

# PUBLIC DRAFT

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Comments Due by: **June 11, 2026**

## SC REVENUE PROCEDURE #26-xx [Public Draft RP – 5/21/2026]

<b>SUBJECT:</b>	Penalty Waiver (All Tax Types)
<b>EFFECTIVE DATE:</b>	Applies to all periods open under the statute
<b>SUPERSEDES:</b>	SC Revenue Procedure #08-6 and all previous documents and any oral directives in conflict herewith.
<b>REFERENCE:</b>	S.C. Code Ann. § 12-54-43 (2014) S.C. Code Ann. § 12-54-155 (2014) S.C. Code Ann. § 12-54-160 (2014)
<b>AUTHORITY:</b>	S.C. Code Ann. § 12-4-320 (2014) SC Revenue Procedure #09-3
<b>SCOPE:</b>	The purpose of a Revenue Procedure is to provide procedural guidance to the public. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Title 12, Chapter 54 of the South Carolina Code imposes penalties when a taxpayer fails to comply with state tax laws. However, Section 12-54-160 authorizes the Department to waive, dismiss, or reduce penalties imposed under this chapter unless specifically prohibited. Section 12-54-160 only allows the Department to waive penalties, not interest.

This Revenue Procedure explains the process for taxpayers to request a penalty waiver and discusses standards the Department will follow when determining whether a penalty should be waived.<sup>1</sup> Such standards are necessary to encourage voluntary tax compliance and to ensure fair and consistent treatment among taxpayers.

### **I. Common Penalties**

The most common civil tax penalties are briefly discussed below. To avoid these penalties, taxpayers must file their returns on time and report and pay the accurate amount of tax owed by

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<sup>1</sup> For simplicity, this Revenue Procedure uses the term “waive” to describe both complete penalty dismissal and partial penalty reduction.

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the due date. The tax owed is the tax that is required to be shown on the return less any tax withheld or otherwise paid.

Penalties are applied to underpayments of the tax required to be shown on ‘a’ return. Therefore, each tax period stands alone and is evaluated separately when determining whether a penalty should be applied to that period.

## Failure to File Penalty

The failure to file penalty, sometimes called a late filing penalty, applies when a taxpayer does not file a required return by the due date, including extensions. The penalty amount is five percent (5%) of the tax owed for every month (or fraction of a month) that the return is late, up to a maximum of twenty-five percent (25%) of the tax owed.<sup>2</sup>

## Failure to Pay Penalty

The failure to pay penalty, sometimes called a late payment penalty, applies when a taxpayer does not pay all the taxes owed by the return’s original due date. The penalty amount is one-half percent (0.5%) of the tax owed for every month (or fraction of a month) that the payment is late, up to a maximum of twenty-five percent (25%) of the tax owed.<sup>3</sup>

An extension of time to file a return does not extend the time for paying the tax or license fee due.<sup>4</sup>

## Negligence Penalty

Taxpayers are required to exercise ordinary diligence and reasonable care when preparing their tax returns. The negligence penalty may be assessed if a taxpayer is negligent or disregards the law, and as a result underpays tax owed or claims a refund of tax paid. The penalty amount is five percent (5%) of the underpayment or refund, and fifty percent (50%) of the interest due under Section 12-54-25.<sup>5</sup> For purposes of the penalty, “negligence” includes a failure to make a reasonable attempt to comply with the law; and “disregard” includes careless, reckless, or intentional disregard of the law.<sup>6</sup>

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<sup>2</sup> See S.C. Code Ann. § 12-54-43(C).

<sup>3</sup> See S.C. Code Ann. §§ 12-54-43(D), (E).

<sup>4</sup> See S.C. Code Ann. §§ 12-6-4980(B) and 12-6-4990. However, Section 12-4-320(6) allows the Department to extend the date for payment of some types of taxes in certain situations, such as for damage caused by war, terrorist act, or natural disaster; or service with the United States armed forces or national guard in or near a hazard duty zone.

<sup>5</sup> See S.C. Code Ann. § 12-54-43(F)(1). Section 12-54-25 states “If any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety.”

<sup>6</sup> See S.C. Code Ann. § 12-54-43(F)(3).

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Negligence is not a deliberate attempt to evade taxes; rather, the taxpayer's actions do not meet a reasonable standard of care. Examples of negligence include careless errors and mistakes, such as not reporting income from all sources; claiming deductions or credits without adequate supporting records; and taking tax return positions that are not reasonably supported by law.

