

Basis For Determining Existence of "Reasonable Cause"

Chapter 714 of the Laws of 1979, effective January 1, 1980, amended section 1145 of the Tax Law by requiring the remission of all penalty and that portion of interest exceeding the minimum amount prescribed by law in the event an assessment for failure to file a sales and use tax return or failure to pay or pay over any sales or use tax was due to "reasonable cause" and not willful neglect.

Furthermore, it required the Tax Commission to promulgate rules and regulations as to what constitutes "reasonable cause".

On December 27, 1979, section 536.1 of the Sales and Use Tax Regulations was promulgated, setting forth the following grounds for "reasonable cause", when clearly established.

- \*1. Death or serious illness of the responsible officer or employee of the taxpayer, or his unavoidable absence from his usual place of business.
2. Destruction of the taxpayer's place of business or business records by fire or other casualty.
- \*3. Timely prepared returns misplaced by a responsible employee and discovered after the due date.
4. Inability to obtain and assemble essential information required for the preparation of a complete return despite reasonable efforts.
5. Pending petition to Tax Commission or formal hearing proceedings involving a question or issue affecting the computation of tax for the year, quarter, month or other period of delinquency.
6. Any other cause for delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return and which clearly indicates an absence of gross negligence or willful intent to disobey the taxing statute.

A request for remission of penalty and interest on the basis of "reasonable cause" must be affirmatively shown in a written statement by the person making the request. In determining whether reasonable cause exists, the taxpayer's previous compliance record may be taken into account; but in no instance will ignorance of the law be considered "reasonable cause".

\*Department policy interprets the reasons in paragraphs 1 and 3 as applicable to the "taxpayer" also.