Penalty Relief for Reasonable Cause

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- **Bank Account (Direct Pay)**
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You may qualify to have certain penalties removed or reduced if you acted with reasonable cause and in good faith.

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Reasonable Cause

Reasonable cause is determined on a case by case basis considering all the facts and circumstances of your situation.

Reasons that qualify for relief due to reasonable cause depend on the type of penalty you owe and the laws in the Internal Revenue Code (IRC) for each penalty.

Reasonable cause doesn't apply to certain penalties such as the estimated tax penalty.

For businesses, the reasons apply to the person with authority to submit the return, deposit, or tax.

Failure to File or Pay Penalties

You may qualify for penalty relief if you demonstrate that you exercised ordinary care and prudence and were nevertheless unable to file your return or pay your taxes on time.

Examples of valid reasons for failing to file or pay on time may include:

- Fires, natural disasters or civil disturbances
- Inability to get records
- Death, serious illness or unavoidable absence of the taxpayer or immediate family
- System issues that delayed a timely electronic filing or payment

For more information see Policy Statement 3-2.

The following factors **don't** generally qualify as valid reasons for failure to file or pay a tax on time:

- **Reliance on a tax professional.** You're generally responsible for complying with tax law even if someone else handles your taxes. You should know what your tax preparer files and get proof that your return or payment is sent on time.
- **Lack of knowledge.** You're responsible for knowing or getting advice on how to file returns and pay or deposit taxes on time. This includes filing requirements, deadlines and amounts you owe.
- **Mistakes and oversights.** You're responsible for making sure your tax returns, payments and deposits are correct and on time. In certain cases, reasonable cause may apply to a mistake if additional facts and circumstances show that you tried to comply with tax law.
- **Lack of funds.** By itself, lack of funds is not reasonable cause for failing to pay or deposit taxes due. However, you may qualify for relief based on other facts and circumstances that show you used reasonable care and tried to comply with tax law.

Accuracy-Related Penalties

If you received an accuracy-related penalty, you may qualify for penalty relief if you acted with reasonable cause and good faith. To determine whether you qualify, we consider factors including:

- Efforts you made to report the correct tax

- The complexity of the tax issue
- Your education, experience, or knowledge of tax law
- Steps you took to understand your tax obligation or seek help from a tax advisor

If you relied on a tax advisor, we may consider:

- Whether you provided all needed information
- Whether your advisor was competent and experienced with the tax situation

For more information see Treasury Regulation 1.6664-4.

Information Return Penalties

If you can show reasonable cause for failing to file accurate, timely information returns or payee statements, we may consider penalty relief if you prove:

- You acted in a responsible manner both before and after the failure by having:
    - Requested extensions of time to file when possible
    - Tried to prevent a foreseeable failure to file on time
    - Fixed any issues causing the failure
    - Corrected the failure as quickly as possible

- Along with acting in a responsible manner, you must also prove there were significant mitigating factors with respect to the failure or the failure happened due to events beyond your control such as:

- First time filer of the particular form or statement
- Good compliance history
- Actions by the IRS
- Actions of an agent
- Actions of another person
- Access to relevant business records
- Economic hardships that prevented electronic filing

For more information see Treasury Regulation 301.6724-1.

Apply for a Payment Plan

If you can't pay the full amount of your taxes or penalty on time, pay what you can now and apply for a payment plan. You may reduce future penalties when you set up a payment plan.

How to Request Penalty Relief

We may reduce or remove some penalties over the phone. Call the toll-free number at the top right corner of your notice to request penalty relief for reasonable cause and have supporting documentation.

Have this information when you call:

- The notice we sent you

- The penalty you want relieved
- The reasons you think we should remove it

During the call, if you apply for reasonable cause but we "determined" you qualify for First Time Abate, we'll apply the latter. If you don't qualify for either or we can't approve your relief over the phone, you can request relief in writing with Form 843, Claim for Refund and Request for Abatement.

To reduce or remove an estimated tax penalty, see:

- Underpayment of Estimated Tax by Individuals Penalty
- Underpayment of Estimated Tax by Corporations Penalty

Explain the facts and circumstances around your late return, deposit, or payment, including:

- What happened and when it happened
- How the situation prevented you from filing your return or paying your tax on time
- What attempts you made to file or pay your taxes

You should also include supporting documentation such as:

- Hospital, court records or a doctor's letter to confirm illness or incapacitation, with start and end dates
- Documentation of natural disasters or other disturbances
- Copies of relevant written letters and responses
- Copies of receipts, forms or other documentation

How to Appeal a Penalty Relief Decision

If you received a notice or letter saying we denied your request for penalty relief, see Penalty Appeal Eligibility for next steps.

Interest Relief

We charge interest on penalties. Interest increases the amount you owe until you pay your balance in full.

We'll automatically reduce or remove the related interest if we reduce or remove any of your penalties. Find more information about the interest we charge on penalties at Interest.

