

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-88 (9) I  
Income Tax  
July 19, 1988

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I880412A

On April 12, 1988, a Petition for Advisory Opinion was received from John P. Rooney, 45 Fifth Avenue, New York, New York 10003.

The issue raised is whether New York State will waive interest and penalties for a 10 year period, on net rental income from a New York building, where the illness and death of a taxpayer's parent caused personal income taxes thereon to be paid inadvertently to the state of the taxpayer's residence.

Petitioner presents the following hypothetical situation. The hypothetical taxpayer is retired and discontinued his New York residence more than 20 years ago. The taxpayer's mother owned and rented a building in New York. In 1979, she suffered a terminal illness. At that time, the taxpayer took control of the building and he does not intend to sell the premises. Since the death of his mother, the taxpayer has had minimal contact with the building. The net rental income averages \$35,000 annually.

Petitioner states that because of the sadness and disturbance caused by the taxpayer's mother's illness and death in 1979, the taxpayer inadvertently began paying taxes on the net rental income to the state where he resided. This mistake has only recently been discovered and the taxpayer is unable to recover several years' taxes paid to such state. Petitioner states that the sadness and disturbance caused by the taxpayer's mother's illness and death made it impossible for the taxpayer to assemble accurate tax information and records. Also, since he had little cause to visit New York, the taxpayer had difficulty in obtaining New York tax forms.

Petitioner contends that based on the taxpayer's circumstances described herein, the taxpayer's non-payment of New York taxes was a good faith error and the interest and penalties on such payment of owed taxes should be waived.

Section 684(a) of the Tax Law provides for payment of interest on any amount of personal income tax that is not paid on or before the last date prescribed for payment under Article 22 of the Tax Law. There is no provision for waiver of said interest for any reason. Accordingly, interest charged on a taxpayer's tax deficiency cannot be waived regardless of whether there might be reasonable cause for late filing and payment.

Paragraphs (1) through (3) of section 685(a) of the Tax Law levy penalties for failure to file personal income tax returns and to pay the amounts shown or required to be shown thereon in a timely manner, unless "such failure is due to reasonable cause and not due to willful neglect."

Section 102.7 of the Personal Income Tax Regulations provides that grounds for reasonable cause must be clearly established as stated in subdivision (d) and may include the following:

(1) The death or serious illness of the taxpayer, employer or other person against whom the additions to tax or penalties have been assessed or are assessable, a member of such party's family, such party's personal representative or employer, or the unavoidable absence of the taxpayer, employer, or other person or personal representative from the usual place of business, which precluded timely compliance, may constitute reasonable cause provided that:

(i) in the case of the failure to file any New York State income tax return, the applicable New York State income tax return is filed; or

(ii) in the case of the failure to pay or deposit any tax, such amount is paid or deposited;

within a justifiable period of time after the death, illness or absence. A justifiable period of time is that period which is substantiated by or on behalf of the taxpayer, employer or other person as a reasonable period of time for filing the return and/or for paying any tax based on the facts and circumstances in each case.

(2) The destruction of the place of business or business records of the taxpayer, employer or other person against whom the additions to tax or penalties have been assessed or are assessable, the place of business or business records of such party's personal representative or employer, or the taxpayer's residence or income records, including wage and tax statements and returns of information, by a fire or other documented casualty, which precluded timely compliance, may constitute reasonable cause provided that:

(i) in the case of the failure to file any New York State income tax return, the applicable New York State income tax return is filed; or

(ii) in the case of the failure to pay or deposit any tax, such amount is paid or deposited;

within a justifiable period of time after the casualty takes place. A justifiable period of time is that period which is substantiated by or on behalf of the taxpayer, employer or other person as a reasonable period of time for filing the return and/or for paying any tax based on the facts and circumstances in each case.

