

# Penalties

## Application & Procedures



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### DISCLAIMER

Because the nature and subject of these guidelines could result in litigation, the confidentiality of these guidelines as a privileged work product and attorney-client communication should be preserved. Accordingly, these guidelines should not be distributed to any taxpayer, any taxpayer's attorney or representative, or any person other than a Department of Revenue employee.

Every effort and care has been taken in the preparation of this manual. The material included in this manual is based on available information as of March 2012.

The possibility of mechanical and/or human error does exist. However, if any information in this manual is later determined to be in error, this manual cannot be used by taxpayers in supporting a specific position or issue before the Department of Revenue as it does not have the statutory or regulatory authority.

## INTRODUCTION

Tax penalties exist to encourage voluntary compliance by supporting the standards of behavior required by the Kentucky Revised Statutes. For most taxpayers, voluntary compliance consists of preparing an accurate return, filing it timely, and paying any tax due. Efforts made to fulfill these obligations constitute compliant behavior. Most penalties apply to behavior that fails to meet any or all of these obligations.

Most taxpayers in Kentucky assess their tax liabilities against themselves and pay them voluntarily. This system of self-assessment and payment is based on the principle of voluntary compliance. Voluntary compliance exists when taxpayers conform to the law without compulsion or threat. Compliant self-assessment requires a taxpayer to know the rules for filing returns and paying taxes. To this end, penalties support and encourage voluntary compliance. It is imperative that the Kentucky Department of Revenue (DOR) develop guidelines for the fair and impartial application of penalties. These guidelines have been developed in partnership with all areas of the Department and apply to all type taxes.

There are numerous Kentucky Revised Statutes and Administrative Regulations that guide DOR in application of penalties. However, there can be gray areas in the understanding of these statutes and regulations. This occasionally leads to interpretation by employees on how to apply or abate penalties.

The purpose of this material is to clearly present the statutory guidelines that eliminate interpretation and to provide an understanding of the nine separate penalty provisions as outlined by KRS 131.180, the application of each penalty, and the basis for reduction or waiver when reasonable cause is demonstrated. KRS 131.180 is known as the Uniform Civil Penalty Act and is the foundation for all nine penalty provisions as well as the administration of those penalties.

The nine separate penalty provisions are:

1. Late Filing
2. Late Payment
3. Underpayment or Late Payment of Estimated Income Tax
4. Failure to File or Failure to Furnish Information
5. Failure to Timely Pay Nonprotested Tax Assessed
6. Failure to Timely Obtain Any Required Tax Identification Number, Permit, License, or Other Document of Authority
7. Negligence
8. Fraud
9. Unhonored Check

KRS 131.180(12) states that:

“Nothing in this section shall be construed to prevent the assessment or collection of more than one (1) of the penalties levied under this section or any other civil or criminal penalty provided for violation of the law for which penalties are imposed.”

This means the application of penalties is not mutually exclusive and may run concurrently. In other words, more than one penalty may apply at a time. This principle is known as *penalty stacking*. For example, if a return is filed late and the taxes are paid late, then both the Late Filing and Late Payment penalties may apply.

All penalties may be reduced or waived by the Department if reasonable cause is demonstrated. The procedures for reducing or waiving penalties will follow each area’s specific guidelines. After careful review by the Department, if the request for reduction or waiver is denied, the request may be appealed in accordance with the protest appeals guidelines for timely or untimely protest.

All decisions regarding assessing, reducing, or waiving penalties should be made with consideration to the Kentucky Revised Statutes and the Department of Revenue’s policies/procedures as outlined in this material.

## UNIFORM CIVIL PENALTY ACT GUIDELINES

Guidelines for the application of the Uniform Civil Penalty Act (UCPA) were developed to provide uniformity and consistency in the application of civil penalties regardless of the type tax involved. Except for certain property taxes, KRS 131.180 imposes uniform civil penalties for violation of tax laws administered by the Department of Revenue (DOR).

The purpose of these guidelines is to provide a clear understanding of the penalty provisions outlined in KRS 131.180, the application of each penalty, and the basis for reduction or waiver of penalties when reasonable cause is demonstrated. KRS 131.180 follows:

### **KRS 131.180 Uniform Civil Penalty Act**

The provisions of this section shall be known as the "Uniform Civil Penalty Act." Penalties to be assessed in accordance with this section shall apply as follows unless otherwise provided by law:

- (1) "Any taxpayer who files any return or report after the due date prescribed for filing or the due date as extended by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the total tax due for each thirty (30) days or fraction thereof that the report or return is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the total tax due; however, the penalty shall not be less than ten dollars (\$10).
- (2) Any taxpayer who fails to withhold or collect any tax as required by law, fails to pay the tax computed due on a return or report on or before the due date prescribed for it or the due date as extended by the department or, excluding underpayments determined pursuant to subsections (2) and (3) of KRS 141.990, fails to have timely paid at least seventy-five percent (75%) of the tax determined due by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the tax not withheld, collected, or timely paid for each thirty (30) days or fraction thereof that the withholding, collection, or payment is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the tax not timely withheld, collected, or paid; however, the penalty shall not be less than ten dollars.
- (3) Any taxpayer who fails to pay any installment of estimated tax by the time prescribed in KRS 141.044 and 141.305 or who, pursuant to subsections (2) or (3) of KRS 141.990, is determined to have a declaration underpayment shall, unless it is shown to the satisfaction of the department that the failure or underpayment is due to reasonable cause, pay a penalty equal to ten percent (10%) of the amount of the underpayment or late payment; however, the penalty shall not be less than twenty-five dollars (\$25).

- (4) If any taxpayer fails or refuses to make and file a report or return or furnish any information requested in writing by the department, the department may make an estimate of the tax due from any information in its possession, assess the tax at not more than twice the amount estimated to be due, and add a penalty equal to five percent (5%) of the tax assessed for each thirty (30) days or fraction thereof that the return or report is not filed. The total penalty levied pursuant to this subsection shall not exceed fifty percent (50%) of the tax assessed; however, the penalty shall not be less than one hundred dollars (\$100) unless the taxpayer demonstrates that the failure to file was due to reasonable cause as defined in KRS 131.010(9). This penalty shall be applicable whether or not any tax is determined to be due on a subsequently filed return or if the subsequently filed return results in a refund.
- (5) If any taxpayer fails or refuses to pay within forty-five (45) days of the due date any tax assessed by the department which is not protested in accordance with KRS 131.110, there shall be added a penalty equal to two percent (2%) of the unpaid tax for each thirty (30) days or fraction thereof that the tax is final, due, and owing, but not paid.
- (6) Any taxpayer who fails to obtain any identification number, permit, license, or other document of authority from the department within the time required by law shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to ten percent (10%) of any cost or fee required to be paid for the identification number, permit, license, or other document of authority; however, the penalty shall not be less than fifty dollars (\$50).
- (7) If any tax assessed by the department is the result of negligence by a taxpayer or other person, a penalty equal to ten percent (10%) of the tax so assessed shall be paid by the taxpayer or other person who was negligent.
- (8) If any tax assessed by the department is the result of fraud committed by the taxpayer or other person, a penalty equal to fifty percent (50%) of the tax so assessed shall be paid by the taxpayer or other person who committed fraud.
- (9) If any check tendered to the department is not paid when presented to the drawee bank for payment, there shall be paid as a penalty by the taxpayer who tendered the check, upon notice and demand of the department, an amount equal to ten percent (10%) of the check. The penalty under this section shall not be less than ten dollars (\$10) nor more than one hundred dollars (\$100). If the taxpayer who tendered the check shows to the department's satisfaction that the failure to honor payment of the check resulted from error by parties other than the taxpayer, the department shall waive the penalty.
- (10) Any person who fails to make any tax report or return or pay any tax within the time, or in the manner required by law, for which a specific civil penalty is not provided by law, shall pay a penalty as provided in this section, with interest from the date due at the tax interest rate as defined in KRS 131.010(6).

(11)The penalties levied pursuant to subsection (5) of this section shall apply to any tax assessment protested pursuant to KRS 131.110 to the extent that any appeal of the assessment or portion of it is ruled by the Kentucky Board of Tax Appeals or, if appealed from, the court of last resort, as not protested, appealed, or pursued in good faith by the taxpayer.

(12)Nothing in this section shall be construed to prevent the assessment or collection of more than one (1) of the penalties levied under this section or any other civil or criminal penalty provided for violation of the law for which penalties are imposed.

(13)All penalties levied pursuant to this section shall be assessed, collected, and paid in the same manner as taxes. Any corporate officer or other person who becomes liable for payment of any tax assessed by the department shall likewise be liable for all penalties and interest applicable thereto.”

As stated in KRS 131.180 (12), application of these penalties is not mutually exclusive; they may run concurrently or “stack”. In other words, more than one penalty may apply. For example, if a return is filed late and paid late, then both the Late Filing and Late Payment penalties may apply.

### **Reduction and Waiver of Penalties**

All penalties assessed under KRS 131.180 may be reduced or waived by DOR if reasonable cause is demonstrated. These guidelines address the majority of situations that may result in waiving or reducing penalties. A discussion of reasonable cause guidelines follows in this manual.

Other situations involving the waiving or reduction of penalties may require approval from our Legal Services for Revenue area. KRS 131.175 grants the commissioner authority to waive penalties due to reasonable cause. KRS 131.175, in combination with KRS 131.030, allows the Department to settle cases based on the hazards of litigation and gives the Department authority to reduce penalties, either due to reasonable cause, or as part of a settlement based on hazards of litigation.

In addition, the Division of Collections may choose to include a waiver or reduction of penalties through their Offer in Settlement Section.

**Approval for Reduction or Waiver of Penalty**

Any front-line employee involved with penalties has the right to recommend the reduction or waiver of penalties based on reasonable cause. However, the ultimate authority for approving the reduction or waiver of any penalty lies with the appropriate supervisory level.

The approval authority to reduce or waive penalties follows the same approval levels to adjust, void, or charge-off tax bills:

Section Supervisor/Field Audit Supervisor	Up to \$50,000
Branch Manager/Field District Manager	Up to \$100,000
Assistant Director/Field Regional Manager	Up to \$150,000
Director	Up to \$1,000,000
Executive Director	Over \$1,000,000
Commissioner	Over \$1,000,000

## OVERVIEW OF PENALTY PROVISIONS

### Late Filing Penalty

A) KRS 131.180 (1) provides:

“Any taxpayer who files any return or report after the due date prescribed for filing or the due date as extended by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the total tax due for each thirty (30) days or fraction thereof that the report or return is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the total tax due; however, the penalty shall not be less than ten dollars (\$10).”

B) The purpose of this penalty is to encourage the timely filing of returns or reports.

The late filing penalty is applied when a return or report is filed after the date prescribed by law or the extended due date for filing the return or report.

This penalty is assessable only at the department's first opportunity to issue a determination of tax (refund or tax bill). The late filing penalty shall not be assessed during subsequent reviews and/or examinations by the department for the same period. The penalty base may be decreased when additional information is received, but it will never be increased.

C) Penalty Base: Total tax due

For the purposes of computing this penalty, total tax due means the tax liability required to be shown on the return or report, less timely credits.

D) Penalty Rate: 2 percent per each 30-day period or fraction thereof.

The penalty is assessed at a rate of 2 percent of the penalty base for each 30-day period or fraction thereof that the return or report is filed after the due date or extended due date for filing a return or report.

E) Maximum Penalty Rate: 20 percent

The penalty rate of 2 percent per month of the penalty base accrues to a maximum of 20 percent if the return or report is not filed within 9 30-day periods.

F) Minimum Penalty: \$10

If the calculated penalty is less than \$10, a minimum penalty of \$10 is applicable.

G) Grounds for Waiver or Reduction:

Any waiver or reduction must be based on reasonable cause guidelines, which follow in this manual.

**Example #1**

*KRS 131.180(1)*

Late Filing Penalty (*other applicable penalties and/or interest not examined*)

Scenario:

- On 12/02/2010, a 09/2010 Sales and Use Tax Return is filed.
- Taxpayer paid in full when the return was filed.
- The system generated a bill because the taxpayer did not calculate or pay the late filing penalty with the return.

Penalty Base Calculation:

	<b>Original</b>	<b>Adjusted</b>	<b>Penalty Base</b>
<b>Tax Liability</b>	\$130	N/A	\$130
<b>Paid with Return</b>	(\$130)	N/A	N/A
<b>Tax Due</b>	\$0	N/A	N/A
<b>Penalty Base</b>			\$130

Penalty Applied:

- 2 percent of the total tax due for every 30 days that the return or report is filed late.
- \$10 minimum amount assessed.

