

DRAFT

September 7, 2022

R861. Tax Commission, Administration.

R861-1A. Administrative Procedures.

R861-1A-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401.

(1) Procedure.

(a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:

(i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;

(ii) the total tax owed for the period has been paid;

(iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;

(iv) the taxpayer has not previously received a waiver review for the same period; and

(v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.

(b) Upon receipt of a waiver request, the commission shall:

(i) review the request;

(ii) notify the taxpayer if additional documentation is needed to consider the waiver request; and

(iii) review the account history for prior waiver requests, taxpayer deficiencies, and historical support for the reason given.

(c) Each request for waiver is judged on its individual merits.

(d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63G, Chapter 4, Administrative Procedures Act, and commission rules.

(e) If a taxpayer first requests a waiver of penalties or interest in an appeal to the commission, the taxpayer is not required to meet Subsections (1)(a)(i) through (iv).

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

(a) Timely Mailing or Electronic Submission:

(i) The taxpayer mailed or electronically submits the return ~~[with]~~and payment to the commission by the due date and it was not timely delivered or electronically transmitted to the commission ~~[by the post office]~~ through no fault of the taxpayer.

(ii) In cases where the taxpayer cannot document a ~~[post office]~~delivery or electronic transmission error, the penalties may be waived if the taxpayer:

(A) has an excellent history of compliance;

(B) proves that sufficient funds were in the bank as of the date of payment, and if applicable, the check was written in numerical order; and

42 (C) presents documentation showing that the return [~~or~~]and payment was mailed_or
43 electronically submitted timely.

44 (b) Wrong Filing Place: The return or payment was filed on time, but was delivered to the
45 wrong office or agency.

46 (c) Death or Serious Illness:

47 (i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family
48 caused the delay.

49 (ii) With respect to a business, trust or estate, the death or illness must have been of the
50 individual, or the immediate family of the individual, who had sole authority to file the return.

51 (iii) The death or illness must have occurred on or immediately prior to the due date of the
52 return.

53 (d) Unavoidable Absence: The person having sole responsibility to file the return was absent
54 from the state due to circumstances beyond their control.

55 (e) Disaster Relief:

56 (i) A delay in reporting, filing, or paying was due either to a governmentally declared disaster
57 or to a natural disaster, such as fire or accident, that results in the destruction of records or disruption
58 of business.

59 (ii) For purposes of this Subsection (3)(e), "governmentally declared disaster" means a
60 disaster declared by:

61 (A) a state;

62 (B) the District of Columbia;

63 (C) a possession or territory of the United States; or

64 (D) the United States government.

65 (iii) If delinquency or delay is due to a federally declared disaster, federal relief guidelines
66 shall be followed.

67 (iv) In the absence of federal guidelines, and for other listed disasters, the taxpayer must
68 demonstrate the matter was corrected within a reasonable time, given the circumstances.

69 (f) Reliance on Erroneous Tax Commission Information:

70 (i) Underpayments and late filings or payments were attributable to incorrect advice obtained
71 from the commission, unless the taxpayer gave the commission inaccurate or insufficient information.

72 (ii) Proof of erroneous information may be based on written communication provided by the
73 commission or, if the taxpayer clearly documents, verbal communication. Clear documentation of
74 verbal communication should include the dates, times, and names of commission employees who
75 provided the erroneous information.

76 (iii) A failure to comply will also be excused if it is demonstrated that the taxpayer requested
77 the necessary tax forms and instructions timely, and the commission failed to timely provide the forms
78 and instructions requested.

79 (g) Tax Commission Office Visit: The taxpayer proves that before expiration of the time for
80 filing the return or making the payment, the taxpayer visited a commission office for information or
81 help in preparing the return and a commission employee was not available for consultation.

82 (h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable
83 to obtain records to determine the amount of tax due.

84 (i) Reliance on Competent Tax Advisor: The taxpayer:

85 (i) furnishes all necessary and relevant information to a competent tax advisor, and the tax
86 advisor:

87 (A) incorrectly advises the taxpayer;

88 (B) fails to timely file a return on behalf of the taxpayer; or
89 (C) fails to make a payment on behalf of the taxpayer; and
90 (ii) demonstrates that the taxpayer exercised ordinary business care, prudence, and diligence
91 in determining whether to seek further advice.

92 (j) First Time Filer:
93 (i) It is the first return required to be filed and the taxes were filed and paid within a reasonable
94 time after the due date.
95 (ii) The commission may also consider waiving penalties on the first return after a filing
96 period change if the return is filed and tax is paid within a reasonable time after the due date.

97 (k) Bank Error:
98 (i) The taxpayer's bank has made an error in returning a check, making a deposit or
99 transferring money.
100 (ii) A letter from the bank verifying its error is required.

101 (l) Compliance History:
102 (i) The commission will consider the taxpayer's recent history for payment, filing, and
103 delinquencies in determining whether a penalty may be waived.
104 (ii) The commission will also consider whether other tax returns or reports are overdue on
105 the date the waiver is requested.

106 (m) Employee Embezzlement: The taxpayer shows that failure to pay was due to employee
107 embezzlement of the tax funds and the taxpayer was unable to obtain replacement funds from any
108 other source.

109 (n) Recent Tax Law Change: The taxpayer's failure to file and pay was due to a recent change
110 in tax law that the taxpayer could not reasonably be expected to be aware of.

111 (4) Other Considerations for Determining Reasonable Cause.
112 (a) The commission allows for equitable considerations in determining whether reasonable
113 cause exists to waive a penalty. Equitable considerations include:
114 (i) whether the commission had to take legal means to collect the taxes;
115 (ii) if the error is caught and corrected by the taxpayer;
116 (iii) the length of time between the event cited and the filing date;
117 (iv) typographical or other written errors; and
118 (v) other factors the commission deems appropriate.

119 (b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment,
120 which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.

121 (c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute
122 reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that
123 reasonable cause for waiver exists.

124 (d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver
125 under any circumstance.