(3) A pending petition to the Commissioner of Taxation and Finance for an advisory opinion or a declaratory ruling, a pending conciliation conference proceeding in the Bureau of Conciliation and Mediation Services of the Division of Taxation, a pending petition to the Division of Tax Appeals or a pending action or proceeding for judicial determination may constitute reasonable cause, until the time in which the taxpayer has exhausted its administrative or judicial remedies, as applicable, for a taxable period or periods the return or returns for which are due subsequent to the filing of the petition with the Commissioner of Taxation and Finance,

the commencement of the conciliation conference proceeding, the filing of the petition with the Division of Tax Appeals or the commencement of the judicial action or proceeding provided that:

(i) the petition, action or proceeding involves a question or issue affecting whether or not the individual or entity is subject to tax and/or required to file a New York State income tax return;

(ii) the petition, action or proceeding is not based on a position which is frivolous nor is it intended to delay or impede the administration of article 22 of the Tax Law; and

(iii) the facts and circumstances for such taxable period or periods are identical or virtually identical to those of the taxable period or periods covered by the petition, action or proceeding.

(4) Any other cause for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay and which clearly indicates an absence of willful neglect may be determined to be reasonable cause. Ignorance of the law, however, will not be considered as a basis for reasonable cause.

Subdivision (e) of section 102.7 of the Personal Income Tax Regulations provides that:

(e)(1) Except as provided for in subparagraph (2)(ii) of this subdivision, an inability to timely obtain and assemble essential information (including wage and tax statements or returns of information from an employer or payor) required for the preparation of a complete New York State income tax return, shall not be a basis for reasonable cause.

(2)(i) Where an inability to timely obtain and assemble essential information required for the preparation of a complete New York State income tax return exists and extensions of time for filing such return are available pursuant to section 151.1 of this Title, such extensions of time for filing must be obtained, a return which reflects the known tax liability must be filed on or before the extended due date for filing and any balance of tax must be paid with the return on that portion of the tax liability which can be ascertained and shown on such return. The relevant facts affecting that portion of the tax liability which cannot be ascertained must be fully disclosed with the timely filed New York State income tax return. When such liability is ascertained, an amended New York State income tax return must be immediately filed together with any additional tax due.

(ii) However, where a taxpayer:

(a) makes a timely application for an extension of time to file the New York State income tax return;

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(b) makes a good faith effort to properly estimate the tax due in accordance with section 151.2 of this Title; and

(c) pays with the application for extension of time for filing any unpaid balance of the tax as estimated;

an inability for reasons beyond the taxpayer's control to obtain and assemble essential information may constitute reasonable cause for failure to file a New York State income tax return and for failure to pay the amount shown as tax on such return, where such inability precluded the taxpayer from properly estimating the tax as finally determined (see section 151.2[a][3][i] of this Title) thereby invalidating the extensions of time for filing the New York State income tax return. In support of this ground as a basis for reasonable cause, the taxpayer or the taxpayer's representative must indicate what information was unavailable and explain the reason or reasons why such information was unavailable, despite reasonable efforts by or on behalf of the taxpayer to obtain the missing information. It must further be explained how the original estimation of tax was derived and what, if any, allowances were included in the estimation to provide for the unknown tax liability.

Based on the hypothetical circumstances described herein and the grounds for reasonable cause contained in section 102.7(d)(1) of the Personal Income Tax Regulations, it has not been substantiated that 10 years is a reasonable period of time for filing a tax return and paying the tax due. In addition, the taxpayer's inability to timely obtain and assemble essential information or tax forms is not a basis for reasonable cause. Moreover, the taxpayer's ignorance of the law will not be considered as a basis for reasonable cause.

The hypothetical taxpayer's failure to file New York State personal income tax returns and failure to pay the taxes due for 10 years following the death of the taxpayer's mother is not due to "reasonable cause" as such term is described in section 102.7 of the Personal Income Tax Regulations. Accordingly, any additions to tax levied pursuant to paragraphs (1) through (3) of section 685(a) of the Tax Law would not be waived.

DATED: July 19, 1988

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.