20.1.1.3.2 (11-21-2017)

Reasonable Cause

1. Reasonable cause is based on all the facts and circumstances in each situation and allows the IRS to provide relief from a penalty that would otherwise apply. Reasonable cause relief is generally granted when the taxpayer exercised ordinary business care and prudence in determining his or her tax obligations but was nevertheless unable to comply with those obligations.

2. In the interest of equitable treatment of the taxpayer and effective tax administration, the non-assertion or abatement of certain civil penalties based on reasonable cause or other relief provisions provided in this IRM must be made in a **consistent** manner and should conform with the considerations specified in the IRC, Treasury Regulations (Treas. Regs.), policy statements, and IRM Part 20.1, Penalty Handbook.

3. Reasonable cause relief is not available for all penalties; however, other exceptions may apply.

   A. For those penalties where reasonable cause can be considered, any reason which establishes that the taxpayer exercised ordinary business care and prudence, but nevertheless was unable to comply with a prescribed duty within the prescribed time, will be considered.

   B. If a reasonable cause provision applies only to a specific IRC section, that reasonable cause provision will be discussed in the IRM 20.1, Penalty Handbook, section relating to that specific IRC section. See *IRM 20.1.1.1.2*, Authority, and *Exhibit 20.1.1-1*, Penalty Relief Application Chart.

   C. When considering the information provided in the following subsections, remember that an acceptable explanation is **not** limited to those given in IRM 20.1. Penalty relief may be warranted based on an "other acceptable explanation," provided the taxpayer exercised ordinary business care and prudence but was nevertheless unable to comply within the prescribed time. See *IRM 20.1.1.3.2.2*, Ordinary Business Care and Prudence.

4. The wording used to describe reasonable cause provisions varies. Some IRC penalty sections also require evidence that the taxpayer acted in good faith or that the taxpayer's failure to comply with the law was not due to willful neglect. See specific IRM 20.1, Penalty Handbook, sections for the rules that apply to a specific IRC penalty section. See *IRM 20.1.1.1.2*, Authority.

5. Taxpayers have reasonable cause when their conduct justifies the non-assertion or abatement of a penalty. Each case must be judged individually based on the facts and circumstances at hand. Consider the following in conjunction with specific criteria identified in the remainder of this subsection:

   A. What happened and when did it happen?

   B. During the period of time the taxpayer was non-compliant, what facts and circumstances prevented the taxpayer from filing a return, paying a tax, and/or otherwise complying with the law?

   C. How did the facts and circumstances result in the taxpayer not complying?

   D. How did the taxpayer handle the remainder of his or her affairs during this time?

   E. Once the facts and circumstances changed, what attempt did the taxpayer make to comply?

6. Reasonable cause **does not exist** if, after the facts and circumstances that explain the taxpayer's noncompliant behavior cease to exist, the taxpayer fails to comply with the tax obligation within a reasonable period of time.

20.1.1.3.2.1 (10-19-2020)

Standards and Authorities

1. Any reason that establishes a taxpayer exercised ordinary business care and prudence but nevertheless failed to comply with the tax law may be considered for penalty relief.

2. The following Treas. Regs. contain examples of circumstances that may be helpful in determining if a taxpayer has established reasonable cause:

Regulation	Description
Treas. Reg. 1.6664–4	Accuracy-Related Penalties (see IRM 20.1.5)
Treas. Reg. 301.6651–1(c)	Failure to File a Tax Return and/or Failure to Pay tax Penalties (see IRM 20.1.2)
Treas. Reg. 301.6724–1	Information Returns Penalties (see IRM 20.1.7)
Treas. Reg. 1.6694–2(e)(1)-(6)	Tax Return Preparer Penalties (see IRM 20.1.6)
Treas. Reg. 301.6707-1(e)(3)	Material Advisor Penalties (see IRM 20.1.6.16)

3. The following Internal Revenue Service policy statements contain specific criteria that may affect the imposition of penalties:

- Policy Statement 20–2, Penalties and Interest Not Asserted Against Federal Agencies. See IRM 1.2.1.12.2.
- Policy Statement 3–2, Reasonable Cause for Late Filing of Return or Failure to Deposit or Pay Tax When Due. See IRM 1.2.1.4.2.
- Policy Statement 3–3, Timely Mailed Returns Bearing Foreign Postmarks to Be Accepted. See IRM 1.2.1.4.3.
- Policy Statement 3–5, Unsigned Income Tax Returns Will Not Be Accepted for Processing; Delinquency Penalty Generally Will Not Be Imposed on Timely Filed Unsigned Income Tax Returns. See IRM 1.2.1.4.5.

See IRM 1.2.1, Servicewide Policy Statements.

20.1.1.3.2.2 (02-22-2008)

Ordinary Business Care and Prudence

1. Ordinary business care and prudence includes making provisions for business obligations to be met when reasonably foreseeable events occur. A taxpayer may establish reasonable cause by providing facts and circumstances showing that he or she exercised ordinary business care and prudence (taking that degree of care that a reasonably prudent person would exercise), but nevertheless were unable to comply with the law.