## Substantial Understatement Penalty

Section 12-54-155(A)(1) imposes a penalty when a taxpayer substantially understates, or underreports, how much tax is owed on a return.<sup>7</sup> The penalty amount is twenty-five percent (25%) of any underpayment that is due to the understatement.

An understatement of tax means the excess of the tax that *should have been shown* on the return, over the amount of tax that *was shown* on the return.<sup>8</sup>

Not all understatements are substantial. For purposes of the penalty, the understatement is substantial if it exceeds the greater of (1) 10% of the tax that is required to be shown on the return, or (2) \$5,000 (\$10,000 in the case of most corporations).<sup>9</sup>

## Civil Fraud Penalty

The Department may apply the civil fraud penalty when there is an underpayment of tax and the Department can show that *some part* of the underpayment is due to fraud.<sup>10</sup> The term "fraud" means intentional wrongdoing motivated by the specific purpose of evading taxes known or believed to be owed.<sup>11</sup> In other words, the taxpayer willfully misrepresented their tax liability to avoid paying taxes. The penalty amount is seventy-five percent (75%) of the portion of the underpayment that is due to fraud, and fifty percent (50%) of the interest due on that portion under Section 12-54-25.<sup>12</sup>

The Department has the burden of showing that a taxpayer acted with fraudulent intent to evade taxes. However, if the Department establishes that *any part* of an underpayment is fraudulent, the Department must presume the *entire* underpayment is fraudulent unless the taxpayer proves otherwise.<sup>13</sup> Intent can be demonstrated by examining the taxpayer's conduct and making reasonable inferences from that conduct. The Department may infer a taxpayer's fraudulent

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<sup>7</sup> Or, for property tax purposes, substantially misstates a valuation. See S.C. Code Ann. § 12-54-155(C).

<sup>8</sup> See S.C. Code Ann. § 12-54-155(B)(2)(a). Note, the understatement amount is reduced in certain situations such as substantial authority for a tax position. See S.C. Code Ann. § 12-54-155(B)(2)(b).

<sup>9</sup> S.C. Code Ann. § 12-54-155(B)(1).

<sup>10</sup> See S.C. Code Ann. § 12-54-43(G).

<sup>11</sup> See Maciel v. Comm'r, 489 F.3d 1018 (9<sup>th</sup> Cir. 2007); see also Mitchell v. Commis'sr, 118 F.2d 308, 310 (5<sup>th</sup> Cir. 1941).

<sup>12</sup> See S.C. Code Ann. § 12-54-43(G)(1). Section 12-54-25 states "If any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety."

<sup>13</sup> See S.C. Code Ann. § 12-54-43(G)(2).

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intent to evade taxes from circumstantial evidence<sup>14</sup> and "any conduct, the likely effect of which would be to mislead or conceal."<sup>15</sup>

If the Department applies the civil fraud penalty on the portion of the underpayment that is due to fraud, it will not also apply failure to file, failure to pay, or substantial understatement penalties on that same underpayment amount.<sup>16</sup> Moreover, the Department may impose the civil fraud penalty in addition to any criminal sanctions,<sup>17</sup> but does not need to pursue criminal prosecution to meet its burden for assessing the civil fraud penalty.

Due to the nature of the civil fraud penalty, it may only be waived by the Department's Director or the Deputy Director of the division that applied the penalty.

## **II. Procedure for Penalty Waiver Request**

Taxpayers are encouraged to use **Form C-530, Penalty Waiver Request**, to begin the penalty waiver request process. Form C-530 is available on the Department's website at dor.sc.gov. It may be completed and submitted electronically (along with supporting documentation) through MyDORWAY, the Department's free online tax portal, or mailed to the address indicated on the form. If the penalties are a direct result of an audit, the waiver request may be sent to the audit contact information shown on the Department's proposed notice of assessment.

