

This notice was modified on September 5, 2017.

Key: Underlining indicates additions to existing Revenue Notice language. Strikeouts indicate deletions from existing Revenue Notice language.

MINNESOTA DEPARTMENT OF REVENUE

Modification of Revenue Notice # 97-01: Penalties - Abatements - Policies and Procedures

ABATEMENT REQUESTS

Minnesota Statutes, section 270C.34, subdivision 1 authorizes the Commissioner of Revenue to abate penalties imposed by any law ~~relating to taxes~~ administered by the Commissioner; if the Commissioner determines the taxpayer's failure to timely pay the tax or timely file the return is due to "reasonable cause." A taxpayer may make a request for an abatement of penalty by contacting the Commissioner of Revenue. The abatement request must be made within 60 days after the date the taxpayer is mailed notification that a penalty has been imposed.

REASONABLE CAUSE

A. Presumption of Reasonable Cause

Reasonable cause will be presumed if the late payment, late filing, or failure to pay by electronic means is a first-time occurrence for the specific tax type involved. This presumption is based upon the taxpayer's previous history of filing timely returns and making timely payments.

An abatement is not available under this part if the taxpayer has previously received an abatement under part B, below, for a different late filing of a return or late payment of a tax for the same tax type, or if there are additional facts and circumstances that exist that would make it inequitable to apply the presumption.

The presumption of reasonable cause does not apply when there is a required one-time filing of a return or payment of tax, such as estate tax. Taxpayers subject to a one-time filing or payment may qualify for an abatement under part B.

B. Reasonable Cause Based Upon Specific Events

Taxpayers for whom reasonable cause is not presumed under part A, above, may apply for an abatement of penalty based upon the occurrence of an event or events that caused the late filing, late payment, or failure to pay by electronic means.

A "reasonable cause" under this part B, is one resulting from circumstances beyond the taxpayer's control. This includes circumstances that cannot reasonably be expected to be under the taxpayer's control, or that make unreasonable the normal expectation of timely performance. When the late filing or late payment is directly attributable to the event, examples of reasonable cause are:

1. Death or serious illness of the taxpayer, or of an immediate family member.
2. "Acts of God" or any unforeseen disasters, such as severe weather, fire, flood, or explosion, that result in loss of the taxpayer's home or place of business, or of personal or business records.
3. Theft, arson, or loss of data or records occurring during a move, or when in the hands of a third party for computerization or processing. Generally, the fact that records are in the hands of a tax return preparer does not constitute reasonable cause.
4. Criminal activity against the taxpayer, such as embezzlement or fraud by an employee of the taxpayer or other person responsible for filing the return or paying the tax.
5. A check for payment of the tax is dishonored by the taxpayer's bank, or an electronic funds transfer fails to be completed by the bank, through no fault of the taxpayer. Not having sufficient funds in the account, as a factor by itself, does not constitute reasonable cause.

Factors used to prove reasonable cause include:

1. The taxpayer can document or otherwise verify that an event listed above took place, with copies of police reports, insurance records, newspaper notices, or other acceptable records.
2. When the taxpayer requests an abatement of penalty based upon the first example, above, the taxpayer can demonstrate that no one else was able to assume the responsibility to file the return or pay the tax in his or her place.
3. The event which caused the late filing or late payment was unavoidable and not scheduled. Planned absences, such as vacations or business trips are not acceptable reasons for failure to file returns or pay taxes.
4. The time lapse between the event causing the delay, and the subsequent late filing of the return or late payment of the tax is reasonable under the circumstances.

Equitable considerations, such as the taxpayer having a good history of filing returns and paying taxes on time, the taxpayer coming forward as soon as the error is known, or a sudden change in the law (such as a court case, or a legislative amendment that has an immediate or rapid effective date), can also be taken into account when considering an abatement request.

Federal court cases and Internal Revenue Service regulations, rulings, and guidelines discussing what constitutes reasonable cause can be considered when reviewing penalty abatement requests. However, the fact that the Internal Revenue Service has previously made a penalty abatement determination regarding the taxpayer in the same case under consideration is not binding on the Department of Revenue. The Department will make an independent determination of whether an abatement is warranted.

