

Proposed Action Related to the Extension of Income Tax Filing and Payment Deadlines

For Individuals

(1) Consistent with IRS Notice 2020-18I which automatically postpones “the due date for filing Federal income tax returns and making Federal income tax payments due April 15, 2020” to July 15, 2020, the Utah State Tax Commission acknowledges that Utah Code Annotated subsections 59-10-514(1)(a) & (b) conforms the due dates for filing Utah individual and fiduciary income tax returns to the Federal return filing due date, thus making these returns now due July 15, 2020;

(2) Contrary to past practice, for returns now due on July 15, 2020, the Commission, under Utah Code Annotated subsection 59-10-516(1)(a), restricts the filing extension for individual income taxpayers, estates and trusts, and S corporations, to three months which ends on October 15, 2020;

(3) As permitted by Utah Code Annotated section 59-10-522, the Commission extends to July 15, 2020, the time for payment of individual income tax shown or required to be shown on individual income tax returns now due on July 15, 2020.

For Corporations and Pass-through Entities

(1) The Utah State Tax Commission reminds taxpayers required to make returns under Utah Code Annotated Title 59, Chapter 7, that subsection 59-7-505(2) requires that “returns shall be made on or before the 15th day of the fourth month following the close of the taxable year;”

(2) The Commission reminds pass-through entities required to make returns under Utah Code Annotated Subsection 59-10-514(1)(c) that “returns shall be filed with the commission on or before the 15th day of the fourth month following the last day of the taxpayer’s taxable year”;

(3) Continuing past practice, the Commission permits taxpayers required to make returns and payments on or before April 15, 2020, under Utah Code Annotated Title 59, Chapter 7 (the “Affected Taxpayers”), the full six month filing extension allowed under Utah Code Annotated subsection 59-7-505(3), which ends on October 15, 2020;

(4) Continuing past practice, the Commission permits taxpayers who file a partnership return a five month filing extension under Utah Code Annotated Subsection 59-10-516, which ends on September 15, 2020;

(5) Under Utah Code Annotated subsection 59-7-507(2)(a), the Commission finds that Affected Taxpayers request a payment extension due to the state of emergency declared by Gary R. Herbert, Governor, State of Utah in Executive Order 2020-1 on 18 March 2020 (the “State of Emergency”);

(6) Under Utah Code Annotated subsection 59-7-507(2)(a) the Commission grants Affected Taxpayers a payment extension which ends on July 15, 2020;

(7) The Commission notes that Utah law imposes failure to file penalties for returns not made on or before the statutory due date (see Utah Code Annotated sections 59-1-401);

(8) So long as Affected Taxpayers comply with Utah Administrative Rule subsections R861-1A-42(1)(a)(ii)-(iv), the Commission finds under Utah Code Annotated subsection 59-1-401(14) and Utah Administrative Rule Annotated section R861-1A-42, reasonable cause to waive failure to file penalties imposed on Affected Taxpayers due to “clearly supported extraordinary and unanticipated reasons for late filing” (Utah Administrative Rule subsection R861-1A-42(4)(b)) caused by the State of Emergency;

(9) The Commission also notes that Utah law imposes an extension penalty upon any amount of tax due from Affected Taxpayers but not paid by April 15, 2020 (see Utah Code Annotated subsections 59-1-401(5) and 59-7-507(1)(c))

(10) So long as Affected Taxpayers comply with Utah Administrative Rule subsections R861-1A-42(1)(a)(ii)-(iv), the Commission finds under Utah Code Annotated subsection 59-1-401(14) and Utah Administrative Rule Annotated section R861-1A-42, reasonable cause to waive extension penalties imposed on Affected Taxpayers due to “clearly supported extraordinary and unanticipated reasons for late filing” (Utah Administrative Rule subsection R861-1A-42(4)(b)) caused by the State of Emergency;

(11) The Commission retains all other authority under state law to waive, reduce or compromise penalties and interest;

(12) The Commission also notes that Utah law imposes interest on any amount of tax due from Affected Taxpayers but not paid by April 15, 2020 (see Utah Code Annotated subsections 59-1-402(6) and section 59-7-513); and

(13) The Commission retains under Utah Code Annotated subsections 59-1-401(14), 59-1-402(6) and Utah Rule Annotated subsection R861-1A-42(2), authority to waive interest imposed upon Affected Taxpayers between April 15, 2020 and July 15, 2020, and interest was addressed by the administrative rule amendment approved in a prior motion.

