**N.Y. Comp. Codes R. & Regs. tit. 20, § 2392.1**

20 NYCRR 2392.1

**Section 2392.1. Reasonable cause**

(a)

(1) Where any person fails to timely file a return, fails to timely pay any taxes due or fails to meet or fulfill any other act or requirement of the Tax Law, thereby subjecting such person to the additions to tax, penalties, or interest penalty imposed pursuant to section 182-a(10)(b), 289- b(1)(a), 289-b(2), 433(1)(a), 481(1)(a)(i), 512(1)(a), 527(b), 658(c)(4)(C)(i), 685(a), 685(f), 685(h), 685(o), 685(u), 685(v), 685(w), 1085(a), 1085(n), 1085(o), 1145(a)(1)(i), 1145(c), 1145(e), or 1416(b) of the Tax Law, or the interest amount imposed pursuant to section 1145(a)(1)(ii) of such law, the applicable additions to tax, penalties, interest penalty and/or the interest amount, as listed above, must be imposed unless it is shown that such failure was due to reasonable cause and not due to willful neglect**. In the event that these amounts have been imposed and it is later determined any such failure was due to reasonable cause and not due to willful neglect, all or part of these amounts will be cancelled. The absence of willful neglect alone is not sufficient grounds for not imposing or for cancelling these amounts.**

(2) As used in this section, the term taxpayer means the person against whom the amounts described in paragraph (1) of this subdivision have been assessed or are assessable.

(3) As used in this section, the phrase articles governed by article 27 of the Tax Law means and includes articles 9 (Corporation Tax), 9-A (Franchise Tax on Business Corporations), 13 (Tax on Unrelated Business Income), 32 (Franchise Tax on Banking Corporations), 33 (Franchise Taxes on Insurance Corporations) and 33-A (Tax on Independently Procured Insurance) of such law.

(b)

Except where reasonable cause exists or is presumed to exist pursuant to subdivision (c) of this section, all of the facts alleged as a basis for reasonable cause may be required to be affirmatively shown in a written statement made by the taxpayer. Where the taxpayer is unable to provide such a statement or does not have a personal knowledge of such facts, a showing of reasonable cause may be made on the taxpayer's behalf by an individual with a personal knowledge of such facts. In determining whether reasonable cause exists, in addition to an evaluation of such facts, the taxpayer's previous compliance record with respect to all of the taxes imposed pursuant to the Tax Law may be taken into account.

(c)

(1) Reasonable cause shall not be determined to exist as a basis for not imposing or for cancelling the additions to tax for failure to file a return, pursuant to section 685(a)(1) or 1085(a)(1) of the Tax Law, or for failure to pay the amount of tax shown on such return, pursuant to section 685(a)(2) or 1085(a)(2) of such law, where it is determined that the taxpayer or the taxpayer's duly authorized representative could have reasonably been expected to timely request extensions of time to file the return or extensions of time to pay the tax due, but failed to do so. However, reasonable cause may be determined to exist with respect to these additions to tax where:

(i) no extensions of time to file the return or no extensions of time to pay the tax due have been requested and it is determined that, given the circumstances, it would have been unreasonable to expect such extensions to be requested;

(ii) a taxpayer has complied with and exhausted all of the provisions with respect to extensions of time for filing the return or extensions of time for paying the tax due but was nevertheless unable to file or to pay on or before the extended due dates; or

(iii) for purposes of the additions to tax under 1085(a)(1) and (2), a taxpayer has attempted to comply, pursuant to subparagraph (e)(3)(i) of this section, with the provisions relating to an extension of time for filing the return.

(2) A showing of reasonable cause with respect to the addition to tax under section 685(a)(2) of the Tax Law will be presumed, with respect to any underpayment of tax, where the taxpayer has:

(i) satisfied the requirements of section 157.2 of this Title, relating to an automatic extension of time for filing a tax return; and

(ii) the excess of the amount of tax shown on the tax return over the amount of tax paid on or before the date prescribed for the filing of the tax return (by virtue of tax withheld, payments of estimated tax and the payment in full of the estimated tax liability pursuant to section 157.2[a] [4] of this Title) is no greater than 10 percent of the amount of tax shown on the tax return; and

(iii) any balance due shown on the tax return is remitted with such return.

