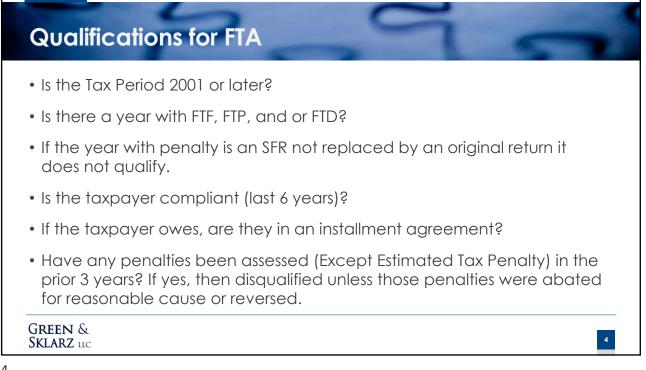


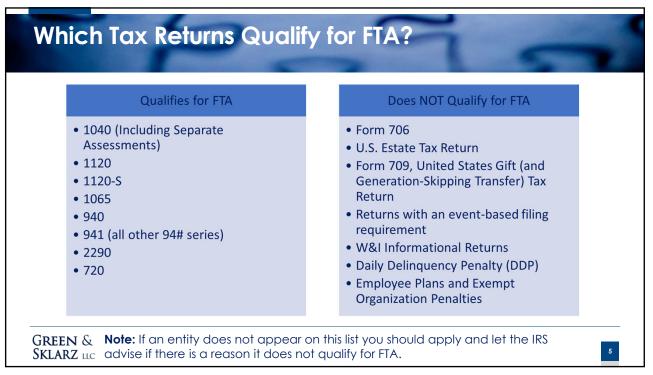
## Agenda

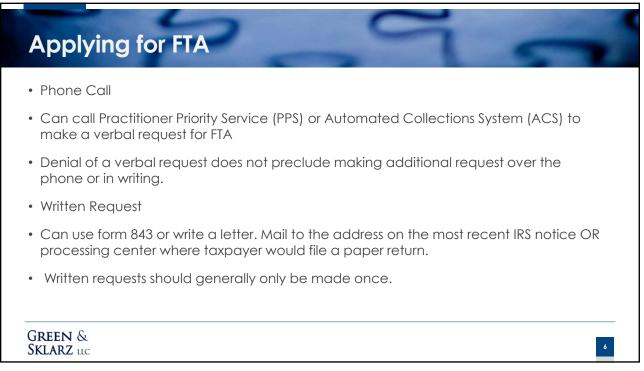
- 1. Background and Issue with Penalties
- 2. Abatement Strategies
- 3. Civil Fraud Penalty

### GREEN & SKLARZ LLC

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### How Reasonable Cause Abatements Impact FTA • The Reasonable Cause Assister (RCA) will attempt to apply relief based on FTA before considering reasonable cause. • Example if a request for Reasonable Cause is submitted by the taxpayer and that tax year qualifies for FTA the abatement is coded as an FTA. • Any year in the 3 Year Lookback where the penalties are completely removed by reasonable cause abatement or reversal are considered a clean year. • Clean Year = Does not disqualify the FTA request. IRS IRM 13.1.24.6.1.1.2 (05-11-2018) First-Time Abate - Clean **Compliance History GREEN** & SKLARZ LLC

