

Note: The appeal period has expired, the Administrative Law Judge's proposed decision is adopted as the final decision by the Department.

Iowa Department of Inspections and Appeals
Administrative Hearings Division
Wallace State Office Building – Third Floor
Des Moines, IA 50319

<p>Paul Schnell, 6145 Lakeland Court Davenport, IA 52807-2993</p> <p>Appellant, v.</p> <p>Iowa Department of Revenue, Respondent.</p>	<p>Case No. 19IDR0073 Rev. Docket No. 2018-200-2-0069</p> <p>PROPOSED DECISION</p>
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STATEMENT OF THE CASE

Hearing in this matter was held May 24, 2019. Sherri Reid represented Paul Schnell and provided testimony. Mr. Schnell also appeared and testified. Assistant Attorney General Hristo Chaprazov represented the Iowa Department of Revenue (Department), and Malia Kirkpatrick, technical tax specialist, testified for the Department. Appellant's Exhibit 1 was admitted without objection. The Department's Exhibits A-L were also admitted into the record without objection. Official notice was taken of the administrative file.

FINDINGS OF FACT

The only issue in this case is whether the Department properly assessed a ten percent late filing penalty on Paul Schnell and Molly O'Meara Schnell's 2016 Iowa individual tax return. (Ex. I.) Issues regarding a 2210 penalty were resolved between the parties prior to the administrative hearing. (Ex. B.) The Schnells are not contesting the interest added to the ten percent late filing penalty. (Reid testimony.) The parties do not dispute the facts of the matter.

The Schnells filed their 2016 Iowa individual income tax return on October 16, 2017. The Schnells' filing status was married filing separately on a combined return. (Ex. A.) Their 2016 income tax return showed they owed \$43,375, withheld \$37,855, and paid a self-assessed \$38 2210 penalty. The Schnells paid the remaining \$5,558 on October 19, 2017. (Ex. B.) The Schnells do not contest that their 2016 income tax return was filed and paid after due date.

The Department assessed a ten percent late filing fee and applicable interest because the return was filed after the due date. In 2016, the due date for filing returns and paying amounts owed was May 1, 2017, because April 30, 2017, was a Sunday. (Kirkpatrick testimony.) The Schnells' ten percent penalty was

based on the \$5,558 late payment minus the self-assessed \$38 penalty. The initial ten percent penalty was \$555.80. (Ex. A; Kirkpatrick testimony.) As of January 31, 2019, the Department calculated the Schnells' penalty and interest at \$701.26. (Ex. K.)

Mr. Schnell is in the investment business, and it is difficult to estimate his taxable income. He tries to overestimate his income tax amount. He did not contest the dates he filed and paid his 2016 income taxes. (Schnell testimony.)

Ms. Reid protested the ten percent late filing penalty assessed to the Schnells because Mr. Schnell had not received all of his K-1 tax forms by April 30. Because of this, she argued the penalty should be waived under a good cause argument. (Reid testimony.) Ms. Reid also noted that Mr. Schnell's inability to obtain his tax documents prior to the April 30 filing deadline is similar to destruction of documents due to an act of God. (Reid testimony.)

CONCLUSIONS OF LAW

All residents and nonresidents are required to pay tax on taxable income earned in Iowa. *See* Iowa Code § 422.5. "If a person fails to file with the [D]epartment on or before the due date a return or deposit form there shall be added to the tax shown due or required to be shown due a penalty of ten percent of the tax shown due or required to be shown due." § 421.27(1). The ten percent penalty shall be waived if one of the conditions listed in Iowa Code section 421.27(1) applies to the taxpayer's situation. *Id.*

The ten percent penalty shall be waived if the taxpayer paid "[a]t least ninety percent of the tax required to be shown due . . . by the due date of the tax." § 421.27(1)(a). The Schnells owed \$43,375 and withheld \$37,755, which was paid to the Department prior to the due date of the tax. However, ninety percent of \$43,375 is \$39,037.50, which is less than the \$37,755 paid by the Schnells. Reid argued the ten percent penalty should be calculated separately for Mr. Schnell and Ms. O'Meara Schnell since their filing status was married filing separately on a combined return. Ms. Reid cited instructions for calculating a 2210 penalty for an underpayment of estimated tax, but she did not provide any instructions or law applicable to a late filing penalty. (Ex. I.) Penalties assessed pursuant to section 421.27 are not calculated separately when spouses file as married filing separately on a combined return.

The penalty under section 421.27 shall also be waived if the taxpayer shows "[d]estruction of records by fire, flood, or other act of God." § 421.27(e). Ms. Reid argued Mr. Schnell's inability to calculate his income prior to the April 30 filing deadline equates to an act of God. I disagree with Ms. Reid's argument. Although Mr. Schnell provided credible testimony that he was unable to calculate his 2016 income by April 30 due to his specific sources of income, his income records were not destroyed by an act of God and unable to be recreated – they were simply delayed in reaching Mr. Schnell. Mr. Schnell's penalty cannot be waived pursuant to section 421.27(e).

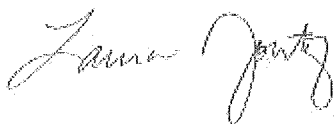
Ms. Reid stressed the Schnells' tax penalty could be waived for reasonable cause. Ms. Reid was unable to provide any legal authority to support this argument. The statute governing late filing penalties is Iowa Code section 421.27. While this statute contains several specific conditions when this penalty can be

waived, reasonable cause is not listed in section 421.27 and cannot be the underlying reason for a late filing penalty waiver. The Department properly assessed a ten percent late filing penalty to the Schnells, and the Schnells' failed to provide a valid legal argument regarding waiver of the penalty.

ORDER

The Department's action is AFFIRMED. The Department shall take any action necessary to implement this decision.

Dated this the 14th day of June, 2019.



Laura Jontz
Administrative Law Judge

Cc: Hristo Chaprozov, Assistant Attorney General (By email)
Sherri Jo Reid, Representative for Taxpayer (By mail)

NOTICE

Any aggrieved party has 30 days, including Saturdays, Sundays, and legal holidays, of the date of this Proposed Decision to file an appeal to the Director of the Department of Revenue. Iowa Admin. Code r. 701-7.17(8)(d). The appeal must be made in writing. The appeal shall be directed to:

Office of the Director
Iowa Department of Revenue
Hoover State Office Building
Des Moines, Iowa 50319