(3) A showing of reasonable cause with respect to the additions to tax under section 1085(a)(2) of the Tax Law (except in the case of such an addition to tax imposed with respect to a liability arising under article 33- A of such law) will exist for purposes of articles 9-A, 13, 32 and 33, or will be presumed to exist for purposes of article 9 or 22, with respect to any underpayment of tax, where the taxpayer has a valid automatic or initial extension of time for filing the return.

(4) The existence or presumption of reasonable cause provided for in paragraphs (2) and (3) of this subdivision will apply to only that period of time for which a taxpayer has a valid automatic or initial extension of time for filing the return and, if any, the additional extensions of time for filing such return.

**(d) Grounds for reasonable cause. The following exemplify grounds for reasonable cause, where clearly established by or on behalf of the taxpayer:**

(1) Death, illness or absence.

(i) The death or serious illness of the taxpayer or the taxpayer's unavoidable absence from its usual place of business, which precluded timely compliance, may constitute reasonable cause, provided that:

(*a*) in the case of the failure to file any return, the applicable return is filed; or

(*b*) in the case of the failure to pay, pay over or deposit any tax, such amount is paid, paid over 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 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.

(ii) As used in subparagraph (i) of this paragraph, the term taxpayer also includes:

(*a*) for purposes of articles 12-A, 18, 20, 21, 21-A and 33-A of the Tax Law, a responsible partner, officer, director, shareholder, employee or other representative of the taxpayer;

(*b*) for purposes of article 22 of the Tax Law, a member of the taxpayer's family or the taxpayer's personal representative or employer;

(*c*) for purposes of the articles governed by article 27 of the Tax Law (not including, for purposes of this paragraph, article 33-A of such law), a responsible officer, employee or other representative of the taxpayer;

(*d*) for purposes of article 28 of the Tax Law, a partner, responsible partner, officer, director, shareholder, employee or other representative of the taxpayer; and

(*e*) for purposes of article 31 of the Tax Law, any other person acting in a fiduciary or representative capacity for the taxpayer.

(2) Destruction of place of business or business records.

(i) The destruction of the taxpayer's place of business or business records by a fire or other documented casualty, which precluded timely compliance, may constitute reasonable cause, provided that:

(*a*) in the case of the failure to file any return, the applicable return is filed; or

(*b*) in the case of the failure to pay, pay over or deposit any tax, such amount is paid, paid over or deposited,

within a justifiable period of time after the casualty has taken place. A justifiable period of time is that period which is substantiated by or on behalf of the taxpayer 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.

(ii) As used in subparagraph (i) of this paragraph, the phrase taxpayer's place of business or business records includes:

(*a*) for purposes of articles 12-A, 18, 21, 21-A and 28 of the Tax Law and the articles governed by article 27 of such law, the place of business or business records of the taxpayer's representatives;

(*b*) for purposes of article 20 of the Tax Law, the place of business or business records of taxpayer's representative or the taxpayer's inventory or stamps;

(*c*) for purposes of article 22 of the Tax Law, the place of business or business records of the taxpayer's personal representative or employer, or the taxpayer's resident or income records (including wage and tax statements and returns of information); and

(*d*) for purposes of article 31 of the Tax Law, the place of business or the business records of any other person acting in a fiduciary or representative capacity for the taxpayer.

(3) Inability to timely assemble information. Except as provided in subdivision (e) of this section, the inability for reasons beyond the taxpayer's control to timely obtain and assemble essential information required for the preparation of a complete return, despite the exercise of reasonable efforts, may constitute reasonable cause provided a return, together with a statement of facts, is timely filed and any tax is timely paid or paid over on that portion of the tax liability which can be ascertained. The relevant facts affecting that portion of the tax liability which cannot be ascertained must be fully disclosed with the timely filed return. When such liability is ascertained, and where applicable collected, an amended return must be immediately filed together with payment of any additional tax due.

(4) Pending petitions, actions or proceedings. 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 at which the taxpayer has exhausted its administrative or judicial remedies, as applicable, for one or more taxable periods (or conveyances for purposes of article 31 of the Tax Law), 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. The ground for reasonable cause described in this paragraph is subject to the following conditions:

(i) the petition, action or proceeding must involve a question or issue affecting whether or not the person or entity or conveyance is subject to tax and/or required to file a return or, for purposes of article 28 of the Tax Law, whether such person or entity is required to file a return and collect and remit sales tax or file a return and pay use tax;

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

(iii) the facts and circumstances for such taxable period(s) or conveyance(s) must be identical or virtually identical to those covered by the petition, action or proceeding.