<b>Penalty Base</b>	<b>\$130</b>
Penalty Percentage	
12/02/2010 – Date return filed	
10/20/2010 – Date return due	
42 days: 2 months X 2%	<b>X 4%</b>
	<b>\$5.20</b>
<b>Total Late Filing Penalty</b>	<b>\$10 (minimum)</b>

Notes:

- System-generated bills will automatically include the late file penalty.
- \$10 minimum is assessed because the calculation is less than \$10.
- Two months of late filing penalty is assessed because a new 30-day cycle had been started. The return or report does not have to be filed 60 days late to accrue two months worth of late filing penalty.

**Example #2**

*KRS 131.180(1)*

Late Filing Penalty (*other applicable penalties and/or interest not examined*)

Scenario:

- On 5/14/2011, a 2010 Individual Income Tax return was filed.
- The return was adjusted by DOR due to multiple errors.
- The taxpayer did not request an extension with the return.
- The taxpayer made a \$600 payment on 05/01/2011 and had verified withholding of \$750.

Penalty Base Calculation:

	<b>Original</b>	<b>Adjusted</b>	<b>Penalty Base</b>
<b>Tax Liability</b>	\$3,799	\$2,994	\$2,994
<b>KY Withholding</b>	(\$2,600)	(\$750)	(\$750)
<b>Payment</b>	(\$600)	(\$600)	(\$600)
<b>Tax Due</b>	\$599	\$1,644	N/A
<b>Penalty Base</b>			\$1,644

Penalty Applied:

- 2 percent of the total tax due for every 30 days that the return or report is filed late.

<b>Penalty Base</b>	<b>\$1,644</b>
Penalty Percentage	
05/14/2011 – Date return filed	
04/18/2010 – Date return due	
26 days: 1 month X 2%	<b>X 2%</b>
	<b>\$33</b>
<b>Total Late Filing Penalty</b>	<b>\$33</b>

Notes:

- Because this return was adjusted, the employee reviewing this return would need to apply the late filing penalty *manually*.
- Any payment, credit, or withholding made before the due date of the return is considered timely. In this example, the withholding was a timely credit used to reduce the penalty base, but the \$600 payment was made after the due date of the return.

**Late Payment Penalty**

A) KRS 131.180 (2) provides:

“Any taxpayer who fails to withhold or collect any tax as required by law, fails to pay the tax computed due on a return or report on or before the due date prescribed for it or the due date as extended by the department or, excluding underpayments determined pursuant to subsections (2) and (3) of KRS 141.990, fails to have timely paid at least seventy-five percent (75%) of the tax determined due by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the tax not withheld, collected, or timely paid for each thirty (30) days or fraction thereof that the withholding, collection, or payment is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the tax not timely withheld, collected, or paid; however, the penalty shall not be less than ten dollars (\$10).”

B) The purpose of this penalty is to encourage timely payment of all tax liabilities.

Any tax not paid by the original due date is subject to the late payment penalty. If the tax shown to be due on the return is not paid in full by the original due date, the late payment penalty shall accrue from the original due date to the date of payment.

The late payment penalty **does not** apply when 75 percent of the tax due is paid timely.

Note: An extension to file a return does not extend the payment due date.

C) Penalty Base: Tax not withheld, collected or timely paid

For the purposes of computing this penalty:

- **Tax not withheld** means total of tax required by law to be withheld less any timely credit as applied
- **Tax not collected** means total of tax required by law to be collected less any timely credit as applied
- **Tax not timely paid** means any tax computed due or determined due by DOR less any timely credit as applied

D) Penalty Rate: 2 percent per each 30-day period or fraction thereof.

The penalty is assessed at a rate of 2 percent of the penalty base for each 30-day period or fraction thereof that the payment is late.

E) Maximum Penalty Rate: 20 percent

The penalty rate of 2 percent per month of the penalty base accrues to a maximum of 20 percent if the total tax is not paid within nine 30-day periods. Any tax paid

after the nine 30-day periods will be assessed with a maximum late payment penalty of 20 percent of the penalty base.

F) Minimum Penalty: \$10

If the calculated penalty is less than \$10, a minimum penalty of \$10 is applicable. However, the minimum late payment penalty is not applicable when a zero return or report is filed.

G) Grounds for Waiver or Reduction:

Any waiver or reduction must be based on reasonable cause guidelines, which follow in this manual.

**Example #3**

*KRS 131.180(2)*

Late Payment Penalty (*other applicable penalties and/or interest not examined*)

Scenario:

- On 03/15/2011, a 01/2011 Withholding Tax return was filed.
- The taxpayer paid \$1,000 with the return.
- A tax bill was issued for the unpaid balance.
- Other penalties apply, but only Late Payment Penalty is examined.

Penalty Base Calculation:

	<b>Original</b>	<b>Adjusted</b>	<b>Penalty Base</b>
<b>Net Tax Due</b>	\$1,100	N/A	\$1,100
<b>Paid with Return</b>	(\$1,000)	N/A	(\$1,000)
<b>Amount Due</b>	\$100	N/A	N/A
<b>Penalty Base</b>			\$100

Penalty Applied:

- 2 percent of the total tax due for every 30 days that the payment is late.
- \$10 minimum amount assessed.

<b>Penalty Base</b>	<b>\$100</b>
Penalty Percentage	
03/15/2011 – payment made	
02/15/2011 – Date return due	
28 days: 1 month X 2%	<b>X                      2%</b>
	<b>\$2</b>
<b>Total Late Payment Penalty</b>	<b>\$10 (Minimum)</b>

Notes:

- Since the calculated penalty is less than \$10, the \$10 minimum applies.

**Example #4**

*KRS 131.180(2)*

Late Payment Penalty (*other applicable penalties and/or interest not examined*)

Scenario:

- On 04/16/2011, a 2009 Individual Income Tax return was filed.
- The return was submitted claiming, after withholding and payments, \$0 due.
- The payment(s) could not be verified.
- Only part of the withholding could be verified.
- There were multiple errors corrected by DOR on the return.

Penalty Base Calculation:

	<b>Original</b>	<b>Adjusted</b>	<b>Penalty Base</b>
<b>Tax Liability</b>	\$1,850	\$1,905	\$1,905
<b>KY Withholding</b>	(\$1,500)	(\$450)	(\$450)
<b>Payment</b>	(\$350)	\$0	\$0
<b>Tax Due</b>	\$0	\$1,455	N/A
<b>Penalty Base</b>			\$1,455

75% Rule

- Tax Due = **\$1,455**
- 75 percent of tax due = **\$1,091**
- Amount paid by due date of return = **\$450**
- *Late Payment Penalty applies*

Penalty Applied:

- 2 percent of the total tax due for 30 days that the return or report is filed late.

<b>Penalty Base</b>	<b>\$1,455</b>
<b>Penalty Percentage</b>	
04/16/2011 – Date return filed	
04/15/2010 – Date return due	
365 days: 12 months	<b>X 20%</b>
	<b>\$291</b>
<b>Total Late Payment Penalty</b>	<b>\$291</b>

Notes:

- The taxpayer failed to timely pay at least 75 percent of the tax due on the return.
- Withholding is given as timely credit.
- Because the payment was made more than 10 months late, the maximum of 20 percent was assessed.

### Underpayment or Late Payment of Estimated Income Tax Penalty

A) KRS 131.180 (3) provides:

“Any taxpayer who fails to pay any installment of estimated tax by the time prescribed in KRS 141.044 and 141.305 or who, pursuant to subsections (2) or (3) of KRS 141.990, is determined to have a declaration underpayment shall, unless it is shown to the satisfaction of the department that the failure or underpayment is due to reasonable cause, pay a penalty equal to ten percent (10%) of the amount of the underpayment or late payment; however, the penalty shall not be less than twenty-five dollars (\$25).”

B) The purpose of this penalty is to encourage timely filing and required payment of installments of estimated income tax.

This penalty may be applied for the late filing of any installment or any underpayment of a declaration.

This penalty is independent of the penalties for late filing and/or late payment of the income tax return per KRS 131.180 (1) and (2).

C) Penalty Base: Per KRS 141.990 (2) for **individual** income tax and per KRS 141.990 (3) for **corporate** income tax, as follows:

KRS 141.990 (2) provides:

“Any **individual** required by KRS 141.300 to file a declaration of estimated tax and required by KRS 141.305 to pay the declaration of estimated tax shall be subject to a penalty as provided in KRS 131.180 for any declaration underpayment or any late payment. Underpayment, for purposes of this subsection, is determined by subtracting declaration credits allowed by KRS 141.070, declaration installment payments actually made, and credit for tax withheld as allowed by KRS 141.350 from seventy percent (70%) of the total income tax liability computed by the taxpayer as shown on the return filed for the tax year. This subsection shall not apply to the tax year in which the death of the taxpayer occurs, nor in the case of a farmer exercising an election under subsection (5) of KRS 141.305, nor in the case of any person having a tax liability of five hundred dollars (\$500) or less.”

KRS 141.990 (3) provides:

“Any **corporation or limited liability pass-through entity** required by KRS 141.042 to file a declaration of estimated tax and required to pay the declaration of estimated tax by the installment method prescribed by subsection (1) of KRS 141.044 shall be subject to a penalty as provided in KRS 131.180 for any declaration underpayment or any installment not paid on time. Declaration underpayment, for purposes of this subsection, is determined by subtracting five thousand dollars (\$5,000) and declaration payments

actually made from seventy percent (70%) of the total tax liability due under KRS 141.040 and computed by the taxpayer on the return filed for the tax year. For taxable years beginning on or after January 1, 2006, the penalty imposed by this subsection shall not apply if estimated payments made under subsection (1) of KRS 141.044 are equal to the amount of tax due under KRS 141.040 for the previous taxable year, and the amount of tax due under KRS 141.040 for the previous year was equal to or less than twenty-five thousand dollars (\$25,000).”

D) Penalty Rate: 10 percent of the penalty base

E) Maximum Penalty Rate: 10 percent

F) Minimum Penalty: \$25 per KRS 131.180 (3)

G) Grounds for Waiver or Reduction:

Any waiver or reduction must be based on reasonable cause guidelines, which follow in this manual.

**Example #5***KRS 131.180(3)*Underpayment or Late Payment of Estimated Income Tax (*other applicable penalties and/or interest not examined*)

Scenario:

- On 10/15/2010, a 2009 Corporate Income Tax return was filed with an extension.
- Taxpayer paid \$599 with the return.
- The corporation paid \$50,000 with their request for extension.
- The corporation made estimated payments totaling \$100,000.
- The corporation had prior year carry forward of \$103,972 but had a tax liability that made the estimated tax penalty applicable for tax year 2009.
- The corporation paid the balance due with the return on 10/15/2010.

Penalty Base Calculation:

	<b>Original</b>	<b>Penalty Base</b>
<b>Tax Liability</b>	\$567,168	\$567,168
<b>Statutory Percentage - 70%</b>	N/A	\$397,018
<b>Statutory Reduction</b>	N/A	(\$5,000)
<b>Estimated Payments</b>	(\$100,000)	(\$100,000)
<b>Paid with Extension</b>	(\$50,000)	N/A
<b>Prior Year Carry Forward</b>	(\$103,972)	(\$103,972)
<b>Tax Due</b>	\$313,196	N/A
<b>Penalty Base</b>		\$188,046

Penalty Applied:

- 10 percent of the amount of underpayment or late payment of estimated tax.
- Minimum penalty amount of \$25.

<b>Penalty Base</b>		<b>\$188,046</b>
Penalty Percentage	<b>X</b>	<b>10%</b>
Total Penalty		<b>\$18,805</b>

Notes:

- For calculating penalty base, the payments made with the extension and/or with filing of return are not recognized as timely credits. The payments must be made by the time as outlined by KRS 141.044 to be an allowable credit.

**Example #6**

*KRS 131.180(3)*

Underpayment or Late Payment of Estimated Income Tax (*other applicable penalties and/or interest not examined*)

Scenario:

- On 05/15/2009, a 2008 Kentucky Corporation Income Tax return was filed.
- The return reflected an amount owed of more than the \$5,000 statutory exemption.
- The corporation’s 2007 tax liability was greater than \$25,000.
- The corporation requested an extension and paid \$4,000 with that request.

