



450 Columbus Blvd Ste 1
Hartford CT 06103-1837

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 that the Commissioner of Revenue Services (Commissioner) applies when deciding whether to waive a penalty.

This guidance generally applies to penalties imposed due to the late payment of tax or filing of a return. This guidance does not apply to penalties assessed by the Department of Revenue Services (DRS) during the course of an audit because such penalties cannot be waived through this process. This guidance also does not apply to interest imposed as a result of late payment because DRS cannot waive or reduce interest.

Procedure to Request a Penalty Waiver: To request a penalty waiver, you must file **Form DRS-PW**, *Request for Waiver of Civil Penalty*, which is available on the DRS website. You must answer all questions on Form DRS-PW and provide documentation to support the claims you make in your request. If you do not provide supporting documentation, your request may be denied.

Sign your completed Form DRS-PW and mail the form, along with all supporting documentation, to the address provided on the form. If another person, such as a tax preparer, is filing the request for you, that person must submit a **Form LGL-001**, *Power of Attorney*, with the request. This form is also available on the DRS website.

Your penalty waiver request will not be considered if you have any outstanding filing obligations or tax liabilities, unless the liabilities are under protest or appeal or the liabilities are covered by an active payment plan.

Time Limit to Request a Penalty Waiver: You must file Form DRS-PW no later than one year from the date that the first notice of the penalty was sent to you or, if you reported the penalty on a return, no later than one year from the date you filed the return.

Requests filed after the one-year period are barred by the statute of limitations and cannot be considered by the Commissioner.

Factors the Commissioner Will Consider When Deciding Whether to Waive a Penalty:

Each penalty waiver request will be judged individually based on its facts, circumstances and supporting documentation. The Commissioner is authorized to waive all or part of a penalty when it is proven to his or her satisfaction that the failure to timely file, pay tax or otherwise comply with a tax obligation was due to reasonable cause and not intentional or due to neglect.

The Commissioner will consider the facts and circumstances of your situation to determine the extent of your effort to properly calculate and timely pay your tax liability. The more efforts you have taken to ensure timely payment and filing, the more likely the Commissioner will find reasonable cause and, therefore, waive your penalty.

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

The Commissioner will presume that reasonable cause exists if the failure to timely pay was caused by legislation signed after the due date of the relevant payment.

Filing history. Your prior history of state tax compliance will be considered in determining whether reasonable cause exists.

The Commissioner will presume that reasonable cause exists if this is the first time you have been subject to a penalty. This presumption only applies with respect to penalties imposed on tax types that are due on a monthly, quarterly, or annual basis.

Timeliness. The Commissioner will consider how promptly you complied and whether you came forward voluntarily or after receiving notice by DRS.

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

Internal Revenue Service (IRS) Waived the Penalty. The Commissioner will presume that reasonable cause exists if the IRS has waived a penalty imposed on you for the same tax type and period.

Tax preparer error. Your reliance upon a tax preparer to file or pay on your behalf generally will not constitute reasonable cause. You are responsible for meeting your tax obligations and that responsibility cannot be delegated. Reasonable cause, however, may be found if there is documented evidence that your tax preparer made a miscalculation, typographical error or transposition error despite the exercise of ordinary business care and prudence. Reasonable cause may also be found if there is documented evidence that you relied upon the advice of a tax advisor with respect to a complex tax issue.

Taxpayer error. Mistakes may only constitute reasonable cause if unintentional as demonstrated by the evidence provided. Mistakes that constitute reasonable cause include miscalculations, typographical or transposition errors, and mistakes attributable to technological problems despite the exercise of ordinary business care and prudence. Mistakes that do not constitute reasonable cause include failure to assure the availability of sufficient funds for payment or failure to pay electronically when 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. The Commissioner will 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.

You are advised to provide documented obituary or medical evidence.

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 due may establish reasonable cause provided that another person could not be assigned the authority.

