

701—10.85(422) Penalty—delinquent returns and payment. This subrule only applies to returns and taxes due and payable prior to January 1, 1985. Effective for estates of decedents dying on or after January 1, 1981, a penalty of 5 percent per month, not to exceed 25 percent in the aggregate, is imposed for failure to file the return or failure to pay 90 percent of the tax required to be shown as due within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless failure is due to reasonable cause. 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. A request for waiver of penalty must be in writing and submitted to the Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319 and must identify the estate and set forth the reasons for the failure. Delinquent returns draw interest at the rate of 8 percent per annum until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. All payments are first credited to penalty and interest and the balance, if any, to the tax due. For estates of decedents dying prior to January 1, 1981, all tax not paid within the time prescribed by law (taking into consideration any extensions of time to file and pay) shall draw interest at the rate of 8 percent per annum until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. There is no penalty for failure to file and pay the tax for estates of decedents dying prior to January 1, 1981.

10.85(1) *What constitutes reasonable cause.* This subrule only applies to returns and taxes due and payable prior to January 1, 1985. What constitutes reasonable cause for failure to timely file the return and pay the tax due depends on the facts and circumstances in each particular case. Factors which tend to establish reasonable cause are, but not limited to:

a. When the return and payment of the tax was timely filed, but filed erroneously with the Internal Revenue Service or another state agency.

b. When the return and payment were timely mailed, but were not received by the department until after the due date (if the due date falls on a Saturday, Sunday or holiday, the due date shall be the next day which is not a Saturday, Sunday or holiday).

c. When the delay was caused by the death or serious illness of the taxpayer.

d. When the delay was caused by the prolonged unavoidable absence of the taxpayer.

e. When the delay was caused by the destruction of the taxpayer's records due to fire or other unavoidable casualty.

f. When the taxpayer has good reason to believe that the gross share of none of the heirs, beneficiaries, transferees or joint tenants is of a sufficient amount for a tax to be owing.

g. When the taxpayer exercised ordinary business care and prudence in providing for the timely filing of the return and payment of the tax due. What constitutes ordinary business care and prudence must be determined by the particular facts and circumstances in each case. See *Armstrong v. Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

10.85(2) *What does not constitute reasonable cause.* This subrule only applies to returns and taxes due and payable prior to January 1, 1985. Factors which do not tend to establish reasonable cause are, but not limited to:

a. Lack of sufficient liquid assets to timely pay the tax due and file the return, when the taxpayer had ample time to request an extension of time to file the return and pay the tax, but failed to do so.

b. Failure to exercise ordinary business care and prudence in providing for the filing of the return and payment of the tax liability within the time prescribed by law.

10.85(3) *Interest—during an extension of time.* During the period of an extension of time, any unpaid tax shall draw interest at the rate of 6 percent per annum until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. Payments made during an extension of time shall first be credited to interest and the balance, if any, to the tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). Any outstanding tax obligation remaining after the expiration of an extension of time shall be deemed delinquent and shall be subject to penalty and draw interest at the rate of 8 percent per annum from the date of the extension expiration until paid, if paid on or before December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

10.85(4) Computation of interest. Beginning May 1, 1985, interest accruing on tax due and on refunds of excessive tax paid is computed on a calendar monthly basis with each fraction of a month considered a full month. Interest accrued through April 30, 1985, both on tax due and on refunds of excessive tax paid, is computed on a daily basis using a 365-day year. If interest accrues for periods of time both before and after May 1, 1985, the rule applicable for the respective period of time before and after May 1, 1985, shall govern the interest computation.

This subrule can be illustrated by the following:

EXAMPLE:

For the purpose of illustration only the interest rate used for 1985 is 10 percent per year or 0.8 percent per month. The original due date of January 15, 1985, was extended to May 31, 1985. The tax due is \$100. The amount due for tax and interest is \$103.68 with interest computed through May 31, 1985. The interest is computed as follows:

1. Interest from January 15, 1985, through April 30, 1985 (105 days) is computed on a daily basis.

$$\$100 \text{ times } 10\% \text{ times } \frac{105}{365} = \$2.88$$

2. Interest for May 1985 (one month) is computed on a monthly basis.

$$\$100 \text{ times } .8\% \text{ times } 1 = \$.80$$

3. Total interest is \$3.68 (\$2.88 plus \$.80)

In this example interest is charged for the full month of May even though the tax and interest may be paid anytime during the month.

10.85(5) Penalty—failure to pay the tax due on or after January 1, 1985, but before January 1, 1987. Effective for tax due and payable on or after January 1, 1985, the cumulative dual penalties for failure to timely file the return and pay 90 percent of the tax required to be shown as due, without reasonable cause, are abolished. In lieu of the dual penalties, a single noncumulative penalty of 5 percent is imposed for failure to timely pay at least 90 percent of the tax due with the filing of the return. The 5 percent penalty is computed on the amount of the tax that is required to be shown as due (as distinguished from tax shown to be due) that is not timely paid, taking into consideration any extensions of time granted to pay the tax due. Reasonable cause for the delinquency is not relevant. The fact the tax is delinquent alone determines the imposition of the penalty. The director cannot waive the penalty.

While the penalty for failure to file the return is abolished, the duty of the personal representative and the taxpayer, as defined in Iowa Code section 450.5, to file the return and pay the tax due remains in full force and effect. The noncumulative penalty of 5 percent only applies to tax that is initially due and payable (taking into consideration any extensions of time granted to file the return and pay the tax due) after December 31, 1984.

However, the repeal of the cumulative penalties for tax that is initially delinquent after December 31, 1984, does not preclude the imposition of the cumulative penalties for failure to timely file or pay 90 percent of the tax due, if the tax was initially delinquent prior to January 1, 1985, even though the delinquency continues for periods of time after December 31, 1984. When the tax initially became delinquent (taking into consideration any extensions of time granted to file the return and pay the tax due) determines which penalty applies. If the initial delinquency occurs prior to January 1, 1985, the cumulative penalties apply. If the initial delinquency occurs after December 31, 1984, only the noncumulative penalty of 5 percent applies.

10.85(6) Penalty—failure to pay the tax due on or after January 1, 1987, but for deaths occurring before January 1, 1991. A penalty of 7.5 percent is imposed for failure to timely pay at least 90 percent of the tax due with the filing of the return. The 7.5 percent penalty is computed on the amount of tax that is required to be shown due (as distinguished from the tax shown due) that is not timely paid, taking into consideration any extensions of time granted to pay the tax due. Reasonable cause for the delinquency is not relevant. The fact the tax is delinquent alone determines the imposition of the penalty. The director cannot waive the penalty.

While the penalty for failure to file the return is abolished, the duty of the personal representative and the taxpayer as defined in Iowa Code section 450.5 to file a return and pay the tax due remains in full force and effect.

See rule 701—10.5(421) for statutory exceptions to penalty for tax due and payable on or after January 1, 1987, but for deaths occurring before January 1, 1991. See rule 701—10.8(421) for statutory exceptions for deaths occurring on or after January 1, 1991.