

Penalty Abatement

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This publication is for general information only. It is designed to assist taxpayers in understanding the process of requesting abatement of penalties. For complete details, refer to the Arizona Revised Statutes and the Arizona Administrative Code. In case of inconsistency or omission in this publication, the language of the Arizona Revised Statutes and the Arizona Administrative Code will govern. Additional information can be found in the Department of Revenue's General Tax Ruling, GTR 04-2.

Arizona administers a penalty system designed to ensure a fair and consistent program of tax compliance. It is the Department of Revenue's goal, through consistent handling of abatement requests, to ensure fair and equal treatment for all taxpayers. The following will assist a taxpayer when considering a request for penalty abatement. Keep in mind, a decision by the Department is based on information and evidence provided by you, the taxpayer. A prompt and consistent reply can only be achieved if the Department receives documented and specific information with your request.

NOTE: Links to Arizona Statute and the Arizona Administrative Code can be found at www.azleg.gov. Decisions, rulings, and procedures can be found under the Legal Research tab at www.azdor.gov.

On What Basis Can Penalties be Abated?

Statutes provide that the Department may abate penalties for reasonable cause. A taxpayer may establish reasonable cause by providing facts and circumstances that show the taxpayer exercised ordinary business care and prudence in the handling of filing and payment of their taxes, the condition which created the assessment is not a recurring problem with that taxpayer, and there are specific reasons why the return was not filed and paid timely. There is no statutory provision for abatement of interest based on reasonable cause.

Situations Where Reasonable Cause May Exist:

Following are some situations where reasonable cause may exist. There may be other situations where reasonable cause may exist, which is why it's important for you to provide specific details or reasons that are directly attributable to the failure to file or pay timely for the periods you are requesting penalty abatement.

Circumstances beyond the control of the Taxpayer while using reasonable and prudent business practices:

1. Mathematical errors.

A mathematical error on a timely filed tax return.

2. Unexpected illness or unavoidable absence.

Individual returns

- a. Delay caused by serious illness of the taxpayer, or member of the taxpayer's immediate family. "Immediate Family" is defined as a spouse, parent, child, brother, sister, in-law, grandparent, or grandchild.
- b. Delay caused by unavoidable absence of the taxpayer. "Unavoidable absence" is defined as an absence which is incapable of being prevented. Vacation time is not acceptable as an unavoidable absence.

Entity returns

In the case of corporate, estate, trust, or other business returns, delay caused by unexpected serious illness of the individual with sole authority to execute the return, or member of such individual's immediate family.

Delay caused by unavoidable absence of the individual with sole authority to execute return.

If unexpected illness is the basis of the request for penalty abatement, the Department shall require proof of the date of illness. This proof includes, but is not limited to, doctor statements.

3. Death

- a. In the case of individual returns, delay caused by the death of a taxpayer or member of the taxpayer's immediate family. "Immediate family" has the same meaning as defined in number 2 above.
- b. In the case of corporate, estate, trust, or other business returns, the delay must have been caused by the death of an individual with sole authority to execute the return, or a member of such individual's immediate family.
- c. For both individual and business returns, a reasonable time frame should apply for filing the return and payment of tax. A copy of a death certificate must be provided.

4. Absence of records

The taxpayer is unable to obtain records necessary to determine the amount of tax due for reasons beyond the taxpayer's control. An example would be a fire which destroys the taxpayer's records.

Situations Where Reasonable Cause May NOT Exist:

1. Ignorance of the law

This does not meet the standard of reasonable cause for any tax type. The taxpayer has the responsibility to be knowledgeable of the laws under which they operate.

2. Delegation of duties

Businesses should exercise caution when delegating responsibilities to ensure job assignments are carried through and controls are in place to assure the timely filing and payment of taxes. It is not reasonable cause for an owner/taxpayer to place responsibility with a third party such as their employee, accountant, or attorney, and claim they were unaware the third party failed to file or pay the taxes in a timely manner.

3. Financial Difficulties

Financial difficulties have no effect on the taxpayer's ability to file returns in a timely fashion.

Penalties and/or fees not considered for abatement:

1. Interest

2. TPT tax licensing fees

3. Audit assessed penalties, or

4. Any disallowed accounting credit(s) for TPT.

Who May Request Abatement of Penalties?

Any taxpayer who files either a personal income or business tax return and is assessed a penalty.

- Individual - If a married filing joint return, both taxpayers must sign the request.
- Business - A responsible authorized party representing the business.

NOTE: If you want the Arizona Department of Revenue to work with your representative or a third party, complete and include Arizona Form 285, General Disclosure/Representation Authorization Form. Ensure boxes 4b and 4c or box 5 are indicated.

When May I File a Request for Abatement?

A written request for abatement of penalty can be submitted when a taxpayer is made aware of the assessment either through phone or department written notice.