Penalty Base Calculation:

	<b>Original</b>	<b>Penalty Base</b>
<b>Tax Liability</b>	\$7,350	\$7,350
<b>Statutory Percentage - 70%</b>	N/A	\$5,145
<b>Statutory Reduction</b>	N/A	(\$5,000)
<b>Paid with Extension</b>	(\$4,000)	N/A
<b>Tax Due</b>	\$0	N/A
<b>Penalty Base</b>		\$145

Penalty Applied:

- 10 percent of the amount of underpayment or late payment of estimated tax.
- Minimum penalty amount of \$25.

<b>Penalty Base</b>		<b>\$145</b>
Penalty Percentage	<b>X</b>	<b>10%</b>
		<b>\$15</b>
<b>Total Penalty</b>		<b>\$25 Minimum</b>

Notes:

- When calculating the penalty base, the payments made with the extension and/or with filing of return are not recognized as timely credits. The payments must be made by the time prescribed by KRS 141.044 to be an allowable credit.
- The calculated penalty is \$15; therefore, the minimum penalty of \$25 is due.

**Example #7**

*KRS 131.180(3)*

Underpayment or Late Payment of Estimated Income Tax (*other applicable penalties and/or interest not examined*)

Scenario:

- On 04/15/2009, a 2008 Kentucky Individual Income Tax return was filed.
- The total tax liability was \$1,714.
- The taxpayer had \$1,027 in withholding.
- The taxpayer paid the \$687 due with the return.

Penalty Base Calculation:

	<b>Original</b>	<b>Penalty Base</b>
<b>Tax Liability</b>	\$1,714	\$1,714
<b>Statutory Percentage - 70%</b>	N/A	\$1,200
<b>Withholding</b>	(\$1,027)	(\$1,027)
<b>Payment with Return</b>	(\$687)	N/A
<b>Tax Due</b>	\$0	N/A
<b>Penalty Base</b>		\$173

Penalty Applied:

- 10 percent of the amount of underpayment or late payment of estimated tax.
- Minimum penalty amount of \$25.

<b>Penalty Base</b>		<b>\$173</b>
Penalty Percentage	<b>X</b>	<b>10%</b>
		<b>\$17</b>
<b>Total Penalty</b>		<b>\$25 Minimum</b>

Notes:

- The calculated penalty is \$17; therefore the minimum penalty of \$25 is due.
- If the taxpayer qualifies for waiver of this penalty per one of the exemptions on the Kentucky Form 2210-K, the taxpayer must include that form with the submission of the return.

**Example #8**

*KRS 131.180(3)*

Underpayment or Late Payment of Estimated Income Tax (*other applicable penalties and/or interest not examined*)

Scenario:

- On 03/29/2012, a 2011 Kentucky Individual Income Tax return was filed.
- The taxpayer was self employed during 2011.
- The income tax due shown on the return was \$1,100.
- The taxpayer took credit for taxes paid to another state in the amount of \$500.
- The taxpayer made estimated tax payments of \$450.

Penalty Base Calculation:

	<b>Original</b>	<b>Penalty Base</b>
<b>Tax Liability</b>	\$1,100	\$1,100
<b>Taxes Paid to Another State</b>	\$500	\$500
<b>Statutory Percentage – 70%</b>	N/A	\$1,120
<b>Estimated Tax Payments</b>	(\$450)	(\$450)
<b>Penalty Base</b>		<b>\$170</b>

Penalty Applied:

- 10 percent of the amount of underpayment or late payment of estimated tax.
- Minimum penalty amount of \$25.

<b>Penalty Base</b>		<b>\$170</b>
Penalty Percentage	<b>X</b>	<b>10%</b>
		<b>\$17</b>
<b>Total Penalty</b>		<b>\$25 Minimum</b>

Notes:

- When dealing with taxes paid to another state, you must first add the amount of credit claimed for those taxes in your calculation of the statutory mandated 70 percent.
- After the 70 percent is calculated, you must then subtract any withholding or timely estimated tax payments.
- This calculation is completed on Kentucky Form 2210-K (as follows).



42A740-S1

Commonwealth of Kentucky  
DEPARTMENT OF REVENUE

**UNDERPAYMENT OF ESTIMATED TAX  
BY INDIVIDUALS**

► Attach to Form 740 or 740-NP

Enter name(s) as shown on page 1, Form 740 or 740-NP.  <b>Joe T. Taxpayer</b>	Your Social Security Number  <b>000-00-0000</b>
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**PART I—EXCEPTIONS AND EXCLUSIONS**

The penalty shall not apply if one of the following exceptions is met. If one or more of the following applies to you, check the appropriate block(s), complete any necessary blank(s) and check the "Form 2210-K attached" block on Form 740, line 41a (Form 740-NP, line 41a). **If none of the exceptions apply, go to Part II.**

Check applicable block(s).

1.  The taxpayer died during the taxable year.
2.  The declaration was not required until after September 1, 2011, and the taxpayer files a return and pays the full amount of the tax computed on the return on or before January 31, 2012.
3.  Two-thirds (2/3) or more of the gross income was from farming; this return is being filed on or before March 1, 2012; **and** the total tax due is being paid in full. Fiscal year taxpayers must file a return and pay the tax due on or before the first day of the third month following the close of the tax year.

a. Enter total gross income.....	00
b. Multiply by 2/3 (.67) .....	00
c. Enter gross income from farming.....	00

Line (c) must **equal or exceed** line (b) to qualify for the exception.

4.  Prepaid tax **equals or exceeds** last year's income tax liability.
    - a. Enter the liability from the 2010 return, Form 740 or Form 740-NP, page 1, line 28.....
    - b. Enter amount from the 2011 Form 740, line 31 (Form 740-NP, page 2, line 31)\* .....
- Line (b) must **equal or exceed** line (a) to claim the exception.

a. Enter the liability from the 2010 return, Form 740 or Form 740-NP, page 1, line 28.....	00
b. Enter amount from the 2011 Form 740, line 31 (Form 740-NP, page 2, line 31)* .....	00

**PART II—FIGURING THE UNDERPAYMENT AND PENALTY** (Complete Part II only if the **additional** tax due exceeds \$500; otherwise, proceed to page 2, Part III.)

1. a. Enter 2011 income tax liability from Form 740, line 26 (Form 740-NP, page 1, line 26)....	1a	1,100	00
b. Enter credit for taxes paid to another state from Form 740, Section A, line 5 (Form 740-NP, Section A, line 5).....	1b	500	00
c. Total (add lines 1a and 1b) .....	1c	1,600	00
2. Percentage of liability required to be prepaid is 70% .....	2	x .7	
3. Multiply line 1c by line 2.....	3	1,120	00
4. a. Enter the amount from Form 740, line 31 (Form 740-NP, page 2, line 31)* .....	4a	450	00
b. Enter credit for taxes paid to another state from Form 740, Section A, line 5 (Form 740-NP, Section A, line 5).....	4b	500	00
c. Total (add lines 4a and 4b) .....	4c	950	00
5. Subtract line 4c from line 3 (If line 4c exceeds line 3, no penalty applies.).....	5	170	00
6. Penalty percentage is 10% .....	6	x .1	
7. Multiply line 5 by line 6. This is the amount of the penalty for underpayment of estimated tax (minimum penalty \$25) .....	7	25	00
8. Enter interest amount due from Form 2210-K, page 2, line 22.....	8	0	00
9. Add lines 7 and 8. Enter here and on Form 740 or Form 740-NP, line 41(a). <b>Also check the "Form 2210-K attached" box</b> .....	9	0	00

**To Avoid Underpayment Penalty In the Future, Obtain and File Form 740-ES.**

\*Do not include amounts prepaid with extension after the due date of the fourth declaration installment.

### **Failure to File Returns/Reports or Furnish Information Penalty**

A) KRS 131.180 (4) provides:

“If any taxpayer fails or refuses to make and file a report or return or furnish any information requested in writing by the department, the department may make an estimate of the tax due from any information in its possession, assess the tax at not more than twice the amount estimated to be due, and add a penalty equal to five percent (5%) of the tax assessed for each thirty (30) days or fraction thereof that the return or report is not filed. The total penalty levied pursuant to this subsection shall not exceed fifty percent (50%) of the tax assessed; however, the penalty shall not be less than one hundred dollars (\$100) unless the taxpayer demonstrates that the failure to file was due to reasonable cause as defined in KRS 131.010(9). This penalty shall be applicable whether or not any tax is determined to be due on a subsequently filed return or if the subsequently filed return results in a refund.”

B) The purpose of this penalty is to encourage timely filing of a return/report or information requested by DOR.

This penalty may be applied in the following situations:

- 1) Failure to file return or report requested in writing by DOR
- 2) Failure to furnish information requested in writing by DOR

**Note:** This statute may also be used for making assessments of tax. However, jeopardy assessments should only be used per KRS 131.150. If a taxpayer subsequently files a valid return or furnishes the requested information, other penalties may be adjusted accordingly.

C) Penalty Base: Tax assessed

For the purposes of administering this penalty, tax assessed means:

Not more than twice the amount of the estimate of the tax due determined by DOR, less the application of any credit.

Estimates of tax due by DOR is determined from information on hand when a taxpayer refuses to voluntarily file a return/report requested in writing and is made before the application of any credit.

D) Penalty Rate: 5 percent per each 30-day period or fraction thereof.

The penalty is assessed at 5 percent of the penalty base for each 30-day period or fraction thereof that the return/report is not filed. The penalty accrues from the due date of the return/report or the due date of the requested information.

E) Maximum Penalty Rate: 50 percent

The penalty rate of 5 percent per month accrues to a maximum of 50 percent of the penalty base if the return/report or requested information is not received.

F) Minimum Penalty: \$100

If the calculated penalty is less than \$100, a minimum penalty of \$100 is applicable.

KRS 131.180 (4) was amended in 2002, effective January 1, 2003. The \$25 minimum penalty was increased to \$100. However, the amount of penalty assessed will be the greater of (i) the penalty due under the formula provided in KRS 131.180(4) or (ii) \$100.

G) Grounds for Waiver or Reduction:

Any waiver or reduction must be based on reasonable cause guidelines, which follow in this manual.

**Failure to Timely Pay Non Protested Tax Assessed by DOR**

A) KRS 131.180 (5) provides:

“If any taxpayer fails or refuses to pay within forty-five (45) days of the due date any tax assessed by the department which is not protested in accordance with KRS 131.110, there shall be added a penalty equal to two percent (2%) of the unpaid tax for each thirty (30) days or fraction thereof that the tax is final, due, and owing, but not paid.”

B) The purpose of this penalty is to encourage prompt payment of notices of tax due prior to the expiration of the protest period.

Per KRS 131.180 (11), the penalties levied pursuant to subsection (5) of this section shall apply to any tax assessment protested pursuant to KRS 131.110 to the extent that any appeal of the assessment or portion of it is ruled by the Kentucky Board of Tax Appeals or, if appealed from, the court of last resort, as not protested, appealed, or pursued in good faith by the taxpayer.

**Note:** The penalty accrues 45 days after the notice of tax due. This penalty is the “due and owing penalty” and should not be confused with the 20 percent “cost of collections fee” imposed by KRS 131.440.

C) Penalty Base: Unpaid tax

For the purposes of administering this penalty, unpaid tax means the balance of any tax assessed by DOR not protested or paid within 45 days of the notice date of the notice of tax due.

D) Penalty Rate: 2 percent per each 30-day period or fraction thereof that the unprotected tax is due and owing, but not paid.

E) Maximum Penalty Rate: None

F) Minimum Penalty: None

G) Grounds for Waiver or Reduction:

Any waiver or reduction must be based on reasonable cause guidelines, which follow in this manual.

**Failure to Obtain any Required Tax Identification Number, Permit, License, or Other Document of Authority Penalty**

A) KRS 131.180 (6) provides:

“Any taxpayer who fails to obtain any identification number, permit, license, or other document of authority from the department within the time required by law shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to ten percent (10%) of any cost or fee required to be paid for the identification number, permit, license, or other document of authority; however, the penalty shall not be less than fifty dollars (\$50).”

B) The purpose of this penalty is to encourage taxpayers to obtain documents of authority within the time required by law.

This penalty is applicable when a taxpayer fails to register with DOR to timely obtain any required tax identification number, permit, license, or other document of authority.