2. In determining if the taxpayer exercised ordinary business care and prudence, review available information including the following:

A. **Taxpayer's Reason:** The taxpayer's reason should address the penalty imposed. To show reasonable cause, the dates and explanations should clearly correspond with events on which the penalties are based. If the dates and explanations do not correspond to the events on which the penalties are based, request additional information from the taxpayer that may clarify the explanation. See *IRM 20.1.1.3.2*, Reasonable Cause.

B. **Compliance History:** Check the preceding tax years (at least three) for payment patterns and the taxpayer's overall compliance history. The same penalty, previously assessed or abated, may indicate that the taxpayer is not exercising ordinary business care. If this is the taxpayer's first incident of noncompliant behavior, weigh this factor with other reasons the taxpayer gives for reasonable cause, since a first-time failure to comply does not by itself establish reasonable cause.

C. **Length of Time:** Consider the length of time between the event cited as a reason for the noncompliance and subsequent compliance. See *IRM 20.1.1.3.2*, Reasonable Cause. Consider: (1) when the act was required by law, (2) the period of time during which the taxpayer was unable to comply with the law due to circumstances beyond the taxpayer's control, and (3) when the taxpayer complied with the law.

D. **Circumstances Beyond the Taxpayer's Control:** Consider whether or not the taxpayer could have anticipated the event that caused the noncompliance. Reasonable cause is **generally** established when the taxpayer exercises ordinary business care and prudence, but, due to circumstances beyond the taxpayer's control, the taxpayer was unable to timely meet the tax obligation. The taxpayer's obligation to meet the tax law requirements is ongoing. Ordinary business care and prudence requires that the taxpayer continue to attempt to meet the requirements, even though late.

20.1.1.3.2.2.1 (11-25-2011)

Death, Serious Illness, or Unavoidable Absence

1. Death, serious illness, or unavoidable absence of the taxpayer, or a death or serious illness in the taxpayer's immediate family, may establish reasonable cause for filing, paying, or depositing late for the following:

A. **Individual:** If there was a death, serious illness, or unavoidable absence of the taxpayer or a death or serious illness in the taxpayer's immediate family (i.e., spouse, sibling, parents, grandparents, children).

B. **Corporation, estate, trust, etc.:** If there was a death, serious illness, or other unavoidable absence of the taxpayer (person responsible), or a member of such taxpayer's immediate family, and that taxpayer **had sole authority to execute the return, make the deposit, or pay the tax**.

2. If someone other than the taxpayer, or the person responsible, is authorized to meet the obligation, consider the reasons why that person did not meet the obligation when evaluating the request for relief. In the case of a business, if only one person was authorized, determine whether this was in keeping with ordinary business care and prudence.

3. Information to consider when evaluating a request for penalty relief based on reasonable cause due to death, serious illness, or unavoidable absence includes, but is not limited to, the following:

A. The relationship of the taxpayer to the other parties involved.

B. The date of death.

C. The dates, duration, and severity of illness.

D. The dates and reasons for absence.

E. How the event prevented compliance.

F. If other business obligations were impaired.

G. If tax duties were attended to promptly when the illness passed, or within a reasonable period of time after a death or return from an unavoidable absence.

20.1.1.3.2.2.2 (10-19-2020)

Fire, Casualty, Natural Disaster, or Other Disturbance-Reasonable Cause

1. Determine if the taxpayer could not comply timely because the taxpayer was an "affected taxpayer" eligible for disaster relief as provided for in IRM 25.16.1.3, Identification of Covered Disaster Area, Postponement Period and Affected Taxpayers. Also see *IRM 20.1.1.3.3.6*, Official Disaster Area.

2. For taxpayers not considered an "affected taxpayer," reasonable cause relief from a penalty may be requested if there was a failure to timely comply with a requirement to file a return or pay a tax as the result of a fire, casualty, natural disaster, or other disturbance. However, one of these circumstances by itself does not necessarily provide penalty relief.

3. Penalty relief may be appropriate if the taxpayer exercised ordinary business care and prudence, but due to circumstances beyond the taxpayer's control, he or she was unable to comply with the law.

4. Factors to consider include the following:

- Timing
- Effect on the taxpayer's business
- Steps taken to attempt to comply
- If the taxpayer complied when it became possible

5. The determination to grant relief from each penalty must be based on the facts and circumstances surrounding each individual case. Determine if the event resulted in a circumstance for which other penalty relief criteria may apply. For example, if the taxpayer was unable to access his or her records as the result of a fire. See *IRM 20.1.1.3.2.2.3*, Unable to Obtain Records. If the taxpayer, or responsible party, was unable to comply because he or she was hospitalized as the result of an accident. See *IRM 20.1.1.3.2.2.1*, Death, Serious Illness, or Unavoidable Absence.

20.1.1.3.2.2.3 (12-11-2009)

Unable to Obtain Records

1. Explanations relating to the inability to obtain the necessary records may constitute reasonable cause in some instances, but may not in others.

