

**REVENUE DEPARTMENT[701]**

**Adopted and Filed**

**Rule making related to penalty for failure to file a tax  
return after receiving a written notice**

The Revenue Department hereby amends Chapter 10, “Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 421.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 421.27 as amended by 2021 Iowa Acts, Senate File 608, section 2.

*Purpose and Summary*

This rule making implements statutory changes to the penalty imposed on taxpayers for failure to file a tax return within 90 days of written notice from the Department. Those changes require the Department to send a written demand to a taxpayer instructing the taxpayer to file a tax return. If the taxpayer fails to file within 90 days of a demand letter, a \$1,000 penalty will be added to the amount of tax shown due. This rule making describes the demand letter that will be sent to the taxpayer to start the 90-day period. It also articulates what constitutes a showing of “good reason” for which this penalty may be waived by the Department. This penalty generally applies to all taxpayers for all tax types.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 10, 2022, as **ARC 6453C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on September 15, 2022.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa beyond that of the legislation it implements. The final Fiscal Note for 2021 Iowa Acts, Senate File 608, did not indicate any fiscal impact.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or

group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on November 9, 2022.

The following rule-making action is adopted:

Adopt the following **new** rule 701—10.9(421):

**701—10.9(421) Failure to file penalty.** A penalty may be assessed for failure to file a return if a taxpayer is subject to a return filing requirement. This penalty may be assessed on any person required to file a return for any tax type administered by the department. This penalty shall be assessed 90 days after the department has issued a demand letter if a return has not been filed. This penalty will be equal to \$1,000 for each failure to file. This penalty is in addition to any other penalty provided by law.

**10.9(1) Demand letter.**

a. The department may send a demand letter to a taxpayer at any time after the taxpayer has failed to file a return, as defined in Iowa Code section 421.6, by the due date. Once this letter has been issued, the taxpayer has 90 days from the date on the letter to file all returns referenced in the letter or show proof that all returns referenced in the letter have already been filed before a penalty will be assessed.

b. The letter shall contain the following title and heading:

**FAILURE TO FILE DEMAND LETTER**

The Iowa Department of Revenue has determined you have not filed one or more required returns. Under Iowa Code section 421.27(8), failure to file your return(s) as described in this letter within 90 days of the date of this letter will result in a \$1,000 penalty for each return that is not filed. Penalties under Iowa Code section 421.27(8) are in addition to other penalties under Iowa law.

c. The letter shall also contain the following:

- (1) Date of demand letter.
- (2) Tax period(s) involved.
- (3) Return(s) to be filed.
- (4) Date by which the return(s) must be filed to avoid incurring a penalty under Iowa Code section 421.27(8).
- (5) Total penalty under Iowa Code section 421.27(8) that will be assessed if the return(s) are not filed within 90 days.

**10.9(2) Waiver of penalty.**

a. *Documentation.* Unless otherwise indicated, written documentation from the taxpayer is required to support the waiver of this penalty.

b. *Good reason.* This penalty can be waived if the taxpayer proves by a preponderance of the evidence that the taxpayer did not file a return within 90 days of the date of the demand letter due to a "good reason" as defined in this rule. "Good reason" can only be shown by proving one of the following circumstances:

(1) Destruction of records by fire, flood, or act of God when the destruction interferes with the filing of a return within 90 days of the date of demand letter. "Act of God" means the same as defined in subrule 10.7(1).

(2) The onset of serious, long-term illness or hospitalization of the taxpayer, a member of the taxpayer's immediate family, or the person directly responsible for filing the return when such illness or hospitalization interferes with the filing of a return within 90 days of the date of the demand letter.

(3) The return is filed but erroneously mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

(4) A timely appeal of a department action, other than the demand letter, contesting the filing requirement of the return(s) stated in the demand letter was filed before the date stated in the letter pursuant to subparagraph 10.9(1)“c”(4).

(5) Other good reason within the discretion of the department, if the taxpayer has mutually agreed, in writing, with the department to file the required return(s) within a reasonable period of time beyond the date stated in the letter pursuant to subparagraph 10.9(1)“c”(4).

*c. Subsequent issuance.* The department may issue a new demand letter for the same filing obligation if the taxpayer continues to fail to file after the waiver is granted.

EXAMPLE 1: X fails to file a return. The department sends X a failure to file demand letter pursuant to subrule 10.9(1). X fails to file the return within 90 days of the date of the demand letter. X is assessed a \$1,000 penalty. X is still required to file the return.

EXAMPLE 2: Y fails to file a return. The department sends Y a failure to file demand letter under subrule 10.9(1). Y fails to file the return within 90 days of the date of the demand letter. Y is assessed a \$1,000 penalty. Y demonstrates to the department that Y was in the hospital and that the hospitalization interfered with Y’s filing of the return within 90 days of the demand letter. The department waives the \$1,000 penalty. Y is still required to file the return.

EXAMPLE 3: Same facts as Example 2. After receiving the good reason waiver, Y does not file the return. The department issues a new failure to file demand letter under subrule 10.9(1) for the same return that the department sought to be filed in Example 2. Y fails to file the return within 90 days of the date of the second demand letter. Y is assessed a \$1,000 penalty. Y is no longer hospitalized and has no other good reason pursuant to paragraph 10.9(2)“b.” The \$1,000 penalty is not waived. A good reason waiver for the first demand letter does not permanently relieve Y from filing the return. Granting the waiver for a good reason for the first demand letter does not prevent the department from issuing a new demand letter for the same filing obligation.

**10.9(3) Rescission.** The department may rescind the demand letter in writing any time before the penalty is assessed under Iowa Code section 421.27(8) if the taxpayer demonstrates to the department’s satisfaction that the taxpayer has no Iowa return filing requirement or that the filing requirement has been met. The taxpayer shall have the burden to prove by a preponderance of the evidence that no filing obligation exists. The department may also rescind the demand letter if the taxpayer proves a good reason exists as described in paragraph 10.9(2)“b” that prevents the taxpayer from filing the return and the taxpayer has mutually agreed, in writing, with the department to file the required return within a reasonable period of time. The department may issue a new demand letter for the same filing obligation if the taxpayer continues to fail to file after the reasonable period of time mutually agreed to by the taxpayer and the department due to proof of a good reason has expired or if, after the department previously determined the taxpayer had no filing requirement, the department obtains additional information that shows the taxpayer does have a filing requirement.

EXAMPLE 4: Z fails to file a return and receives a demand letter. Z presents proof to the department that Z has no filing requirement. In response to this information, the department rescinds the demand letter. Z does not need to file the return within 90 days, and the department does not impose a \$1,000 penalty on Z.

EXAMPLE 5: Same facts as Example 4. After the department rescinds the demand letter, the department receives new information showing Z is required to file a return. The department can send Z a new demand letter for the same return.

This rule is intended to implement Iowa Code section 421.27 as amended by 2021 Iowa Acts, Senate File 608, section 2.

[Filed 9/15/22, effective 11/9/22]

[Published 10/5/22]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.