C) Penalty Base: The cost of fee required to be paid for such identification number, permit, license, or other document of authority

For the purposes of administering this penalty, cost or fee required to be paid means the cost or fee prescribed by the applicable statute.

D) Penalty Rate: 10 percent of the cost or fee required to be paid.

E) Maximum Penalty Rate: 10 percent

F) Minimum Penalty: \$50

If the calculated penalty is less than \$50, a minimum penalty of \$50 is applicable.

G) Grounds for Waiver or Reduction:

Any waiver or reduction must be based on reasonable cause guidelines, which follow in this manual.

### Negligence Penalty

A) KRS 131.180 (7) provides:

“If any tax assessed by the department is the result of negligence by a taxpayer or other person, a penalty equal to ten percent (10%) of the tax so assessed shall be paid by the taxpayer or other person who was negligent.”

B) The purpose of this penalty is to encourage taxpayers and/or other responsible parties to comply with statutes and regulations.

This penalty is applicable when a taxpayer fails to register with DOR to timely obtain any required tax identification number, permit, license, or other document of authority.

“Negligence” means any failure by a taxpayer or other person to make a reasonable attempt to comply with, or any careless disregard by a taxpayer or other person of any statute or regulation.

Negligence shall include determinations of negligence made by the Internal Revenue Service (IRS). With the exception of the determination of negligence by the IRS, the assessment of negligence penalty requires approval from a Branch Manager or above.

Negligence does not include the filing of a return supported by **substantial authority** (including authority that is litigated). If the substantial authority relied upon by the taxpayer is contrary to DOR’s position as set forth in statutes and regulations or has been made known to the taxpayer in an audit or a direct communication, the substantial authority must be disclosed by the taxpayer in a statement attached to the return detailing such substantial authority.

“Substantial authority” means authoritative documentation such as:

- 1) The Internal Revenue Code, the Kentucky Revenue Code, and other statutes, but not other states statutes;
- 2) Final and temporary regulations of the Internal Revenue Service and DOR;
- 3) Revenue rulings, revenue procedures, and private letter rulings of the Internal Revenue Service; and
- 4) Any case law interpreting items 1 through 3, which provides that the tax or accounting treatment (including an exclusion) of an item as claimed on a return or report is more likely than not correct.

“Other person who was negligent” means, but is not limited to:

- 1) A tax return preparer,
- 2) A trustee of an estate or trust who signs a return of tax,
- 3) An officer of a corporation filing a return of tax, or
- 4) A general partner of a partnership filing a return of tax, who was negligent.

The negligence penalty can only be assessed against the taxpayer or other person, but not both.

C) Penalty Base: Tax assessed

For the purposes of administering this penalty, tax assessed is calculated differently for two specific situations:

- 1) DOR audit adjustments to filed returns: the tax assessed is the total tax liability determined by DOR less the total tax liability shown by the taxpayer.
- 2) Taxpayer’s failure to file a return: the tax assessed is the total tax liability determined by DOR less any timely credits. If a tax return is subsequently filed, the tax assessed is the total tax liability shown on the return less any timely credits.

**Note:** The negligence penalty for failure to file a return may be assessed only after DOR has notified the taxpayer in writing that a specific return is due.

D) Penalty Rate: 10 percent

E) Maximum Penalty Rate: 10 percent

F) Minimum Penalty: None

G) Grounds for Waiver or Reduction:

Any waiver or reduction must be based on reasonable cause guidelines, which follow in this manual.

**Fraud Penalty**

A) KRS 131.180 (8) provides:

“If any tax assessed by the department is the result of fraud committed by the taxpayer or other person, a penalty equal to fifty percent (50%) of the tax so assessed shall be paid by the taxpayer or other person who committed fraud.”

B) The purpose of this penalty is to encourage taxpayers and/or other responsible parties to file returns/reports in accordance with DOR statutes and regulations and to pay the tax due.

KRS 131.010 (10) defines "fraud" as:

(a) “Intentional or reckless disregard for the law, administrative regulations, or the department's established policies to evade the filing of any return, report, or the payment of any moneys due to the department pursuant to law or administrative regulation; or

(b) The deliberate false reporting of returns or reports with the intent to gain a monetary advantage;”

A disregard is **intentional** if the taxpayer knows of the statute or regulation that is disregarded or violated.

A disregard is **reckless** if the taxpayer makes little or no effort to determine if a statute or regulation exists or has been violated under circumstances which include a substantial deviation from the standard of conduct that a reasonable person would observe in trying to learn such a statute or regulation.

Fraud shall include determinations of fraud made by the IRS. With the exception of the determination of fraud by the Internal Revenue Service, the assessment of fraud in other instances requires approval from a Division Director or above.

A “taxpayer who committed fraud” means any person made liable by law to file a return or pay a tax who committed fraud. A spouse will not be assessed a fraud penalty based solely upon the filing of a joint return.

“Other person who committed fraud” means, but is not limited to:

- 1) A tax return preparer;
- 2) A trustee of an estate or trust who signs a return of tax;
- 3) An officer of a corporation filing a return of tax; or
- 4) A general partner of a partnership filing a return of tax, who was negligent.

The fraud penalty can only be assessed against the taxpayer or other person, but not both.

C) Penalty Base: Tax assessed

For the purposes of administering this penalty, tax assessed is calculated differently for two specific situations:

- 1) DOR audit adjustments to filed returns: the tax assessed is the total tax liability determined by DOR less the total tax liability shown by the taxpayer.
- 2) Taxpayer's failure to file a return: the tax assessed is the total tax liability determined by DOR less any timely credits. If a tax return is subsequently filed, the tax assessed is the total tax liability shown on the return less any timely credits.

**Note:** The fraud penalty for failure to file may be assessed only after DOR has established that the taxpayer has knowledge of the requirement to file a return and has intentionally disregarded that duty.

D) Penalty Rate: 50 percent

E) Maximum Penalty Rate: 50 percent

F) Minimum Penalty: None

G) Grounds for Waiver or Reduction:

Any waiver or reduction must be based on reasonable cause guidelines, which follow in this manual.

### **Unhonored Check Penalty**

A) KRS 131.180 (9) provides:

“If any check tendered to the department is not paid when presented to the drawee bank for payment, there shall be paid as a penalty by the taxpayer who tendered the check, upon notice and demand of the department, an amount equal to ten percent (10%) of the check. The penalty under this section shall not be less than ten dollars (\$10) nor more than one hundred dollars (\$100). If the taxpayer who tendered the check shows to the department's satisfaction that the failure to honor payment of the check resulted from error by parties other than the taxpayer, the department shall waive the penalty.”

B) The purpose of this penalty is to encourage valid payment of tax liabilities.

The unhonored check penalty is applied when any check tendered to DOR is unhonored by the bank or financial institution on which the check is written.

This penalty is applicable upon notice and demand of DOR and shall be paid by the taxpayer writing the check.

C) Penalty Base: Check tendered to the department

For the purposes of administering this penalty, check tendered to the department means any instrument submitted by a taxpayer or his agent to DOR for the payment of tax, interest, fees, or penalties. Any instrument includes any method of payment that can be unhonored by a financial institution such as a check or electronic fund transfer.

D) Penalty Rate: 10 percent

E) Maximum Penalty Rate: \$100

F) Minimum Penalty: \$10

If the calculated penalty is less than \$10, a minimum penalty of \$10 is applicable.

G) Grounds for Waiver or Reduction:

Any waiver or reduction must be based on reasonable cause guidelines, which follow in this manual.

**Interest**

KRS 131.180 (10) provides:

“Any person who fails to make any tax report or return or pay any tax within the time, or in the manner required by law, for which a specific civil penalty is not provided by law, shall pay a penalty as provided in this section, with interest from the date due at the tax interest rate as defined in KRS 131.010(6).”

**Protest Ruled Not in Good Faith**

KRS 131.180 (11) provides:

“The penalties levied pursuant to subsection (5) of this section shall apply to any tax assessment protested pursuant to KRS 131.110 to the extent that any appeal of the assessment or portion of it is ruled by the Kentucky Board of Tax Appeals or, if appealed from, the court of last resort, as not protested, appealed, or pursued in good faith by the taxpayer.”

**Stacking of Penalties**

KRS 131.180 (12) provides:

“Nothing in this section shall be construed to prevent the assessment or collection of more than one (1) of the penalties levied under this section or any other civil or criminal penalty provided for violation of the law for which penalties are imposed.”

**Penalties Treated as Tax**

KRS 131.180 (13) provides:

“All penalties levied pursuant to this section shall be assessed, collected, and paid in the same manner as taxes. Any corporate officer or other person who becomes liable for payment of any tax assessed by the department shall likewise be liable for all penalties and interest applicable thereto”.

## PENALTY WAIVERS REASONABLE CAUSE GUIDELINES

### Overview

In the vast majority of cases, taxpayers voluntarily comply with Kentucky's tax laws. However, there are times when a taxpayer does not comply with these laws and, as a result, will incur penalties. Given the various circumstances that arise with taxpayer situations, DOR is afforded the authority to reduce or waive penalties when a taxpayer can demonstrate a reasonable cause for the reduction or waiver.

DOR is given the authority to reduce or waive penalties by Chapter 131 of the Kentucky Revised Statutes. While it is the taxpayer's responsibility to support reasonable cause, it is also the responsibility of DOR to partner with the taxpayer by guiding them through the process of requesting a reduction or waiver of penalties. Every taxpayer has a right to request a reduction or waiver of penalties incurred. By communicating this right to the taxpayer, DOR will help eliminate barriers to voluntary compliance.

When making a determination to reduce or waive a penalty, it is helpful to understand the background of the taxpayer and their history with the Department of Revenue. To that end, DOR views taxpayers as falling into one of three categories:

1. **Taxpayers Who Voluntarily Comply** – The vast majority of taxpayers fall into this category and will likely never receive a penalty. They are knowledgeable of the tax laws and comply with all their requirements.
2. **Taxpayers Who Occasionally Do Not Comply** – Taxpayers who fall into this category are unable to understand their basic responsibilities or the procedures for complying with Kentucky tax law. They may not be able to obtain sufficient information to comply or are not able to follow instructions on how to be in compliance.

If taxpayers in this category exercise due care in complying with their responsibilities, they will rarely (if ever) incur a penalty. However, if they, through unintentional disregard for tax laws and regulations, fail to comply with their responsibilities, they will likely incur penalties and may need to demonstrate reasonable cause for a waiver of those penalties.

3. **Taxpayers Who Refuse to Comply** – This category represents a small portion of Kentucky taxpayers who will never comply with tax laws. This category also includes those who evade their tax obligation through careless, reckless, or intentional disregard of statutes, regulations, and the policies of DOR. These taxpayers may incur numerous penalties and will rarely (if ever) be able to demonstrate reasonable cause for reduction or waiver of penalties.

## Reasonable Cause

### Statutory Authority

**KRS 131.010(9)** defines “reasonable cause” as:

“...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 or report or the payment of moneys due the department pursuant to law or administrative regulation;”

DOR’s authority to reduce or waive penalties is provided by **KRS 131.175**:

“Notwithstanding any other provisions of KRS Chapters 131 to 143A, for all taxes payable directly to the Department of Revenue, the sheriff or the county clerk, the commissioner shall have authority to waive the penalty, but not interest, where it is shown to the satisfaction of the department that failure to file or pay timely is due to reasonable cause.”

This statute gives the Commissioner the discretion to waive any penalties assessed by DOR. However, the statute does not allow for the reduction or waiver of interest (with the exception of cases that interest is assessed in error by DOR). Additionally, the Uniform Civil Penalties Act under **KRS 131.180** specifically provides this authority with many of the penalties it imposes.

These statutes provide each taxpayer with the ability to demonstrate reasonable cause for the reduction or waiver of penalties. This demonstration of reasonable cause relieves the taxpayer of paying a penalty that DOR has properly assessed against the taxpayer. Further, the authority to reduce or waive penalties allows DOR to consider the circumstances surrounding the taxpayer’s situation in their entirety. Many times, these circumstances may be without the knowledge or control of the taxpayer and may prevent them from timely filing a return or timely paying their tax.

Every taxpayer’s situation should be taken on a case-by-case basis and all factors should be considered. Often, deciding on the waiver of a penalty can be a process of communicating extensively with a taxpayer in order to understand if their request of reduction or waiver can be granted under the *reasonable cause* guidelines. These guidelines are provided to DOR employees by way of **103 KAR1:040**. This administrative regulation gives a detailed explanation of 14 circumstances that constitute reasonable cause.

