

Tax and Revenue Administration (TRA)

Alberta Corporate Income Tax Act

Information Circular CT-5R5

Waiver or Cancellation of Penalties and/or Interest

Last updated: March 8, 2011

NOTE: This information circular is intended to explain legislation and provide specific information. Every effort has been made to ensure the contents are accurate. However, if a discrepancy should occur in interpretation between this information circular and governing legislation, the legislation takes precedence.

Waiver or Cancellation of Penalties and/or Interest

This information circular explains the guidelines Tax and Revenue Administration (TRA) follows in administering the waiver or cancellation of penalties and/or interest.

Index

- [Overview](#)
- [Objection or Waiver](#)
- [What may be Waived](#)
- [Extraordinary Circumstances](#)
- [Administrative Delay or Error](#)
- [Voluntary Disclosure](#)
- [Financial Hardship](#)
- [Circumstances under which Waivers will not be Considered](#)
- [Other Considerations](#)
- [Limitation Period](#)
- [Waiver Application Procedures](#)
- [Second Administrative Review](#)
- [Judicial Review](#)

TAX AND REVENUE ADMINISTRATION
9811 - 109 STREET, EDMONTON AB T5K 2L5

- Email: TRA.Revenue@gov.ab.ca
- Website: tra.alberta.ca
- Phone: 780-427-3044
- Fax: 780-427-0348

Note: for toll-free service in Alberta, call 310-0000, then enter the number.



Overview

1. Section 55.1 of the *Alberta Corporate Tax Act* (the Act) authorizes the Minister of Finance to waive or cancel all or any portion of any penalties and/or interest charged under the Act. TRA administers the Act on behalf of the Minister. In this information circular, the term waive is used to mean waive or cancel.
2. Waivers are intended to provide relief in circumstances not covered by legislation or administrative policies. Waivers are a last resort and requests for relief are treated as such.
3. TRA does not usually waive penalties and/or interest unless the requesting corporation took all reasonable steps to avoid the charge.
4. Generally, waiver of penalties and/or interest are granted:
 - if a corporation was unable to comply because of circumstances beyond its control;
 - if TRA, or in some cases the Canada Revenue Agency (CRA) or other jurisdiction, was responsible for an administrative error or unreasonable delay;
 - if all the conditions for a voluntary disclosure were met; or
 - in cases of financial hardship.
5. TRA will review the waiver request in detail and inform the corporation of its decision, in writing.
6. Usually, any resulting change to penalties and/or interest will be made through an adjustment to the corporation's tax account, not through reassessment. Refund interest will not be paid on these adjustments.

[Back to Index](#)

Objection or Waiver

7. A dispute regarding the assessment of penalties and/or interest can be resolved by filing an objection or requesting waiver of the penalties and/or interest. Paragraphs 8 and 9 explain when each method is appropriate. Before beginning a formal dispute resolution process, contact TRA to see if the matter can be resolved informally.

8. If a corporation believes penalties and/or interest have not been assessed according to legislation, the corporation should file a notice of objection with TRA on form AT97 within 90 days from the date of mailing of the notice of (re)assessment. Refer to [Information Circular CT-8, Objections and Appeals](#) for an explanation of the objection process and the information that should be included when filing an objection.
9. If a corporation has been assessed penalties and/or interest according to legislation, but extenuating circumstances prevented it from complying with the filing or remitting requirements, the corporation may submit a request for waiver of penalties and/or interest by letter to TRA. Refer to paragraph 39 for information to include in your waiver request. Refer to paragraphs 12 to 36 to determine if the corporation's circumstance falls within TRA's guidelines.
10. A corporation may seek relief from penalties and/or interest by either filing an objection or a request to waive penalties and/or interest, but not both.

[Back to Index](#)

What may be Waived

11. TRA will consider requests to waive penalties for late filing and inadequate instalments, instalment interest, arrears interest, and interest on overpayments of a tax credit. Penalties relating to false statements made knowingly or those resulting from gross negligence will generally not be waived. See [Information Circular CT-4, Interest and Penalties](#) for more information.

[Back to Index](#)

Extraordinary Circumstances

12. TRA may waive penalties and/or interest if extraordinary circumstances prevented a corporation or its agent from complying with the Act. Examples of such circumstances include:
 - natural disasters such as flood, fire, storm;
 - personal tragedy such as a serious illness or death of, or in the family of, the person in a small corporation who oversees and ensures compliance with the legislation;
 - theft or vandalism of records; or
 - civil disturbances.

