

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

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Income Tax
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New York State Filing Requirements for
Certain Small Partnerships

The Internal Revenue Service, in Revenue Procedure 84-35 (which modified and superseded Revenue Procedure 81-11), held that reasonable cause for failure to timely file a federal partnership return will be granted automatically to partnerships of 10 or fewer partners that meet the criteria set forth in the procedure. Accordingly, the small partnerships that qualify will not be subject to the penalty for late or incomplete filing imposed by section 6698 of the Internal Revenue Code. The Department has received numerous inquiries as to whether New York State will also grant automatic reasonable cause for those partnerships.

A discussion of this issue follows.

Section 658(c)(1) of the New York State Tax Law provides that every partnership having a resident partner or having any income derived from New York sources must file a partnership return. Section 685(h)(2) imposes a penalty for late or incomplete filing of a partnership return, unless the failure is due to reasonable cause and not willful neglect. The amount of the penalty for each month or fraction of a month (for a maximum of 5 months) that the failure continues is \$50 multiplied by the total number of partners who were subject to the New York State personal income tax for the year.

Even though federal and New York filing requirements and penalty provisions are substantially similar, New York law does not contain any special exceptions for small partnerships. Specifically, New York law does not contain a small partnership provision comparable to Section 6231(a)(1)(B) of the Internal Revenue Code, upon which Revenue Procedure 84-35 is based. Accordingly, all partnerships (including small partnerships) that meet the above requirements must file timely and complete returns. Penalties may be imposed on partnerships that fail to comply unless the partnership qualifies for the limited exception explained below or can establish other grounds for reasonable cause.

It will be Department policy to waive the penalty imposed under section 685(h)(2) of the Tax Law for partnerships that failed to timely or completely file New York returns for prior years due to reliance on the federal ruling. However, the penalties will be waived only once. After a partnership has been notified by the Department that New York returns are required to be timely filed, reasonable cause (determined according to federal rules) will not be granted for subsequent years.

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Partnerships that filed late or incomplete returns for prior years and were billed for penalties should return a copy of the tax notice with a statement explaining that the partnership qualified for the federal automatic reasonable cause provision and that the partnership relied on that provision in not filing New York returns. Partnerships that have not filed for prior years should do so immediately. When the partnership receives a bill for the penalty due, it should follow the procedure outlined above. If requested by the Department, any partnership that requests a waiver of penalty must be able to substantiate that all partners have fully reported their shares of the income, deductions and credits from the partnership on their timely filed personal income tax returns.