## Explanation of Reasonable Causes

### 1. Erroneous Advice by DOR

- a. The delay or failure to file a return or the failure to pay a tax could be forgiven if such a delay was due to written advice from DOR.

In order to be considered a reasonable cause, the following conditions must be met:

1. The taxpayer must have requested the advice in writing and fully described the specific facts and circumstances of the activity or transaction in the request;
2. DOR did not subsequently rescind or modify the advice in writing; and
3. No subsequent change has occurred in the applicable laws or regulations or a court's decision has become final.

Any of these outcomes would render written advice by DOR invalid and would provide a reasonable cause for reduction or waiver of any penalty.

This reasonable cause is unique because it is specifically addressed in the Taxpayer Bill of Rights. **KRS 131.081(6)** states that:

“If any taxpayer's failure to submit a timely return or payment to the department is due to the taxpayer's reasonable reliance on written advice from the department, the taxpayer shall be relieved of any penalty or interest with respect thereto, provided the taxpayer requested the advice in writing from the department and the specific facts and circumstances of the activity or transaction were fully described in the taxpayer's request, the department did not subsequently rescind or modify the advice in writing, and there were no subsequent changes in applicable laws or regulations or a final decision of a court which rendered the department's earlier written advice no longer valid.”

It is important to note that this statute allows for **waiver of interest** if a penalty is reduced or waived under this reasonable cause. All written documents issued by DOR are considered official positions and, given the circumstances outlined here, must be produced with much care and supervision.

### 2. Death or Serious Illness of Taxpayer or Immediate Family

- a. This reasonable cause is considered when the delay or failure to file a return or pay a tax was caused by the death or serious illness of a taxpayer or their immediate family member. This cause must be considered with a number of factors. The first factor that must be considered is if the taxpayer is an individual or a corporation, partnership, estate, trust, etc. In the case of a corporation et. al, the death or serious

illness must have been an individual having sole authority to execute the return or report or a member of such individual's immediate family.

In order to properly evaluate this claim, the following must be considered:

1. Relationship of parties involved;
2. Date of death;
3. Date and nature of serious illness;
4. Length of time from the date of death or serious illness to the date prescribed by law for filing a return, including any extension granted;
5. Explanation of how the event prevented compliance; and
6. Explanation of other business obligations that were impaired.

### 3. Death or Serious Illness of Taxpayer's Tax Return Preparer

- a. Similar to the previous cause, this reasonable cause is considered when the delay or failure to file a return or pay a tax was caused by the death or serious illness of a taxpayer's tax return preparer.

In order to properly evaluate this claim, the following must be considered:

1. The name of the preparer;
2. Date of death of the preparer;
3. Length of time from the date of death of the tax preparer to the date prescribed by law for filing a return; and
4. Explanation as to how the death or illness prevented compliance.

### 4. Unavoidable Absence by Taxpayer

- a. There are times when the absence of a taxpayer will cause the delay of filing or payment of taxes. In the cases where this absence was unavoidable, the following must be considered:
  1. Dates and reasons for the absence; and
  2. Explanation as to how the event prevented compliance.

Every absence must be evaluated on its own merit and the determination must be made whether or not the absence was truly unavoidable. The absence must be due to circumstances unforeseeable and does not include a planned absence such as a vacation. In the case of a corporation, estate, trust, etc., the absence must have been of an individual having sole authority to file the return (not the individual preparing the return) or make the payment.

## 5. Destruction or Unavailability of Taxpayer Records by a Catastrophic Event

- a. Determine if the taxpayer could not comply timely because the taxpayer was affected by a catastrophic event. Reasonable cause relief from a penalty may be requested if there was a failure to timely comply with a requirement to file a return or pay a tax as the result of a fire, casualty, natural disaster, or other catastrophic event. Penalty relief may be appropriate if the taxpayer exercised ordinary business care and prudence, but due to circumstances beyond the taxpayer's control, they were unable to comply with the law.

Factors to consider include:

1. Dates and description of catastrophic event;
2. Supporting documentation such as a copy of the police, fire, or insurance report;
3. Explanation as to how the destruction or unavailability of records prevented compliance; and
4. Explanation as to whether other means were explored to secure needed information.

## 6. Inability to Obtain Records in Custody of Third Party

- a. A taxpayer is unable to obtain records necessary to comply with a tax return filing or tax payment requirement (e.g. possession of the records by the IRS or some other investigative agency).

Factors to consider include:

1. The records in the custody of a third party and the third party's identity;
2. Explanation of why the records were needed to comply;
3. Explanation of why the records were unavailable and what steps were taken to secure the records;
4. Explanation of when and how the taxpayer became aware that the necessary records were unavailable;
5. Supporting documentation such as copies of letters written and responses received in an effort to get the needed information; and
6. Explanation of all means explored to secure the needed tax information.

## 7. Employee Theft or Defalcation

- a. Generally, defalcation is used to describe embezzlement by an employee of a company. For the purposes of reasonable cause, penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by an employee who stole or intentionally falsified financial records. In order to meet this reasonable cause, the taxpayer must prove

that the records stolen or falsified were directly related to filing, reporting, or paying their taxes.

#### 8. Undue Hardship

- a. A taxpayer demonstrates that a reasonable effort was made in providing for payment of the tax, but the taxpayer was nevertheless unable to make the tax payment. Therefore, the enforcement of the penalty would constitute an undue financial hardship on the taxpayer. In such a case, the waiver of the penalty should facilitate collection of the tax liability. *Undue hardship* means more than an inconvenience to the taxpayer; the taxpayer must show that substantial financial loss will result to them if they are required to pay the penalty.

Some of the factors to consider include:

1. Nature of the tax which the taxpayer has failed to pay;
  2. Amount and nature of the taxpayer's expenditures in light of the income the taxpayer could, at the time of the expenditures, reasonably have expected to receive prior to the date prescribed by law for the payment of the tax;
  3. Reasonableness of the taxpayer's efforts to conserve sufficient assets in marketable form to satisfy the tax liability;
  4. Potential loss due to the sale of property at a sacrificed price. If a market exists, the sale of property at the current market price shall not be considered as resulting in an undue hardship;
  5. Equity in assets, including repayment ability;
  6. Family size;
  7. Necessary living expenses, if a taxpayer is an individual, or necessary business expenses;
  8. Income from all sources, both taxable and nontaxable, including income of the nonliable spouse to the extent used for the necessary living expenses of a family;
  9. Stability of income and anticipated increases or decreases;
  10. Current status of business;
  11. Possibility of payment through an installment agreement; and
  12. Age and health of the taxpayer.
- b. The following factors shall be considered in determining if waiver of a fee or penalty facilitates collection of the tax liability:
1. Dischargeability of tax liability in bankruptcy;
  2. Collectability of the tax, penalty, and interest directly from the taxpayer, as determined from the taxpayer's financial statements;
  3. Availability of sources of funds for payment not under the control of the taxpayer; and
  4. Past and current compliance with DOR filing and payment requirements.

## 9. Human Error

- a. The delay or failure to file a return or make a payment was due to a taxpayer's error. However, this delay must be the first record of such occurrence over the last 12 calendar months if a monthly or quarterly filer, or 24 months if an annual filer. DOR records must support this claim. Records must also indicate that the taxpayer took appropriate steps to eliminate the delinquency in a timely manner.

## 10. Erroneous Advice by Tax Adviser

- a. Taxpayers have a reasonable right to rely on qualified tax advisers or other professionals. For purposes of this cause, a taxpayer must demonstrate the following:
  1. Unfamiliarity with the tax laws and actual reliance by the taxpayer on the advice of the tax adviser;
  2. Full disclosure by the taxpayer of all relevant facts to the tax adviser or other professional retained. Supporting documentation shall include a copy of the advice requested, a copy of the advice provided, and a statement from the tax adviser explaining the circumstances;
  3. Exercise of ordinary care by the taxpayer, based on the taxpayer's own information and knowledge, in determining whether to secure further advice; and
  4. A statement from the tax advisor explaining the circumstances.

This cause must be used only in very limited circumstances. The Division of Legal Services should be consulted to evaluate these requests.

## 11. Substantial Authority

- a. If the taxpayer is delayed in filing or paying their taxes based on a reasonable reliance on substantial authority (including authority that is litigated) then reasonable cause is warranted.

For the purposes of this cause, the taxpayer must demonstrate the following:

1. Actual reliance on the substantial authority at the time of not filing the return or paying the tax; and
2. If a return *is* filed, full disclosure on the reliance of authority must be disclosed to DOR at the time of filing. Such disclosure shall include all copies of statements sent by the authority to the taxpayer, explaining in detail why the taxpayer can not or should not pay the tax at that time.

Examples of substantial authority which would change the accounting treatment of an item as claimed on the taxpayer's return include:

1. The Internal Revenue Code;
2. Final and temporary regulations of the IRS;
3. Revenue Rulings, Revenue Procedures, and Private Letter Rulings of the IRS; and
4. Case law in the courts that interprets all of the above items.

This reasonable cause is used in very limited circumstances. The Division of Legal Services should be consulted to evaluate these requests.

## 12. Ignorance of Reporting Requirements

- a. Ordinary care and prudence requires that a taxpayer be aware of tax obligations. In some isolated cases, a taxpayer may not be aware of the reporting requirements. Ignorance of the law in conjunction with other facts and circumstances such as limited education or the lack of previous tax and penalty experience may support reasonable cause.

A taxpayer's ignorance of a recent law change or form revision resulting in the taxpayer's failure to comply could be considered ignorance of reporting requirements and thus constitute *reasonable cause*. When applying this reasonable cause, take into account the taxpayer's filing history with DOR.

## 13. Tax Modernization

- a. For taxable periods beginning after December 31, 2004 and before January 1, 2006, this reasonable cause applied to any declaration underpayment penalty that was a direct result of Tax Modernization. Because this is now out of statute, this reasonable cause is no longer available in CARS; however, it is still in the administrative regulation outlined in this chapter.

## 14. Miscellaneous

- a. If the cause submitted by the taxpayer does not fall within one of the other listed reasonable causes, a DOR manager may decide that the written statements submitted by the taxpayer establish reasonable cause for the noncompliance. There are many cases that must be evaluated on an individual basis that may constitute waiver of a penalty that does not fit into these guidelines. Reducing or waiving a penalty using this reasonable cause as justification must be weighed against the taxpayer's history with DOR, the taxpayer's willingness to comply with tax law, and the taxpayer's incentive to pay the tax liability and interest upon reduction or waiver of any penalties.

## Taxpayer's Support for Reasonable Cause

A taxpayer's request for reduction or waiver of penalties outlined previously in this manual should follow these guidelines:

### 1. Responsibility for Request

- a. The taxpayer bears the burden to request reduction or waiver of any penalty. However, if it appears that a taxpayer may have a reasonable cause for reduction or waiver of a penalty, the DOR shall advise the taxpayer of the reasonable cause guidelines outlined in this manual and **103 KAR 1:040**.

In all cases, a taxpayer bears the burden of proof to substantiate their request for reduction or waiver of penalties for reasonable cause. A taxpayer may fulfill this burden of proof requirement by producing statements or documents that clearly show the grounds for reasonable cause. Once the taxpayer meets that burden of proof, it is up to each area within DOR to follow their specific procedures and guidelines for waiving the penalty.

### 2. Time of Request

- a. A taxpayer may attach a statement requesting reduction or waiver for reasonable cause to their return or may respond after notice of assessment. The written request must be submitted by the taxpayer in a timely manner pursuant to normal DOR procedure.

### 3. Request by Representative of Taxpayer

- a. A request from a taxpayer's representative is considered a request by the taxpayer if the taxpayer has provided a properly signed power of attorney to DOR. This requirement may also be satisfied by a written document signed by both the taxpayer and the representative (such as a tax return) that substantiates the taxpayer's consent to allow a person to represent them with DOR.

### 4. Form of Request

- a. No particular form of request for reduction or waiver of penalty is required. While an initial request may be oral, the taxpayer must follow up with a written request to the Department. All notes in OSCAR, CARS, Fasttrieve, and/or MeF/ELF must be updated with the reason(s) given by the taxpayer for reduction or waiver.

As with all pieces of correspondence received regarding a taxpayer's case, the written request should be attached to the appropriate record per the specific procedures outlined and followed by each area within DOR.

