

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.

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 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 insure job assignments are carried through and controls are in place to assure the timely filing and payment of taxes. It is not

PENALTY ABATEMENT

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.

Who May Request Abatement of Penalties?

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

When May I File a Request for Abatement?

A written request for abatement of penalty can be submitted upon receipt of a department notice of penalty assessment.

How May I File a Request for Abatement?

All requests for abatement of penalties must be in writing and signed. You may also request abatement using Arizona Form 290 which is located on the Department's website. Include a contact name, telephone number, tax identification number of the account (for example the business license number, employer identification number or social security number), the specific period(s) and the specific penalties for those periods that you want considered for abatement. You must include an explanation as to why those tax returns and/or payments were late or underpaid. 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.

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, requests for abatement should be mailed to:

Arizona Department of Revenue
Penalty Review Unit
1600 W Monroe, Division Code 9
Phoenix AZ 85007

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. Upon completion of the review a determination letter will be mailed to the taxpayer or the taxpayer's authorized representative.

The department does not accept penalty abatement requests or render decisions by telephone. Fax requests are accepted. The fax number is (602) 771-9912.

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 date notice is received, 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

Request for hearing can be submitted in your appeal. You may request to have an informal conference at our office location or by telephone. 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. For audit assessed penalties, contact the auditor identified on the audit assessment notification.

NOTE: If a third party is assisting a taxpayer, a current

PENALTY ABATEMENT

Power of Attorney must be filed with the Arizona Department of Revenue. Arizona Form 285, General Disclosure/Representation Authorization Form, is available on our website.

FOR ADDITIONAL INFORMATION:

~ Call ~

(602) 255-3381

Toll-free within AZ: 1-800-352-4090

~ Write ~

Arizona Department of Revenue

Audit Division

1600 W Monroe, Division Code 9

Phoenix AZ 85007

~ Browse ~

www.azdor.gov

www.AZTaxes.gov

This publication is available in an alternative format upon request.