C. No Abatement Based Upon Intentional Acts or Opposition to Tax Laws

Abatements will not be granted under parts A or B to the taxpayer because the failure to file or pay is intentional or is based on religious, political, or philosophical opposition to the tax.

ERRONEOUS ADVICE GIVEN TO THE TAXPAYER

In addition to an abatement of penalty for "reasonable cause," *Minnesota Statutes*, section 270C.34, subdivision 1 provides for abatement of a penalty attributable to erroneous advice given to the taxpayer, in writing, by an employee of the Department acting in an official capacity, if the advice:

- (1) was reasonably relied on and was in response to a specific written request of the taxpayer; and
- (2) was not the result of failure by the taxpayer to provide adequate or accurate information.

COMPUTATIONAL ERRORS AND THE TOYS "R" US CASE

The Minnesota Tax Court interpreted the reasonable cause standard for abatement of penalties in *Toys "R" Us, Inc. v. Commissioner of Revenue*, Minn. Tax Ct. Dkt. No. 6694 (Sept. 4, 1996). *Toys "R" Us* applied for an extension of time to file its fiscal year 1994 corporate franchise tax return. Along with the extension, the taxpayer filed a tentative return, which showed estimated taxes paid during the year in a greater amount than what had actually been paid. As a result, when the final fiscal year 1994 return was filed, there was a balance of tax due and a late payment penalty was imposed on that balance. At issue in the case was whether the penalty should be abated.

The court held that the computational error made on the tentative return in overstating the amount of estimated tax paid during the fiscal year constituted reasonable cause. This was the holding, even though the taxpayer had made two previous payment errors for fiscal years 1990 and 1993. The court relied upon a federal regulation which states: "An isolated computational or transcriptional error generally is not inconsistent with reasonable cause and good faith." (*Treas. Reg.* § 1.6664-4(b)(1).)

The Department of Revenue applies the reasonable cause standard set forth in the *Toys "R" Us* case in the following manner: A late payment of tax that results from an overstatement of the amount of estimated tax actually paid during the taxable period does not generally constitute reasonable cause. However, if the error is merely computational or transcriptional, and there is no pattern of previous computational or transcriptional errors, an abatement may be granted.

DENIAL OF ABATEMENT REQUESTS; APPEALS

If the Commissioner issues an order denying a request for an abatement of penalty, the taxpayer has 60 days after the date of the order to file an administrative appeal with the Department of Revenue, or a judicial appeal to the Minnesota Tax Court. If the taxpayer files an administrative

appeal and it is denied, the taxpayer has 60 days after the date of the denial to appeal to the Minnesota Tax Court.

If the taxpayer requests an abatement of penalty and the Commissioner does not respond within 60 days after the date the request is received, the taxpayer ~~has an additional 60 days to~~ may appeal to the Minnesota Tax Court. ~~Under these circumstances, the appeal to the Minnesota Tax Court must be filed no later than 120 days after the date the Department receives the penalty abatement request.~~

JOHN H. MANSUN, Assistant
Commissioner for Tax Policy and External
Relations

~~Publication Date: August 15, 2005~~
Publication Date: September 5, 2017

RYAN CHURCH, Deputy Commissioner

MINNESOTA DEPARTMENT OF REVENUE

Modification of Revenue Notice # 97-01: Penalties - Abatements - Policies and Procedures**

****As modified**

ABATEMENT REQUESTS

Minnesota Statutes, section 270C.34, subdivision 1 authorizes the Commissioner of Revenue to abate penalties imposed by any law administered by the Commissioner if the Commissioner determines the taxpayer's failure to timely pay the tax or timely file the return is due to "reasonable cause." A taxpayer may make a request for an abatement of penalty by contacting the Commissioner of Revenue. The abatement request must be made within 60 days after the date the taxpayer is mailed notification that a penalty has been imposed.

REASONABLE CAUSE

A. Presumption of Reasonable Cause

Reasonable cause will be presumed if the late payment, late filing, or failure to pay by electronic means is a first-time occurrence for the specific tax type involved. This presumption is based upon the taxpayer's previous history of filing timely returns and making timely payments.

