

701—10.111(423A) 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 section 423.40 and 2005 Iowa Code Supplement section 423A.1.