

701—10.7(421) Waiver of penalty. Under certain circumstances, the penalty for failure to timely file a return, failure to timely pay the tax due with the filing of a return, or failure to pay following an audit by the department may be waived. The taxpayer has the burden to prove the necessary conditions to waive a penalty.

10.7(1) Definitions. For purposes of this rule, the following definitions apply:

“*Act of God*” means an unusual and extraordinary manifestation of nature that could not reasonably be anticipated or foreseen and cannot be prevented by human care, skill, or foresight.

“*Immediate family*” includes the spouse, children, or parents of the taxpayer. There is a rebuttable presumption that relatives of the taxpayer beyond the relation of spouse, children, or parents of the taxpayer are not within the taxpayer’s immediate family for purposes of the waiver exceptions.

“*Sanctioned self-audit program*” means an audit performed by the taxpayer with forms provided by the department as a result of contact by the department to the taxpayer prior to voluntary filing or payment of the tax. Filing voluntarily without contact by the department does not constitute a sanctioned self-audit.

“*Substantial authority*” means the weight of authorities for the tax treatment of an item is substantial in relation to the weight of authorities supporting contrary positions.

In determining whether there is substantial authority, only the following will be considered authority: applicable provisions of Iowa statutes, provisions of the Internal Revenue Code and United States Treasury regulations that were applicable for the tax period(s) in question, Iowa administrative rules construing those statutes, court cases, administrative rulings, legal periodicals, department guidance and tax return instructions current for the applicable tax period(s), tax treaties and regulations, and legislative intent as reflected in committee reports.

Conclusions reached in treatises, legal opinions rendered by other tax professionals, descriptions of statutes prepared by legislative staff, legal counsel memoranda, and proposed rules and regulations are not substantial authority.

There is substantial authority for the tax treatment of an item if there was current substantial authority at the time the return containing the item is due to be filed or there was current substantial authority on the last day of the taxable year to which the return relates.

The taxpayer must notify the department at the time the return or payment is originally due of the substantial authority the taxpayer is relying upon for not filing the return or paying the tax due.

10.7(2) Documentation. Unless otherwise indicated, written documentation is required to support the waiver of a penalty.

10.7(3) For failure to timely file a return or failure to timely pay tax due, the 5 percent penalties shall be waived upon a showing of the following exceptions:

a. An amount of tax greater than \$0 is due and at least 90 percent of the tax required to be shown due has been paid by the due date of the tax return. This exception does not apply to the penalty for failure to timely file by a specified business under subrule 10.6(2).

b. A taxpayer required to file a monthly or quarterly return is allowed one late return or one late payment within a three-year period.

(1) The use by the taxpayer of any other penalty exception under this subrule will not count as a late return or payment for purposes of this subrule.

(2) If the taxpayer receives this waiver, the taxpayer must make timely filings and payments for three years prior to being eligible for another waiver under this paragraph.

(3) This exception does not apply to an income return, a franchise return, or a moneys and credits return.

(4) This exception is determined on the basis of the tax period for which the return or payment is due and not the date on which the return is filed or payment is made.

EXAMPLE: Taxpayer A, a retail business with multiple employees, has not been late in filing returns or making payments for five years. Taxpayer A files its withholding return for the fourth quarter of 2020, due January 20, 2021, on the due date but does not make the payment until the next day. Taxpayer A incurs the penalty for failing to timely pay, but the penalty will be waived under this exception. Taxpayer A is not eligible for a waiver for a late return filing or late payment again until the due date for the fourth quarter of 2023.

c. Death of a taxpayer, a member of the immediate family of the taxpayer, or the person directly responsible for filing the return and paying the tax, when the death interferes with timely filing of a return or timely payment of tax. There is a rebuttable presumption that a death that occurs more than 30 days before the date the return or payment is due does not interfere with timely filing or payment. The taxpayer, or taxpayer's legal representative, has the burden of supplying proof of when the death occurred. A taxpayer who is eligible for this waiver will be allowed 30 days from the date the return or payment is originally due to file the return or make the associated payment without incurring penalty.

d. 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 and paying the tax when such illness or hospitalization interferes with the timely filing of a return or timely payment of tax.

