpayer's records due to fire or other unavoidable casualty.
- f. When the taxpayer has good reason to believe that the gross share of none of the heirs, beneficiaries, transferees or joint tenants is of a sufficient amount for a tax to be owing.
- g. When the taxpayer exercised ordinary business care and prudence in providing for the timely filing of the return and payment of the tax due. What constitutes ordinary business care and prudence must be determined by the particular facts and circumstances in each case. See *Armstrong v. Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

**10.85(2) What does not constitute reasonable cause.** This subrule only applies to returns and taxes due and payable prior to January 1, 1985. Factors which do not tend to establish reasonable cause are, but not limited to:

- a. Lack of sufficient liquid assets to timely pay the tax due and file the return, when the taxpayer had ample time to request an extension of time to file the return and pay the tax, but failed to do so.
- b. Failure to exercise ordinary business care and prudence in providing for the filing of the return and payment of the tax liability within the time prescribed by law.

**10.85(3) Interest—during an extension of time.** During the period of an extension of time, any unpaid tax shall draw interest at the rate of 6 percent per annum until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. Payments made during an extension of time shall first be credited to interest and the balance, if any, to the tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). Any outstanding tax obligation remaining after the expiration of an extension of time shall be deemed delinquent and shall be subject to penalty and draw interest at the rate of 8 percent per annum from the date of the extension expiration until paid, if paid on or before December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

**10.85(4) Computation of interest.** Beginning May 1, 1985, interest accruing on tax due and on refunds of excessive tax paid is computed on a calendar monthly basis with each fraction of a month considered a full month. Interest accrued through April 30, 1985, both on tax due and on refunds of excessive tax paid, is computed on a daily basis using a 365-day year. If interest accrues for periods of time both before and after May 1, 1985, the rule applicable for the respective period of time before and after May 1, 1985, shall govern the interest computation.

This subrule can be illustrated by the following:

EXAMPLE:

For the purpose of illustration only the interest rate used for 1985 is 10 percent per year or 0.8 percent per month. The original due date of January 15, 1985, was extended to May 31, 1985. The tax due is \$100. The amount due for tax and interest is \$103.68 with interest computed through May 31, 1985. The interest is computed as follows:

1. Interest from January 15, 1985, through April 30, 1985 (105 days) is computed on a daily basis.

$$\$100 \text{ times } 10\% \text{ times } \frac{105}{365} = \$2.88$$

2. Interest for May 1985 (one month) is computed on a monthly basis.

$$\$100 \text{ times } .8\% \text{ times } 1 = \$.80$$

3. Total interest is \$3.68 (\$2.88 plus \$.80)

In this example interest is charged for the full month of May even though the tax and interest may be paid anytime during the month.

**10.85(5) Penalty—failure to pay the tax due on or after January 1, 1985, but before January 1, 1987.** Effective for tax due and payable on or after January 1, 1985, the cumulative dual penalties for failure to timely file the return and pay 90 percent of the tax required to be shown as due, without reasonable cause, are abolished. In lieu of the dual penalties, a single noncumulative penalty of 5 percent is imposed for failure to timely pay at least 90 percent of the tax due with the filing of the return. The 5 percent penalty is computed on the amount of the tax that is required to be shown as due (as distinguished from tax shown to be due) that is not timely paid, taking into consideration any extensions of time granted to pay the tax due. Reasonable cause for the delinquency is not relevant. The fact the tax is delinquent alone determines the imposition of the penalty. The director cannot waive the penalty.

While the penalty for failure to file the return is abolished, the duty of the personal representative and the taxpayer, as defined in Iowa Code section 450.5, to file the return and pay the tax due remains in full force and effect. The noncumulative penalty of 5 percent only applies to tax that is initially due and payable (taking into consideration any extensions of time granted to file the return and pay the tax due) after December 31, 1984.

