

## Consideration of Penalty and Interest Abatement Requests

A. The Commission shall have the authority to resolve occupational license fee controversies to the extent of waiving penalty or interest, or both, in whole or in part where it is shown to the satisfaction of the Commission that failure to file or pay timely is due to reasonable cause and not willful neglect. In exercising such authority, the Commission will consider the facts and circumstances of each particular matter and, where necessary, the hazards and costs of litigation. The Commission has no authority to waive any tax due.

B. "Reasonable Cause" exists if the taxpayer establishes to the satisfaction of the Commission that either (i) there were significant mitigating factors for the failure or (ii) the failure arose as a result of an event, happening or circumstance entirely beyond the knowledge or control of a taxpayer who has exercised due care and prudence in the filing of a return and in the payment of the tax due.

C. Events which will be generally considered beyond the taxpayer's knowledge or control include, but are not limited to, the following:

1. Unavoidable absence. The absence (e.g. due to death or serious illness) of the person with the sole responsibility for filing the return in issue or for payment of the tax. The duration of the absence and its proximity to the due date of the return or payment will be taken into account in the Commission's determination.
2. Unavailability of relevant business records. Necessary business records must have been unavailable under such conditions, in such manner and for such period as to prevent timely compliance.
3. Revenue Commission advice or error. The taxpayer must show that the failure to comply was due to taxpayer's reasonable reliance on erroneous information provided by the Revenue Commission. This exception will not apply if the Revenue Commission was not aware of all the relevant facts when it provided the information to the taxpayer. The erroneous advice must have been provided in writing or be acknowledged by the Revenue Commission.

D. Events which will not generally be considered as establishing reasonable cause include, but are not limited to, the following:

1. Actions of agent or employee. The filing of a tax return and the payment of tax due are both personal, non-delegable duties of the taxpayer. Reasonable cause is not established by merely showing that the taxpayer relied upon an employee, accountant, attorney, payroll service or other person, who failed to file the return or pay the tax.
2. Ignorance of the Law. Neither ignorance of the law, nor ignorance of the necessity of filing a return or paying the tax is sufficient in and of itself to relieve the taxpayer from liability for penalty or interest.
3. No tax forms. Failure to receive or obtain tax forms.

E. In addition to establishing that an event beyond the taxpayer's knowledge or control caused the failure to file or pay timely, the taxpayer must also establish that the taxpayer acted in a responsible manner both before and after the failure occurred. The taxpayer must demonstrate that the taxpayer undertook appropriate steps to avoid or mitigate the failure and that the taxpayer rectified the failure as promptly as possible once the impediment to compliance was removed or the failure discovered.

F. In evaluating the hazards and cost of litigation, the Commission will consider waiving penalties or interest, in whole or in part, based on doubt as to collectability. To establish such doubt, a taxpayer must demonstrate lack of both present and future income and assets (inability to pay must be permanent or long-term and the taxpayer's lack of present ability to pay is not sufficient). That the taxpayer will suffer hardship by reason of payment of penalty or interest is not in and of itself a sufficient basis to waive penalty or interest.

G. Circumstances which will generally be considered in evaluating collectability include, but are not limited to, the following:

1. The taxpayer is in receivership or is the subject of any proceeding under the Bankruptcy Act, taking into account the priority of the Revenue Commission's claim.
2. The taxpayer has made or is making an assignment for the benefit of creditors or other arrangement or composition with the taxpayer's creditors.
3. The taxpayer is involved in any other insolvency or liquidation proceedings.
4. The taxpayer is seriously ill, disabled or deceased.
5. Any lien rights and other security the Revenue Commission may possess.
6. Any court proceedings involving the taxpayer, pending substantial claims against the taxpayer outside of the ordinary course of business, and other unusual circumstances impacting the taxpayer's financial condition.

H. In considering requests for waiver of interest and penalties, the Commission will take into account the history, if any, of the taxpayer in complying with its obligations to the Revenue Commission in the past. Other evidence demonstrating a lack of willful neglect on the part of the taxpayer with respect to the taxpayer's failure to comply will also be considered.

I. Since interest represents merely a charge for the benefit realized by the taxpayer from retaining money beyond the date it should have been paid to the Revenue Commission and the loss incurred by the Revenue Commission from not having use of the money for the same period of time, the Commission will generally be more disposed to granting waivers of penalties as opposed to waivers of interest.

J. In order to obtain a waiver of penalty or interest, a taxpayer must submit to the Revenue Commission a written request for the waiver no later than sixty (60) days after notice of assessment of the penalty or interest from the Revenue Commission. In such request, the taxpayer shall set forth all of the facts and circumstances believed by the taxpayer to constitute

reasonable cause for the non-compliance on the part of the taxpayer giving rise to the penalty or interest. Such request must be signed by the taxpayer, acknowledged and sworn to by the taxpayer before a notary public, and contain a declaration that it is made under penalties of perjury. The taxpayer should submit to the Revenue Commission with the request all documentation, affidavits, and other material the taxpayer deems necessary or relevant in support of the taxpayer's position. The taxpayer may request an extension of up to ninety (90) days to obtain material facts relevant to the request.

K. The Commission will not generally consider a request for waiver of interest or penalty unless the taxpayer has filed all required filings and has paid all of the tax to which the interest or penalty relates before or at the same time as the taxpayer submits the request. The taxpayer may request an extension of up to ninety (90) days to meet this obligation.

L. No waiver of penalty or interest shall be granted unless approved by the Board of Commissioners of the Revenue Commission. The Director shall have a staff report made of the request for penalty and interest abatement. The staff report shall document the case as presented by the requestor. The Director shall review the staff report and shall make a formal recommendation to the Board of Commissioners. Such recommendation shall not name the requestor. The Board may ask for additional material which it deems necessary to allow it to make a final determination.