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1 **R861. Tax Commission, Administration.**

2 **R861-1A. Administrative Procedures.**

3 **R861-1A-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code**
4 **Ann. Section 59-1-401.**

5 (1) Procedure.

6 (a) A taxpayer may request a waiver of penalties or interest for reasonable cause under
7 Section 59-1-401 if the following conditions are met:

8 (i) the taxpayer provides a signed statement, with appropriate supporting documentation,
9 requesting a waiver;

10 (ii) the total tax owed for the period has been paid;

11 (iii) the tax liability is based on a return the taxpayer filed with the commission, and not
12 on an estimate provided by the taxpayer or the commission;

13 (iv) the taxpayer has not previously received a waiver review for the same period; and

14 (v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or
15 interest.

16 (b) Upon receipt of a waiver request, the commission shall:

17 (i) review the request;

18 (ii) notify the taxpayer if additional documentation is needed to consider the waiver
19 request; and

20 (iii) review the account history for prior waiver requests, taxpayer deficiencies, and
21 historical support for the reason given.

22 (c) Each request for waiver is judged on its individual merits.

23 (d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to
24 appeal. Procedures for filing appeals are found in Title 63G, Chapter 4, Administrative
25 Procedures Act, and commission rules.

26 (e) If a taxpayer first requests a waiver of penalties or interest in an appeal to the
27 commission, the taxpayer is not required to meet Subsections (1)(a)(i) through (iv).

28 (2)(a) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more
29 stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the
30 commission gave the taxpayer erroneous information or took inappropriate action that
31 contributed to the error.

32 (b) As a result of the COVID-19 emergency, the commission finds there is reasonable
33 cause to waive interest from April 15, 2020 to July 15, 2020 for:

34 (i) a return due April 15, 2020 under Title 59, Chapter 7;

35 (ii) a payment due April 15, 2020 under Section 59-7-504; or

36 (iii) a return due April 15, 2020 under Subsection 59-10-514(1)(c).

37 (c) The commission may find reasonable cause to waive interest for a return due after
38 April 15, 2020, but on or before July 15, 2020 for a fiscal year filer under Title 59, Chapter 7 or
39 Chapter 10, if the commission finds that the interest accrued as a result of the COVID-19
40 emergency.

41 (3) Reasonable Cause for Waiver of Penalty. The following clearly documented
42 circumstances may constitute reasonable cause for a waiver of penalty:

43 (a) Timely Mailing:

44 (i) The taxpayer mailed the return with payment to the commission by the due date and it
45 was not timely delivered by the post office through no fault of the taxpayer.

46 (ii) In cases where the taxpayer cannot document a post office error, the penalties may be
47 waived if the taxpayer:

48 (A) has an excellent history of compliance;

49 (B) proves that sufficient funds were in the bank as of the date of payment, and the check
50 was written in numerical order; and

51 (C) presents documentation showing that the return or payment was mailed timely.

52 (b) Wrong Filing Place: The return or payment was filed on time, but was delivered to
53 the wrong office or agency.

54 (c) Death or Serious Illness:

55 (i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate
56 family caused the delay.

57 (ii) With respect to a business, trust or estate, the death or illness must have been of the
58 individual, or the immediate family of the individual, who had sole authority to file the return.

59 (iii) The death or illness must have occurred on or immediately prior to the due date of
60 the return.

