



Requests for Waiver of Civil Penalties

Purpose: The purpose of this Policy Statement is to provide taxpayers with guidance regarding requests for waiver of civil penalties and the standard applied by the Commissioner of Revenue Services (the Commissioner) in determining whether to waive a penalty.

Note: Requests for penalty waiver do not reduce interest that has been assessed. Additionally, a federal tax penalty waiver by the Internal Revenue Service does not automatically result in Connecticut tax penalty waiver.

Effective Date: When released.

Background: Subject to the provisions of Conn. Gen. Stat. §12-3a, the Commissioner may waive all or part of a Connecticut tax penalty when it is proven to his or her satisfaction that failure to timely file or pay the tax was due to reasonable cause and was not intentional or due to neglect.

Similar to the Internal Revenue Service, the Department of Revenue Services (DRS) has condensed this two-pronged requirement into a single requirement of reasonable cause. Therefore, the Commissioner will apply a reasonable cause standard when determining whether to waive a penalty (\$1,000 or less) or to recommend a waiver of a penalty (over \$1,000) to the Penalty Review Committee.

Reasonable Cause: The Commissioner and the Penalty Review Committee will determine reasonable cause on a case-by-case, fact-specific basis. Simply put, each penalty waiver request will be judged individually based on its facts and circumstances as presented in information provided by the applicant.

In order to understand the facts and circumstances of each penalty waiver request, taxpayers must respond to the following questions:

1. Why did the taxpayer fail to comply?

The taxpayer must explain what prevented the tax filing or payment as required. The timing of these events along with specific facts and circumstances must be identified and documented.

2. How did the taxpayer handle other financial responsibilities during the noncompliance period?

In other words, was the taxpayer able to make mortgage payments, credit card payments or similar required payments at the time the state tax filing or payment was due.

3. What efforts did the taxpayer make to comply?

The taxpayer should explain and document efforts to determine the tax due and file or pay on time.

4. Did the taxpayer make the required tax filing or tax payment as soon as possible after the facts and circumstances that caused non-compliance changed?

The Commissioner will consider how promptly the taxpayer took corrective action.

Form DRS-PW: In order to request a penalty waiver, taxpayers must complete and submit **Form DRS-PW, Request for Waiver of Civil Penalty**, (available on the DRS website at www.ct.gov/DRS). Form DRS-PW, submitted under penalty of false statement, requires taxpayers to provide sufficient, specific and detailed information (including supporting documentation and relevant information from other parties) to support the penalty waiver request.

A fully completed Form DRS-PW must be submitted to the following address:

**Department of Revenue Services
Operations Bureau/Penalty Waiver
PO Box 5089
Hartford CT 06102-5089**

Taxpayers should provide as much detail as possible and must attach any documentation supporting their claims to Form DRS-PW. **Failure to provide**

sufficient supporting documentation will result in the denial of a penalty waiver request.

The taxpayer or, in the case of corporations, partnerships, limited liability companies, estates, and trusts, the person authorized to execute the return or pay the tax, **must** sign Form DRS-PW.

Note: The Commissioner will not consider a penalty waiver request from a taxpayer with any outstanding Connecticut tax liability or Connecticut tax filing obligation. However, taxpayers on a Connecticut tax payment plan and in compliance with the terms of the plan may submit penalty waiver requests. Taxpayers who have timely protested or appealed an assessed Connecticut tax liability are also eligible to submit penalty waiver requests.

What Constitutes Reasonable Cause: Each penalty waiver request will be judged individually based on its facts, circumstances and supporting documentation. Reasonable cause will never be presumed.

Circumstances beyond the taxpayer's control. In general, the Commissioner's main consideration is whether the taxpayer could have anticipated or otherwise foreseen the circumstances that resulted in noncompliance and the circumstances were beyond the taxpayer's control. If there was an alternative means of compliance available to the taxpayer or sufficient time before the due date for the taxpayer to file or pay the tax due on time, it is unlikely that the Commissioner will find reasonable cause.

Note: A financial hardship cannot be considered in determining whether to waive a tax penalty.

Ignorance of the law. Taxpayers must make reasonable efforts to determine their tax obligations. Ignorance of the law usually will not establish reasonable cause. Factors such as the relative complexity of the issue or significant recent tax changes may be considered in determining whether reasonable cause exists.