However, the repeal of the cumulative penalties for tax that is initially delinquent after December 31, 1984, does not preclude the imposition of the cumulative penalties for failure to timely file or pay 90 percent of the tax due, if the tax was initially delinquent prior to January 1, 1985, even though the delinquency continues for periods of time after December 31, 1984. When the tax initially became delinquent (taking into consideration any extensions of time granted to file the return and pay the tax due) determines which penalty applies. If the initial delinquency occurs prior to January 1, 1985, the cumulative penalties apply. If the initial delinquency occurs after December 31, 1984, only the noncumulative penalty of 5 percent applies.

**10.85(6)** *Penalty—failure to pay the tax due on or after January 1, 1987, but for deaths occurring before January 1, 1991.* A penalty of 7.5 percent is imposed for failure to timely pay at least 90 percent of the tax due with the filing of the return. The 7.5 percent penalty is computed on the amount of tax that is required to be shown due (as distinguished from the tax shown due) that is not timely paid, taking into consideration any extensions of time granted to pay the tax due. Reasonable cause for the delinquency is not relevant. The fact the tax is delinquent alone determines the imposition of the penalty. The director cannot waive the penalty.

While the penalty for failure to file the return is abolished, the duty of the personal representative and the taxpayer as defined in Iowa Code section 450.5 to file a return and pay the tax due remains in full force and effect.

See rule 701—10.5(421) for statutory exceptions to penalty for tax due and payable on or after January 1, 1987, but for deaths occurring before January 1, 1991. See rule 701—10.8(421) for statutory exceptions for deaths occurring on or after January 1, 1991.

**701—10.86 to 10.89** Reserved.

IOWA ESTATE

[Prior to 1/23/91, see 701—subrules 87.3(9) to 87.3(12)]

**701—10.90(451) Penalty—delinquent return and payment.** This rule applies only to Iowa estate tax due and payable prior to January 1, 1985. Effective for estates of decedents dying on or after January 1, 1981, a penalty of 5 percent per month, not to exceed 25 percent in the aggregate, is imposed for failure to file the return or failure to pay the tax due within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless the failure is due to reasonable cause. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. The penalty imposed is based on the tax due and is in addition to the penalties imposed by Iowa Code chapter 450 for failure to file or pay the inheritance tax due. A request for waiver of penalty must be in writing and submitted to Fiduciary and Inheritance Tax Processing, P.O. Box 10467, Des Moines, Iowa 50306, and must identify the estate and set forth the reasons for the failure. All tax not paid within the time prescribed by law (taking into consideration any extensions of time to pay) draws interest at the rate of 8 percent per annum. All payments are first credited to penalty and interest and the balance, if any, to the tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). For estates of decedents dying prior to January 1, 1981, all tax not paid within the time prescribed by law (taking into consideration any extensions of time to file and pay) shall draw interest at the rate of 8 percent per annum. There is no penalty for failure to file and pay the tax for estates of decedents dying prior to January 1, 1981. For interest accruing after January 1, 1982, see rule 701—10.2(421) for the statutory interest rate.

**10.90(1)** *What constitutes reasonable cause.* This subrule applies only to Iowa estate tax due and payable prior to January 1, 1985. What constitutes reasonable cause for failure to timely file the return and pay the tax due depends on the facts and circumstances in each particular case. Factors which tend to establish reasonable cause are, but not limited to:

a. When the return and payment of the tax was timely filed, but filed erroneously with the Internal Revenue Service or another state agency.

b. When the return and payment were timely mailed, but were not received by the department until after the due date (if the due date falls on a Saturday, Sunday or holiday, the due date shall be the next day which is not a Saturday, Sunday or holiday).

c. When the delay was caused by the death or serious illness of the taxpayer.

d. When the delay was caused by the prolonged unavoidable absence of the taxpayer.

e. When the delay was caused by the destruction of the taxpayer's records due to fire or other unavoidable casualty.

f. When no Iowa estate tax was shown to be due when the federal estate tax return was filed and the taxpayer had reasonable cause to believe none was due, but then as a result of either a federal audit or an audit of the inheritance tax return, an estate tax, or additional estate tax, was due.

g. When the taxpayer exercised ordinary business care and prudence in providing for the timely filing of the return and payment of the tax due. What constitutes ordinary business care and prudence must be determined by the particular facts and circumstances in each case. See *Armstrong v. Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

**10.90(2)** *What does not constitute reasonable cause.* This subrule applies only to Iowa estate tax due and payable prior to January 1, 1985. Factors which do not tend to establish reasonable cause are, but not limited to:

Failure to exercise ordinary business care and prudence in providing for the filing of the return and payment of the tax liability within the time prescribed by law.