Regardless of whether the taxpayer uses Form C-530, the taxpayer must provide the Department with a signed, written request to be considered for penalty relief and include the following with the request:

- Taxpayer name(s)
- Taxpayer contact information (complete mailing address and telephone number)
- Taxpayer FEIN/SSN
- Tax type and periods covered (for example, Individual Income Tax for 2023-2025 tax years)
- Facts and reason(s) for the penalty waiver request (be as specific as possible; see Section III "Penalty Waiver Standards" below for more information)

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<sup>14</sup> Direct evidence, such as the taxpayer's admission or confession, is not required to show fraudulent intent. "It is rare the taxpayer who announces to the world his intent to defraud." Richardson v. Comm'r, 509 F.3d 736, 743 (6<sup>th</sup> Cir. 2007).

<sup>15</sup> See Spies v. United States, 317 U.S. 492, 499 (1943).

<sup>16</sup> See S.C. Code Ann. § 12-54-43(G)(4) and S.C. Code Ann. § 12-54-155(A)(2).

<sup>17</sup> The Department has assessed civil fraud penalties both in cases where there have been criminal prosecutions and in cases where there have not been criminal prosecutions. The South Carolina Administrative Law Court found that South Carolina's civil fraud penalty serves a remedial rather than a punitive purpose and does not violate the Double Jeopardy Clause when imposed concurrently with criminal fraud sanctions, so long as the civil fraud penalty is not overwhelmingly disproportionate to the losses incurred by the State. See Anonymous Taxpayer v. South Carolina Dep't of Revenue, Docket No. 97-ALJ-17-0094-CC, Docket No. 97-ALJ-17-0109-CC, 09/11/1997. See also, Helvering v. Mitchell, 303 U.S. 391 (1938).

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- Other documentation that supports the request
- Taxpayer signature (both taxpayers must sign if the penalty arises from a joint return; if the request is for a corporation, the request requires the signature and title of a corporate officer authorized to sign)

Penalty waivers are not guaranteed and are evaluated on a case-by-case basis. Authorized employees within the Department will review the taxpayer's request and apply the standards discussed in Section III below to make a determination. The Department will then notify the taxpayer in writing as to whether the waiver request is granted or denied.<sup>18</sup> If denied, the taxpayer may appeal the decision within ninety (90) calendar days of the date of the denial. See SC Revenue Procedure #20-1 for information about the appeals process. See also the South Carolina Taxpayers' Bill of Rights in Title 12, Chapter 58 of the South Carolina Code; the full text and summary can be found on the Department's website at: <https://dor.sc.gov/transparency/taxpayers-bill-rights>.

The Department maintains an electronic log of all penalty waivers. The log is subject to disclosure rules and records the amount of penalty assessed; the amount waived; the name of the authorized employee who waives the penalty; and the reason(s) for the waiver.

Section 12-54-160 only allows the Department to waive penalties, not interest.<sup>19</sup> In addition, taxpayers may only request a waiver for penalties owed to the Department, not debt the Department is collecting on behalf of another claimant agency through the Setoff or Governmental Enterprise Accounts Receivable (GEAR) debt collection programs.<sup>20</sup>

### **III. Penalty Waiver Standards**

The appropriate treatment of a penalty is a question of fact to be considered on a case-by-case basis. A waiver should only be considered if the penalty was properly imposed. If the penalty was erroneously imposed or the facts reveal it otherwise should not be applied, removing or adjusting the penalty is not a waiver. See Section IV of this Ruling for further discussion.

**The Department may grant a complete penalty waiver when a taxpayer shows reasonable cause for failure to comply. When a taxpayer cannot show reasonable cause, but significant mitigating factors are present, the Department may grant a partial penalty waiver.**

In the case of more than one penalty, each individual penalty (*e.g.* failure to file, failure to pay) is evaluated separately for reasonable cause or significant mitigating factors.

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<sup>18</sup> The notification letter will generally be delivered via the taxpayer's MyDORWAY account or, if the taxpayer does not have an account, via mail.

<sup>19</sup> Interest represents the time value of money and is mandated by state law. The Department may only waive up to thirty days' interest for administrative convenience purposes. See S.C. Code Ann. § 12-54-25(A).

<sup>20</sup> More information about these programs is available on the Department's website.

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Financial hardship cannot be considered in determining whether to waive a penalty. A taxpayer who is unable to pay the entire amount owed should review the applicability of the Department's Offer in Compromise program or contact the Department to set up a payment plan.

## A. Complete Waiver due to Reasonable Cause

A complete penalty waiver may be appropriate when a taxpayer has reasonable cause, meaning the taxpayer exercised ordinary business care and prudence but was unable to comply with a tax obligation. The taxpayer has the burden to prove reasonable cause. Note, while these situations may be grounds for a penalty waiver, the tax and interest remain due and may not be waived.