2. Consider the facts and circumstances relevant to each case and evaluate the request for penalty relief.

3. If the taxpayer was unable to obtain records necessary to comply with a tax obligation, the taxpayer may or may not be able to establish reasonable cause. Reasonable cause may be established if the **taxpayer exercised ordinary business care and prudence, but due to circumstances beyond the taxpayer's control, he or she was unable to comply.**

4. Information to consider when evaluating such a request includes, but is not limited to, an explanation as to the following:

- Why the records were needed to comply.
- Why the records were unavailable and what steps were taken to secure the records.
- When and how the taxpayer became aware that he or she did not have the necessary records.
- If other means were explored to secure needed information.
- Why the taxpayer did not estimate the information.
- If the taxpayer contacted the IRS for instructions on what to do about missing information.
- If the taxpayer promptly complied once the missing information was received.
- Supporting documentation such as copies of letters written and responses received in an effort to get the needed information.

20.1.1.3.2.2.4 (12-11-2009)

Mistake Was Made

1. The taxpayer may try to establish reasonable cause by claiming that a mistake was made. Generally, this is **not** in keeping with the **ordinary business care and prudence standard** and does not provide a basis for reasonable cause.

2. However, the reason for the mistake may be a supporting factor if additional facts and circumstances support the determination that the taxpayer exercised ordinary business care and prudence but nevertheless was unable to comply within the prescribed time.

3. Information to consider when evaluating a request for an abatement or non-assertion of a penalty based on a mistake or a claim of ignorance of the law includes, but is not limited to the following:

   A. When and how the taxpayer became aware of the mistake.

   B. The extent to which the taxpayer corrected the mistake.

   C. The relationship between the taxpayer and the subordinate (if the taxpayer delegated the duty).

   D. If the taxpayer took timely steps to correct the failure after it was discovered.

   E. The supporting documentation.

20.1.1.3.2.2.5 (11-21-2017)

Erroneous Advice or Reliance

1. Each request for penalty relief should be reviewed thoroughly to determine the exact basis of the taxpayer's request.

   A. Is the taxpayer claiming he or she did not comply due to specific advice he or she received from someone, whether orally or in writing, or

   B. Is the taxpayer claiming he or she relied on someone else to comply on his or her behalf?

2. Certain sections of the IRC and Treasury Regulations provide relief from certain penalties based on erroneous advice. See *IRM 20.1.1.3.3.4*, Advice, to first determine if a statutory exception or administrative waiver applies.

3. If the taxpayer states he or she relied on written or oral advice from the IRS but does not qualify for relief in accordance with the criteria in *IRM 20.1.1.3.3.4.1*, Written Advice From the IRS, or *IRM 20.1.1.3.3.4.2*, Oral Advice From the IRS, refer to *IRM 20.1.1.3.2.2*, Ordinary Business Care and Prudence, to determine if the taxpayer exercised ordinary business care and prudence in relying on the IRS's advice.

4. The taxpayer may try to establish reasonable cause by claiming he or she relied on another party to comply on his or her behalf. Generally, this is **not** a basis for reasonable cause, particularly for filing or paying obligations, since **the taxpayer is responsible for meeting his or her tax obligations and that responsibility cannot be delegated**. However, other factors to consider include:

   A. Was the taxpayer unable to comply because he or she did not have access to his or her own records? See *IRM 20.1.1.3.2.2.3*, Unable to Obtain Records.

   B. Was the failure to comply due to a change in the tax law the taxpayer could not reasonably be expected to know? See *IRM 20.1.1.3.2.2.6*, Ignorance of the Law.

5. Consider all facts and circumstances presented by the taxpayer to determine if, despite the exercise of ordinary business care and prudence, the taxpayer nevertheless was unable to comply.

20.1.1.3.2.2.6 (11-25-2011)

Ignorance of the Law

1. In some instances taxpayers may not be aware of specific obligations to file and/or pay taxes. The **ordinary business care and prudence standard** requires that taxpayers make reasonable efforts to determine their tax obligations. See *IRM 20.1.1.3.2.2*, Ordinary Business Care and Prudence.

2. Reasonable cause may be established if the taxpayer shows ignorance of the law in conjunction with other facts and circumstances. For example, consider the following:

   A. The taxpayer's education.

   B. If the taxpayer has previously been subject to the tax.

   C. If the taxpayer has been penalized before.

   D. If there were recent changes in the tax forms or law which a taxpayer could not reasonably be expected to know.

   E. The level of complexity of a tax or compliance issue.

3. Reasonable cause should never be presumed, even in cases where ignorance of the law is claimed.

4. The taxpayer may have reasonable cause for noncompliance due to ignorance of the law if the following are true:

   A. A reasonable and good faith effort was made to comply with the law, or

   B. The taxpayer was unaware of a requirement and could not reasonably be expected to know of the requirement.

20.1.1.3.2.2.7 (08-05-2014)

Forgetfulness

1. The taxpayer may try to establish reasonable cause by claiming forgetfulness or an oversight by the taxpayer, or another party, caused the noncompliance. Generally, this is **not** in keeping with the **ordinary business care and prudence standard** and does not provide a basis for reasonable cause. See *IRM 20.1.1.3.2.2*, Ordinary Business Care and Prudence.

