

701—10.6 (421) Penalties. A penalty shall be assessed upon all tax and deposits due under the following circumstances:

1. For failure to timely file a return or deposit form there is a 10 percent penalty. This penalty, once imposed, will be assessed on all subsequent amounts due or required to be shown due on the return or deposit form.

EXAMPLE: The taxpayer fails to timely file a return and fails to timely pay the tax due. The department will assess a 10 percent penalty for failure to timely file the return but will not assess a 5 percent penalty for failure to timely pay. The department subsequently audits the untimely filed return and determines additional tax is due. The department shall assess a 10 percent penalty on the additional tax found due by an audit.

2. For failure to timely pay the tax due on a return or deposit form, there is a 5 percent penalty.

3. For a deficiency of tax due on a return or deposit form found during an audit, there is a 5 percent penalty. For purposes of this penalty, the audit deficiency shall be assessed only when there is a timely filed return or deposit form.

Audit deficiency occurs when the department determines additional tax is due.

4. For willful failure to file a return or deposit form with the intent to evade tax, or in the case of willfully filing a false return or deposit form with the intent to evade tax, there is a 75 percent penalty.

The penalty rates are uniform for all taxes and deposits due under this chapter.

The penalty for failure to timely file will take precedence over the penalty for failure to timely pay or an audit deficiency when more than one penalty is applicable.

5. Examples to illustrate the computation of penalty for tax periods beginning on or after January 1, 1991.

The following are examples to illustrate the computation of penalties imposed under rule 701—10.7(421). For purposes of these examples, interest has been computed at the rate of 12 percent per year or 1 percent per month. The tax due amounts are assumed to be the total amounts required to be shown due when considering whether the failure to pay penalty should be assessed on the basis that less than 90 percent of the tax was paid.

Example (a) — Failure to File

- a. Tax due is \$100.
- b. Return filed 3 months and 10 days after the due date.
- c. \$100 paid with the return.

The calculation for additional tax due is shown below:

Tax	\$100
Penalty	10 (10% failure to timely file)
Interest	4 (4 months interest)
Total	<u>\$114</u>
Less payment	<u>100</u>
Additional tax due	\$ 14

Example (b) — Failure to Pay

- a. Tax due is \$100.
- b. Return is timely filed.
- c. \$0 paid.

The calculation for the total amount due 5 months after the due date is shown below:

Tax	\$100	
Penalty	5	
Interest	5	(5 months interest)
Total	<u>\$110</u>	

Example (c) — Failure to File and Failure to Pay

- Tax due is \$100.
- Return is filed 2 months and 10 days after the due date.
- \$0 paid.

The calculation for the total amount due 3 months after the due date is shown below:

Tax	\$100	
Penalty	10	(10% for failure to file)
Interest	3	(3 months interest)
Total due in 3rd month	<u>\$113</u>	

Example (d) — Audit on Timely Filed Return

- \$100 in additional tax found due.
- Timely filed return.
- Audit completed 8 months after the due date of the return.
- Return showed \$100 as the computed tax, which was paid with the return.

The calculation for the total amount due is shown below:

Computed tax after audit	\$200	
Less tax paid with return	<u>100</u>	
Additional tax due	\$100	
Penalty	5	(5% for audit deficiency)
Interest	8	(8 months interest)
Total due	<u>\$113</u>	

Example (e) — Audit on Late Return Granted an Exception From Failure to File

- Tax due is \$100.
- Return filed 3 months and 10 days after the due date.
- \$100 paid with the return.
- Taxpayer is granted an exception from penalty for failure to file. (Return is then considered timely filed.)
- Audit completed 8 months after the due date of the return. \$100 additional tax found due.
- Return showed \$100 as the computed tax which was paid with the return.

The computation for the total amount due is shown below:

Computed tax after audit	\$200	
Less tax paid with return	<u>100</u>	
Additional tax due	\$100	
Penalty	5	(5% for audit deficiency. No penalty for failure to file.)
Interest	<u>8</u>	(8 months interest)
Total due	\$113	

Example (f) — Audit on Late Filed Return No Pay Return

- \$100 claimed as tax on the return.
- \$100 in additional tax found due.
- Return filed 3 months and 10 days after the due date.
- Audit completed 8 months after the due date.

The computation for the total amount due is shown below:

Computed tax after audit	\$200	
Penalty	20	(10% for failure to file)
Interest	<u>16</u>	(8 months interest)
Total due	\$236	