## PENALTY ISSUES AND CONCERNS

It is important to realize that both the decision to assess penalties and to reduce or waive penalties impacts more than one area of Revenue. Any Notice of Tax Due issued by DOR has the potential to become a collectible bill for the Division of Collections or a protested bill to be handled by Protest Resolution. In addition, front-line employees may have to field phone calls, answer correspondence, or complete other types of follow-up with the taxpayer and co-workers to resolve a case. For these reasons it is important to be consistent and diligent in documenting actions taken.

### **Procedures**

Because the determination to reduce or waive penalties can depend on many factors, there are often “area-specific” procedures in place. There must be consistent policies established within each area when determining if a penalty should be reduced or waived. When consistent practices, based on applicable statutes and regulations, are followed it benefits both DOR and the taxpayer. Consistent practices benefit DOR employees by providing guidance in applying and waiving penalties and benefit the taxpayers of the Commonwealth by providing them fair and equitable treatment.

### **Issues**

There are several areas within DOR that deal with penalties. Multiple issues often arise when a determination is made to assess, waive, or reduce penalties. The material that follows, though not all inclusive, addresses many of those issues. The penalty issues that follow are topics suggested by various supervisors, employees, and areas seeking guidance on applying and waiving or reducing penalties.

## **Jeopardy Assessments**

The Division of Collections issues jeopardy assessments (also called tentative assessments) when the taxpayer fails to file a tax return for a required period. The statutory authority for these assessments is KRS 131.150 which states:

### **131.150 Jeopardy assessments.**

(1) When the Department of Revenue reasonably believes that any taxpayer has withdrawn from the state or concealed his assets or a material part thereof so as to hinder or evade the assessment or collection of taxes, or has desisted from any taxable activity in the state, or has become domiciled elsewhere, or has departed from this state with fraudulent intent to hinder or evade the assessment or collection of taxes, or has done any other act tending to render partly or wholly ineffective proceedings to assess or collect any such taxes, or contemplates doing any of these acts in the immediate future, or that any tax claim for any other reason is being endangered, such tax liability shall become due and payable immediately upon assessment or determination of the amount of taxes due, as authorized in this section.

(2) Under any of the circumstances set out in subsection (1) of this section, the department may make a tentative assessment or determination of the taxes due, and may proceed immediately to bring garnishment, attachment or any other legal proceedings to collect the taxes so assessed or determined to be due. Notwithstanding the provisions of KRS 131.180(1), if the tax so assessed is due to the failure of the taxpayer to file a required tax return a minimum penalty of one hundred dollars (\$100) shall be assessed unless the taxpayer demonstrates that the failure to file was due to reasonable cause as defined in KRS 131.010(9). This penalty shall be applicable whether or not any tax is determined to be due on a subsequently filed return or if the subsequently filed return results in a refund. No bond shall be required of the department in such proceedings. The taxpayer may stay legal proceedings by filing a bond in an amount sufficient in the opinion of the department to cover the taxes, penalties, interest, and costs. If no legal proceedings have been instituted, the department may require a bond adequate to cover all taxes, penalties, and interest. On making bond, exception to the assessment or determination of tax liability may be filed in the same manner and time as provided in KRS 131.110. If no exceptions are filed to the tentative assessment or determination, it shall become final.

(3) The department may require any such taxpayer to file with it forthwith the reports required by law or regulation, or any additional reports or other information necessary to assess the property or determine the amount of tax due.

(4) If the department fails to exercise the authority conferred by this section, such taxpayer shall report and pay all taxes due as otherwise provided by law.

Jeopardy assessments are billed under bill reasons that begin with “W”. These assessments become due and payable upon assessment, but *may* be protested within 45 days if a bond is posted.

Upon assessment, interest is applied from the due date until the date the amount due is paid in full. Failure to pay penalty (reason BN) is applied from the due date until the date the amount due is paid in full.

The “failure to file or furnish information” penalty assessed under KRS 131.180(4) **is not applicable to jeopardy assessments issued under KRS 131.150.**

If the return is not filed before the 46<sup>th</sup> day after the jeopardy assessment is issued, a negligence penalty (reason H) is also assessed.

If the amount due is not paid before the 46<sup>th</sup> day after the jeopardy is issued, a cost of collection fee is assessed.

For any jeopardy assessment issued **prior** to January 1, 2003, when the return is filed, a late file penalty (reason A) is applied from the due date to the late file date and accrues at the rate of 2 percent per month up to a maximum of 20 percent, with a minimum of \$10.

For any jeopardy assessment issued **on or after** January 1, 2003, when the return is filed, a late file penalty (reason AJ) is applied from the due date to the late file date, and accrues at the rate of 2 percent per month up to a maximum of 20 percent with a minimum of \$100.

If the return is filed with payment, the failure to pay penalty (BN) is changed to paid late (B).

### **Estimated Assessments**

Estimated Assessments may be issued under the authority of KRS 131.180 (4) which states:

(4) If any taxpayer fails or refuses to make and file a report or return or furnish any information requested in writing by the department, the department may make an estimate of the tax due from any information in its possession, assess the tax at not more than twice the amount estimated to be due, and add a penalty equal to five percent (5%) of the tax assessed for each thirty (30) days or fraction thereof that the return or report is not filed. The total penalty levied pursuant to this subsection shall not exceed fifty percent (50%) of the tax assessed; however, the penalty shall not be less than one hundred dollars (\$100) unless the taxpayer demonstrates that the failure to file was due to

reasonable cause as defined in KRS 131.010(9). This penalty shall be applicable whether or not any tax is determined to be due on a subsequently filed return or if the subsequently filed return results in a refund.

Estimated assessments are issued under bill reasons that begin with “O”, “S” or “X”. (There are also other assessment types issued under bill reasons that begin with “O”, “S” or “X”)

These assessments are subject to a 45-day protest period.

The “failure to provide information” penalty (DA or W) may be applied at the time of assessment and accrues at the rate of 5 percent per month up to a maximum of 25 percent. The minimum due is \$25 prior to January 1, 2003 and **\$100 on or after** January 1, 2003.

There are other “estimated” assessments issued under other statutory authority, for example when a taxpayer has failed to register for a tax account, or report a sale subject to *use* tax. The applicable penalties are applied upon assessment.

## **Property Tax**

The Division of Property Tax is unique in that their assessments may involve local and state taxing jurisdictions. Additionally, certain areas of Property Tax utilize an Omitted Property Tax (OPT) billing system and the CARS billing system. Therefore, any determination regarding waiving or reducing penalties must be communicated to their area in order to ensure their systems are up-to-date.

Fees and penalties on TT049 bills should only be waived by the Division of Collections Individual Income Branch, Property Tax Section. The fees applied to TT049 bills are “county fees” with the exception of DOR’s 20 percent collection fee.

In order to waive these fees, DOR must get approval from the County Clerk, Sheriff and Fiscal Court to waive the county fees and approval must be in writing from the county clerk. In addition to getting approval from the county, when the sheriff’s fees are waived the interest base needs to be recalculated.

It is at DOR’s discretion to waive the 20 percent fee based on reasonable cause.

The following fees are located on the interest/penalty/fee page in the “cost of collection” fee detail:

- Advertising Cost
- Clerk Fee
- Clerk Service Fee
- Mailing Fees
- Sheriff Fee
- DOR’s 20 percent collection fee

The same procedure also applies for waiving penalties on TT 050 and TT076 bills. When a waiver or reduction of penalty occurs, the Division of Property Tax should be notified in order to ensure their systems are updated accordingly.

The Division of Property Tax has established written guidelines for waiving penalties on real and personal property via a memorandum issued by the Director to all Kentucky Sheriffs, County Attorneys, County Clerks and Property Valuation Administrators for the Commonwealth. In addition, a form verifying the reasonable cause for waiving the penalty is also required.

A copy of the memorandum and form follows.

Commonwealth of Kentucky  
Finance and Administration Cabinet  
Department of Revenue  
**Office of Property Valuation**  
501 High Street Post Office Box 1202  
Frankfort KY 40602-1202

**MEMORANDUM**

To: Kentucky Sheriffs  
  
Kentucky County Attorneys  
  
Kentucky County Clerks  
  
Kentucky Property Valuation Administrators

From: David L Gordon   
  
Executive Director, Office of Property Valuation

Date: 12 November 2009

RE: Guidance for the Waiver of Penalties and Interest on Real and Personal Property

\*\* \* \* \* \*

The Kentucky Department of Revenue (“Department”) has developed the following guidance to allow the county attorneys under contract with the Department, sheriffs, and county clerks, to provide for the waiver of penalties and, in one instance, interest at the local level as the agent for the Department. KRS 131.140(2) The county attorneys acting under contract with the Department, sheriffs, and county clerks are allowed to waive penalties and interest, when the waiver will facilitate the

collection of the delinquent tax bill and further, to prevent any injustice to the taxpayer. In light of the fact that the local official will be more familiar with the taxpayer and his or her circumstance, each waiver of penalties and interest reviewed by the local official should be done on a case-by-case basis, with each taxpayer's circumstance being reviewed independently.

KRS 133.220 requires the county clerk to prepare for the use of the sheriff or collector a correct tax bill for each taxpayer in the county whose property has been assessed and whose valuation is included in the certification provided in KRS 133.180. Unfortunately, errors can occur on a tax bill, some of which are beyond the control of the taxpayer, which can result in the failure of the taxpayer not receiving a notice of tax due.

KRS 131.175 allows for the waiver of penalties when it is shown that the failure to pay is due to "reasonable cause". Though KRS 131.175 specifically does not allow for the waiver of interest, KRS 131.081(6) does allow for the waiver of interest when it is shown that the taxpayer has relied on written advice from the Department, which would include written advice from a local official. Waiver of penalties and interest should only be granted as a matter of settlement and for the purpose of facilitating the collection of the tax, as allowed by KRS 131.030(3). Further, no authority is provided by the Kentucky General Assembly to reduce the amount of tax due, unless there is a clerical, mathematical or procedural error in an assessment or any duplication of an assessment and that error has been reviewed and approved by the Department. KRS 133.110.

The sheriff may waive the penalties and interest that have been added when the tax bill is payable to the sheriff's office whenever reasonable cause has been demonstrated. If a waiver of a penalty and interest on a property tax bill is granted after the tax bill is transferred to the county clerks' office, each of the local officials affected by the waiver of the penalties and interest must sign the form.

The Department encourages the local officials to communicate and participate with each other in the decision to waive any penalty and interest related to this memorandum

#### I. GUIDELINES FOR WAIVER OF PENALTY AND INTEREST

KRS 131.175 allows for the waiver of penalties when there is shown "reasonable cause".

KRS 131.010(9) defines reasonable cause as an event, happening, circumstance entirely beyond the knowledge or control of a taxpayer who has exercised due care and prudence in the filing of a return or report or the payment of monies due the Department pursuant to law or administrative regulation.

The waiver of interest can only occur when the taxpayer has shown that he or she has relied on erroneous written advice from the Department, which includes erroneous written advice from a local official. KRS 131.081(6)

A taxpayer's demonstration of reasonable cause relieves the taxpayer of paying a penalty and interest because payment would be unfair to the taxpayer in light of the circumstances surrounding the nonpayment of tax. A review by the local official of the circumstance provided by the taxpayer should be done on a case-by-case basis, with each taxpayer's circumstance being reviewed independently.

103 KAR 1:040 enumerate the circumstances constituting reasonable cause, which are as follows:

1. The taxpayer has relied on erroneous written advice from the Department, which would include erroneous written advice from a local official;
2. Death or serious illness of a taxpayer or his or her immediate family at the time the tax bills were mailed or due;
3. Death or serious illness of the taxpayer's tax return preparer at the time the tax bills were mailed or due;
4. Unavoidable absence of the taxpayer when the tax bills were mailed or due;
5. Destruction or unavailability of taxpayer records due to a catastrophic event at the time the tax bills were mailed or due;
6. Inability to obtain records in custody of a third party. For example, taxpayer divorced and the tax bill was mailed to the person other than who received the property under the terms of the divorce decree;
7. Employee theft or defalcation of taxpayer's financial records;
8. Undue hardship which can include the loss of a job or an unexpected emergency at the time the tax bills were mailed or due;
9. Human error. For example, the taxpayer's name or address may be misspelled and the taxpayer does not receive the bill;
10. Erroneous written advice by tax advisor on which it was reasonable for the taxpayer to rely;

11. Reliance on substantial legal authority;
12. Ignorance of reporting requirements due to the lack of previous tax and penalty experience. For example, the taxpayer moved in or out of state but failed to update the address with the property valuation administrator's office. Another example is when a taxpayer purchases property after January 1 and the tax bill is sent to the January 1 owner. The new owner is unaware of the delinquency the sheriff sends a second notice or the county attorney contacts the taxpayer about the delinquent tax bill;
13. Miscellaneous. The taxpayer has submitted a written waiver of penalties and fees and it is decided that the statements of the taxpayer establishes reasonable cause for delay in filing of a return or paying a tax which clearly negates negligence on the part of the taxpayer.