An abatement is not available under this part if the taxpayer has previously received an abatement under part B, below, for a different late filing of a return or late payment of a tax for the same tax type, or if there are additional facts and circumstances that exist that would make it inequitable to apply the presumption.

The presumption of reasonable cause does not apply when there is a required one-time filing of a return or payment of tax, such as estate tax. Taxpayers subject to a one-time filing or payment may qualify for an abatement under part B.

B. Reasonable Cause Based Upon Specific Events

Taxpayers for whom reasonable cause is not presumed under part A, above, may apply for an abatement of penalty based upon the occurrence of an event or events that caused the late filing, late payment, or failure to pay by electronic means.

A "reasonable cause" under this part B, is one resulting from circumstances beyond the taxpayer's control. This includes circumstances that cannot reasonably be expected to be under the taxpayer's control, or that make unreasonable the normal expectation of timely performance.

When the late filing or late payment is directly attributable to the event, examples of reasonable cause are:

1. Death or serious illness of the taxpayer, or of an immediate family member.
2. "Acts of God" or any unforeseen disasters, such as severe weather, fire, flood, or explosion, that result in loss of the taxpayer's home or place of business, or of personal or business records.
3. Theft, arson, or loss of data or records occurring during a move, or when in the hands of a third party for computerization or processing. Generally, the fact that records are in the hands of a tax return preparer does not constitute reasonable cause.
4. Criminal activity against the taxpayer, such as embezzlement or fraud by an employee of the taxpayer or other person responsible for filing the return or paying the tax.
5. A check for payment of the tax is dishonored by the taxpayer's bank, or an electronic funds transfer fails to be completed by the bank, through no fault of the taxpayer. Not having sufficient funds in the account, as a factor by itself, does not constitute reasonable cause.

Factors used to prove reasonable cause include:

1. The taxpayer can document or otherwise verify that an event listed above took place, with copies of police reports, insurance records, newspaper notices, or other acceptable records.
2. When the taxpayer requests an abatement of penalty based upon the first example, above, the taxpayer can demonstrate that no one else was able to assume the responsibility to file the return or pay the tax in his or her place.
3. The event which caused the late filing or late payment was unavoidable and not scheduled. Planned absences, such as vacations or business trips are not acceptable reasons for failure to file returns or pay taxes.
4. The time lapse between the event causing the delay, and the subsequent late filing of the return or late payment of the tax is reasonable under the circumstances.

Equitable considerations, such as the taxpayer having a good history of filing returns and paying taxes on time, the taxpayer coming forward as soon as the error is known, or a sudden change in the law (such as a court case, or a legislative amendment that has an immediate or rapid effective date), can also be taken into account when considering an abatement request.

Federal court cases and Internal Revenue Service regulations, rulings, and guidelines discussing what constitutes reasonable cause can be considered when reviewing penalty abatement requests. However, the fact that the Internal Revenue Service has previously made a penalty abatement determination regarding the taxpayer in the same case under consideration is not binding on the Department of Revenue. The Department will make an independent determination of whether an abatement is warranted.

C. No Abatement Based Upon Intentional Acts or Opposition to Tax Laws

Abatements will not be granted under parts A or B to the taxpayer because the failure to file or pay is intentional or is based on religious, political, or philosophical opposition to the tax.

ERRONEOUS ADVICE GIVEN TO THE TAXPAYER

In addition to an abatement of penalty for "reasonable cause," *Minnesota Statutes*, section 270C.34, subdivision 1 provides for abatement of a penalty attributable to erroneous advice given to the taxpayer, in writing, by an employee of the Department acting in an official capacity, if the advice:

- (1) was reasonably relied on and was in response to a specific written request of the taxpayer; and
- (2) was not the result of failure by the taxpayer to provide adequate or accurate information.