**10.90(3)** *Penalty—failure to pay the tax due on or after January 1, 1985.* Department of revenue and finance subrules 10.85(5) and 10.85(6) implementing the penalty for failure to timely pay the inheritance tax due are also the rules implementing the penalty for failure to pay the Iowa estate tax due. See rule 701—10.6(421) for penalty for failure to pay the tax due for deaths occurring on or after January 1, 1991.

**701—10.91 to 10.95** Reserved.

#### GENERATION SKIPPING

[Prior to 1/23/91, see 701—subrules 88.3(14) and 88.3(15)]

**701—10.96(450A) Penalty—delinquent return and payment for deaths occurring before January 1, 1991.** Effective for generation skipping transfers which are eligible for the federal credit for state generation skipping transfer tax under Section 2604 of the Internal Revenue Code, a penalty of 7.5 percent of the tax due is imposed for failure to pay at least 90 percent of the tax due on or before the date prescribed for payment, taking into consideration any extension of time granted to pay the tax due. The penalty imposed cannot be waived by the director. However, penalty cannot be imposed if any of the five exceptions enumerated in Iowa Code section 421.27 are established by the taxpayer. The term "tax due" means the correct amount of tax due which may, due to an audit or an adjustment in the amount of the federal generation skipping transfer tax, be a different amount than the tax shown as due on the return. If a penalty is applicable, it is computed on the amount of the tax that has not been timely paid, taking into consideration any extension of time granted to pay the tax due. See rule 701—10.6(421) for penalty for delinquent return and payment of tax due for deaths occurring on or after January 1, 1991.

**701—10.97(422) Interest on tax due.** All tax which has not been paid on or before the last day of the ninth month following the death of the individual whose death is the event imposing the federal generation skipping transfer tax draws interest at the rate prescribed by Iowa Code section 421.7, to be computed on a monthly basis with each fraction of a month counted as a full month. See rule 701—10.2(421) for the interest rate to use for a specific calendar year. Interest applies equally to tax that is delinquent and tax that is due under an extension of time to pay.

**701—10.98 to 10.100** Reserved.

FIDUCIARY INCOME  
[Prior to 1/23/91, see 701—89.6(422) and 89.7(422)]

**701—10.101(422) Penalties.**

**10.101(1) Negligence penalty—delinquent returns and payment.** This subrule is only applicable to tax that is due and payable prior to January 1, 1985. Effective for fiduciary income tax returns and tax due on or after January 1, 1981, a penalty of 5 percent per month, not to exceed 25 percent in the aggregate, is imposed for failure to file a fiduciary income tax return or to pay the tax required to be shown as due, within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless the failure is due to reasonable cause. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay if, after the return is filed, there is a continued failure to pay during the five-month period after the tax was due (taking into consideration any extensions of time to file and pay). The combined penalties for failure to file or to pay shall not exceed 25 percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return. Therefore, if an audit of a fiduciary return results in an additional tax which was required to be shown as due on the return, the additional tax is subject to the penalty for failure to pay, unless the failure was due to reasonable cause. See rules 10.40(422) and 10.41(422) for individual income tax penalties and subrule 10.41(2) for examples of penalty computation for tax periods ending before January 1, 1991. See rule 701—10.6(421) for individual income tax penalties and subrule 10.6(5) for examples of penalty computation for tax periods beginning on or after January 1, 1991.

