

NOTICE:

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

(This notice is required by A.R.S. § 41-1091(B).)

NOTICE OF SUBSTANTIVE POLICY STATEMENT

DEPARTMENT OF ECONOMIC SECURITY

- 1. Title of the substantive policy statement and the substantive policy statement number by which the policy statement is referenced:**

Unemployment Insurance Tax: Good Cause for Waiver of Penalties and Interest. The substantive policy statement number is 17P-C106.

- 2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:**

The substantive policy statement was issued and will become effective upon filing with the Office of the Secretary of State.

- 3. Summary of the contents of the substantive policy statement:**

The substantive policy statement describes the considerations taken by the Department in determining if good cause exists to warrant a waiver of potential Unemployment Insurance Tax employer penalties and interest.

- 4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:**

A.R.S. § § 23-723 (A) and 23-736 (A)

Arizona Administrative Codes (A.A.C.) R6-3-1404 (B) and R6-3-1704 (D)

Social Security Handbook, 2009, §917

5. **Statement as to whether the substantive policy statement is a new statement or a revision:**

This is a new substantive policy statement.

6. **Name, address and telephone number of the person to whom questions and comments about the substantive policy statement may be directed:**

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Policy Statement
Number: 17P-C106
Unemployment Insurance Tax
Date Issued: May 19, 2010

SUBJECT

Good cause for waiver of penalties and interest.

AUTHORITY

For deficiency assessments, Arizona Revised Statute (A.R.S.) § 23-738.01 (A) states that “if the return filed by an employer is deficient, the department may compute the amount...and shall add to the deficiency assessment made under this section, subject to waiver for good cause shown, a penalty of one-tenth of one per cent of the difference between wages paid during the quarter and the wages reported during the quarter, but not more than two hundred dollars and interest as prescribed by § 23-736.”

For delinquent assessments, A.R.S. § 23-723 (A) provides that an employer who fails to timely submit its quarterly contribution and wage report “shall pay to the department for each such delinquent report, subject to waiver for good cause shown, a penalty of one-tenth of one per cent of the total wages paid during the quarter, but not less than thirty-five dollars, nor more than two hundred dollars.”

In the case of contributions, A.R.S. § 23-736 (A) states that “remaining unpaid shall bear interest at the rate of one per cent per month, or fraction thereof, from and after the due date until payment is received by the commission, subject to waiver for good cause shown.”

Arizona Administrative Code (A.A.C.) R6-3-1404 (B) notes that:

[S]ubmission of any payment, appeal, application, request, notice, objection, petition, report, or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the Department that the delay in submission was due to: Department error or misinformation, delay or other action of the United States Postal Service or its successor, or when the delay in submission was because the individual changed his mailing address at a time when there would have been no reason for him to notify the Department of the address change.

1. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
2. The Director shall designate personnel who are to decide whether an extension of time shall be granted.

3. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the Department after considering the circumstances in the case.

Emphasis added.

In addition, A.A.C. R6-3-1704 (D) states that in the event an employer's contribution and quarterly wage report (including payments in lieu of contributions required by a reimbursable employer) is delinquent because it was not received on or before the due date, penalties and interests will accrue as follows:

1. An employer who fails to file on or before the due date a contribution and wage report shall pay to the Department for each such delinquent report, subject to waiver for good cause shown, a penalty as prescribed in A.R.S. § 23- 723(A). No penalty shall apply to delinquent reports when the employer proves to the satisfaction of the Department that no wages were paid and no contributions were due.
2. An employer who has not paid contributions or payments in lieu of contributions on or before the due date shall pay interest on the whole or part thereof remaining unpaid at the rate of 1% per month, or fraction thereof, from and after the due date until payment is received by the Department unless good cause is shown why such interest shall be waived.

DISCUSSION AND CONCLUSION

Good cause exists where it can be shown to the satisfaction of the Department that an employer had no control over the circumstances which prompted the untimely submission of the required contribution and wage report whereby the employer could not reasonably be expected to anticipate and plan for such an unforeseen occurrence. In addition, ignorance of the law is insufficient to establish good cause absent mitigating circumstances. The Department may also consider the reporting history of the employer's account.

Examples of good cause include, but are not limited to, the following:

1. The delinquency was caused by the accidental destruction of the employer's place of business or business records e.g. fire, flood or other natural disasters.
2. The delinquency was caused by the illness or death of the employer or person who prepares the contribution and wage report, but only if there is no other person available who could reasonably be expected to prepare the report.
3. The delinquency was caused by fraud, embezzlement, theft, or conversion by the employer's employee or other persons contracted with the employer, which the employer could not immediately detect or prevent. The employer must have had reasonable safeguards or internal controls in place.

4. When the employer has made a good faith effort to comply with all applicable laws and rules and the Department is responsible for the delay which results in the assessment of penalties or interest.
5. The employer's contribution and wage report were submitted on time but inadvertently sent to another state(s) or agency and the employer has documentation verifying the error.
6. The reporting delay is the result of postal error, e.g. lost or delayed mail, and the employer has documentation verifying the error.
7. The penalty and/or interest assessment would cause undue hardship to an elderly, domestic employer.

However, if the employer is a new employer, then the Department may consider whether or not the employer has exhibited a willful disregard for reporting requirements. For example, the employer was negligent or unreasonably late in reporting to the Department or during the course of a field assignment, and the employer failed to submit all of the required reports within thirty (30) days from the date the liability determination notice (form UC-016) was issued by the Department.

To request a waiver from the Department, the employer's request must be in writing and include all relevant facts and attach supporting documentation. In all cases the burden of proof is on the employer.

However, the Department at its discretion may waive penalties on its own motion without requiring a written request from the employer if the Department finds that the penalty was caused by the Department's own error or for other good cause.

The Department's decision is made on a case by case basis after considering all the pertinent facts and supporting documentation whereby the employer has demonstrated to the satisfaction of the Department that good cause exists.

REFERENCES

A.R.S. §§ 23-723 (A) and 23-736 (A).
Arizona Administrative Codes (A.A.C.) R6-3-1404 (B) and R6-3-1704 (D).
Social Security Handbook, 2009 §917

AGENCY RECEIPT

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