COMPUTATIONAL ERRORS AND THE TOYS "R" US CASE

The Minnesota Tax Court interpreted the reasonable cause standard for abatement of penalties in *Toys "R" Us, Inc. v. Commissioner of Revenue*, Minn. Tax Ct. Dkt. No. 6694 (Sept. 4, 1996). *Toys "R" Us* applied for an extension of time to file its fiscal year 1994 corporate franchise tax return. Along with the extension, the taxpayer filed a tentative return, which showed estimated taxes paid during the year in a greater amount than what had actually been paid. As a result, when the final fiscal year 1994 return was filed, there was a balance of tax due and a late payment penalty was imposed on that balance. At issue in the case was whether the penalty should be abated.

The court held that the computational error made on the tentative return in overstating the amount of estimated tax paid during the fiscal year constituted reasonable cause. This was the holding, even though the taxpayer had made two previous payment errors for fiscal years 1990 and 1993. The court relied upon a federal regulation which states: "An isolated computational or transcriptional error generally is not inconsistent with reasonable cause and good faith." (*Treas. Reg.* § 1.6664-4(b)(1).)

The Department of Revenue applies the reasonable cause standard set forth in the *Toys "R" Us* case in the following manner: A late payment of tax that results from an overstatement of the amount of estimated tax actually paid during the taxable period does not generally constitute reasonable cause. However, if the error is merely computational or transcriptional, and there is no pattern of previous computational or transcriptional errors, an abatement may be granted.

DENIAL OF ABATEMENT REQUESTS; APPEALS

If the Commissioner issues an order denying a request for an abatement of penalty, the taxpayer has 60 days after the date of the order to file an administrative appeal with the Department of

Revenue, or a judicial appeal to the Minnesota Tax Court. If the taxpayer files an administrative appeal and it is denied, the taxpayer has 60 days after the date of the denial to appeal to the Minnesota Tax Court.

If the taxpayer requests an abatement of penalty and the Commissioner does not respond within 60 days after the date the request is received, the taxpayer may appeal to the Minnesota Tax Court.

Publication Date: Sept. 5, 2017



RYAN CHURCH, Deputy Commissioner

This notice was modified on August 15, 2005.

MINNESOTA DEPARTMENT OF REVENUE

Modification of Revenue Notice #97-01

Revenue Notice #97-01: Penalties - Abatements - ~~General Policy Policies~~ and Procedures*

*With modifications shown (see "Key" below).

ABATEMENT REQUESTS

~~Minnesota Statutes, section 270.07, subdivision 1, paragraph (e), 270C.34, subdivision 1~~ authorizes the Commissioner of Revenue to abate penalties imposed by any law relating to ~~taxation~~ taxes administered by the Commissioner, if the Commissioner determines the taxpayer's failure to timely pay the tax or timely file the return is due to "reasonable cause." A taxpayer may make a request for an abatement of penalty by contacting the Commissioner of Revenue. The abatement request must be made within 60 days after the date the taxpayer is mailed notification that a penalty has been imposed.

REASONABLE CAUSE

A. Presumption of Reasonable Cause

Reasonable cause will be presumed if the late payment, late filing, or failure to pay by electronic means is a first-time occurrence for the specific tax type involved. This presumption is based upon the taxpayer's previous history of filing timely returns and making timely payments.

An abatement is not available under this part if the taxpayer has previously received an abatement under part B, below, for a different late filing of a return or late payment of a tax for the same tax type, or if there are additional facts and circumstances that exist that would make it inequitable to apply the presumption.

B. Reasonable Cause Based Upon Specific Events

Taxpayers for whom reasonable cause is not presumed under part A, above, may apply for an abatement of penalty based upon the occurrence of an event or events that caused the late filing, late payment, or failure to pay by electronic means.

A "reasonable cause" under this part B, is one resulting from circumstances beyond the taxpayer's control. This ~~means~~ includes circumstances that cannot reasonably be expected to be under the taxpayer's control, or ~~which~~ that make unreasonable the normal expectation of timely performance.

