

# PENALTY ABATEMENT

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.

If a taxpayer was audited by the department, and penalties assessed, an abatement request should be submitted in writing to the appropriate audit unit.

## On What Basis Can Penalties be Abated?

Statutes provide that the department may abate penalties for reasonable cause. Reasonable cause is presumed when the taxpayer uses ordinary business care and prudence in the handling of filing and payment of their taxes. Generally, this means a taxpayer has a good filing and payment history with the department, the condition which created the assessment is not a chronic problem with that taxpayer, and there are specific reasons why this particular return was not filed and paid timely. There is no statutory provision for abatement of interest based on reasonable cause.

## Who May Request Abatement of Penalties?

Any taxpayer who files either a personal income or business tax return and is assessed a penalty. If there is potential for reasonable cause, you should write to the department and provide specific information on the incident or event causing the penalty assessment.

## Situations Where Reasonable Cause May Exist:

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.
  - a) Individual returns
    1. 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 grand-child.
2. 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.
- b) Entity returns
  1. 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.
  2. Delay caused by unavoidable absence of the individual with sole authority to execute return.
- c) 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 taxpayer's immediate family. "Immediate family" has the same meaning as in situation 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 the individual with sole authority to execute the return, or a member of such individual's immediate family.
- c) In cases of individuals or business, a reasonable time frame should apply for filing the return and payment of tax, along with a copy of the death certificate.

### 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.

"Reasons beyond the taxpayer's control" are defined as those conditions or events which occur outside the taxpayer's authority. An example would be a fire.

### 5. Taxpayer's financial difficulties

Taxpayer's financial difficulties may present reasonable cause for failure to actually pay the tax. However, financial difficulties have no effect on the taxpayer's ability to file returns in a timely fashion.

There may be other reasons to consider abatement of penalties. Reasonable cause may exist if laws have changed during the taxpayer's period of operation.

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## Situations Where Reasonable Cause May NOT Exist:

1. Ignorance of the law.  
This in itself is not cause to abate penalties. 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 insure 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 claim they were unaware the employee filed or paid taxes late.

## When May I File a Request for Abatement?

A request for abatement of unpaid, system assessed (non-audit) penalties may be filed at anytime. A request for a refund of paid, system assessed penalties is governed by the statute of limitations for refunds.

## How May I File a Request for Abatement?

All requests for abatement of penalties must be in writing. Include the specific period(s) that should be considered and an explanation as to why a penalty should be abated. Clear and concise information will allow for a prompt reply by the department. Sign, date, and provide a telephone number with your request and include your tax identification or social security number. Any documentation that supports your request should be included with the correspondence.

## Where Should an Abatement Request be Filed?

A request for abatement of audit assessed penalties should be directed to the appropriate audit unit. For non-audit penalties, requests for abatement should be mailed to:

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

Once a request for penalty abatement is received, it will be reviewed on a first come, first served basis. A decision will be rendered and a letter sent to the taxpayer within 45 days of receipt of the request.

The Penalty Review Unit will review each request independently and determine if reasonable cause exists, based on the information provided in the taxpayer's letter. The department does not accept penalty abatement requests or render decisions by telephone. Requests by fax will be accepted. The fax number is (602) 542-2072.

General questions on penalty abatement, for non-audit periods, can be obtained by calling (602) 716-7802. If a

third party is assisting a taxpayer, a current Power of Attorney must be filed with the Department of Revenue.

## Appeals

The taxpayer has 90 days from the date of a denial to appeal an income tax related decision. On all other taxes, the taxpayer has 45 days. 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's Hearing Office.

### For Additional Information, call:

#### \*Transaction Privilege Tax\*

Phoenix ..... (602) 255-2060  
Toll free from area codes 520 & 928 .. (800) 843-7196

#### \*Income Tax\*

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

### For Hearing Impaired - TDD only:

Phoenix ..... (602) 542-4021  
Toll-free from area codes 520 & 928.. (800) 397-0256

### For Related Tax Information:

Internet Address ..... [www.azdor.gov](http://www.azdor.gov)  
Recorded Tax Information ..... (602) 542-1991  
Toll free from area codes 520 & 928 .. (800) 845-8192  
Forms by Mail ..... (602) 542-4260  
Forms by Fax ..... (602) 542-3756

### Or Write to:

Arizona Department of Revenue  
Taxpayer Information & Assistance  
1600 W Monroe  
Phoenix AZ 85007

This publication is available in an alternative format upon request.