				IRS	ACCOUNT STATUS	DASHBOARD			
<ul> <li>FTA applies only to</li> </ul>									
taxpayers not	Return Year Filed	Filing Status	Extension Date	Lien Active	Collections Active	Examination Active	Assessed Balance	Accrued Balance	Transcript Date
	2020 No	S					\$0.00	\$0.00	7/1/2020
penalized for the three	2019 No	S					\$0.00	\$0.00	7/1/2020
•	2018 Original	MFJ	10/15/2019		4/22/2020	4/27/2020#	\$269,636.55	\$278,353.58	7/1/2020
years prior	2017 Original	MFJ	10/15/2018 10/15/2017			<b>0</b> 1	\$0.00	\$0.00	
/	2016 Amended 2015 Amended	MFJ	10/15/2017			Closed	\$0.00 \$0.00	\$0.00 \$0.00	
	2013 Amended	MFJ	10/15/2015			Closed	\$0.00	\$0.00	7/1/2020
<ul> <li>Pull transcripts to</li> </ul>	2013 Original	MFJ	10/15/2014			Closed	\$0.00	\$0.00	7/1/2020
•	2012 Original	MFJ	10/15/2013			Closed#	\$0.00	(\$0.73	7/1/2020
confirm this!	2011 Original	MFJ	10/15/2012				\$0.00	\$0.00	7/1/2020
	2010 Original	MFJ	10/15/2011			Closed	\$0.00	\$0.00	7/1/2020
	2009 Original	MFJ	10/15/2010				\$0.00	\$0.00	7/1/2020
<ul> <li>This case – "Has never</li> </ul>	2008 Original	MFJ	10/15/2009	Removed			\$0.00	\$0.00	7/1/2020
	2007 Original	MFJ	10/15/2008				\$0.00	\$0.00	7/1/2020
owed anything"	2006 Original	MFJ	10/15/2007				\$0.00	\$0.00	
owed drivining	2005 Original	MFJ	10/15/2006			ASED exp	\$0.00	\$0.00	7/1/2020
	2004 Original	MFJ	10/15/2005				\$0.00	\$0.00	7/1/2020
• So far looks good	2003 No	S					\$0.00	\$0.00	
50 TUL IOOKS GOOD	2002 Original 2001 Original	MFJ	10/15/2003				\$0.00	\$0.00	7/1/2020
		MFJ	10/15/2002				\$0.00	\$0.00	7/1/2020

						PENALTY AND II	NTEREST DASHBO	DARD			
	Return				Penalties Failure	Accuracy Related				Assessed	
Year	Filed	FTA	PA	to File	to Pay	Penalties	Accrued Penalty	Total Penalties*	Accrued Interest	Interest	Total Interest
2020			-				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2019			_				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2018		N	_		\$147,801.15		\$0.00	\$147,801.15	\$8,717.03	\$121,835.40	\$130,552.43
2017		N	Y		\$63,295.94 \$93,701.63		\$0.00	\$63,295.94 \$93,701.63	\$0.00 \$0.00	\$48,928.11	\$48,928.11 \$52,011.86
2016		N	Y		\$18,314.56		\$0.00	\$18,314.56	\$0.00	\$52,011.86	\$52,011.86
2015			Y		\$62.065.80		\$0.00	\$62,065.80	\$0.00	\$74.80 (\$715.32)	(\$715.32)
2014		N			\$21,256,24		\$0.00	\$21,256.24	\$0.00	\$9.829.42	\$9,829,42
		N	-		\$21,256.24		\$0.00	\$21,256.24	(\$0,73)		\$9,693.97
2012	Original	N			\$21,136.46		\$0.00	\$21,136.46	\$0.00	\$9,694.70 \$10,798.64	\$10,798.64
2011		N	-	-	\$13.672.62		\$0.00	\$13.672.62	\$0.00	\$7,838.33	\$7,838.33
2010		N			\$9,100.33		\$0.00	\$9,100.33	\$0.00	\$5,867.29	\$5,867.29
2009	-	N	-		\$49.332.13		\$0.00	\$49,332.13	\$0.00	\$28,906.92	\$28,906.92
2008		N			\$58,617,62		\$0.00	\$58,617,62	\$0.00	\$40,252.35	\$40,252,35
			-								\$13,972.08
		_									\$2,514.92
			-								\$6,290.80
	-				\$3,100.70						\$0.00
		N			\$15 795 96						\$11,335,74
2002		?			\$15,528.70		\$0.00	\$15,528.70	\$0.00	\$15,165,28	\$15,165.28
2006 2005 2004 2003 2002	Original Original No Original	N N N N			\$14,215.04 \$1,928.49 \$6,166.78 \$15,795.96 \$15,528.70		\$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00	\$14,215.04 \$1,928.49 \$6,166.78 \$0.00 \$15,795.96 \$15,528.70	\$0.00 \$0.00 \$0.00 \$0.00 \$0.00	\$13,972.08 \$2,514.92 \$6,290.80 \$0.00 \$11,335.74	\$2 \$6 \$11

### Penalty Relief – IRS Notice 2022-36

Automatic Penalty Relief for Returns if filed by September 30, 2022

-Individual Income Tax Return (Forms 1040, 1040-C, 1040-NR, 1040-SR, etc.)

- -Income Tax Return for Trusts and Estates (Form 1041)
- -C Corporation Income Tax Return (Forms 1120, 1120-F, etc.)