DRS error. Documented reliance on erroneous information provided by the DRS or its employees usually will constitute reasonable cause.

Tax preparer error. Documented reliance on erroneous independent professional tax preparer advice or tax preparation may establish reasonable cause, provided the taxpayer made a good faith effort to confirm filing or payment. Similarly, erroneous filing or payment by an independent third party payroll processor may constitute evidence of reasonable cause.

Taxpayer error. Mere mistake by the taxpayer, employee of the taxpayer or any person unqualified to provide independent professional tax preparation will not, in and of itself, establish reasonable cause. Examples of mere mistakes include forgetfulness, inattention or inaction resulting in miscalculation, failure to include proper payment, failure to assure the availability of funds for purposes of payment and failure to file or pay electronically when, after reasonable notice or unless waived in writing by the DRS, the taxpayer is required to do so.

Death, serious illness, or unavoidable absence. Death, serious illness or unavoidable absence of the taxpayer (or death or serious illness in the taxpayer's immediate family) may establish reasonable cause. Any such determination will be dependent on the specific facts and circumstances and documentation provided. To this end, the Commissioner will, among other things, consider:

- The relationship of the taxpayer to the other parties involved;
- Date of death;
- Date, duration, and severity of illness;
- Date and reason for absence;
- How the circumstances prevented compliance;
- Whether other financial obligations were impaired; **and**
- Whether tax filing or payment were made promptly after the illness passed or after the death.

Taxpayers are advised to provide documented obituary or medical evidence.

Note: For corporations, partnerships, limited liability companies, estates and trusts, death, serious illness or unavoidable absence of the person (or death or serious illness in such person's immediate family) who had sole authority to execute the tax return or pay the tax may establish reasonable cause provided that another person could not be assigned the authority.

Inability to obtain tax records or information. Inability of taxpayers to obtain necessary tax records or information may constitute reasonable cause. The Commissioner may consider:

- Why the records were necessary;
- When and how the taxpayer became aware that the necessary records were not available;
- Why the records were unavailable;
- What steps were taken to secure the records;

- Whether other means were available and attempted to obtain the information;
- Whether the taxpayer timely requested and received DRS approval of an extension to file or an extension to pay or otherwise made a reasonable estimate and payment of any tax due;
- Whether the taxpayer contacted the DRS for assistance; **and**
- Whether the taxpayer promptly complied once the missing information became available.

Loss of necessary business records due to fire or other casualty beyond the taxpayer's control may constitute reasonable cause unless there is sufficient time to reconstruct the lost records. As always, taxpayers are required to provide supporting documentation of efforts made to get the information or otherwise estimate the tax due.

Note: Certain circumstances commonly present challenges for taxpayers with respect to the availability of necessary tax information. Such circumstances include the valuation and settlement of complex estates and late receipt of final reported Schedule K-1 income. Factors considered by the Commissioner in determining reasonable cause include:

- Whether the taxpayer timely filed a request for extension approved by the DRS;
- The extent of taxpayer ownership or involvement in the direction or finances of the business entity responsible for issuing the Schedule K-1;
- Documented reliance on receipt of an estimated Schedule K-1 at the time of requesting an extension to file or at the time of payment;
- Documented reliance on the final Schedule K-1 for the prior tax period; **and**
- Prompt payment of the tax due following documented receipt of the final Schedule K-1 for the applicable tax year.

Prior history. The Commissioner will consider a taxpayer's prior history of state tax compliance in determining whether reasonable cause exists.

Notification to Taxpayers: The DRS will notify the taxpayer in writing when a decision on the penalty waiver request has been made.

If the taxpayer disagrees with the Commissioner's decision or the decision of the Penalty Review Committee, the taxpayer may appeal the decision by filing a timely appeal to the Connecticut Superior Court. Information regarding appeal rights is contained in the notification letter.

Penalties Not Subject to Waiver: The following penalties are not subject to waiver:

- Criminal penalties/willful violations;
- Fraud and intent to evade penalties imposed in connection with an audit;
- Negligence penalties imposed in connection with an audit;
- Penalty imposed by Conn. Gen. Stat. §12-295;
- Penalty imposed by Conn. Gen. Stat. §12-330i;
- Penalty imposed by Conn. Gen. Stat. §12-414a;
- Penalty imposed by Conn. Gen. Stat. §12-458e;
- Penalty imposed by Conn. Gen. Stat. §12-547a;
- Penalty imposed by Conn. Gen. Stat. §12-660; **and**
- Penalty imposed by Conn. Gen. Stat. §12-736.