~~When the late filing or late payment is directly attributable to the event, e~~ Examples of reasonable cause (assuming the late filing or late payment is directly attributable to the event) are:

1. Death or serious illness of the taxpayer, or of an immediate family member.
2. "Acts of God" or ~~other natural or human~~ any unforeseen disasters, such as severe weather, fire, flood, or explosion, ~~or other kinds of that result in~~ loss of the taxpayer's home or place of business, or of personal or business records.
3. Theft, arson, or loss of data or records occurring during a move, or when in the hands of a third party for computerization or processing. Generally, the fact that records are in the hands of a tax return preparer does not constitute reasonable cause.
4. Criminal activity against the taxpayer, such as embezzlement or fraud by an employee of the taxpayer or other person responsible for filing the return or paying the tax.
5. A check for payment of the tax is dishonored by the taxpayer's bank, or an electronic funds transfer fails to be completed by the bank, through no fault of the taxpayer. Not having sufficient funds in the account, as a factor by itself, does not constitute reasonable cause.

Factors used to prove reasonable cause ~~are~~ include:

1. The taxpayer can document or otherwise verify that an event listed above took place, with copies of police reports, insurance records, newspaper notices, or other acceptable records.

2. When the taxpayer requests an abatement of penalty based upon the first example, above, the taxpayer can demonstrate that no one else was able to assume the responsibility to file the return or pay the tax in his or her place.
3. The event which caused the late filing or late payment was unavoidable and not scheduled. Planned absences, such as vacations or business trips are not acceptable reasons for failure to file returns or pay taxes.
4. The time lapse between the event causing the delay, and the subsequent late filing of the return or late payment of the tax is reasonable under the circumstances.

Equitable considerations, such as the taxpayer having a good history of filing returns and paying taxes on time, the taxpayer coming forward as soon as the error is known, or a sudden change in the law (such as a court case, or a legislative amendment that has an immediate or rapid effective date), can also be taken into account when considering an abatement request.

~~Abatements will not be granted to the taxpayer because the failure to file or pay is based on religious, political, or philosophical opposition to the tax.~~

~~The taxpayer can be required to pay the tax and interest on the tax before a penalty abatement determination is made by the Department of Revenue.~~

Federal court cases and Internal Revenue Service regulations, rulings, and guidelines discussing what constitutes reasonable cause can be considered when reviewing penalty abatement requests. However, the fact that the Internal Revenue Service has previously made a penalty abatement determination regarding the taxpayer in the same case under consideration is not binding on the Department of Revenue. The Department will make an independent determination of whether an abatement is warranted.

C. No Abatement Based Upon Intentional Acts or Opposition to Tax Laws

Abatements will not be granted under parts A or B to the taxpayer because the failure to file or pay is intentional or is based on religious, political, or philosophical opposition to the tax.

ERRONEOUS ADVICE GIVEN TO THE TAXPAYER

In addition to an abatement of penalty for "reasonable cause," *Minnesota Statutes*, section ~~270.07, subdivision 6, paragraph (e)~~, 270C.34, subdivision 1 provides for abatement of a penalty attributable to erroneous advice given to the taxpayer, in writing, by an employee of the Department acting in an official capacity, if the advice:

- (1) was reasonably relied on and was in response to a specific written request of the taxpayer;
and
- (2) was not the result of failure by the taxpayer to provide adequate or accurate information.

COMPUTATIONAL ERRORS AND THE TOYS "R" US CASE

The Minnesota Tax Court ~~has~~ interpreted the reasonable cause standard for abatement of penalties in *Toys "R" Us, Inc. v. Commissioner of Revenue*, Minn. Tax Ct. Dkt. No. 6694 (Sept. 4, 1996). *Toys "R" Us* applied for an extension of time to file its fiscal year 1994 corporate franchise tax return. Along with the extension, the taxpayer filed a tentative return, which showed estimated taxes paid during the year in a greater amount than what had actually been paid. As a result, when the final fiscal year 1994 return was filed, there was a balance of tax due and a late payment penalty was imposed on that balance. At issue in the case was whether the penalty should be abated.

The court held that the computational error made on the tentative return in overstating the amount of estimated tax paid during the fiscal year constituted reasonable cause. This was the holding, even though the taxpayer had made two previous payment errors for fiscal years 1990 and 1993. The court relied upon a federal regulation which states: "An isolated computational or transcriptional error generally is not inconsistent with reasonable cause and good faith." (*Treas. Reg.* § 1.6664-4(b)(1).)