-S Corporation Income Tax Return (Form 1120-S)

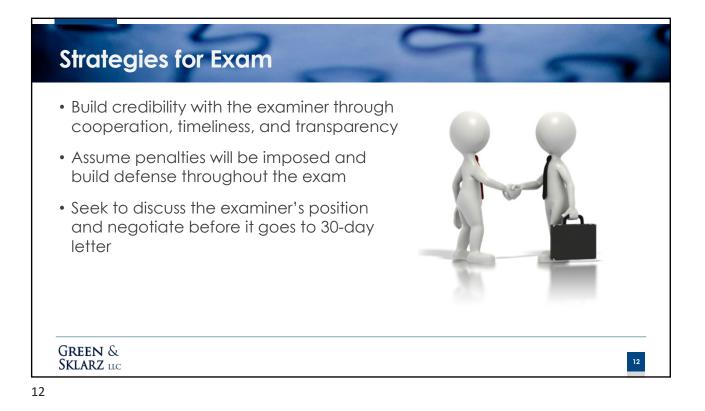
- -Return of Partnership Income (Form 1065)
- -Return of Private Foundations or Trusts Treated as Private Foundations (Forms 990-PF and 990-T)
- -Information Return for U.S. Persons with Interests in Foreign Corporations (Form 5471)
- -Information Return for U.S. Corporations with Foreign Owners (Form 5472)

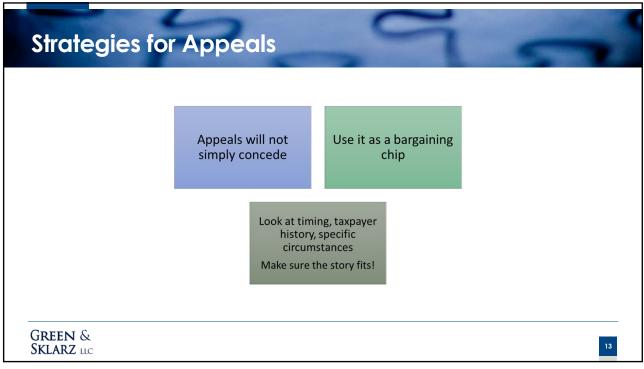
-Information Return Related to Foreign Trusts and Estates (Forms 3520 and 3520-A)

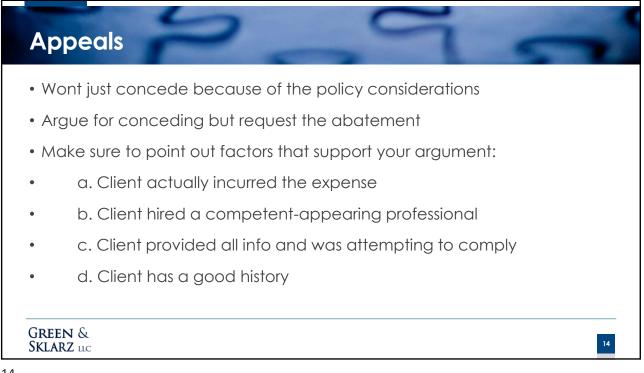
The Notice also includes waivers of the penalty for failure to provide certain information to the IRS under IRC § 6721 (including Forms W-2 and W-3, as well as Forms 1094-C and 1095-C).

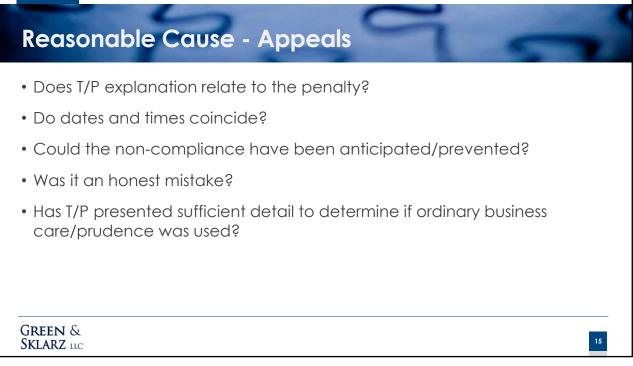
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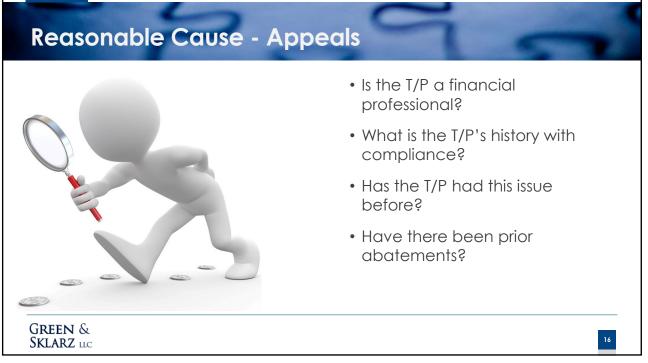
## Occasion of the provided the provid