(5) Additional grounds. Any other ground 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.

(e)

(1) Except as provided for in paragraph (3) of this subdivision, for purposes of article 22 of the Tax Law and for purposes of the articles governed by article 27 of such law, 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 return shall not be a basis for reasonable cause.

(2) Where an inability to timely obtain and assemble essential information required for the preparation of a complete return exists and where extensions of time for filing the return are available, 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 such timely filed returns. When such liability is ascertained, an amended return must be immediately filed together with any additional tax due.

(3)

(i) However, for purposes of the articles governed by article 27 of the Tax Law, where a taxpayer:

(*a*) makes a timely application for an extension of time to file the return;

(*b*) makes a good-faith effort to properly estimate the tax due; 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 return and for failure to pay the amount shown as tax on the return, where such inability precluded the taxpayer from properly estimating the tax as finally determined thereby invalidating the extensions of time for filing the return.

(ii) In support of the ground described in subparagraph (i) of this paragraph as a basis for reasonable cause, the taxpayer or the taxpayer's representative must:

(*a*) indicate why the estimated tax would not be predicated on the preceding year's tax;

(*b*) indicate what information was unavailable;

(*c*) 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; and

*(d*) further explain how the original estimation of tax was derived and what allowances, if any, were included in the estimation to provide for the unknown tax liability.

(iii) Where the Tax Law does not provide for an extension of time for filing, a return which reflects the known tax liability must be filed on or before the prescribed due date for filing and the 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 such timely filed returns. When such liability is ascertained, an amended return must be immediately filed together with any additional tax due.

(f) The provisions of this section shall apply to the extent pertinent where any person is subject to the penalty imposed by section 685(k) of the Tax Law. in addition to any relevant grounds for reasonable cause as exemplified in subdivision (d) of this section, further grounds for reasonable cause for failure to secure and supply any identifying numbers (as described in such section 685[k]), where clearly established, may include the following:

(1) a reliance in good faith on an identifying number provided to such person which subsequently proves to be erroneous; or

(2) awaiting the issuance of an identifying number or the inability to secure an identifying number despite repeated, documentable attempts to do so.

(g)

(1) The provisions of this section shall apply to the extent pertinent where any taxpayer is subject to the additions to tax or penalties imposed pursuant to sections 685(p), 1085(k) and 1145(a)(1)(vi) of the Tax Law and such understatement or omission (as described in such sections), or part thereof, was due to reasonable cause and, for purposes of section 1145(a)(1)(vi), is not due to willful neglect. In such a case, reasonable cause, and the absence of willful neglect, if applicable, may be determined to exist only where the taxpayer has acted in good faith. Further, reasonable cause and good faith, and the absence of willful neglect, if applicable, shall be considered as a basis for cancellation or waiver of all or part of the assessed or assessable additions to tax or penalties imposed pursuant to such sections of the Tax Law only after the understatement of tax or omission has been reduced, in accordance with the provisions of such sections, by that portion of the tax attributable to any item for which there is or was substantial authority for the tax treatment thereof, or for which the relevant facts affecting the tax treatment were adequately disclosed with the original return, if applicable.

(2) In determining whether reasonable cause and good faith exist, the most important factor to be considered is the extent of the taxpayer's efforts to ascertain the proper tax liability. In addition to any relevant grounds for reasonable cause as exemplified in subdivision (d) of this section, circumstances that indicate reasonable cause and good faith with respect to the substantial understatement or omission of tax, where clearly established by or on behalf of the taxpayer, may include the following:

(i) an honest misunderstanding of fact or law that is reasonable in light of the experience, knowledge and education of the taxpayer;

(ii) a computational or transcriptional error;

(iii) the filing of an amended return which shows an additional amount of tax due or which adequately discloses the tax treatment of an item which should have been adequately disclosed with the original return, provided the amended return is filed prior to the time the taxpayer is first contacted by the Department of Taxation and Finance concerning an audit or an examination of the return; and

(iv) the reliance by the taxpayer on any written information, professional advice or other facts, provided such reliance was reasonable and the taxpayer had no knowledge of circumstances which should have put the taxpayer upon inquiry as to whether such facts were erroneous;