The Department of Revenue ~~will apply~~ applies the reasonable cause standard set forth in the *Toys "R" Us* case in the following manner: A late payment of tax that results from an overstatement of the amount of estimated tax actually paid during the taxable period does not generally constitute reasonable cause. However, if the error is merely computational or transcriptional, and there is no pattern of previous computational or transcriptional errors, an abatement may be granted.

DENIAL OF ABATEMENT REQUESTS; APPEALS

If the Commissioner issues an order denying a request for an abatement of penalty, the taxpayer has 60 days after the date of the order to file an administrative appeal with the Department of Revenue, or a judicial appeal to the Minnesota Tax Court. If the taxpayer files an administrative appeal and it is denied, the taxpayer has 60 days after the date of the denial to appeal to the Minnesota Tax Court.

If the taxpayer requests an abatement of penalty and the Commissioner does not respond within 60 days after the date the request is received, the taxpayer has an additional 60 days to appeal to the Minnesota Tax Court. Under these circumstances, the appeal to the Minnesota Tax Court must be filed no later than 120 days after the date the Department receives the penalty abatement request.

Dated: ***January 21, 1997***

Jennifer L. Engh

~~Assistant Commissioner for Tax Policy~~

Publication date: August 15, 2005

***Key:** Underlining indicates additions to existing Revenue Notice language. Strikeouts indicate deletions from existing Revenue Notice language.

Please see next page for a clean, printable copy of this notice as modified.

MINNESOTA DEPARTMENT OF REVENUE

Modification of Revenue Notice #97-01

Revenue Notice #97-01: Penalties - Abatements - Policies and Procedures**

****As modified**

ABATEMENT REQUESTS

Minnesota Statutes, section 270C.34, subdivision 1 authorizes the Commissioner of Revenue to abate penalties imposed by any law relating to taxes administered by the Commissioner, if the Commissioner determines the taxpayer's failure to timely pay the tax or timely file the return is due to "reasonable cause." A taxpayer may make a request for an abatement of penalty by contacting the Commissioner of Revenue. The abatement request must be made within 60 days after the date the taxpayer is mailed notification that a penalty has been imposed.

REASONABLE CAUSE

A. Presumption of Reasonable Cause

Reasonable cause will be presumed if the late payment, late filing, or failure to pay by electronic means is a first-time occurrence for the specific tax type involved. This presumption is based upon the taxpayer's previous history of filing timely returns and making timely payments.

An abatement is not available under this part if the taxpayer has previously received an abatement under part B, below, for a different late filing of a return or late payment of a tax for the same tax type, or if there are additional facts and circumstances that exist that would make it inequitable to apply the presumption.

B. Reasonable Cause Based Upon Specific Events

Taxpayers for whom reasonable cause is not presumed under part A, above, may apply for an abatement of penalty based upon the occurrence of an event or events that caused the late filing, late payment, or failure to pay by electronic means.

A "reasonable cause" under this part B, is one resulting from circumstances beyond the taxpayer's control. This includes circumstances that cannot reasonably be expected to be under the taxpayer's control, or that make unreasonable the normal expectation of timely performance.

When the late filing or late payment is directly attributable to the event, examples of reasonable cause are:

1. Death or serious illness of the taxpayer, or of an immediate family member.
2. "Acts of God" or any unforeseen disasters, such as severe weather, fire, flood, or explosion, that result in loss of the taxpayer's home or place of business, or of personal or business records.
3. Theft, arson, or loss of data or records occurring during a move, or when in the hands of a third party for computerization or processing. Generally, the fact that records are in the hands of a tax return preparer does not constitute reasonable cause.
4. Criminal activity against the taxpayer, such as embezzlement or fraud by an employee of the taxpayer or other person responsible for filing the return or paying the tax.
5. A check for payment of the tax is dishonored by the taxpayer's bank, or an electronic funds transfer fails to be completed by the bank, through no fault of the taxpayer. Not having sufficient funds in the account, as a factor by itself, does not constitute reasonable cause.

Factors used to prove reasonable cause include:

1. The taxpayer can document or otherwise verify that an event listed above took place, with copies of police reports, insurance records, newspaper notices, or other acceptable records.