## II. DOCUMENTATION

The Department has developed a form for use by the local official which documents why a taxpayer should be granted a waiver of a penalty and interest. The circumstance for waiver of penalties or interest corresponds with the ones listed in 103 KAR 1:040. The local official should simply check the box that applies and sign the form. If a waiver is granted for a miscellaneous reason, then please provide details in the section marked "other".

If a penalty and interest on a property tax bill is waived while the sheriff is the local official responsible for its collection, only the sheriff or an authorized deputy is required to sign the form. A copy of the signed form may be provided to the taxpayer if a copy is requested. The original, signed copy should remain on file with the sheriff's office. The Department will review these forms as part of the settlement process to complete a collection cycle. These forms are also subject to inspection by the Auditor of Public Accounts.

If a waiver of a penalty and interest on a property tax bill is granted after the tax bill is transferred to the county clerks' office, each of the local officials affected by the waiver of the penalties and interest must sign the form. Again, a copy of the signed form may be provided to the taxpayer upon request. The original signed copy should remain on file in the County Clerk's office for review by the Department and the Auditor of Public Accounts.

## III. CONCLUSION

The situations detailed in this memorandum describe the most common occurrences encountered. The local official should not hesitate to contact the Department for further consideration of any situation, listed or unlisted, in this memorandum. Please contact the Office of Property Valuation at (502) 564-8338 for further discussion.

**WAIVER OF PROPERTY TAX PENALITES  
(AND INTEREST UNDER KRS 131.081(6) ONLY)**

	Name of Taxpayer	
County	Year	Tax Bill Number(s)

**PENALTIES WAIVED**

(Please check the box that applies)

- Taxpayer has relied on erroneous written advice from the Department or a local official. **(103 KAR 1:040(1))**
- Death or serious illness of a taxpayer or a member of the taxpayer’s immediate family at time the tax bills were mailed or due. **(103 KAR 1:040(2))**
- Death or serious illness of the taxpayer’s tax return preparer at the time the tax bills were mailed or due. **(103 KAR 1:040(3))**
- Unavoidable absence of the taxpayer at the time tax bills were mailed or due. **(103 KAR 1:040(4))**
- Destruction or unavailability of taxpayer records due to a catastrophic event at the time the tax bills were mailed or due. **(103 KAR 1:040(5))**
- Inability to obtain records in custody of a third party. For example, taxpayer divorced and the tax bill was mailed to the person other than who received the property under the terms of the divorce decree. **(103 KAR 1:040(6))**
- Employee theft or defalcation (misuse of funds) of taxpayer’s financial records. **(103 KAR 1:040(7))**
- Undue hardship which can include the loss of a job or unexpected emergency at the time the tax bills were mailed or due. **(103 KAR 1:040(8))**
- Human error. For example, the taxpayer’s name or address may be misspelled and the taxpayer does not receive the bill. **(103 KAR 1:040(9))**
- Erroneous written advice by tax advisor on which it was reasonable for the taxpayer to rely. **(103 KAR 1:040(10))**
- Reliance on substantial legal authority. **(103 KAR 1:040(11))**

- Lack of previous tax and penalty experience by the taxpayer. For example, the taxpayer moved in or out of state, but failed to update the address with the property valuation administrator’s office. Another example is when a taxpayer purchases property after January 1 and the tax bill is sent to the January 1 owner. The new owner is unaware of the delinquency, the sheriff sends a second notice or the county attorney contacts the taxpayer about the delinquent bill. **(103 KAR 1:040(12))**
- Miscellaneous. The taxpayer has submitted a written waiver of penalties and it is decided that the statements of the taxpayer establishes reasonable cause for delay in filing of a return or paying a tax which clearly negates negligence on the part of the taxpayer. **(103 KAR 1:040(14))**

Explain: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Sheriff’s Signature and Date

\_\_\_\_\_  
 Clerk’s Signature and Date – If waiver involves a delinquency filed in the clerk’s office

\_\_\_\_\_  
 County Attorney’s Signature and Date – If waiver involves a delinquency filed in the clerk’s office and County Attorney is under contract with the Department to collect delinquent property tax bills.

## **Bankruptcy, Insolvency, Offers in Settlement**

Cases that involve bankruptcy, insolvency, and offers in settlement are handled by the Legal Support Branch of the Division of Collections.

During the course of an injunction action a penalty/fee waiver may be used as a bargaining tool in negotiations for an Agreed Judgment or Order. When dealing with penalty and fees associated with bankruptcies, often those are waived in order to make the best use of our resources. In a bankruptcy court, penalty and fees are considered nonpriority debt and when paid on a claim, only pennies on the dollar are received, if that. Some are not considered at all, so DOR ultimately waives or reduces penalties and fees associated with these type cases.

Offers in Settlement involve cases that DOR is willing to settle for less than the full amount owed based on the circumstances, hazards of litigation, etc. The Division of Collections has guidelines in place for an Offer in Settlement in determining how much is to be paid to settle a case. Often penalties and fees are not included in the amount agreed upon to resolve the case. Sometimes DOR will agree to accept an immediate payment of tax and interest and in exchange waive penalties and fees in order to resolve the taxpayer's liability with DOR.

## **Post Amnesty Penalties**

There are two penalties that became effective 01/01/2003. These are assessed on periods ending on or after 01/01/2003. The codes are AJ and DA.

### A. PENALTY CODE:

AJ (Filed Late)

### PENALTY BASE CODE:

3 (Tax due)

U (User entered)

The AJ penalty code is assessed on returns that are filed late to replace Jeopardy Assessments for periods ending on or after 01/01/2003. This penalty is assessed at 2 percent for each 30 days or portion thereof on the balance of tax due from the due date of the return until the date the return is filed or a maximum of 20 percent is reached. The minimum penalty is \$100.

Some examples are:

1. A taxpayer's return was due on 04/15/2003 but not filed and a Jeopardy Assessment was issued by the Division of Collections. Subsequently the taxpayer filed the return to replace the Jeopardy Assessment on 08/15/2003. The AJ penalty is assessed and computed on the tax due from 04/16/2003 until 08/15/2003. If the penalty is less than \$100 then the \$100 minimum is assessed.
2. A taxpayer's return was due on 01/31/2002 but not filed until 06/30/2002 the AJ penalty is not assessed. The "A" penalty which we currently use is assessed.

### B. PENALTY CODE:

DA (DID NOT FILE)

### PENALTY BASE CODE:

3 (Tax Due)

U (User entered)

The DA penalty code is assessed on Arbitrary Assessment bills. The penalty will compute at 5 percent for each 30 days or portion thereof on the balance of the tax due from the due date of the return until the return is filed or the maximum penalty of 50 percent is reached. The minimum penalty is \$100.

Some examples are:

1. If the taxpayer fails to file a return for a period end of 12/31/2003 and an arbitrary assessment bill is created pursuant to KRS 131.180(4), the DA penalty would be assessed on the tax due.
2. If the taxpayer fails to file a return for a period end of 04/30/2001 and an arbitrary assessment bill is created the DA penalty would not be assessed. The "D" penalty we use now would be assessed.

### **Cost of Collection Fees**

Cost of collection fees are imposed in addition to all other applicable penalties to offset the cost of collection. This fee is assessed by the Division of Collections when a bill becomes due and owing. Cost of collection fees are added to bills between the 46<sup>th</sup> – 52<sup>nd</sup> days of the original billing. Currently, the program that adds this fee runs once per week.

Cost of collection fees added to those accounts that are collected by the Enterprise Collections Branch **cannot** be waived. Statutorily, KRS 45.238 provides that the 25 per cent cost of collections fee be retained by DOR, thus funding the collections efforts.

Otherwise, the fee is subject to waiver based on reasonable cause. There are instances that DOR will waive the fee *up front* on current year individual income tax bills if that is the only bill the taxpayer owes and arrangements are made to pay the bill.

In all instances, the decision to waive the cost of collection fee should be made by the Divisions of Collections. Other areas may recommend waiving the fee by contacting the appropriate area of the Division of Collections.

KRS 131.440 provides:

#### **131.440 Cost of collection fees -- Applicability.**

(1) In addition to all other penalties provided under KRS 131.180, 131.410 to 131.445, and 131.990 and any other law, there is hereby imposed after the expiration of the tax amnesty period the following cost of collection fees:

- (a) A cost of collection fee of twenty-five percent (25%) on all taxes which are or become due and owing to the department for any reporting period, regardless of when due. This fee shall be in addition to any other applicable fee provided in this subsection;
- (b) Taxes which are assessed and collected after the amnesty period for taxable periods ending or transactions occurring prior to December 1, 2001, shall be charged a cost of collection fee of twenty-five percent (25%) at the time of assessment; and
- (c) For any taxpayer who failed to file a return for any previous tax period for which amnesty is available and fails to file the return during the amnesty period, the cost of collection fee shall be fifty percent (50%) of any tax deficiency assessed after the amnesty period.

(2) The commissioner of revenue shall have the right to waive any penalties or collection fees when it is demonstrated that any deficiency of the taxpayer was due to reasonable cause as defined in KRS 131.010(9). However, any taxes that cannot be paid under the amnesty program because of the exclusions in subsection (2) of KRS 131.410 shall not be subject to these fees.

(3) The provisions of subsection (1) of this section shall not relate to any account which has been protested pursuant to KRS 131.110 as of the expiration of the amnesty period and which does not become due and owing, or to any account on which the taxpayer is remitting timely payments under a payment agreement negotiated with the department prior to or during the amnesty period.

(4) The fee levied under subsection (1) of this section shall not apply to taxes paid pursuant to the terms of the amnesty program nor shall the judgment penalty of twenty percent (20%) levied under KRS 135.060(3) apply in any case in which the fee levied under this section is applicable.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 85

## ADMINISTRATIVE REGULATIONS FOR REFERENCE

### **103 KAR 1:010. Protests and appeals.**

RELATES TO: KRS 131.081, 131.110, 131.340, 131.345, 131.360, 131.370, 139.760, 139.980(4)

STATUTORY AUTHORITY: KRS Chapter 13A, 131.130

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation summarizes significant portions of the statutes dealing with taxpayer protest and appeal rights and outlines procedures to facilitate the filing, processing and disposition of such protests and appeal.

**Section 1. Protest - Assessments.** (1) Taxpayers will be notified of additional tax assessments by mail. Payment including interest from the original due date, in the absence of protest, must be made within forty-five (45) days from the date of the notice of tax due.

(2) A written protest may be filed by the taxpayer, or other persons representing the taxpayer, against additional assessments. The protest shall be filed with the Revenue Cabinet within forty-five (45) days from the date of notice.

(3) A hearing may also be requested. The taxpayer may appear in person or by representative. If a taxpayer is not present in person, or if a corporation is not represented by an authorized officer, the cabinet may require the taxpayer's representative to furnish evidence of his authority to act for the taxpayer. Consideration will be given to additional information presented in the protest and at hearings and the additional assessment may be adjusted accordingly.

(4) As provided in KRS 131.081, a taxpayer may make an audio recording of any conference with or hearing by the Revenue Cabinet. However, the Revenue Cabinet may make such a recording only if the taxpayer is given prior written notice. If the conference or hearing is recorded by the Revenue Cabinet, the taxpayer may obtain a copy or transcript thereof as provided in KRS 61.874.

**Section 2. Protests - Refund or Credit Denials.** (1) Taxpayers will also be notified by mail of disallowance or partial disallowance of any refund or credit claim including a refund or credit requested upon any return.

(2) A taxpayer may protest such disallowance or partial disallowance by written protest filed with the Revenue Cabinet, within forty-five (45) days of the disallowance. Procedures governing protests and hearings for refunds and credits are the same as for assessments.