61 (d) Unavoidable Absence: The person having sole responsibility to file the return was
62 absent from the state due to circumstances beyond his or her control.

63 (e) Disaster Relief:

64 (i) A delay in reporting, filing, or paying was due either to a federal or state declared
65 disaster or to a natural disaster, such as fire or accident, that results in the destruction of records
66 or disruption of business.

67 (ii) If delinquency or delay is due to a federally declared disaster, federal relief
68 guidelines shall be followed.

69 (iii) In the absence of federal guidelines, and for other listed disasters, the taxpayer must
70 demonstrate the matter was corrected within a reasonable time, given the circumstances.

71 (f) Reliance on Erroneous Tax Commission Information:

72 (i) Underpayments and late filings or payments were attributable to incorrect advice
73 obtained from the commission, unless the taxpayer gave the commission inaccurate or
74 insufficient information.

75 (ii) Proof of erroneous information may be based on written communication provided by
76 the commission or, if the taxpayer clearly documents, verbal communication. Clear
77 documentation of verbal communication should include the dates, times, and names of
78 commission employees who provided the erroneous information.

79 (iii) A failure to comply will also be excused if it is demonstrated that the taxpayer
80 requested the necessary tax forms and instructions timely, and the commission failed to timely
81 provide the forms and instructions requested.

82 (g) Tax Commission Office Visit: The taxpayer proves that before expiration of the time
83 for filing the return or making the payment, the taxpayer visited a commission office for
84 information or help in preparing the return and a commission employee was not available for
85 consultation.

86 (h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was
87 unable to obtain records to determine the amount of tax due.

88 (i) Reliance on Competent Tax Advisor: The taxpayer:

89 (i) furnishes all necessary and relevant information to a competent tax advisor, and the
90 tax advisor:

91 (A) incorrectly advises the taxpayer;

92 (B) fails to timely file a return on behalf of the taxpayer; or

93 (C) fails to make a payment on behalf of the taxpayer; and

94 (ii) demonstrates that the taxpayer exercised ordinary business care, prudence, and
95 diligence in determining whether to seek further advice.

96 (j) First Time Filer:

97 (i) It is the first return required to be filed and the taxes were filed and paid within a
98 reasonable time after the due date.

99 (ii) The commission may also consider waiving penalties on the first return after a filing
100 period change if the return is filed and tax is paid within a reasonable time after the due date.

101 (k) Bank Error:

102 (i) The taxpayer's bank has made an error in returning a check, making a deposit or
103 transferring money.

104 (ii) A letter from the bank verifying its error is required.

105 (l) Compliance History:

106 (i) The commission will consider the taxpayer's recent history for payment, filing, and
107 delinquencies in determining whether a penalty may be waived.

108 (ii) The commission will also consider whether other tax returns or reports are overdue at
109 the time the waiver is requested.

110 (m) Employee Embezzlement: The taxpayer shows that failure to pay was due to
111 employee embezzlement of the tax funds and the taxpayer was unable to obtain replacement
112 funds from any other source.

113 (n) Recent Tax Law Change: The taxpayer's failure to file and pay was due to a recent
114 change in tax law that the taxpayer could not reasonably be expected to be aware of.

115 (4) Other Considerations for Determining Reasonable Cause.

116 (a) The commission allows for equitable considerations in determining whether
117 reasonable cause exists to waive a penalty. Equitable considerations include:

118 (i) whether the commission had to take legal means to collect the taxes;

119 (ii) if the error is caught and corrected by the taxpayer;

120 (iii) the length of time between the event cited and the filing date;

121 (iv) typographical or other written errors; and

122 (v) other factors the commission deems appropriate.

123 (b) Other clearly supported extraordinary and unanticipated reasons for late filing or
124 payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver
125 of the penalty.

126 (c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute
127 reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that
128 reasonable cause for waiver exists.

129 (d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for
130 waiver under any circumstance.