2. If the taxpayer claims forgetfulness or an oversight by another party, consider the following:

   A. Relying on another person to perform a required act is generally not sufficient for establishing reasonable cause.

   B. **It is the taxpayer's responsibility to file a timely return and to make timely deposits or payments. This responsibility cannot be delegated**.

20.1.1.3.3 (11-25-2011)

Statutory Exceptions and Administrative Waivers

1. This subsection addresses statutory exceptions and administrative waivers. These two very separate categories are placed together because in many instances an administrative waiver is an extension of rules that were provided for by statute.

20.1.1.3.3.1 (10-19-2020)

Statutory and Regulatory Exceptions

1. Tax legislation may provide an exception to a penalty. Specific statutory exceptions can be found in either the penalty-related IRC section(s) or the accompanying regulation(s). For example:

Legal Reference	Title	IRM Reference
IRC 6654(e)(1), (2), or (3)	Estimated Tax Penalties (ES)	IRM 20.1.3
IRC 7502(a) and IRC 7502(e) (IRC 7502(e) does not apply to deposits due after Dec. 31, 2010)	Timely Mailing Treated as Timely Filing and Paying	IRM 20.1.2 and IRM 20.1.4
IRC 6724	Waiver; Definitions and Special Rules, Information Return Penalties	IRM 20.1.7.12
IRC 6404(f)	Abatement of Any Penalty or Addition to Tax Attributable to Erroneous Written Advice by the Internal Revenue Service	*IRM 20.1.1.3.3.4.1*
IRC 7508	Time for Performing Certain Acts Postponed by Reason of Service in Combat Zone. This	IRM 20.1.2.2.2.1, *Combat Zone-IRC 7508*

Legal Reference	Title	IRM Reference
	provision applies only in a **presidentially** declared Combat Zone	
IRC 7508A and Treas. Reg. 301.7508A-1	Authority to Postpone Certain Deadlines by Reason of Federally Declared Disaster or Terroristic or Military Actions	IRM 25.16.1, *Disaster Assistance and Emergency Relief, Program Guidelines* and IRM 20.1.2.2.2.2, *Federal Disaster Area-IRC 7508A*

2. Legislation with retroactive provisions may provide guidance on associated penalties. As a result of that retroactive provision, the IRS may issue a news release or other guidance with instructions for the disposition of the related penalties.

3. IRC 6205 provides for an interest-free adjustment when an employer underreported and underpaid certain employment taxes if specific conditions are met by the employer to report the error and pay the tax due. Prior to Jan. 1, 2009, IRC 6205 and related Treasury Regulations were silent in regard to penalties. Consequently, IRS extended an administrative waiver to certain penalties. See *IRM 20.1.1.3.3.2*, Administrative Waivers.

   A. The regulations under IRC 6205 provide that an interest-free adjustment cannot be made if the failure to report relates to an issue that was raised in an examination of a prior return period or if the employer knowingly underreported its employment tax liability.

   B. Also, under the regulations, an interest-free adjustment cannot be made after receipt of notice and demand for payment or after receipt of Letter 3523, Notice of Employment Tax Determination under IRC Section 7436.

4. Effective Jan. 1, 2009, Treas. Reg. 31.6205–1 and Treas. Reg. 31.6302–1 have been amended for interest-free adjustments. When all conditions have been met for an employer to qualify for an interest-free adjustment, the amount timely paid will be deemed to have been timely deposited by the employer. In other words, **tax deemed to have been timely deposited** is not subject to the failure to deposit (FTD), failure to pay (FTP), and failure to file (FTF) penalties. See IRM 21.7.2.4.6, Adjusted Employer's Federal Tax Return or Claim for Refund, IRM 20.1.2, Failure to File/Failure to Pay Penalties, and IRM 20.1.4, Failure to Deposit Penalty, for required procedures and additional information.

   A. When all regulatory requirements have been met for the amount paid to be considered timely deposited by the employer, penalties should not be assessed.

   B. If penalties were assessed, the account must be carefully reviewed to determine if penalty relief is appropriate, and if so, the correct reason for relief. Did the taxpayer state he or she met all requirements for an interest-free adjustment?

If	And	Then
The adjustment was input with Transaction Code (TC) 290, see IRM 21.7.2.4.6, Adjusted Employer's Federal Tax Return or Claim for Refund, to determine if reversal of the TC 290 and reassessment with TC 298 is appropriate,	Manual penalty reversal is required (Master File will automatically reverse systemic penalty assessments),	Use Penalty Reason Code (PRC) 044.
The adjustment was input with TC 298,	IRS asserted the penalty or penalties **incorrectly**,	Refer to *IRM 20.1.1.3.4*, Correction of Service Error.
The adjustment was input with TC 298,	IRS asserted the penalty or penalties **correctly**,	Explain the reason for the penalty or penalties to the taxpayer.
The taxpayer did not meet all requirements for an interest-free adjustment,	Established he or she was unable to comply timely due to reasonable cause and not due to willful neglect, (see *IRM 20.1.1.3.2*, Reasonable Cause),	Use the appropriate PRC for penalty abatement listed in *Exhibit 20.1.1-2*, Penalty Reason Code Chart.