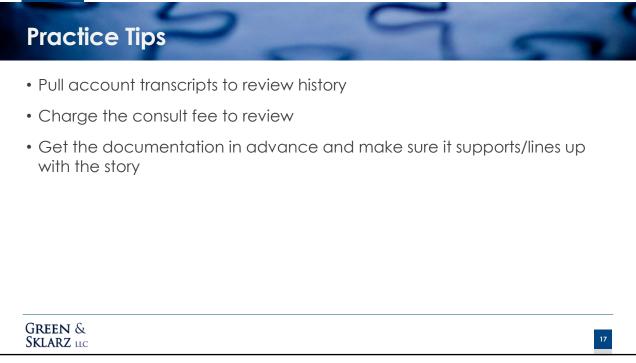




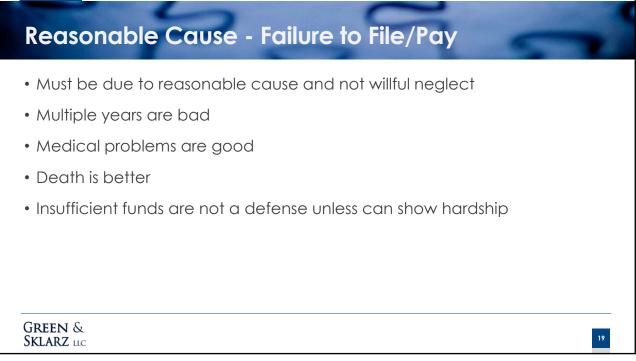








	From 843 Pier. Aquat 1011 Description of the Issuery Description of the Issuery Due Form 843 grout claim or request involves: (a) a refund of one of the taxes (offer than income taxes or an emply witholding/or a refus-domon on line 3.2	OMB No. 1545-0024
Use Form 843	<ul> <li>(b) an abatement of FUTA tax or certain excise taxes, or</li> <li>(c) a relund or abatement of Interest, penaltic, additions to tax</li> <li>(De not use Form 843 fyour claim or request involves:</li> <li>(a) an overpayment of nonce taxes or an employer i claim for FICA approximate amended tax return).</li> <li>(b) a retund of excise taxes based on the nontaxable use or sale of (c) an overpayment of excise taxes reported on Form(s) 11-C, 720, Taxing)</li> </ul>	tax, RRTA tax, or income tax withholding (use the uses, or
	Address (number, street, and room or suite no.)	Spouse's social security number
Request abatement	City or town, state, and ZIP code	Employer identification number (EIN)
nequest abatement	Name and address shown on return if different from above	Daytime telephone number
	1 Period. Prepare a separate Form 843 for each tax period or fee ye From to	\$
Document your case	Type of tax or fee. Indicate the type of tax or fee to be refunded is related.     Employment Estate Gift     Type of penalty. If the claim or request involves a penalty, enter based (see instructions). IRC section:	Excise Income Fee
Appeal (15 days)	Se Interest, penalities, and additions to tax. Check the box that indi- none apply, go bit loss.           Image:	advice from the IRS.
	Chiginal return, indicate the type of fee or return; if any, field to w     705 P 706 940 9     000 P 707 90 940     100 P 707 100 100 100     1000 P 707 100 100 100     1000 P 707 1000 P 1000 P 1000     00 In 0 2. If you define space, status doilional shrets.	41



Drafting the request
<ul> <li>Make the request – we are requesting penalty abatement for the following period(s)</li> </ul>
<ul> <li>Factual background – how the client got here</li> </ul>
<ul> <li>History – if a good history explain that</li> </ul>
<ul> <li>Review the documentation – tab exhibits</li> </ul>
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### **Reasonable Cause: Reliance on Tax Advice**



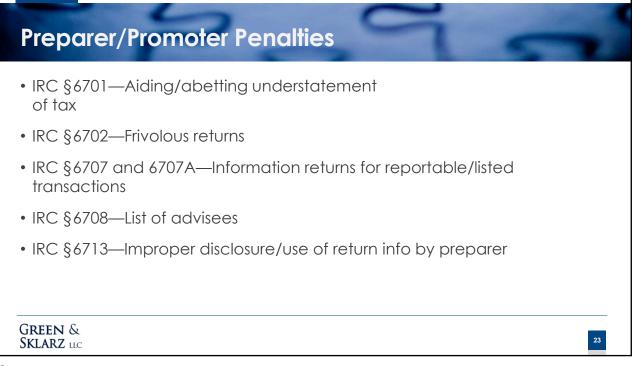
 Relying on a tax opinion by a tax advisor may serve as a defense to the accuracy related penalty