**10.101(2) Fraud penalty for tax returns ending before January 1, 1991.** If the failure to file the fiduciary income tax return is willful or deliberate with the intention of evading tax or if a false return is willfully or deliberately filed for the purpose of evading the correct tax due, a penalty of 50 percent of the amount of the tax required to be shown as due is imposed. The penalty for fraud shall be in lieu of the penalties provided in subrule 10.101(1).

**10.101(3) Waiver of penalty.** This subrule is only applicable to tax that is due and payable prior to January 1, 1985. A request for waiver of penalty must be in writing, in the form of an affidavit, and be submitted to Fiduciary and Inheritance Tax Processing, P.O. Box 10467, Des Moines, Iowa 50306. It must identify the fiduciary income tax return, the taxable year for which the delinquency occurred and state the reasons for the failure. It is not sufficient for the taxpayer to simply establish that the failure was not willful. The reasons why the failure was reasonable must also be established. The affidavit must contain the facts on which a conclusion can be reached that the penalty should be waived. A mere statement of conclusions is not sufficient. See rule 701—10.8(421) for exceptions to penalty for tax periods beginning on or after January 1, 1991.

**10.101(4) Reasonable cause.** This subrule is only applicable to tax that is due and payable prior to January 1, 1985. What constitutes reasonable cause for failure to timely file the fiduciary return and pay the tax due depends on the facts and circumstances in each particular case. Factors which tend to establish reasonable cause include, but are not limited to:

*a.* The return filing and payment were timely, but erroneously submitted to the Internal Revenue Service or another state agency.

*b.* When the return and payment were mailed on or before the due date, but were not received by the department until after the due date. If the due date falls on a Saturday, Sunday or holiday, the due date is the next day which is not a Saturday, Sunday or holiday. See Iowa Code section 622.106 for what constitutes proof of the mailing date.

*c.* The estate's right to the income is subject to litigation and the personal representative of the estate either has not received the income, or is prohibited from disbursing the income received.

*d.* The condition of the decedent's books and records prevent the compilation of the data necessary to file a return.

*e.* The delay was caused by the death or serious illness of the taxpayer.

*f.* The delay was caused by the prolonged unavoidable absence of the taxpayer.

*g.* The delay was caused by the destruction of the taxpayer's records due to fire or other unavoidable casualty.

*h.* Ordinary business care and prudence was exercised to provide for the timely filing of the return and payment of the tax due, but the filing or payment was nevertheless delinquent. What constitutes ordinary business care and prudence must be determined by the particular facts and circumstances in each case. See *Armstrong v. Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

**10.101(5) What does not constitute reasonable cause.** This subrule is only applicable to tax that is due and payable prior to January 1, 1985. Factors which do not tend to establish reasonable cause include, but are not limited to:

Failure to exercise the generally accepted standards of fiduciary responsibility in providing for the timely filing of the return and payment of the tax due.

**10.101(6) Interest cannot be waived.** Interest due on unpaid tax is not a penalty, but rather it is compensation to the government for the period it was deprived of the use of money. Therefore, interest due cannot be waived. *Vick v. Phinney*, 414 F.2d 444, 448 (5th CA 1969); *Time, Inc. v. United States*, 226 F.Supp. 680, 686 (S.D. N.Y. 1964); *In Re Jeffco Power Systems*, Dep't of Revenue Hearing Officer decision, Docket No. 77-9-6A-A (1978).

**701—10.102(422) Penalty.** Tax due and payable after December 31, 1984, but for tax periods ending before January 1, 1991. See subrules 10.41(3) to 10.41(6) for the penalty for tax that is due and payable after December 31, 1984, but for tax periods ending before January 1, 1991.

This rule is intended to implement Iowa Code sections 4.1, 422.25, 622.106, and 1990 Iowa Acts, chapter 1172. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

**701—10.103(422) Interest on unpaid tax.** Tax not paid within the time prescribed by law, including the period during an extension of time, draws interest at the rate of three-fourths of one percent per month for each month, or fraction of a month, that the tax liability remains unpaid until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. Payments made are first credited to penalty and interest due and then to the tax liability. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990).

