

7. Taxpayers' attorney requested a waiver of the penalties by letter dated July 2, 2010.
8. In the letter the attorney stated that income tax returns were not filed for the 2004 through 2007 tax years because Taxpayers were not able to function as normal citizens due to the following circumstances beyond Taxpayers' control:
 - a. Taxpayers' home burnt in late 2003 and they lost all of their possessions.
 - b. Lawsuits resulting from the fire consumed much of Taxpayers' focus.
 - c. Taxpayer's sister was diagnosed with [REDACTED] in early 2004. Taxpayer cared for her for the next year. She died in May of 2005.
 - d. Taxpayer's father was diagnosed with [REDACTED] and he required constant care until his death in 2009.
 - e. Because of these events Taxpayers were completely incoherent to the outside world from 2004 through 2008.
9. Taxpayers did not present detailed documentation or evidence of the events listed in Findings of Fact No. 8.
10. During 2004 through 2008 Taxpayer [REDACTED] continued to carry on his business.
11. The Unit denied Taxpayers' request for penalty abatement.
12. Taxpayers timely requested a hearing before the Hearing Office.

CONCLUSIONS OF LAW

1. If a taxpayer fails to file his income tax return on or before the due date of the return or the due date as extended by the department, Arizona Revised Statutes (A.R.S.) § 42-1125(A) imposes a late filing penalty of four and one-half per cent of the tax required to be shown on such return for each month or fraction of a month elapsing between the due date of the return and the date on which it is filed.
2. The total late filing penalty cannot exceed twenty-five per cent of the tax found to be remaining due. A.R.S. § 42-1125(A).

3. If a taxpayer fails to pay the amount shown as tax on any return within the time prescribed, A.R.S. § 42-1125(D) imposes a late payment penalty of one-half of one per cent of the unpaid amount for each month or fraction of a month during which the failure continues.
4. The total late payment penalty cannot exceed ten percent of the amount due. A.R.S. § 42-1125(D).
5. The total late filing and late payment penalties cannot exceed twenty-five percent of the amount due. A.R.S. § 42-1125(D).
6. Taxpayers were required to make estimated income tax payments for tax years 2005 and 2006. A.R.S. § 43-581(A).
7. If a taxpayer does not pay the estimated tax required by A.R.S. § 43-581(A) on or before the prescribed dates, the taxpayer is liable for a penalty upon the unpaid amount as prescribed by A.R.S. § 42-1125(P).² A.R.S. § 43-581(D)
8. The total estimated underpayment penalty cannot exceed ten per cent of the amount of estimated payment not made. A.R.S. § 42-1125(P).
9. The late filing and the estimated underpayment penalties may be abated only if the failure to timely comply “is due to reasonable cause and not due to wilful neglect.” A.R.S. §§ 42-1125(A) and 42-2062.
10. “Reasonable cause” is generally defined to mean the exercise of “ordinary business care and prudence.” *Daley v. United States*, 480 F. Supp. 808 (D.N.D. 1979).
11. Reasonable cause may include delay caused by serious illness of the taxpayer, or member of the taxpayer’s immediate family. Arizona General Tax Ruling (GTR) 04-2, p.6.
12. A taxpayer’s immediate family includes a taxpayer’s parent or sister. GTR 04-2, p.6.

² A.R.S. § 42-1125(P) was the subsection designation in effect during the years at issue.

13. Reasonable cause may include delay caused by the death of taxpayer or a member of taxpayer's immediate family. GTR 04-2, p.6.
14. Taxpayers have not demonstrated that their failure to file Arizona individual income tax returns or pay Arizona income taxes for tax years 2004 through 2007 or make required estimated payments for tax years 2005 and 2006 were caused by the events listed in Findings of Fact No. 8.
15. Taxpayers have provided insufficient evidence to establish reasonable cause for the late filing of their Arizona individual income tax returns for tax years 2004 through 2007 or for the underpayment of their estimated taxes for tax years 2005 and 2006.
16. The Section properly imposed the late filing penalty under A.R.S. § 42-1125(A) and the estimated underpayment penalty under A.R.S. §§ 42-1125(P) and 43-581(A).

DISCUSSION

Taxpayers did not timely file their Arizona individual income tax returns for tax years 2004 through 2007 and did not make required estimated payments for tax years 2005 and 2006. The Department imposed late filing penalties and estimated underpayment penalties. Taxpayers requested an abatement of the penalties arguing that their failure to file and pay taxes was due to a house fire in 2003 that destroyed all their possessions and the unfortunate illness and death of Taxpayer's sister and father during 2004 through 2009. Taxpayers did not provide detailed facts or documentation surrounding these circumstances or showed how the circumstances caused Taxpayers' failure to file their income tax returns or make the required estimated payments. .

It is significant that tax year 2004 was not the first year that Taxpayers failed to file a return or pay the taxes due. Taxpayers had already established a pattern of not filing returns or paying their taxes for tax years 1999 through 2003. While Taxpayers experienced certain unfortunate events during 2003 through 2009, Taxpayers' broad references to the house fire and family illness did not establish that Taxpayers' failure to timely file returns or timely pay taxes were caused by those events. Taxpayer

[REDACTED] was able to continue to carry on his business during the years at issue notwithstanding the unfortunate events. Taxpayers have not shown that their failure to timely file their returns and or make estimated payments for the tax years at issue was not simply a continuation of a pattern that had developed during the previous five years.

Under the facts and circumstances of this particular case, Taxpayers have not established reasonable cause for their failure to timely file income tax returns or to make required estimated payments during the periods at issue. Therefore Taxpayers' request for abatement of the late filing and estimated underpayment penalties is denied. The Unit's denial of the late filing penalty and the estimated underpayment penalty is upheld.

DATED this 29th day of April, 2011.

ARIZONA DEPARTMENT OF REVENUE
HEARING OFFICE

[REDACTED]
Hearing Officer

Original of the foregoing sent by
certified mail to:

[REDACTED]

Copy of the foregoing mailed to:

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue
Penalty Review Unit