13. In all cases, the corporation must satisfy TRA that, despite the extraordinary circumstances, it made reasonable efforts to comply with the Act. This includes making payments on or before the payment due-date. If a corporation does not make a payment by the required filing date, and the extraordinary circumstances leading to the request for a waiver of a late-filing penalty did not begin until after the payment-due day, TRA will not waive the penalty.
14. A postal strike is **not** generally enough reason to waive interest on late remittances by corporations, since payments can be made at most financial institutions in Canada.
15. TRA will **not** waive penalties on returns filed late as a result of postal strikes unless the corporation shows it could not use other means, such as courier delivery or fax transmission, to file its return on time. During postal strikes, TRA arranges for the filing of returns at designated government centres within Alberta.
16. TRA may grant a waiver of penalties and/or interest during a postal/courier strike if:
 - a corporation's return or its payment is already in the postal system or with a courier when a strike begins in that service;
 - the corporation took reasonable steps to find out if TRA received the payment or return; and
 - the corporation replaced the item caught in the postal/courier strike, as soon as possible.

[Back to Index](#)

Administrative Delay or Error

17. TRA may waive penalties and/or interest if the corporation requesting a waiver shows that TRA's actions were in error or the primary cause of the delay. Examples of such actions include:
 - processing delays by TRA that result in the corporation not being informed within a reasonable time of an amount owing;
 - unreasonable delays in resolving objections or appeals, or in completing an audit;
 - incorrect advice or action in response to a corporation's enquiry or request;
 - unreasonable delay in providing information required by a corporation to make the appropriate payment;
 - errors in public information provided by TRA in publications or forms; or

- changed interpretation of tax law by TRA after a tax return, relying on a previous interpretation, was filed.
18. TRA will reject requests if the corporation's actions were the main cause of the delay. For example, if a processing delay resulted from the corporation not submitting required information on time, a request for waiver of interest based on processing delays will be rejected. A liability that arose because the corporation applied a general response from TRA to its specific circumstance may not be waived if, at the time of the response, the corporation did not make TRA aware of its specific circumstances.
 19. CRA may waive federal interest and/or penalties if an assessment action was delayed by CRA and the delay was the cause of the liability for interest or penalties. If TRA has paralleled the federal assessment, TRA will consider waiving interest or penalties for the same time period.

[Back to Index](#)

Voluntary Disclosure

20. TRA reinforces the self-assessment nature of the tax and incentive programs administered in Alberta. Therefore, TRA encourages any voluntary submissions to redress previous contraventions of the Act.
21. Acceptable voluntary disclosures will not be prosecuted, nor will any civil penalties, including late-filing penalties, be imposed on any amounts disclosed.
22. The corporation should discuss waivers with TRA at the time the disclosure is made. If a late-filing penalty is applied on assessment, the corporation may request a waiver of the penalty on the basis a voluntary disclosure was made. Please see [Information Circular CT-11, Voluntary Disclosures](#).

[Back to Index](#)

Financial Hardship

23. TRA will consider waiving interest when substantial interest has accumulated or is expected to accumulate for a corporation confirmed to be unable to pay all amounts owing.
24. TRA will consider waiving interest accumulated over the course of an extended payment agreement that was based on the corporation's inability to pay. The waiver will apply only if the corporation maintains its payment schedule and complies with the Act.

25. Penalties will generally be waived only for a business experiencing extreme financial difficulty for which enforcing payment of penalties would jeopardize its continued operation, the jobs of employees or the welfare of the community, as a whole.
26. TRA requires full financial disclosure, including a statement of income and expenses, and a statement of assets and liabilities, to consider financial hardship requests.
27. TRA generally does not grant requests for waiver of penalties and/or interest on the basis of financial hardship unless CRA has also provided a waiver of penalties and interest for the same reason.

[Back to Index](#)

Circumstances under Which Waivers will not be Considered

28. The Alberta corporate income tax system depends on voluntary compliance. Corporations are responsible for correctly calculating and reporting income, tax and tax credits and filing their tax returns on time.
29. Penalties and/or interest will not be waived for error or delay caused by the corporation's representative or tax return preparer.
30. Penalties and/or interest are often charged when TRA finds and corrects errors in a filed return. This may not occur until there is a post-assessment review of the return, several months or years after the initial assessment. In these cases, the charges that are assessed are not waived due to this delay, unless the delay was unreasonable.
31. TRA will not waive penalties and/or interest on assessments or reassessments based on information received from CRA, if the corporation has not provided the information to TRA.
32. When a loss for a year is carried back to a preceding year, the resulting tax reduction is treated as a payment on account made some time after the loss year. The Act provides that, for purposes of calculating the late-filing penalty and interest, the loss carry-back is to be given an effective date equal to the latest of these five dates:
 - the first day following the loss year;
 - the day on which the return for the loss year is filed;
 - the day on which the loss carry-back request, form AT1 Schedule 10, is filed;
 - the day on which a request was made for the loss carry-back; or

- if the corporation is reassessed by another jurisdiction and no amended return or taxpayer request has been received by TRA, the day the reassessment was issued.
33. Penalties and interest based on the original tax assessment will not be waived for tax ultimately reduced by a loss carry-back.