If, however, a taxpayer disagrees with the DRS imposition of one of the above-listed penalties (other than criminal penalties), the taxpayer may file a timely protest with the DRS Appellate Division by completing **Form APL-002, Appellate Division Appeal Form** (available at www.ct.gov/DRS).

Penalty Review Committee: Conn. Gen. Stat. §12-3a establishes the Penalty Review Committee comprised of the Commissioner of Revenue Services (or an employee designated by the Commissioner), the State Comptroller (or an employee designated by the Comptroller) and the Secretary of the Office of Policy and Management (or an employee designated by the Secretary). The Commissioner's recommendation to waive any penalty in excess of \$1,000 is subject to review and approval by the Penalty Review Committee. Meetings of the Penalty Review Committee are publicly noticed.

Note: The Penalty Review Committee has no authority to waive penalties on its own motion. The Committee may only consider penalty waiver requests recommended to it by the Commissioner.

Questions Regarding Penalty Waiver: Any and all questions regarding a penalty waiver request should be directed to the DRS Operations Bureau/Penalty Waiver at **860-297-4944**.

Statutory Authority: Conn. Gen. Stat. §12-206, Conn. Gen. Stat. §12-229, Conn. Gen. Stat. §12-263c, Conn. Gen. Stat. §12-263m, Conn. Gen. Stat.

§12-268d, Conn. Gen. Stat. §12-284b, Conn. Gen. Stat. §12-293a, Conn. Gen. Stat. §12-330d, Conn. Gen. Stat. §12-390c, Conn. Gen. Stat. §12-392, Conn. Gen. Stat. §12-405d, Conn. Gen. Stat. §12-419, Conn. Gen. Stat. §12-439, Conn. Gen. Stat. §12-458, Conn. Gen. Stat. §12-488, Conn. Gen. Stat. §12-502a, Conn. Gen. Stat. §12-509, Conn. Gen. Stat. §12-548, Conn. Gen. Stat. §12-590, Conn. Gen. Stat. §12-638c, Conn. Gen. Stat. §12-649, Conn. Gen. Stat. §12-655, Conn. Gen. Stat. §12-667, Conn. Gen. Stat. §12-668, Conn. Gen. Stat. §12-692, Conn. Gen. Stat. §12-735, Conn. Gen. Stat. §17b-320, Conn. Gen. Stat. §38a-277, Conn. Gen. Stat. §51-81b; and Conn. Agencies Reg. §12-689-4.

Effect on Other Documents: Policy Statement 2013(5), *Requests for Waiver of Civil Penalties*, is superseded and can no longer be relied upon.

Effect of This Document: A Policy Statement explains in depth a current DRS position, policy, or practice affecting the tax liability of taxpayers.

For Further Information: Call DRS during business hours, Monday through Friday:

- **1-800-382-9463** (Connecticut calls outside the Greater Hartford calling area only); **or**
- **860-297-5962** (from anywhere).

TTY, TDD, and Text Telephone users only may transmit inquiries anytime by calling 860-297-4911.

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Forms and Publications: Visit the DRS website at www.ct.gov/DRS to download and print Connecticut tax forms and publications.

Paperless Filing/Payment Methods (fast, easy, free, and confidential): Business and individual taxpayers can use the Taxpayer Service Center (*TSC*) at www.ct.gov/TSC to file a variety of tax returns, update account information, and make payments online.

File Electronically: You can choose first-time filer information and filing assistance or log directly into the *TSC* to file returns and pay taxes.

Pay Electronically: You can pay taxes for tax returns that cannot be filed through the *TSC*. Log in and select the ***Make Payment Only*** option. Designate a payment date up to the due date of the tax and mail a paper return to complete the filing process.

Want DRS E-Alerts? Get connected to the latest news from DRS. Receive notification by email of changes to legislation, policies, and procedures. **DRS E-Alerts** provide information for employer's withholding tax, News – Press Releases, and Top 100 Delinquency List. Visit the DRS website at www.ct.gov/DRS and select ***Sign up for e-alerts*** under ***How Do I?*** on the gold navigation bar.