**701—10.104 to 10.109** Reserved.

HOTEL AND MOTEL  
[Prior to 1/23/91, see 701—104.8(422A) and 104.9(422A)]

**701—10.110(422A) Interest and penalty.**

**10.110(1)** *Computation for tax due after December 31, 1979, but before January 1, 1985.* The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed. Section 422.58(1) of the Iowa Code provides a penalty for failure to file a permitholder's monthly tax deposit or a return or, if a permitholder fails to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of any tax required to be shown on the return. Only the penalty for a failure to file a return will be added when both a failure to file a return and a failure to remit at least 90 percent of the tax due or to pay less than 90 percent of the tax required to be shown on the return occurs. The penalty for failure to pay at least 90 percent of the tax due is 5 percent of the tax due. Penalty is computed on the amount required to be shown as tax with the filing of the deposit or return. For purposes of computing the penalty in case of failure to file or to pay at least 90 percent of the amount of tax required to be shown on the return, the tax shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be the percentage which had accumulated when the initial penalty was assessed and paid on the delinquent return.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due.

In addition to the penalty computed above, there shall be added interest as provided by law from the due date of the return. Interest accrues on the tax or additional tax at the rate of three-fourths of one percent per month, counting each fraction of a month as an entire month, computed from the date the return or deposit was required to be filed until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

**10.110(2)** *Computation for tax due on or after January 1, 1985, but before January 1, 1987.* Iowa Code section 422.58(1) provides for a penalty of 10 percent for the failure to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of any tax required to be shown on the return. For purposes of computing the penalty in case of failure to pay at least 90 percent of the amount required to be shown on the return, the tax shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return.

The penalty for failure to pay at least 90 percent of the tax required to be shown on the return is not subject to waiver.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). See subrule 10.41(4) for examples of computation of penalty and interest for tax periods ending before January 1, 1991. See subrule 10.6(5) for examples of penalty computation for tax periods beginning on or after January 1, 1991.

In addition to the penalty computed above, there shall be added interest as provided by law from the due date of the return. See rule 701—10.2(421) for the statutory interest rate.

**10.110(3)** *Computation for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991.* Iowa Code section 422.58(1) provides for a penalty of 15 percent for the failure to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of the tax required to be shown on the return. For purposes of computing the penalty in case of failure to pay at least 90 percent of the amount required to be shown on the return, the tax will be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return.

The penalty for failure to pay at least 90 percent of the tax required to be shown on the return is not subject to waiver.

All payments must be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). See subrule 10.41(6) for examples of computation of penalty and interest.

In addition to the penalty computed above, there shall be added interest as provided by law from the due date of the return. See rule 701—10.2(421) for the statutory interest rate.

See rule 701—10.5(421) for statutory exceptions to penalty for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code sections 422A.1 and 422.58.

**701—10.111(422A) Request for waiver of penalty.** This rule is only applicable to tax due on or before December 31, 1984. Any taxpayer who believes there is good reason to object to any penalty imposed by the department for failure to timely file returns, or pay the tax must submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to file the return, or pay the tax as required by law. The following are examples of situations that may be accepted by the director as being reasonable cause:

1. Where the return, monthly deposit or payment was filed on time, but filed erroneously with another state agency or the Internal Revenue Service.
2. A showing that the completed return was mailed in time to reach the department in the normal course of mails, within the legal period. If the due date is a Saturday, Sunday or legal holiday, the following business day is within the legal period.
3. Where the delay was caused by death or serious illness of the person responsible for filing.
4. Where the delay was caused by prolonged unavoidable absence of the person responsible for filing.
5. Where the delinquency was caused by destruction by fire or other casualty of the retailer's records.
6. A showing that the delay or failure was due to erroneous information given the retailer by an employee of the department.
7. Where the retailer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the retailer has made a satisfactory showing that ordinary business care and prudence were exercised in providing for payment of the liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if the retailer paid on the due date. What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, *Armstrong's Inc. v. Iowa Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

8. If the retailer has had no reported delinquencies or late payments in the past 36 months. However, this does not apply to a penalty established by audit.

