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Sec. 12-3a-1. Waiver of certain penalties

(a) **Scope.** Various provisions of title 12 of the Connecticut General Statutes provide that, subject to the provisions of section 12-3a, the commissioner of revenue services may waive penalties, in whole or in part, when it is proven to his satisfaction that the failure to pay any tax on time was due to reasonable cause and was not intentional or due to neglect. Section 12-3a (c) requires the tax review committee to adopt regulations establishing guidelines for the waiver of penalties. This regulation establishes such guidelines, with subsection (b) providing examples of a failure to pay any tax on time due to reasonable cause and with subsection (c) providing examples of an unintentional failure (and not a failure due to neglect) to pay any tax on time.

(b) **Failure to pay tax on time due to reasonable cause.** A penalty will be waived, if a taxpayer clearly establishes the facts alleged to be a reasonable cause for failure to pay tax on time in the form of a written statement containing a declaration that it is made under penalties of false statement, as the term is defined in section 53a-157 (a) of the Connecticut General Statutes. The following are examples of a failure to pay tax on time due to reasonable cause:

(1) loss of business records necessary to prepare a tax return as a result of fire or other casualty; however, if there is sufficient time before the due date to reconstruct lost records, the failure to pay tax on time will not be due to reasonable cause.

(2) death or serious illness of the tax return preparer (or a member of the immediate family of the preparer); however, if more than one person is responsible for preparing tax returns, the failure to pay tax on time will not be due to reasonable cause.

(3) unforeseeable absence or unavailability of the tax return preparer; however, a vacation trip will not constitute an unforeseeable absence or unavailability, and a business trip will not constitute an unforeseeable absence or unavailability unless it is of an emergency nature.

(4) No tax return was filed (or a tax return was filed but the tax was underreported) but the taxpayer contacted a competent tax advisor, to whom the taxpayer furnished all necessary information but who incorrectly advised the taxpayer that a tax return was not required (or that the tax was correctly reported), and the taxpayer exercised ordinary business care and prudence in determining whether to seek further advice.

(c) **Failure to pay tax on time not intentional or due to neglect.** A penalty will be waived, if a taxpayer clearly establishes the facts alleged to be a cause of the taxpayer's unintentional failure (and not a failure due to neglect) to pay tax on time in the form of a written statement containing a declaration that it is made under penalties of false statement, as the term is defined in section 53a-157 (a) of the Connecticut General Statutes. The following are examples of a failure to pay tax on time which is unintentional (and not due to neglect):

(1) A mathematical error is made on a tax return resulting in an underpayment of tax, but the taxpayer exercised ordinary business care and prudence to avoid such an error.

(2) Figures are transposed on a check or money order resulting in an underpayment of tax, but the taxpayer exercised ordinary business care and prudence to avoid such an error.

(3) No tax return was filed (or a tax return was filed but the tax was underreported) and the taxpayer did not contact a competent tax advisor, but the taxpayer made a reasonable effort to comply with tax statutes and regulations and did not carelessly,

recklessly or intentionally disregard tax statutes and regulations, and the taxpayer exercised ordinary business care and prudence in determining not to contact a competent tax advisor.

(Effective August 26, 1988)