

701—10.21(422,423) Request for waiver of penalty. Any taxpayer who has good reason to object to any penalty imposed by the department for failure to timely file returns, monthly deposits or pay the tax may submit a request for waiver seeking that the penalty be waived for taxes initially due and payable prior to January 1, 1985. 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, monthly deposit 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, monthly deposit 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 taxpayer responsible for filing.

4. Where the delay was caused by prolonged unavoidable absence of the taxpayer responsible for filing.

5. Where the delinquency was caused by destruction by fire or other casualty of the taxpayer's records.

6. A showing that the delay or failure was due to erroneous information given the taxpayer by an employee of the department.

7. The department will allow without penalty one late return or monthly deposit, or one timely filed return containing a mathematical error if the taxpayer has had no reported delinquencies in the past 36 months. (Not applicable to penalty established by audit.)

8. Where the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return or monthly deposit 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 taxpayer has made a satisfactory showing that ordinary business care and prudence were exercised in providing for payment of the taxpayer's liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if the taxpayer 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).

A request for waiver of penalty on an assessment will be treated as timely filed with the department, if filed no later than 30 days following the date of the notice of assessment. See rule 701—11.6(422,423) regarding notices of adjustment and assessment.

This rule is intended to implement Iowa Code sections 422.58 and 423.18.