9. If the return is filed on time, but the face of the return contained a mathematical error, if the retailer has had no reported delinquencies, including mathematical errors, in the past 36 months. However, this does not apply to a penalty established by audit.

See rule 701—10.6(421) for exceptions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code sections 422.58 and 422A.1.

**701—10.112 to 10.114** Reserved.

ALL TAXES

**701—10.115(421) Application of payments to penalty, interest, and then tax due for payments made on or after January 1, 1995, unless otherwise designated by the taxpayer.** The department will not reapply prior payments made by the taxpayer to penalty or interest determined to be due after the date of those prior payments. However, the department will apply payments to penalty and interest which were due at the time the payment was made.

Example (a) — Delinquent Return

- a. Tax due is \$1,000.
- b. Return filed two months late.
- c. \$1,000 paid with the return.
- d. The department bills the additional tax in the third month after the due date. The taxpayer pays the assessment in the third month.

The computation of additional tax is shown below:

Tax	\$1,000.00	
Penalty	100.00	(10% failure to file penalty)
Interest	14.00	(2 months interest)
Total	<u>\$1,114.00</u>	
Less payment	1,000.00	
Additional tax due	<u>\$ 114.00</u>	
Interest	.80	(1 month interest)
Total due	<u>\$ 114.80</u>	

Two years after the due date, the Internal Revenue Service conducts an audit and increases the taxpayer's taxable income. The department redetermines the taxpayer's liability 26 months after the due date as follows:

Tax as redetermined by the department	\$1,100.00	
Less paid with return	1,000.00	
Additional tax	<u>\$ 100.00</u>	
Penalty	10.00	(10% failure to file penalty)
Interest	18.20	(26 months interest)
Total due	<u>\$ 128.20</u>	

Example (b) — Timely Filed No Remit

- a. Tax due is \$1,000.
- b. Return timely filed.
- c. \$0 paid.

The calculation for the total amount due five months after the due date is shown below:

Tax	\$1,000.00	
Penalty	50.00	(5% failure to pay penalty)
Interest	35.00	(5 months interest)
Total due	<u>\$1,085.00</u>	

The department bills the additional tax in the fifth month after the due date and the taxpayer pays the additional amount in the eighth month after the due date. The payment is applied as follows:

Tax	\$1,000.00	
Penalty	50.00	(5% failure to pay penalty)
Interest	56.00	(8 months interest)
Total due	<u>\$1,106.00</u>	
Amount paid	\$1,085.00	

Balance tax due \$21.00 subject to interest until paid.

The balance due was not paid.

Three years after the due date the taxpayer forwards a copy of an Internal Revenue Service audit which increases the taxpayer's income to the department. The department recomputes the taxpayer's liability as follows:

Tax as redetermined by the department	\$1,200.00	
Less paid per prior audit	979.00	
Balance due	<u>\$ 221.00</u>	(includes the balance due of \$21)
Penalty	10.00	(5% failure to pay penalty on \$200, the \$21.00 already bears penalty)
Interest	54.52	(36 months interest on \$200 and 28 months interest on \$21)
Total due	<u>\$ 285.52</u>	

**10.115(1)** *Refunds.* In those instances where an audit reduced the amount of tax, penalty, and interest due over the amount paid, the department will reapply payments so that amount refunded is tax on which interest will accrue as set forth in the Iowa Code.

**10.115(2)** *Partial payments made after notices of assessments issued.* Where partial payments are made after a notice of assessment is issued, the department will reapply payments to penalty, interest, and then to tax due until the entire assessed amount is paid.

Where there are both agreed and unagreed to items as a result of an examination, the taxpayer and the department may agree to apply payments to the penalty, interest, and then to tax due on the agreed to items of the examination when all of the penalty, interest, and tax on the agreed to items are paid. In these instances, subsequent payments will not be applied to penalty and interest accrued on the agreed to items of the examination.