If the Department determines there is reasonable cause based on the facts, the waiver should be granted *regardless of whether the taxpayer has paid the assessed tax related to the penalty*, unless other factors indicate the penalty should not be waived.

### i. Unforeseen Circumstances Beyond the Taxpayer's Control

The following are examples of unforeseen circumstances beyond the taxpayer's control that will usually constitute reasonable cause, depending on the facts:

- **The taxpayer was unexpectedly and unavoidably absent from South Carolina.**<sup>21</sup> The following are examples:
  - a. The taxpayer was a deployed military service member. The Department may consider the deployment dates and whether the taxpayer should have delegated authority or otherwise ensured compliance in his or her absence.
  - b. The taxpayer traveled away from home during the tax period and, due to uncontrollable circumstances, was unable to return home and could not access records to file or pay while away. The Department will consider travel dates and circumstances.

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<sup>21</sup> In the case of a corporation, estate, partnership, or trust, the absence must have been of an individual having primary authority to execute the return, make the deposit, or pay the tax.

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- Non-compliance was caused by **serious, incapacitating illness and/or death of the taxpayer, taxpayer's immediate family member,<sup>22</sup> or taxpayer's return preparer.<sup>23</sup>** The Department may consider the date, duration, and severity of the illness and/or date of death relative to the date of the taxpayer's required compliance.
- Causes outside of the taxpayer's control resulted in the **destruction of records that directly related to a return and made it impractical to comply with the law.** Reasons outside of the taxpayer's control include fire or flood, but do not include business pressures, employee turnover, or negligence.
- The taxpayer, in good faith, was **unable to obtain records or information** necessary to comply with a tax requirement.<sup>24</sup>
- The taxpayer's return was not received and/or the payment was not honored due to an **electronic, bank, or Department error.**

These examples are not all-inclusive. The main considerations are whether a taxpayer exercising ordinary business care and prudence could have anticipated or otherwise foreseen the circumstances that resulted in noncompliance, and that those circumstances were outside of the taxpayer's control such that they could not be prevented.

## ii. Other Circumstances

In other circumstances, the Department may decide reasonable cause exists based on the facts and supporting documentation. Among other things, the Department will consider: (1) the extent of the taxpayer's effort to determine the proper tax liability; (2) when and how the taxpayer became aware of any mistake or non-compliance; (3) what the taxpayer has done to correct any

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<sup>22</sup> For purposes of this Revenue Procedure, an immediate family member means a first-degree relative such as a spouse; a parent or stepparent of the taxpayer or the taxpayer's spouse; a sibling or step-sibling of the taxpayer or the taxpayer's spouse; a child (including a stepchild, foster child, or adopted child) of the taxpayer or the taxpayer's spouse; and any other individual who is the equivalent of a first degree relationship to the taxpayer or the taxpayer's spouse, like the person who raised the taxpayer or who was raised by the taxpayer, or an unmarried romantic couple living in the same household.

<sup>23</sup> In the case of a corporation, estate, partnership, or trust, the death or serious illness must have been of an individual having primary authority to execute the return, make the deposit, or pay the tax.

<sup>24</sup> For example, the taxpayer made timely, reasonable, and documented attempts to obtain assistance or tax forms from the Department but was unable to secure the necessary forms or assistance in sufficient time to file on the due date. Or, in the case of an estate, there was difficulty in acquiring appraisals, inability to identify or locate assets, litigation concerning the will or property, subsequent discovery of additional assets, or the existence of a nonresident decedent's property in this State. Note, this does not include the failure of an executor or personal representative to ascertain the nature of his or her responsibilities.

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mistake or non-compliance; and (4) the lapse of time between noncompliance and corrective action.