20.1.1.3.3.2 (08-05-2014)

Administrative Waivers

1. The IRS may formally interpret or clarify a provision to provide administrative relief from a penalty that would otherwise be assessed. An administrative waiver may be addressed in either a policy statement, news release, or other formal communication stating that the policy of the IRS is to provide relief from a penalty under specific conditions.

Example:

An example of an administrative waiver is Notice 98-30, IRB 1998-22. This allowed a temporary waiver of the failure to deposit penalty for certain taxpayers first required to make federal tax deposits by EFTPS beginning on or after July 1, 1997.

2. An administrative waiver may be necessary when there is a delay by the IRS in the following:

   A. Printing or mailing forms,

   B. Publishing guidance (e.g. writing Regulations), or

   C. Other conditions.

3. IRC 6205 permits adjustments to be made, without interest, to correct underpayments of employment taxes. The amount of the underpayment must be paid by the time an adjusted return (e.g., Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund) is filed or interest will begin to accrue from that date.

4. For errors discovered on or after January 1, 2009, see *IRM 20.1.1.3.3.1*, Statutory and Regulatory Exceptions, for penalty information related to interest-free adjustments for employment taxes.

5. For errors discovered prior to Jan. 1, 2009, take the following action to meet the IRS's responsibility to provide fair and consistent treatment to taxpayers:

A. For an increase of tax that qualifies for an interest-free adjustment, the IRS will not assess failure to file (TC 16X), failure to pay (TC 27X), or failure to deposit (TC 18X) penalties; provided the tax increase was paid by the due date of the tax period in which additional tax was ascertained.

Note:

If there's a previously assessed TC 16X, on the tax period, it may be necessary to restrict the failure to file penalty by entering a TC 160 .00 on the adjustment.

B. The tax adjustment will be represented by a TC 298/308, with an interest computation date.

C. If one of the previously identified penalties has been assessed and a request for abatement is received, the abatement will be done as an administrative waiver if the penalty is based on the TC 298/308 tax increase (provided the tax increase was paid by the due date of the tax period in which it was ascertained).

20.1.1.3.3.2.1 (10-19-2020)

First Time Abate (FTA)

1. IRS provides administrative relief from the following penalties if the qualifying criteria contained in this subsection are met:

A. Failure to file (FTF) penalty under IRC 6651(a)(1), IRC 6698(a)(1), or IRC 6699(a)(1),

B. Failure to pay (FTP) penalty under IRC 6651(a)(2) and/or IRC 6651(a)(3), and

C. Failure to deposit (FTD) penalty under IRC 6656.

2. This administrative waiver, implemented in 2001, is referred to as First Time Abate (FTA) and is available for penalty relief the first time a taxpayer is subject to one or more of the referenced penalties for a single return. However, even when FTA criteria outlined in paragraphs (4)-(6) have otherwise been met, do not provide penalty relief under the FTA waiver unless the following are also true:

A. The taxpayer has filed, or filed a valid extension for, all required returns currently due, AND

B. The taxpayer has paid, or arranged to pay, any **tax** currently due.

Note:

Although reported as a tax on Form 1040, this does not include an unpaid Shared Responsibility Payment (SRP) applicable under IRC 5000A(b).

- When determining if the taxpayer has filed, or filed a valid extension for, all returns currently due, consider the taxpayer current with this requirement if the taxpayer states they filed any missing return or timely extension to file whose due date is no more than 45 days prior to the current date. For returns or extensions to file that were due more than 45 days prior to the current

date, either secure a processable copy of each return or request evidence that a valid and timely extension request was filed, as applicable.

Example:

If considering penalty relief on May 25, 2021 and the taxpayer otherwise meets FTA criteria, consider the taxpayer current for the 2020 Form 1040 if the taxpayer states that the return or an extension request was filed, even if no record of the return or the extension can be found.

- Do not consider the taxpayer current in filing a required return if the assessment is made via an unagreed "substitute for return" (SFR) pursuant to IRC 6020(b).

- When determining if the taxpayer has paid, or arranged to pay, any tax currently due, consider the taxpayer current with this requirement if they have a valid open payment plan (e.g., Short Term Payment Plan or an installment agreement) and are current with the required installment payments.

Example:

A taxpayer called IRS on October 25, 2019 and requested the FTA waiver for FTF and FTP penalty relief on their 2017 Form 1040. Discussion with the taxpayer and research of the module confirmed that there were no corrective actions needed (e.g., correction to tax, missing payments, missing request for an extension of time to file). Review of the taxpayer's account supported that all FTA eligibility criteria were met, all required returns were filed, and a current installment agreement for any remaining balances due (2017 and 2018 Forms 1040) showed all required payments to date were timely received. The FTA waiver may be granted for penalty relief on the 2017 Form 1040 module.

