

701—10.90(451) Penalty—delinquent return and payment. This rule applies only to Iowa estate tax 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 the tax due within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless the 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. The penalty imposed is based on the tax due and is in addition to the penalties imposed by Iowa Code chapter 450 for failure to file or pay the inheritance tax due. A request for waiver of penalty must be in writing and submitted to Fiduciary and Inheritance Tax Processing, P.O. Box 10467, Des Moines, Iowa 50306, and must identify the estate and set forth the reasons for the failure. All tax not paid within the time prescribed by law (taking into consideration any extensions of time to pay) draws interest at the rate of 8 percent per annum. All payments are first credited to penalty and 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). 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. There is no penalty for failure to file and pay the tax for estates of decedents dying prior to January 1, 1981. For interest accruing after January 1, 1982, see rule 701—10.2(421) for the statutory interest rate.

10.90(1) What constitutes reasonable cause. This subrule applies only to Iowa estate tax 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 no Iowa estate tax was shown to be due when the federal estate tax return was filed and the taxpayer had reasonable cause to believe none was due, but then as a result of either a federal audit or an audit of the inheritance tax return, an estate tax, or additional estate tax, was due.

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).

10.90(2) What does not constitute reasonable cause. This subrule applies only to Iowa estate tax due and payable prior to January 1, 1985. Factors which do not tend to establish reasonable cause are, but not limited to:

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.

10.90(3) Penalty—failure to pay the tax due on or after January 1, 1985. Department of revenue subrules 10.85(5) and 10.85(6) implementing the penalty for failure to timely pay the inheritance tax due are also the rules implementing the penalty for failure to pay the Iowa estate tax due. See rule 701—10.6(421) for penalty for failure to pay the tax due for deaths occurring on or after January 1, 1991.