- Must be objectively reasonable
- Must be based upon all pertinent facts
- Advice must not be based upon unreasonable factual or legal assumptions
- Does not cover the filing of a return that is missed

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# Preparer/Promoter Penalties IRC §6694(a)—Unreasonable position IRC §6694(b)—Willful conduct or intentional or reckless disregard of rule/regs IRC §6695—Miscellaneous preparer misdeeds IRC §6695A—Appraisers IRC §6700—Promoters of abusive tax shelter



R.C.	§ 6663:
mpo	sition of penalty
	If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud.
a. D	etermination of portion attributable to fraud
	If the Secretary establishes that any portion of an underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes (by a preponderance of the evidence) is not attributable to fraud.

Evidence of Fraud
Internal Revenue Manual- IRM Section 25.1.6.4 (06-10-2021) provides:
Since direct proof of fraudulent intent is rarely available, fraud must be proven by circumstantial evidence and reasonable inferences. Fraud generally involves one or more of the following elements:
• Deception;
<ul> <li>Misrepresentation of material facts;</li> </ul>
False or altered documents;
Evasion (i.e., diversion or omission).
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Common Indicators
<ul> <li>Understatement of income (e.g., omissions of specific items or entire sources of income, failure to report substantial amounts of income received);</li> </ul>
<ul> <li>Fictitious or improper deductions (e.g., overstatement of deductions, personal items deducted as business expenses);</li> </ul>
<ul> <li>Accounting irregularities (e.g., two sets of books, false entries on documents).</li> </ul>
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Common Indicators, cont.
<ul> <li>Obstructive actions of the taxpayer (e.g., false statements, destruction of records, transfer of assets, failure to cooperate with the examiner, concealment of assets);</li> </ul>
<ul> <li>A consistent pattern over several years of underreporting taxable income; and</li> </ul>
Implausible or inconsistent explanations of behavior.
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Common Indicators, cont.
<ul> <li>Engaging in illegal activities (e.g., drug dealing), or attempting to conceal illegal activities;</li> </ul>
<ul> <li>Inadequate records;</li> </ul>
<ul> <li>Dealing in cash, and;</li> </ul>
• Failure to file returns.
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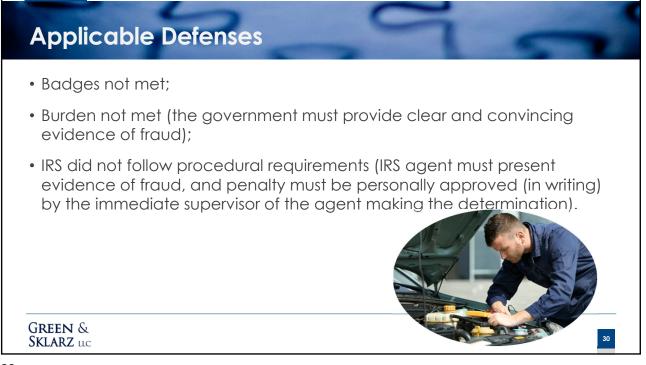
## Clark v. Comm'r, T.C.Memo 2021-114 (Sept. 28, 2021)

- Mr. Clark owned an auto shop.
- He substantially underreported his income on his tax returns.
- In these same years he filed financial statements with the bank to obtain lines of credit and also reported his finances during his divorce proceeds.
- When audited he did not provide IRS with bank records; he lied about his bank accounts; did not disclose or report his rental activity to the agent or on his tax returns; etc.



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Collateral Estoppel
• IRM 25.1.6.5 (06-10-2021)
<ul> <li>Prevents a taxpayer that has been previously convicted of criminal tax evasion under IRC 7201, from asserting a defense to the civil fraud penalty.</li> </ul>
<ul> <li>Taxpayer may still argue that the actual tax amount and the amount of the underpayment reported in the return due to fraud are incorrect.</li> </ul>
<ul> <li>The doctrine of collateral estoppel applies only to the years for which the taxpayer has been convicted.</li> </ul>
<ul> <li>Intent must be established for non-conviction years.</li> </ul>
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