**Section 3. Final Ruling.** If the taxpayer's protest of an assessment or refund or credit denial cannot be resolved through correspondence and/or conferences with officials of the Revenue Cabinet and he desires to exercise his rights of further appeal, the taxpayer may request in writing a final ruling at any time after the filing of a timely protest and supporting statements. The final ruling shall be given to the taxpayer within thirty (30) days from the date the request is received by the cabinet.

**Section 4. Appeal - Kentucky Board of Tax Appeals.** (The following procedure is prescribed by rules and administrative regulations of the board):

(1) If a taxpayer desires to appeal a final ruling of the cabinet he may, within thirty (30) days from the date of such ruling, apply for a hearing before the Kentucky Board of Tax Appeals. The appeal:

- (a) Must be filed in quintuplicate;
- (b) Must contain a brief statement of the law and facts in issue;
- (c) Must state the petitioner's position regarding the law, facts, or both; and
- (d) Must contain a copy of the final ruling of the cabinet.

(2) The board will set a date for a formal hearing. The hearing procedure before the board will be in accordance with the board's rules.

(3) On the basis of the hearing, briefs, and other documents, the board will issue a written order which will affirm, reverse, modify or remand the final ruling, and will forward a copy of the order to the taxpayer and the cabinet. Assessments upheld by the board shall be due and payable thirty (30) days after the date of the board's order. In the absence of appeal, penalties for failure to pay tax when due apply if payment is not made within thirty (30) days after the date of the board's order.

(4) Interest from the original due date of the return until the tax is paid shall be added to the additional assessments.

(5) As provided in KRS 131.355, all hearings before the board are required to be officially reported and all records of proceedings shall be public records except in the case of appeals of unmined minerals assessments in which, under specified circumstances, the statute prohibits disclosure of records or any recorded or transcribed testimony concerning such records. In such cases, a protective order is required to be entered and remain in effect during the entire appeals process, including appeals to the courts, and thereafter, preventing the parties, their agents and representatives, except the taxpayer, from disclosing the confidential records or testimony concerning them outside the appeals proceedings.

**Section 5. Appeal - Circuit Court.** Any party aggrieved by a final order of the Kentucky Board of Tax Appeals may, within thirty (30) days after such order becomes final, file a notice of appeal with the Kentucky Board of Tax Appeals and shall serve a copy of said notice upon all other parties to the appeal. A statement of appeal must then be filed within (30) days after the date on which the notice of appeal was filed with the appropriate circuit court, with a copy of the ruling made before the Kentucky Board of Tax Appeals. The statement of appeal must conform to that required to be filed in the Kentucky Supreme Court. Pursuant to KRS 131.370, if the appeal is from an order sustaining a tax assessment, collection of the tax may be stayed by the filing of a supersedeas bond in the manner directed by the Rules of Civil Procedure, or by payment of the tax as provided in KRS 134.580(1).

**Section 6. Appeal - Kentucky Court of Appeals and Kentucky Supreme Court.** Any party may appeal to the Kentucky Court of Appeals and to the Kentucky Supreme Court under rules provided by those courts. (GA-1; 1 Ky.R. 137; Am. 324; eff. 12-11-74; 3 Ky.R. 381; eff. 12-1-76; 9 Ky.R. 1150; eff. 5-4-83; 17 Ky.R. 1126; eff. 11-21-90.)

**103 KAR 1:040. Waiver of penalties.**

RELATES TO: KRS 131.010(9), 131.030(3), 131.081(6), 131.175, 131.180, 131.440(3)(d), 133.180, 133.220, 138.885, 139.185, 141.180(7), 141.180(8), 141.340(2), 141.990, 142.357, 143.085.

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.175 authorizes the Commissioner of the Department of Revenue to waive the penalty, but not interest, if the failure to pay is due to reasonable cause. KRS 131.130 authorizes the department to promulgate administrative regulations to administer Kentucky's tax laws. This administrative regulation establishes the criteria used to determine if the taxpayer has demonstrated reasonable cause to justify the waiver of penalties.

**Section 1. Enumeration of Circumstances Constituting Reasonable Cause.** The Department of Revenue shall employ the criteria established in this section to determine if the taxpayer has demonstrated reasonable cause to waive penalties.

**(1) Erroneous advice by Department of Revenue.** The taxpayer may demonstrate good cause for reliance on erroneous written advice from the department in accordance with KRS 131.081(6).

**(2) Death or serious illness of taxpayer or immediate family.** Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the death or serious illness of the taxpayer or a member of that taxpayer's immediate family. If the taxpayer is not an individual, the death or serious illness shall be that of an individual having sole authority to execute the return or a member of the individual's immediate family. The following factors shall be considered in a determination of the applicability of this subsection:

- (a) Relationship of parties involved;
- (b) Date of death;
- (c) Date and nature of serious illness;
- (d) Length of time from the date of death or serious illness to the date prescribed by law for filing a return, including any extension granted;
- (e) Explanation of how the event prevented compliance; and
- (f) Explanation of other business obligations that were impaired.

**(3) Death or serious illness of taxpayer's tax return preparer.** Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the death or serious illness of the taxpayer's tax return preparer. The following factors shall be considered in a determination of the applicability of this subsection:

- (a) Name of preparer;
- (b) 1. Date of preparer's death; or  
2. Date and nature of preparer's serious illness;
- (c) Length of time from the date of death or serious illness of the tax preparer to the date prescribed by law for filing a return, including any extension granted; and
- (d) Explanation of how the death or serious illness prevented compliance.

**(4) Unavoidable Absence of Taxpayer.** Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the unavoidable absence of the taxpayer. For a corporation, partnership, estate, trust, or similar entity, the absence shall have been of an

individual having sole authority to execute the return or report. The following factors shall be considered in a determination of the applicability of this subsection:

- (a) Dates and reasons for the absence; and
- (b) Explanation as to how the event prevented compliance.

**(5) Destruction or unavailability of taxpayer records by a catastrophic event.** Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the destruction or unavailability of the taxpayer's records by a catastrophic event. The following factors shall be considered in a determination of the applicability of this subsection:

- (a) Date and description of catastrophic event;
- (b) Supporting documentation such as a copy of the police, fire, or insurance report;
- (c) Explanation of how the destruction or unavailability of records prevented compliance;

and

- (d) Explanation of all other means explored to secure needed tax information.

**(6) Inability to obtain records in custody of third party.** Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the inability to obtain taxpayer's records in the custody of a third party. The following factors shall be considered in a determination of the applicability of this subsection:

- (a) The records in the custody of a third party and the third party's identity;
- (b) Explanation of why the records were needed to comply;
- (c) Explanation of why the records were unavailable and what steps were taken to secure the records;

(d) Explanation of when and how the taxpayer became aware that the necessary records were unavailable;

(e) Supporting documentation such as copies of letters written and responses received in an effort to get the needed information; and

- (f) Explanation of all means explored to secure the needed tax information.

**(7) Employee Theft or Defalcation.** Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by employee theft or defalcation. The employee theft or defalcation shall be directly related to the financial records or funds required to file a return or report or pay a tax.

**(8) Undue hardship.** Penalties may be waived if the enforcement of the penalty or fee would constitute an undue hardship on the taxpayer, and if waiver of the penalty or fee would facilitate collection of the tax liability. A taxpayer shall demonstrate that reasonable care and prudence was exercised in providing for payment of the tax, but the taxpayer was unable to pay the tax.

- (a) The following factors shall be considered in determining undue hardship:

1. Nature of the tax which the taxpayer has failed to pay;

2. Amount and nature of the taxpayer's expenditures in light of the income the taxpayer could, at the time of the expenditures, reasonably have expected to receive prior to the date prescribed by law for the payment of the tax;

3. Reasonableness of the taxpayer's efforts to conserve sufficient assets in marketable form to satisfy the tax liability;

4. Potential loss due to the sale of property at a sacrificed price. If a market exists, the sale of property at the current market price shall not be considered as resulting in an undue hardship;

5. Equity in assets, including repayment ability;

6. Family size;

7. Necessary living expenses, if a taxpayer is an individual, or necessary business expenses;

8. Income from all sources, both taxable and nontaxable, including income of the nonliable spouse to the extent used for the necessary living expenses of a family;
9. Stability of income and anticipated increases or decreases;
10. Current status of business;
11. Possibility of payment through an installment agreement; and
12. Age and health of the taxpayer.

(b) The following factors shall be considered in determining if waiver of a fee or penalty facilitates collection of the tax liability:

1. Dischargeability of tax liability in bankruptcy;
2. Collectability of the tax, penalty, and interest directly from the taxpayer, as determined from the taxpayer's financial statements;
3. Availability of sources of funds for payment not under the control of the taxpayer; and
4. Past and current compliance with Department of Revenue filing and payment requirements.

**(9) Human error.** Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by human error and the delay or failure is the first occurrence over the last twelve (12) calendar months if the taxpayer is a monthly or quarterly filer, or twenty-four (24) months if the taxpayer is an annual filer, and Department of Revenue records show that the taxpayer took appropriate steps to eliminate the delinquency in a timely manner.

**(10) Erroneous advice by tax advisor.** Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the receipt of erroneous advice from a tax advisor or other professional on whom a taxpayer had a reasonable right to rely. The taxpayer shall establish the presence of the following three (3) factors for the Department of Revenue to consider the applicability of this subsection:

(a) Unfamiliarity of the taxpayer with the tax laws, and actual reliance by the taxpayer on the advice of the tax advisor;

(b) Supporting documentation of full disclosure by the taxpayer of all relevant facts provided to the tax advisor or other professional retained and advice received, including:

1. A copy of the advice requested;
2. A copy of the advice provided; and
3. A statement from the tax advisor explaining the circumstances; and

(c) Exercise of reasonable care and prudence by the taxpayer in determining whether to secure further advice.

**(11) Reliance on substantial legal authority.** Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by reliance on substantial legal authority for the particular tax treatment of an item of gross income, deduction, exemption, credit, or basis. The following factors shall be considered in a determination of the applicability of this subsection:

(a) Actual reliance by the taxpayer at the time of failure to file the return or report or to pay the tax; and

(b) Conspicuous, full disclosure by the taxpayer in the return, if a return was filed, of the position that is contrary to the Department of Revenue's position, including all copies of or citation to the Internal Revenue Code, the Kentucky Revised Statutes, final and temporary regulations of the Internal Revenue Service and the Department of Revenue, Revenue Rulings, Revenue Procedures, and Private Letter Rulings of the Internal Revenue Service, case law interpreting the previous items, or any other relevant legal authority which provides that the tax treatment is more likely than not correct.

**(12) Ignorance of Reporting Requirements.** Ordinary business care and prudence shall require that a taxpayer be aware of tax obligations. Penalties may be waived in isolated cases if a taxpayer is not aware of the reporting requirements. Ignorance of the law may be considered in conjunction with other facts and circumstances including limited education or the lack of previous tax and penalty experience.

**(13) Tax modernization.** For taxable periods beginning after December 31, 2004 and before January 1, 2006, the penalty for any declaration underpayment, as provided in KRS 131.180 and 141.990(3) shall be waived if the declaration underpayment is directly related to the changes to the tax laws pursuant to 2005 Ky. Acts ch. 168, and the taxpayer made a good faith effort to comply with 2005 Ky. Acts ch. 168.

**(14) Miscellaneous.** If the cause for penalty waiver submitted by the taxpayer does not fall within the other reasonable cause guidelines provided in this section, the Department of Revenue may decide that the written statements submitted by the taxpayer establish a reasonable cause for noncompliance with the applicable tax statute. A cause for noncompliance which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return or paying a tax and which clearly negates negligence, willful disregard of administrative regulations, or fraud may be accepted. The facts and circumstances of each case shall be considered.

**Section 2. Taxpayer's Support for Reasonable Cause.** (1) Responsibility for request. The taxpayer shall:

- (a) Request reduction or waiver of any penalty, in writing; and
- (b) Provide all supporting documentation necessary to substantiate reasonable cause.

(2) Time of request. A taxpayer shall:

- (a) Attach a statement requesting waiver for reasonable cause to a return; or
- (b) Request waiver after notice of assessment.

(3) Request by representative of taxpayer. A request from a taxpayer's representative shall be considered a request by the taxpayer if the taxpayer has provided a properly signed power of attorney or the Department of Revenue is satisfied by any other written statement that the representative has been authorized to act for the taxpayer. (32 Ky.R. 1810; Am. 33 Ky.R. 376; eff. 9-1-2006.)