(1) There is a rebuttable presumption that the onset of an illness or hospitalization that precedes the due date of the return or payment by more than 30 days does not interfere with the timely filing or timely payment of tax.

(2) The taxpayer will be allowed at least 30 days from the date the return or payment form is due or until the illness or hospitalization no longer reasonably interferes with the taxpayer's ability to file the return without incurring a penalty.

(3) The taxpayer has the burden of proof on whether or not a serious, long-term illness or hospitalization has occurred, when it occurred, and how the illness or hospitalization interfered with the taxpayer's ability to timely file a return or timely pay.

e. Destruction of records by fire, flood, or act of God when the destruction interferes with the timely filing of a return or timely payment of tax. There is a rebuttable presumption that an "act of God" that precedes the due date of the return or payment by 30 days or more did not interfere with the timely filing or payment.

f. The taxpayer presents proof that the taxpayer at the due date of the return or payment relied upon applicable, documented, written advice made specifically to the taxpayer; to the taxpayer's preparer; or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or Internal Revenue Service. The advice must be relevant to the agency offering the advice and not beyond the scope of the agency's area of expertise and knowledge. The reliance must be the direct cause of the failure to file or failure to pay. The advice must be current and not superseded by a court decision; ruling of a quasi-judicial body such as an administrative law judge or the director; or by the adoption, amendment, or repeal of a rule or law.

g. Reliance upon the results of a previous audit was a direct cause for failure to file or pay where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision or by adoption, amendment, or repeal of a rule or law.

h. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return. These types of errors will not be considered as penalty exceptions.

i. The return or payment is timely, 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.

j. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

k. The failure to file was discovered through a sanctioned self-audit program conducted by the department.

l. The availability of funds in payment of tax required to be made through electronic funds transfer is delayed and the delay of availability is due to reasons beyond the control of the taxpayer.

m. For estates with disclaimers, a penalty will not be imposed for failure to pay or a late-filed Iowa inheritance tax return if the sole reason for the failure to pay or late-filed inheritance tax return is due to a beneficiary's decision to disclaim property or disclaim an interest in property from the estate. However, for the penalty to be waived, the Iowa inheritance tax return must be filed and all tax must be paid to the

department within the later of nine months from the date of death or 60 days from the delivery or filing date of the disclaimer pursuant to Iowa Code section 633E.12.

10.7(4) In addition to any applicable waivers for failure to timely pay the tax due on a return in subrule 10.7(3), the 5 percent penalty for failure to timely pay the tax due shall be waived upon a showing of any of the following exceptions:

a. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department. This exception does not apply to a sanctioned self-audit program conducted by the department or to adjustments from a state partnership audit as described in Iowa Code section 422.25C(2).

b. Changes to Iowa tax liability.

(1) For changes to Iowa tax liability resulting from a federal partnership level audit, the partnership or a direct or indirect partner voluntarily and timely complies with its reporting and payment requirements following the final determination date of the audit. Requirements for reporting federal partnership level audit adjustment to Iowa can be found in Iowa Code section 422.25A.

(2) For changes to Iowa tax liability resulting from an audit or examination by the Internal Revenue Service other than a federal partnership level audit, the taxpayer voluntarily files a complete federal adjustments report and pays any additional Iowa tax due within 180 days of the final determination date of the federal audit or examination. For purposes of this paragraph, “federal adjustments report” means a filing that includes an amended Iowa return with any required supporting schedules, a copy of the federal audit report or other federal documents that show the final determination and explains all the final federal adjustments, and a copy of the amended federal return if one was filed.

(3) This exception does not apply to adjustments from a state partnership audit as described in Iowa Code section 422.25C(2).

10.7(5) For a deficiency of tax due on a return found during an audit or examination, the 5 percent penalty is waived under the following exceptions:

a. At least 90 percent of the tax due has been paid by the due date.

b. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice as described in paragraph 10.7(3) “*f.*”

c. Reliance upon results in a previous audit was a direct cause for failure to file or pay as described in paragraph 10.7(3) “*g.*”

d. The taxpayer presents documented proof of substantial authority as described in paragraph 10.7(3) “*h.*”

This rule is intended to implement Iowa Code section 421.27.

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