

701—10.20(422,423) Penalty and interest computation.

10.20(1) *Computations for tax periods where the due date occurs after December 31, 1980.* The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause. Iowa Code section 422.58(1) provides a penalty for failure to file a permit holder's semimonthly or monthly tax deposit or a return or, if a permit holder fails to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of any tax required to be shown on the return, excepting the period between the completion of an examination of the books and records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due. The rate of penalty shall be 5 percent per month or fraction thereof, not to exceed 25 percent in the aggregate for failure to file a deposit or return and for failure to pay at least 90 percent of the tax due.

In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay if, after the return is filed, there is a continued failure to pay during the five-month period after the tax was due (taking into consideration any extensions of time to file and pay). The combined penalties for failure to file or pay shall not exceed 25 percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return. Therefore, if an audit results in an additional tax which was required to be shown as due on the return, the additional tax is subject to the penalty for failure to pay, unless the failure was due to reasonable cause. See 701—subrule 44.3(3) for examples of the penalty computation. These examples would also apply to sales and use tax unless 90 percent of the tax is remitted timely, then no penalty applies.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due in the order specified.

In addition to the penalty, interest accrues on the tax or additional tax at the rate of three-fourths of one percent per month, counting each fraction of a month as an entire month, computed from the date the return or deposit was required to be filed until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

10.20(2) *Computations for tax periods for taxes initially due and payable on or after January 1, 1985, but before January 1, 1987.*

a. Penalty for failure to file return. Subsequent to December 31, 1984, a permit holder or other person who fails to file a semimonthly or monthly tax deposit form or a quarterly or annual return shall be subject to penalty for this failure only if the failure to file is willful. The penalty for willful failure to file a deposit form or return is 50 percent of the amount required to be shown on the deposit form or return, see Iowa Code section 422.58(1). When it is appropriate to impose this 50 percent penalty, it shall be in lieu of the penalty described in 701—subrule 12.10(4), paragraph "b."

b. Penalty for failure to timely remit tax. If a permit holder or other person fails to remit with the deposit form or pay with the return at least 90 percent of the tax due and owing, there shall be added to the amount of tax required to be shown on the deposit form or return a penalty of 10 percent of the tax due. Under Iowa Code section 422.58(1), the director cannot waive payment of this penalty. Thus, the equitable doctrine of waiver is not available to a permit holder or other person seeking relief from the penalty.

Also, that portion of the statute allowing the right to demonstrate that failure to timely pay has been due to reasonable cause has been repealed, House File 2507 supra. No statutory basis for remission of the 10 percent penalty now exists. Therefore, if it is shown that a fixed amount of tax was due to be paid upon a date certain and less than 90 percent of that amount has been paid, the director may not excuse payment of penalty. The penalty described in this subrule shall include a penalty for additional tax shown to be due and owing as the result of an audit. See 701—subrule 44.3(5) for examples which illustrate the computation of penalty for tax due on or after January 1, 1985.

c. Application of payments. All payments shall be first applied to penalty, then interest, and the balance, if any, to the amount of tax then due in the order specified. If penalty, interest, and tax are due and owing for more than one tax period, any payment shall be applied first to the penalty, then

the interest, then the tax for the oldest tax period; then to the penalty, interest and tax to the period immediately subsequent, and so on until the payment is exhausted.

EXAMPLE: A permit holder is an annual filer. As a result of audit, it is determined that the permit holder owes penalty, interest, and tax for the years 1984, 1983, and 1982. The total amount owed for tax, penalty and interest for the three years is \$1,200. \$200 of this amount is tax for the year 1984. The permit holder remits a single payment of \$1,000. The payment would be applied first to the penalty, then interest, then tax owing for 1982. The same application would then be made to penalty, interest and tax owing for 1983. Any amount remaining would be applied first to penalty and then interest owing for 1984. The \$200 in tax due for the year 1984 would remain to be paid.

d. Computation of penalty for taxes initially due and payable prior to January 1, 1985, and overdue and payable on that date. The date upon which the tax initially became delinquent (taking into consideration any extension of time to pay the tax due) determines which penalty applied. If the initial delinquency occurs prior to January 1, 1985, the aggregating penalty applies. If the initial delinquency occurs on or after January 1, 1985, only the flat rate penalties of 5 or 10 percent apply.

10.20(3) *Computations for tax periods for taxes initially due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991.*

a. Penalty for failure to file return. Subsequent to December 31, 1986, a permit holder or other person who willfully fails to file a semimonthly or monthly tax deposit form or a quarterly or annual return will be subject to penalty for this failure. The penalty for willful failure to file a deposit form or return is 75 percent of the amount required to be shown on the deposit form or return, see Iowa Code section 422.58(1). When it is appropriate to impose this 75 percent penalty, it will be in lieu of the penalty described in paragraph 10.20(3) "b."

b. Penalty for failure to timely remit tax. If a permit holder or other person fails to remit with the deposit form or pay with the return at least 90 percent of the tax due and owing on or before the due date of the deposit or return, there will be added to the amount of tax required to be shown on the deposit form or return a penalty of 15 percent of the tax due. Under Iowa Code section 422.58(1), the director cannot waive payment of this penalty. Thus, the equitable doctrine of waiver is not available to a permit holder or other person seeking relief from the penalty.

Also, that portion of the statute allowing the right to demonstrate that failure to timely pay has been due to reasonable cause has been repealed. No statutory basis for remission of the 15 percent penalty now exists. Therefore, if it is shown that a fixed amount of tax was due to be paid upon a date certain and less than 90 percent of that amount has been paid, the director may not excuse payment of penalty. The penalty described in this subrule will include a penalty for additional tax shown to be due and owing as the result of an audit. See subrule 10.41(6) for examples which illustrate the computation of penalty for tax due on or after January 1, 1987, but for tax years ending before January 1, 1991.

c. Application of payments. All payments must be first applied to penalty, then interest, and the balance, if any, to the amount of tax then due in the order specified. See *Ashland Oil Inc. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). If penalty, interest, and tax are due and owing for more than one tax period, any payment must be applied first to the penalty, then the interest, then the tax for the oldest tax period; then to the penalty, interest, and tax to the period immediately subsequent, and so on until the payment is exhausted.

EXAMPLE: A permit holder is an annual filer. As a result of audit, it is determined that the permit holder owes penalty, interest, and tax for the years 1984, 1983, and 1982. The total amount owed for tax, penalty, and interest for the three years is \$1,200. \$200 of this amount is tax for the year 1984. The permit holder remits a single payment of \$1,000. The payment would be applied first to the penalty, then interest, then tax owing for 1982. The same application would then be made to penalty, interest, and tax owing for 1983. Any amount remaining would be applied first to penalty and then interest owing for 1984. The \$200 in tax due for the year 1984 would remain to be paid and would continue to accrue interest.

d. Computation of penalty for taxes initially due and payable prior to January 1, 1987, and overdue and payable on that date. The date upon which the tax initially became delinquent determines which penalty applied. If the initial delinquency occurs prior to January 1, 1987, the 10 percent penalty applies.

If the initial delinquency occurs on or after January 1, 1987, but for tax periods ending before January 1, 1991, only the flat rate penalties of 7.5 or 15 percent apply. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

See rule 701—10.5(421) for statutory exemptions to penalty for tax due and payable on or after January 1, 1987. See rule 701—10.8(421) for exceptions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 422.58(1).