**N.Y. Comp. Codes R. & Regs. tit. 20, § 536.1**

20 NYCRR 536.1

**Section 536.1. Penalties and interest**

*[Tax Law, §§ 1142, 1145]*

(a) *Penalty.* Any person failing to file a return or to pay or pay over any tax to the Department of Taxation and Finance within the time required by Part 533 of this Title (determined with regard to any extension of time for filing or paying) shall be subject to a penalty of 10 percent of the amount of tax due if such failure is for not more than one month, with an additional one percent for each additional month or fraction thereof during which such failure continues, not exceeding 30 percent in the aggregate. However, where any person fails to file a return within 60 days of the date such return was required to be filed (determined with regard to any extension of time for filing), the minimum penalty for failure to file provided for in the foregoing provisions shall not be less than the lesser of $100 or 100 percent of the amount required to be shown as tax on such return. The amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return. In no event, however, shall the penalty for failure to file a return be less than $50.

(b) *Interest.* If any amount of tax is not paid on or before the last date that payment is required, interest shall be paid on such unpaid amount at the rate specified in section 1145(a)(1)(ii) of the Tax Law or at the underpayment rate set by the Commissioner of Taxation and Finance (see Part 2393 of this Title) pursuant to section 1142(9) of the Tax Law, whichever is greater. Interest shall be paid for the period from the last date that payment is required to the date that payment is made, whether or not any extension of time for payment was granted. Interest shall not be paid if the amount thereof is less than one dollar.

**(c) If a person required to collect tax can establish that the failure or delay to file a return or to pay or pay over any tax was due to reasonable cause and not due to willful neglect (see section 2392.1 of this Title), all of such penalty and that portion of the interest that exceeds the amount that would be payable if such interest were computed at the underpayment rate set by the Commissioner of Taxation and Finance (see Part 2393 of this Title) pursuant to section 1142(9) of the Tax Law shall be waived.**

*Cross-reference:* See section 2392.1 of this Title for examples of whether reasonable cause and not willful neglect does or does not exist.

*Example 1:* A review of a vendor's books and records of a retail clothing store operation disclosed that the vendor reported a larger amount of sales on his Federal income tax return than that reported on his sales and use tax return. The review also revealed the vendor made no out-of-state sales and exempt sales were minimal. As the vendor did not explain or show reasonable cause for the irreconcilable discrepancies, penalty and maximum interest are due on the additional sales and use tax determined.

*Example 2:* In the course of examining, with a third party, information supplied by a liquor store, it was discovered that the liquor store's records failed to disclose a number of different purchases made from its suppliers. Since the records of the liquor were incomplete and inadequate, a mark-up test was performed on purchases from all suppliers. Because the audited taxable sales exceeded the taxable sales reported due to the numerous omissions of proper recordkeeping, it was evident that not all of the items purchased from the suppliers were included in the vendor's sales records. Because of the nature of the understatement of the tax due, it could be concluded that the vendor did not make a conscientious and diligent effort to collect and remit the correct amount of tax. Penalty and maximum interest are due because the vendor has not shown that reasonable cause existed for the understatement.

*Example 3:* A vendor who is a manufacturer has continuously filed timely returns. The records indicate that on a prior audit the vendor was assessed tax of $75,000 as a result of purchases used by the vendor and therefore subject to tax. The prior audit report disclosed that the vendor was informed of the taxable status of these purchases. The current audit discloses the same type of discrepancies that the prior audit showed. Additional tax of $80,000 is determined to be due for the period being audited. Since the vendor failed to pay sales and use tax on these purchases, after having been advised of their taxable status on the prior audit, the vendor cannot show reasonable cause existed. Therefore, penalty and maximum interest are due.

*Example 4:* A registered vendor is a manufacturer with production facilities located both in and out of New York State. Its corporate headquarters and accounting offices are located outside the State. Audited liability consisted of tax due on equipment and various supply items located in New York State which were used by it but not used directly in production. The vendor made no attempt to determine the taxability of these items in New York State. The vendor assumed that these items were not taxable because they would have been exempt in the state where the vendor's corporate offices are located. Penalty and maximum interest are due since the vendor has not demonstrated that failure to pay was due to reasonable cause and not due to willful neglect.

*Example 5:* A vendor is located outside New York State. Initially the only connection with the State had been soliciting sales by mail and making deliveries by mail of electronics equipment. Gradual expansion of the business resulted in providing repairs to the equipment in this State and hiring sales persons who solicit sales in New York. The vendor was complying with the withholding tax requirements of the New York State personal income tax but was not a registered vendor and did not file sales and use tax returns. Since the vendor failed to comply with the Sales and Use Tax Law, the vendor cannot show that reasonable cause existed. Therefore, penalties and maximum interest are due.

*Example 6:* In an audit conducted for the period December 1, 1980 through November 30, 1983, the auditor found that the vendor had failed to file a return for the quarter ended August 31, 1983. Accounting records provided during the audit showed recorded taxable sales of $12,000 for the delinquent quarter ended August 31, 1983. Reasonable cause existed, as described in section 2392.1 of this Title, for the waiving of penalty and maximum interest on the tax due for the quarter ended August 31, 1983. In addition, the audit results disclosed additional taxable sales of $8,000 for each remaining quarter of the audit period. The vendor furnished no basis for the department to find that reasonable cause existed for not reporting these additional taxable sales for such quarters. In this situation, penalty and maximum interest would not be determined on the tax owed on the unreported taxable liability of $12,000 for the delinquent quarter ended August 31, 1983, but would be due on the audited taxable liability of $8,000 for each of the remaining quarters of the audit period.

(d) *Rate of interest imposed.* Except as provided in subdivision (b) of this section, the amount of interest to be added to taxes that are underpaid or overpaid shall be based on the interest rates set by the commissioner (see Part 2393 of this Title) that are in effect while such taxes remain underpaid or overpaid.

(e) *Daily compounding of interest.* Interest required to be paid either by the department on overpayments of sales and use taxes or by the taxpayer on underpayments of sales and use taxes shall be compounded daily.

**Credits**

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