2. When the taxpayer requests an abatement of penalty based upon the first example, above, the taxpayer can demonstrate that no one else was able to assume the responsibility to file the return or pay the tax in his or her place.
3. The event which caused the late filing or late payment was unavoidable and not scheduled. Planned absences, such as vacations or business trips are not acceptable reasons for failure to file returns or pay taxes.
4. The time lapse between the event causing the delay, and the subsequent late filing of the return or late payment of the tax is reasonable under the circumstances.

Equitable considerations, such as the taxpayer having a good history of filing returns and paying taxes on time, the taxpayer coming forward as soon as the error is known, or a sudden change in the law (such as a court case, or a legislative amendment that has an immediate or rapid effective date), can also be taken into account when considering an abatement request.

Federal court cases and Internal Revenue Service regulations, rulings, and guidelines discussing what constitutes reasonable cause can be considered when reviewing penalty abatement requests. However, the fact that the Internal Revenue Service has previously made a penalty abatement determination regarding the taxpayer in the same case under consideration is not binding on the Department of Revenue. The Department will make an independent determination of whether an abatement is warranted.

C. No Abatement Based Upon Intentional Acts or Opposition to Tax Laws

Abatements will not be granted under parts A or B to the taxpayer because the failure to file or pay is intentional or is based on religious, political, or philosophical opposition to the tax.

ERRONEOUS ADVICE GIVEN TO THE TAXPAYER

In addition to an abatement of penalty for "reasonable cause," *Minnesota Statutes*, section 270C.34, subdivision 1 provides for abatement of a penalty attributable to erroneous advice given to the taxpayer, in writing, by an employee of the Department acting in an official capacity, if the advice:

- (1) was reasonably relied on and was in response to a specific written request of the taxpayer; and
- (2) was not the result of failure by the taxpayer to provide adequate or accurate information.

COMPUTATIONAL ERRORS AND THE TOYS "R" US CASE

The Minnesota Tax Court interpreted the reasonable cause standard for abatement of penalties in *Toys "R" Us, Inc. v. Commissioner of Revenue*, Minn. Tax Ct. Dkt. No. 6694 (Sept. 4, 1996). *Toys "R" Us* applied for an extension of time to file its fiscal year 1994 corporate franchise tax return. Along with the extension, the taxpayer filed a tentative return, which showed estimated taxes paid during the year in a greater amount than what had actually been paid. As a result, when the final fiscal year 1994 return was filed, there was a balance of tax due and a late payment penalty was imposed on that balance. At issue in the case was whether the penalty should be abated.

The court held that the computational error made on the tentative return in overstating the amount of estimated tax paid during the fiscal year constituted reasonable cause. This was the holding, even though the taxpayer had made two previous payment errors for fiscal years 1990 and 1993. The court relied upon a federal regulation which states: "An isolated computational or transcriptional error generally is not inconsistent with reasonable cause and good faith." (*Treas. Reg.* § 1.6664-4(b)(1).)

The Department of Revenue applies the reasonable cause standard set forth in the *Toys "R" Us* case in the following manner: A late payment of tax that results from an overstatement of the amount of estimated tax actually paid during the taxable period does not generally constitute reasonable cause. However, if the error is merely computational or transcriptional, and there is no pattern of previous computational or transcriptional errors, an abatement may be granted.

DENIAL OF ABATEMENT REQUESTS; APPEALS

If the Commissioner issues an order denying a request for an abatement of penalty, the taxpayer has 60 days after the date of the order to file an administrative appeal with the Department of Revenue, or a judicial appeal to the Minnesota Tax Court. If the taxpayer files an administrative appeal and it is denied, the taxpayer has 60 days after the date of the denial to appeal to the Minnesota Tax Court.

If the taxpayer requests an abatement of penalty and the Commissioner does not respond within 60 days after the date the request is received, the taxpayer has an additional 60 days to appeal to the Minnesota Tax Court. Under these circumstances, the appeal to the Minnesota Tax Court must be filed no later than 120 days after the date the Department receives the penalty abatement request.

JOHN H. MANSUN, Assistant Commissioner
for Tax Policy and External Relations

Publication Date: August 15, 2005