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.

[**ARC 6566C**, IAB 10/5/22, effective 11/9/22]