This rule is intended to implement 1994 Iowa Acts, chapter 1133, section 1.

#### JEOPARDY ASSESSMENTS

**701—10.116(422,453B) Jeopardy assessments.** A jeopardy assessment may be made where a return has been filed and the director believes for any reason that assessment or collection of the tax will be jeopardized by delay, or where a taxpayer fails to file a return, whether or not formally called upon to file a return. In addition, all assessments made pursuant to Iowa Code chapter 453B are jeopardy assessments. The department is authorized to estimate the applicable tax base and the tax upon the basis of available information, add penalty and interest, and demand immediate payment.

A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code sections 422.30 and 453B.9.

**701—10.117(422,453B) Procedure for posting bond.** In the event a taxpayer seeks to post a bond in lieu of summary collection of a jeopardy assessment, pending final determination of the amount of tax legally due, an original and four copies of a separate written bond application conspicuously titled "Jeopardy Assessment Bond Request" must be filed with the clerk of the hearings section for the department. Thereafter, if the taxpayer and the department agree on an appropriate bond, the clerk of the hearings section for the department shall be notified and the bond shall be approved by the clerk of the hearings section for the department.

If the clerk of the hearings section for the department has not been notified that an agreement on the bond has been reached within ten days after the date upon which the bond request was filed, the clerk of the hearings section for the department shall transfer the file to the director who shall promptly schedule a hearing on the bond request with written notice to be given the taxpayer and the department at least ten days prior to the hearing.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

**701—10.118(422,453B) Time limits.** Bond requests may be made anytime after a timely protest to the jeopardy assessment has been filed with the clerk of the hearings section for the department, except that any bond request whereby the taxpayer seeks to postpone a scheduled sale of assets seized by or on behalf of the department must be filed with the clerk of the hearings section for the department no later than ten days from the date on which notice of the sale was mailed to, or otherwise served upon, the taxpayer. Portions of an assessment which are undisputed must be paid in full at the time a bond request is filed.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

**701—10.119(422,453B) Amount of bond.** In the event no agreement on the bond is reached, bonds must be posted in an amount to be determined by the director consistent with the following:

**10.119(1)** If property has been seized or a lien has been filed and the taxpayer seeks only to postpone the sale of property, pending final determination of the amount of tax legally due, the bond shall be in an amount equal to the expected depreciation loss, storage cost, insurance costs and any and all other costs associated with the distraint and storage of the property pending such final determination.

**10.119(2)** If property has been seized or a lien has been filed and the taxpayer seeks to prevent the sale of property and to have the property returned for the taxpayer's own use, pending final determination of the amount of tax legally due, the bond shall be in an amount equal to the sale price the department can reasonably expect to realize on any property seized plus all costs related to the distraint and storage of the property.

**10.119(3)** If a taxpayer seeks to prevent the department from seizing property or placing a lien upon property, pending final determination of the amount of tax legally due, the bond shall be in an amount equal to the total amount of the department's assessment including interest to the date of the bond.

Bonds may not be required in excess of double the amount of the department's jeopardy assessment.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

**701—10.120(422,453B) Posting of bond.** If the taxpayer fails to post the bond as agreed upon within 15 days from the date the bond is approved by the clerk of the hearings section for the department, no bond will be allowed and the director shall dismiss the bond request. If no agreement was reached and a bond order is issued by the director, the taxpayer has ten days to post the bond. If the bond is not posted within the ten-day period, the director shall dismiss the bond request.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

**701—10.121(422,453B) Order.** The director's order shall be in writing and shall include findings of fact based solely on the evidence in the record and on matters officially noticed in the record and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. Findings of fact shall be prefaced by a concise and explicit statement of underlying facts supporting the findings. Each conclusion of law shall be supported by cited authority or by a reasoned opinion.