[Back to Index](#)

Other Considerations

34. While CRA waiving interest and/or penalties may be persuasive, it does not bind Alberta to a parallel action. The waiver request may fit under the federal guidelines, but not under the Alberta guidelines, or a federal waiver may be attributable to a federal action that does not reasonably affect the corporation's business with TRA. For example, a federal interest liability waived because a corporation was informed erroneously about its federal instalment requirements would not reasonably affect the interest liability to Alberta.
35. A late-filing penalty levied by TRA may be waived if a corporation is not charged a late-filing penalty by CRA and requests a waiver of the penalty because its AT1 return was mailed on the same day as its T2 return was mailed. The corporation must prove that the mailing date to TRA was not later than the mailing date to CRA and that the return was not late-filed with CRA.
36. The penalty may also be waived if a corporation is charged a late-filing penalty because the corporation or the corporation's representative sent its AT1 return and payment of the outstanding Alberta tax to CRA in error. The AT1 return and payment (showing Alberta as the payee) must have been sent on, or before, the filing due-date. The corporation must also prove that CRA received the AT1 return and payment.
37. How the corporation conducted business with TRA is considered before a decision for a waiver is made. This includes the corporation's history of compliance with tax obligations, its efforts to prevent the liability or to take corrective action, and its care in conducting its affairs under a self-assessment system.

[Back to Index](#)

Limitation Period

38. A corporation may submit a request for a waiver of penalties and/or interest to TRA anytime before the later of:
- 10 calendar years from the end of the taxation year to which the penalties and/or interest was assessed, **or**
 - 12 months from the date the penalties and/or interest was assessed by TRA.

For example, if a corporation was assessed late-filing penalties and/or interest for its taxation year ended July 31, 2002 on February 28, 2003, based on the later of the 10-calendar-years limitation period and the 12-month limitation period, the corporation would have until December 31, 2012 to submit a request to TRA for a waiver of penalties and/or interest.

On the other hand, if a corporation was assessed by TRA with late-filing penalties and/or interest relating to its July 31, 2000 taxation year on November 30, 2010, based on the later of the 10-calendar-years limitation period and the 12-month limitation period, the corporation would have until November 30, 2011 to submit a request for a waiver of penalties and/or interest.

[Back to Index](#)

Application Procedures

39. If you believe the corporation meets the above guidelines, send a written request for waiver of penalties and/or interest relating to voluntary disclosures to:

AUDIT BRANCH
TAX AND REVENUE ADMINISTRATION
ALBERTA TREASURY BOARD AND FINANCE
9811 109 STREET
EDMONTON AB T5K 2L5

Send all other requests for waivers of penalties and/or interest to:

TAX SERVICES BRANCH
TAX AND REVENUE ADMINISTRATION
ALBERTA TREASURY BOARD AND FINANCE
9811 109 STREET
EDMONTON AB T5K 2L5

40. The request for waiver should include:
- the corporation's name and address;
 - the representative's name and address;
 - the corporation's Alberta corporate account number;
 - the taxation years involved;
 - a description of the penalties and/or interest for which the waiver is sought, and the amount involved;
 - the reasons why it is believed that the penalties and/or interest should be waived, supported by documentation and a chronology of events, as applicable; and

- a description of previous contacts with TRA or other areas of Alberta Finance on the issue.

41. While TRA considers the waiver request, it may request the corporation to provide more information or documentation.

[Back to Index](#)

Second Administrative Review

42. If a request for a waiver of penalties and/or interest was partially accepted or denied, the corporation cannot file an objection with TRA to dispute the decision under the Act. However, if the corporation believes that TRA's discretion has not been properly exercised within the intent of the legislation, the corporation can request that we reconsider the original decision and review the situation again. During the second review, the corporation will have the opportunity to make additional representations to us for consideration. The request for a second administrative review should be submitted in writing to the Tax Services Branch.
43. Tax Services Branch members not involved in the first review of the waiver request will perform the second administrative review to ensure a second, independent review process.
44. TRA will inform the corporation of its second decision in writing.

[Back to Index](#)

Judicial Review

45. If the corporation disagrees with either of TRA's decisions, the corporation may file an application for a judicial review with the Court of Queen's Bench of Alberta within six months after the date of the waiver decision. The corporation should obtain professional advice or contact the Court of Queen's Bench of Alberta for information about how to make an application for judicial review.

[Back to Index](#)

Contact Information and Useful Links

Contact Tax and Revenue Administration (TRA):	Email: TRA.Revenue@gov.ab.ca
Visit our website:	tra.alberta.ca
Subscribe to receive email updates:	tra.alberta.ca/subscribe.html
TRA Client Self-Service (TRACS):	tra.alberta.ca/tracs