The following situations may constitute reasonable cause, depending on the taxpayer's facts (this list is not all-inclusive):

- Incorrect Advice – The taxpayer received erroneous written or oral advice from:
  - a. A competent tax advisor (such as a tax attorney, certified public accountant, or enrolled agent) provided the taxpayer exercises ordinary business care and prudence in determining whether to secure further advice based on the taxpayer's own information and knowledge. In case of incorrect oral advice, the advisor must confirm the taxpayer's claim.
  - b. A Department employee, if the taxpayer gave the employee accurate and complete facts and there is no change in the law. In case of incorrect oral advice, the Department employee must confirm the taxpayer's claim.
- Good Faith Reliance – The taxpayer demonstrates good faith reliance on (1) substantial, official written authority (such as case law, Department advisory opinions, and instructions to South Carolina tax forms); or (2) erroneous information reported on a Form W-2, Form 1099, or information return, provided the taxpayer did not know or have reason to know that the information was incorrect.
- Ignorance of the Law – Lack of knowledge about the law usually will not be sufficient to show reasonable cause, since ordinary business care and prudence requires taxpayers to be aware of their tax obligations. However, reasonable cause may exist if the taxpayer, in good faith, had an honest misunderstanding of the law that is reasonable considering all the facts and circumstances, including the experience, knowledge, and education of the taxpayer. For example, the taxpayer may have reasonable cause for noncompliance when difficult and complex issues are involved, reasonable persons differ as to the appropriate tax treatment of the issue, and there is no Department guidance. The taxpayer may also have reasonable cause if the noncompliance resulted from a recent law change or form revision and the taxpayer could not reasonably be expected to be aware of the change.
- Mistakes – A mistake on its own does not constitute reasonable cause. However, mistakes are considered along with all other facts when determining whether there is reasonable cause or significant mitigating factors.

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- Best Interest of the State – The Department’s Director determines that waiving a penalty is in the best interest of the State.

## **B. Partial Waiver due to Significant Mitigating Factors**

A partial penalty waiver may be appropriate when reasonable cause does not exist, but significant mitigating factors are present. The amount of the waiver is at the Department’s discretion. In determining whether significant mitigating factors are present, the Department will evaluate the taxpayer’s facts and circumstances, including filing and payment history, effort to comply, and the complexity, amount, frequency, and materiality of the error or understatement.

## **IV. Remedies that are Not Waivers**

Penalties may be reduced or dismissed for reasons that are not considered waivers under Section 12-54-160. Such situations are not subject to the guidelines set forth in this Revenue Procedure. Examples include:

1. A penalty is adjusted due to a mathematical or other error either in calculating the penalty amount and/or the tax amount (which affects the penalty amount).
2. An assessment is issued to the taxpayer, and the Department subsequently revises the amount of tax due. The penalty is also adjusted if it is based upon a percentage of the tax due on the initial assessment.
3. A penalty was erroneously imposed, or the facts reveal the penalty otherwise should not be applied. For instance:
  - The taxpayer is allowed special filing or payment relief because of being affected by a natural disaster or serving in an area designated as a combat zone.<sup>25</sup>
  - A penalty is imposed for late filing, but the taxpayer proves that the tax return was mailed timely, or an extension was timely filed.<sup>26</sup>

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<sup>25</sup> See S.C. Code Ann. § 12-4-320(6).

<sup>26</sup> S.C. Code Ann. § 12-60-50 references section 7502 of the Internal Revenue Code (IRC) to determine timely filing of returns and other tax documents and payment of amounts owed. IRC § 7502 is commonly referred to as the “mailbox rule.” It provides that the postmark date stamped on the envelope is deemed to be the date of delivery or payment. Note, the United States Postal Service (USPS) advises its customers to request a manual postmark at a retail location if they want to ensure their mail receives a postmark containing a date that aligns with the date on which the USPS first accepted the mail. Alternatively, the mail can be delivered by registered or certified mail, which deems the registration date the postmark date.

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- The taxpayer pays an assessment on time, but the Department's computer system does not reflect the timely payment, and additional penalties accrue in error.
  - The substantial understatement penalty was applied to an amount of understated tax that should have been reduced because of certain situations outlined in Section 12-54-155(B)(2)(b), such as substantial authority for a tax position.
4. A penalty is adjusted as part of the Department settling a case based on the hazards of litigation under Section 12-4-320(4).
  5. A penalty is adjusted as part of the acceptance of a formal offer in compromise under Section 12-4-320(3).
  6. A penalty is adjusted related to innocent spouse provisions of Internal Revenue Code (IRC) Section 6015.<sup>27</sup>

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<sup>27</sup> South Carolina conforms to IRC § 6015, which governs situations where an innocent spouse may be granted relief from joint and several liability on jointly filed returns. See S.C. Code Ann. §§ 12-6-40(A)(1)(a) & 12-6-50(16).