Orders will be issued within a reasonable time after termination of the hearing. Parties shall be promptly notified of each order by delivery to them of a copy of the order by personal service or by ordinary mail.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

**701—10.122(422,453B) Director's order.** The director's order constitutes the final order of the department for purposes of judicial review. Parties shall be promptly notified of the director's order by delivery to them of a copy of the order by personal service or by ordinary mail.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

**701—10.123(422,453B) Type of bond.** The bond shall be payable to the department for the use of the state of Iowa and shall be conditioned upon the full payment of the tax, penalty, interest, or fees that are found to be due which remain unpaid upon the resolution of the contested case proceedings up to the amount of the bond. Upon application of the taxpayer or the department, the director may, upon hearing, fix a greater or lesser amount to reflect changed circumstances, but only after ten days' prior notice is given to the department or the taxpayer as the case may be.

A personal bond, without a surety, is only permitted if the taxpayer posts with the clerk of the hearings section for the department, cash, a cashier's check, a certificate of deposit, or other marketable securities which are approved by the director with a readily ascertainable value which is equal in value to the total amount of the bond required. If a surety bond is posted, the surety on the bond may be either personal or corporate. The provisions of Iowa Code chapter 636 relating to personal and corporate sureties shall govern to the extent not inconsistent with the provisions of this subrule.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

**701—10.124(422,453B) Form of surety bond.** The surety bond posted shall be in substantially the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE AND FINANCE  
 HOOVER STATE OFFICE BUILDING  
 DES MOINES, IOWA

---

<u>IN THE MATTER OF</u>	*	
	*	
(Taxpayer's Name, Address and	*	<u>SURETY BOND</u>
designate proceeding, e.g.,	*	
income, sales, etc.)	*	DOCKET NO.
	*	

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KNOW ALL PERSONS BY THESE PRESENTS:

That we \_\_\_\_\_ (taxpayer) as principal, and \_\_\_\_\_ (surety) \_\_\_\_\_, as surety, of the county of \_\_\_\_\_, and State of Iowa, are held and firmly bound unto the Iowa Department of Revenue and Finance for the use of the State of Iowa, in the sum of \$ \_\_\_\_\_ dollars, lawful money of the United States, for the payment of which sum we jointly and severally bind ourselves, our heirs, devisees, successors and assigns firmly by these presents. The condition of the foregoing obligations are, that, whereas the above-named principal has protested an assessment of tax, penalty, interest, or fees or any combination of them, made by the Iowa Department of Revenue and Finance, now if the principal \_\_\_\_\_ shall promptly pay the amount of the assessed tax, penalty, interest or fees found to be due upon the resolution of the contested case proceedings, then this bond shall be void, otherwise to remain in full force and effect.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Surety

(corporate acknowledgment if surety is a corporation)

AFFIDAVIT OF PERSONAL SURETY

STATE OF IOWA )

ss.

COUNTY OF )

I hereby swear or affirm that I am a resident of Iowa and am worth beyond my debts the amount set opposite my signature below in the column entitled, "Worth Beyond Debts," and that I have property in the State of Iowa, liable to execution equal to the amount set opposite my signature in the column entitled "Property in Iowa Liable to Execution."

Signature	Worth Beyond Debts	Property in Iowa Liable to Execution
_____ Surety (type name)	\$ _____	\$ _____
_____ Surety (type name)	\$ _____	\$ _____

Subscribed and sworn to before me the undersigned Notary Public this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public in and  
for the State of Iowa

**701—10.125(422,453B) Duration of the bond.** The bond shall remain in full force and effect until the conditions of the bond have been fulfilled or until the bond is otherwise exonerated as provided by law.

This rule is intended to implement Iowa Code sections 422.30 and 453B.9.

**701—10.126(422,453B) Exoneration of the bond.** Upon conclusion of the contested case administrative proceedings, the bond shall be exonerated by the director when any of the following events occur: upon full payment of the tax, penalty, interest, costs or fees found to be due; upon filing a bond for the purposes of judicial review which bond is sufficient to secure the unpaid tax penalty, interest, costs and fees; or if no additional tax, penalty, interest, costs or fees are found to be due that have not been previously paid, upon entry of a final unappealable order which resolves the underlying protest.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

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