(*a*) reliance on professional advice. The provisions regarding a taxpayer's reliance on professional advice found in this subparagraph shall be applied as follows:

(*1*) facts and circumstances; minimum and requirements. All facts and circumstances must be taken into account in determining whether a taxpayer has reasonably relied in good faith on professional advice as to the treatment of the taxpayer under the Tax Law. However, in no event will a taxpayer be considered to have reasonably relied in good faith on professional advice unless the requirements of this subclause are satisfied. The fact that these requirements are satisfied will not necessarily establish that the taxpayer reasonably relied in good faith on professional advice. For example, reliance may not be reasonable or in good faith if the taxpayer knew, or should have known, that the advisor lacked knowledge in the relevant aspects of the Tax Law;

(*i*) all facts and circumstances considered. The advice must be based upon all pertinent facts and circumstances and the law as it relates to those facts and circumstances. For example, the advice must take into account the taxpayer's purposes (and the relative weight of such purposes) for entering into a transaction and for structuring a transaction in a particular manner. In addition, the requirements of this subclause are not satisfied if the taxpayer fails to disclose a fact that it knows, or should know, to be relevant to the proper tax treatment of an item;

(*ii*) no unreasonable assumptions. The advice must not be based on unreasonable factual or legal assumptions (including assumptions as to future events) and must not unreasonably rely on the representations, statements, findings, or agreements of the taxpayer or any other person. For example, the advice must not be based upon a representation or assumption which the taxpayer knows, or has reason to know, is unlikely to be true, such as an inaccurate representation or assumption as to the taxpayer's purposes for entering into a transaction or for structuring a transaction in a particular manner;

(*2*) advice must be reasonable. Reliance upon professional advice as a basis for reasonable cause will not be supported where the advice received is unreasonable. For example, professional advice may be considered to be unreasonable where such advice is contrary to written guidance or published information applicable or relevant to the given facts or circumstances.

(*3*) No inference shall be drawn from any of the provisions of this subdivision with respect to establishing reasonable cause pursuant to any other subdivision of this section. However, the provisions of subparagraphs (2)(i) and (iv) of this subdivision may be applicable, under the appropriate circumstances, to establishing reasonable cause pursuant to subdivision (d) of this section, (see paragraph [d][5] of this section).

(h) The provisions of this section shall also apply to the extent pertinent where any person is subject to penalty under section 1145(a)(3), 1145(a)(4), 1145(g) or 1145(h). A determination of reasonable cause with respect to these failures will be based on the facts and circumstances leading to the failure at issue. It must be established by or on behalf of a person described in this subdivision that the failure occurred despite the exercise of ordinary business care and prudence.

(i)

(1) Pursuant to statutory provisions for joint administration and applicability, the provisions of this section will also apply as follows:

(i) to the extent that the provisions of this section apply to article 12-A of the Tax Law, they will also apply to the taxes imposed pursuant to article 13-A (Tax on Petroleum Businesses) of such law;

(ii) to the extent that the provisions of this section apply to article 22 of the Tax Law, they will also apply to the taxes imposed pursuant to articles 26 (Estate Tax) and 26-A (Gift Tax) and to the local taxes imposed pursuant to the authority of articles 30 (City of New York Personal Income Tax on Residents), 30-A (City of Yonkers Income Tax Surcharge on Residents) and 30-B (City of Yonkers Earnings Tax on Nonresidents) of such law, and to article 2-E (City of New York Earnings Tax on Nonresidents) of the General City Law; and

(iii) to the extent that the provisions of this section apply to article 28 of the Tax Law, they will also apply to the taxes imposed pursuant to article 28-A (Passenger Car Rentals) and to the taxes imposed pursuant to the authority of article 29 (Local Enabling Act) of such law.

(2) See sections 2396.11 and 2397.7 of this Title for provisions regarding reasonable cause that are applicable to the Electronic Filing and Funds Transfer Program for Certain Taxpayers Remitting Withholding Taxes and the Electronic Funds Transfer Program For Certain Taxpayers Remitting Taxes Under and Pursuant to the Authority of articles 12-A, 13-A, 28 and 29 of the Tax Law, provided for by sections 9 and 10, respectively, of the Tax Law.

**Credits**

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