Inability to obtain tax records or information. If you were unable to obtain tax records or information, the Commissioner may find reasonable cause. In making this determination, the Commissioner will consider:

- Why the records were necessary;
- When and how you became aware that the necessary records were not available;
- Why the records were unavailable;
- What steps you took to secure the records;
- Whether other means were available and you attempted to obtain the information;
- Whether you 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 you made any timely payments and the amount of those payments;
- Whether you contacted the DRS for assistance; **and**
- Whether you promptly complied once the missing information became available.

Loss of necessary business records due to fire or other casualty beyond your control may constitute reasonable cause unless there is sufficient time to reconstruct the lost records.

As always, you are required to provide supporting documentation of the efforts you made to get the information or otherwise estimate the tax due.

The Commissioner recognizes that certain circumstances will present challenges for you to obtain necessary tax information. These circumstances include the valuation and settlement of complex estates and late receipt of final reported Schedule K-1 income.

In these circumstances, the Commissioner will consider:

- Whether you timely filed a request for extension;
- The amount of your timely payments, which evidence that a good faith effort was made to comply;
- The extent of your ownership or involvement in the direction or finances of the business entity responsible for issuing the Schedule K-1;
- Your 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;
- Your documented reliance on the final Schedule K-1 for the prior tax period; **and**
- Evidence of your prompt payment of the tax due following receipt of the final Schedule K-1 for the applicable tax year.

Ignorance of the law. Your 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.

Financial hardship. Your financial hardship cannot be considered in determining whether to waive a tax penalty. If there are issues related to ability to pay, please see **Informational Publication 2004(31), *Procedures for Making Offers of Compromise***, or contact DRS to discuss potential payment options.

Penalty Review Committee Approval of Penalty Waivers Above \$5,000: If the Commissioner recommends the waiver of a penalty in excess of \$5,000, the Commissioner's recommendation is subject to the review and approval of the Penalty Review Committee. The Penalty Review Committee is comprised of the Commissioner of Revenue Services, the State Comptroller and the Secretary of the Office of Policy and Management (or their designated employees). Meetings of the Penalty Review Committee are publicly noticed.

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

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

If you disagree with the Commissioner's decision or the decision of the Penalty Review Committee, you may appeal the decision by filing a timely appeal to the Connecticut Superior Court.

Visit <https://jud.ct.gov/external/super/Tax/> for information regarding appeals to the Connecticut Superior Court. Information regarding your appeal rights is contained in the DRS notification letter.

Penalties That May Not Be Waived: The following penalties may not be waived by this process:

- Criminal penalties;
- Penalties imposed due to negligence, willfulness, fraud, intentional disregard of or intent to evade the tax provisions, failure to disclose a reportable or listed transaction, or false statement;
- Penalties imposed in connection with an audit; **and**
- Penalties specifically identified as civil penalties or fines, unless the Commissioner is authorized by the section imposing the civil penalty or fine to waive it on the basis of reasonable cause.

If you disagree with the imposition of penalties imposed in connection with an audit, you may file a protest with the DRS Appellate Division by completing **Form APL-002, *Appellate Division Protest Form***.

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

Effective Date: Effective upon issuance

Statutory Authority: Conn. Gen. Stat. § 12-3a, Conn. Gen. Stat. § 12-3d, Conn. Gen. Stat. § 12-206, Conn. Gen. Stat. § 12-229, Conn. Gen. Stat. § 12-263c, Conn. Gen. Stat. § 12-263m, Conn. Gen. Stat. § 12-263s, 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. § 12-699, Conn. Gen. Stat. § 12-735, Conn. Gen. Stat. § 12-790, Conn. Gen. Stat. § 38a-277, Conn. Gen. Stat. § 51-81b; and Conn. Agencies Reg. § 12-689-4.

Effect on Other Documents: Policy Statement 2018(3), *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:

- **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. Taxpayers may also call 711 for relay services. A taxpayer must tell the 711 operator the number he or she wishes to call. The relay operator will dial it and then communicate using a TTY with the taxpayer.

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Forms and Publications: Visit the DRS website at portal.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 portal.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. Choose a payment date up to the due date of the tax and mail a paper return to complete the filing process.