A request for penalty abatement can be submitted when the account requesting abatement is in compliance. Compliance means there are no delinquent tax returns and all non-audit tax liabilities are paid when making the request.

How May I File a Request for Abatement?

All requests for abatement of penalties must be in writing and signed. Submit the request for penalty abatement using Arizona Form 290 which is located on the Department's website.

- Include a contact name, address, telephone number, and email address.
- Tax identification number of the account requesting penalty abatement. For example the business license number, employer identification number, or social security number.
- Provide the specific period(s) or year(s) in number format based on the account's filing frequency for the account requesting penalty abatement.
- Provide the specific penalty amount for those periods that you want considered for abatement. Do not include interest. There is no statutory provision that permits abatement of interest based on reasonable cause.
- You must include an explanation provide specific details or reasons that directly contributed to the failure to file or pay timely for the periods you are requesting penalty abatement. as to why those tax returns and/or payments were late or underpaid. Include in the explanation why there is reasonable cause for the returns and/or payments being late. Clear and concise information will allow for a prompt reply by the department. Copies of any documentation that supports your request should be included with the request.
- You must provide a signature, date, and print the name that matches the signature. Handwritten signatures or an electronic signature with a digital certificate are accepted.

Requests without supporting documentation may be denied.

IMPORTANT: You must include documentation that supports the basis of your request. Requests without supporting documentation may be denied.

Examples include:

- Proof of timely payment; including front and back copies of canceled checks or payment confirmation.
- Medical reports and/or Death certificate(s)
- Other pertinent documents that support your request for this abatement.
- Proof an extension has been filed.

NOTE: *The request will not be considered for processing if the form is incomplete or if the account is not in compliance. The abatement request form and documentation will be returned for correction. The form and documentation will then need to be resubmitted for consideration.*

Where Should an Abatement Request be Filed?

A request for abatement of audit assessed penalties should be directed to the appropriate audit unit. Generally, an audit assessment notification will provide the auditor name and contact information.

For non-audit penalties, mail, fax, or email the Form 290 *Requests for Penalty Abatement* to:
Arizona Department of Revenue
Penalty Review Unit
1600 W Monroe, Division Code 9
Phoenix AZ 85007

Fax: (602) 716-6787
Email: PenaltyReview@azdor.gov

What Happens Once a Request for Abatement is Received?

In the Penalty Review Unit, the request will be reviewed on a first come, first serve basis. Requests will be reviewed independently to determine if reasonable cause exists.

The Department does not accept penalty abatement requests or render decisions in person or by telephone.

Appeals

In accordance with Arizona Revised Statute § 42-1251, the taxpayer in the case of individual income taxes has 90 days from the date the denial notice was mailed in which to appeal. For all other tax types, the taxpayer has 45 days from the date the denial notice was mailed in which to appeal.

If you fail to file a formal appeal with the Department by the 45 or 90 day deadline, the abatement decision becomes final. However you can reinstate your appeal rights by filing a claim for refund.

To file a claim for refund, the total liability must be paid in full including tax, penalties, and interest. This claim for refund must be filed within six months of payment or four years from the due date of the original return or the date you actually filed the original return, whichever is later. Each claim shall provide your name, tax identification number, the amount of refund requested, the specific tax period(s) involved and specific grounds on which the claim is founded. Claims for refunds are to be mailed to the appropriate Audit unit of the department. Refunds are subject to offset of existing tax liability pursuant to Arizona Revised Statute § 42-1122.

Hearings

A request for hearing can be submitted in your appeal. You may request to have an informal conference at our office location, by telephone, or by virtual meeting. The

unit's auditor and/or their supervisor and you and/or your representative will participate in the conference. You will use this opportunity to present any information or documentation which you believe supports your abatement request and to discuss any remaining questions you may have. If a satisfactory resolution is not achieved, you may request a formal hearing. The formal hearing is conducted by an impartial hearing officer. Formal hearings on transaction privilege tax will be conducted by the Office of Administrative Hearings, an independent state agency. Hearings for all other tax types will be held at the Department of Revenue Hearing Office. Formal hearing requests are forwarded to the appropriate hearing office for scheduling. The hearing office will notify you in writing and provide you with the date and time of the hearing.

Contact Information

General questions regarding penalty abatement, for non-audit periods, can be obtained by calling (602) 716-7802. The Department does not accept penalty abatement requests or render decisions by telephone or in person.

For audit assessed penalties, contact the auditor identified on the audit assessment notification.

For Additional Information, call:

Phoenix..... (602) 255-3381
Toll free from area codes 520 & 928 800-352-4090

Write

Arizona Department of Revenue
Penalty Review Unit
1600 W. Monroe
Phoenix AZ 85007

Browse:

ADOR Websitewww.azdor.gov
Pay Onlinewww.AZTaxes.gov

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