Example:

A taxpayer called IRS on July 30, 2019 and asked for a 60-day Short Term Payment Plan for their 2017 and 2018 Form 1040 balances due and requested the FTA waiver for FTF and FTP penalty relief on their 2017 Form 1040. Discussion with the taxpayer and research confirmed there were no corrective actions needed (e.g., correction to tax, missing payments, missing request for an extension of time to file). The 60-day Short Term Payment Plan was input as requested. Since review of the taxpayer's account supported that all FTA eligibility criteria were met, all required returns were filed, and all balance due modules (2017 and 2018 Forms 1040) reflected the current 60-day Short Term Payment Plan, the FTA waiver may be granted for penalty relief on the 2017 Form 1040 module.

1. The Reasonable Cause Assistant (RCA) is programmed to determine if FTA criteria are met. Refer to *IRM 20.1.1.3.6*, Reasonable Cause Assistant, for RCA policy and additional FTA guidelines in *IRM 20.1.1.3.6.1*, RCA and First Time Abate (FTA) Consideration, when RCA is used.

Exception:

RCA is unable to determine if the taxpayer has filed all returns and paid, or arranged to pay, all tax currently due. The account must be reviewed manually to determine if these criteria have been met prior to removing any penalties under the FTA waiver.

2. The following FTA waiver eligibility criteria applies to all taxpayers:

Note:

When determining if FTA criteria are met, the criteria below applies to the same MFT as the penalized MFT unless the penalized MFT is 01, 14, 30, or 31. If the penalized MFT is 01 or 14, the criteria applies to both MFTs 01 AND 14. If the penalized MFT is 30 or 31, the criteria applies to both MFTs 30 AND 31.

1. The tax period ending date is later than Dec. 31, 2000, and

2. The taxpayer has not been required to file the same return, or no tax modules for the same return are in TDI Status 02, 03, or 04 (IMF), for the 3 years preceding the penalized tax period (see Exception), and

3. If required to file the same return during the preceding 3 years, has no unreversed penalties (except an estimated tax penalty, TC 17X) ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ and a notice was issued showing the assessed penalty or penalties (a module balance cleared with a TC 606 indicates a notice showing the assessed penalty or penalties **was not** issued), and

4. If required to file the same return during the preceding 3 years, has no penalties manually suppressed or reversed with Penalty Reason Code (PRC) 018 (FTA, RCA not used), 020 (FTA, RCA used), or 021 (Tolerance). See *Exhibit 20.1.1-2*, Penalty Reason Code Chart (see Exception).

Exception:

If subsequent information shows the taxpayer was either not required to file a return or that they did in fact comply and were not subject to any penalty on a module on which a penalty abatement was input with PRC 018, 020, or 021, consider the taxpayer compliant for that module.

Note:

If a MFT 06, 07, or 08 module for the first tax year beginning after December 31, 2015, and before January 1, 2017, contains a penalty abatement input with PRC 018 (or 020) AND a TC 971 with Action Code 199 stating **PER NOTICE 2017-47**, disregard the penalty reversal that was input with PRC 018 (or 020). Public Law 114-41 changed the due date of returns processed on MFTs 06, 07, and 08 from the fifteenth day of the fourth month following the close of the taxable year to the fifteenth day of the third month following the close of the taxable year for tax years beginning after December 31, 2015. Notice 2017-71(which superseded Notice 2017-47) provides penalty relief for the first return due for a taxable year beginning in 2016 that would have been timely if not for the due date change. The Notice also provided that taxpayers qualifying for relief would not be treated as having received a first-time abatement. A TC 971 with Action Code 199 stating **PER NOTICE 2017-47** was input on all modules meeting relief criteria, however, some penalties were incorrectly abated with PRC 018 (or 020) prior to input of the TC 971.

1. When determining if FTA criteria are met for penalties assessed on MFT 30 or 31, the taxpayer(s) must meet FTA criteria on all returns required to be filed as a primary and secondary taxpayer, if applicable.

Example:

If the filing status of the return on the penalized period is Married Filing Joint and the required returns in the preceding 3 years were not filed under the same primary SSN and with the same filing status and same primary and secondary SSNs, FTA criteria for both SSNs must be met.

Example:

If the filing status on the return on the penalized period is other than Married Filing Joint and the taxpayer filed, or was required to file, as a secondary taxpayer during the preceding 3 years, FTA criteria must be met for all returns on which the taxpayer was reported, or was required to be reported, as the secondary taxpayer on a joint return.

2. In addition to the criteria in paragraph (4), FTA criteria will not be met on BMF accounts if any of the following is true:

1. A total of four or more FTD penalty waiver codes are present in the taxpayer's three-year penalty history. Waiver Code 24 is set when the FTD penalty is waived due to a change in deposit frequency. Waiver Code 25 is set when the FTD penalty is waived per IRM 20.1.4.3, Restrictions on Assessments, criteria. Waiver codes, if posted, are shown in Command Code (CC) BMFOL definer R with the literal FTD PEN WAIVER CD.

Note:

Some employers with COVID-19 credits that filed Form 941 for tax period ending June 30, 2020 followed directions per Notice 2020-22, Relief from Penalty for Failure to Deposit Employment Taxes, and also existing instructions for Form 941 and Schedule B when reporting their liabilities. This caused some employers to incur an FTD penalty. Due to this issue, disregard Waiver Code 25 for MFT 01 for tax period ending June 30, 2020 when determining if FTA criteria are met.

2. The FTD penalty is charged for EFTPS avoidance. However, if the taxpayer made some deposits electronically by EFTPS as required but not all and all other FTA criterion are met, any portion of an FTD penalty not attributable to EFTPS avoidance can be removed or suppressed. If the portion of the penalty attributable to EFTPS avoidance meets IRM 20.1.4.3, Restrictions on Assessments, criteria, remove the penalty in full.

3. Review of the three-year look back period shows the Form 1120, U.S. Corporation Income Tax Return, or Form 1120-S, U.S. Income Tax Return for an S Corporation, was filed late but not penalized.

Note:

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4. The penalty is charged for an incomplete Form 1120-S under IRC 6699(a)(2) or Form 1065 under IRC 6698(a)(2). See IRM 20.1.2.6, Failure to File S Corporation Return-IRC 6699, and IRM 20.1.2.4, Failure to File a Partnership Return-IRC 6698. An incomplete return penalty is assessed on MFT 02 or 06 with a TC 246 or a TC 240 without a three digit penalty reference number (PRN). Taxpayers that file an incomplete Form 1120-S or Form 1065 are provided an opportunity to submit the missing information before the incomplete return penalty is assessed.

3. In addition to the criteria contained in paragraphs (4)-(6), penalty relief under the FTA waiver does not apply to the following:

- Returns with an event-based filing requirement, generally returns filed once or infrequently such as Form 706, U.S. Estate Tax Return, and Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return.
- The daily delinquency penalty (DDP), see e.g., IRC 6652(c)(2)(A) and IRM 20.1.8, Employee Plans and Exempt Organization Penalties.
- Information reporting that is dependent on another filing, such as various forms that are attached.

Example:

Penalties assessed against a late or unfiled Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, or Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. See IRM 20.1.9, International Penalties.

- This list is not all inclusive.

1. FTA is an administrative waiver and does not carry any oral statement authority (OSA) threshold. See *IRM 20.1.1.3.1*, Unsigned or Oral Requests for Penalty Relief, for OSA guidelines.

2. As stated in paragraph (2), penalty relief under the FTA waiver only applies to a single tax period. Further, penalty relief under the FTA waiver only applies to a tax period for which the qualifying criteria in paragraphs (4)-(6), as applicable, have been met. In addition, the FTA waiver is not applicable based solely on a taxpayer's first request for penalty relief.

Example:

If a Form 941 filer was compliant for calendar years 2013, 2014, and 2015 but made late deposits and was assessed FTD penalties on all 4 2016 tax periods, FTA criteria can only be met and the waiver applied to the tax period ended 201603. Reasonable cause criteria must be met for tax periods 201606, 201609, and 201612.

Example:

If the same Form 941 filer was not compliant during calendar year(s) 2013, 2014, and/or 2015 but didn't request penalty relief for those years and their first request for penalty relief is for the 4 FTD penalties on their 2016 returns, penalty relief under the FTA waiver is not appropriate for any of the 2016 penalties.

3. An FTA waiver is not penalty-specific. In other words, if the taxpayer has any unreversed penalties (except an ES penalty) on a module in the three-year look-back period, or any penalties reversed with PRC 018, 020, or 021, the FTA waiver does not apply to any penalty on the module under consideration.

Example:

If a taxpayer was assessed an FTD penalty and no other penalties on Form 941 for tax period 201703 and a review of the three-year look-back period shows an unreversed FTP penalty ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ (and a notice was issued), or the FTP penalty was removed with PRC 018, 020, or 021, the FTA waiver does not apply for 201703 tax module.

4. Per *IRM 20.1.1.3*, Criteria for Relief From Penalties, penalty relief under Administrative Waivers, including FTA, is to be considered and applied before reasonable cause. If FTA criteria are met, the FTA waiver will be applied before reasonable cause and the taxpayer must be notified that we removed their penalty or penalties based on their prior history of compliance and not based on their reasonable cause statement.

Caution:

Do not provide relief under the FTA waiver if there is clear and convincing evidence that the taxpayer did in fact comply and is not subject to any penalties or if the penalty or penalties is/are the result of an IRS error. Take appropriate corrective actions that will result in systemic reversal of the penalty or penalties. If the module is restricted from removing the penalty or penalties systemically or the penalty or penalties is/are clearly the result of an IRS error then input the penalty abatement transaction(s) with penalty reason code (PRC) 045.

5. When penalty relief under the FTA waiver is granted, notify the taxpayer that the penalty or penalties have been removed based on their prior history of compliance and not based on a reasonable cause explanation provided, if applicable. Correspondex Letters 168C, 3502C (RCA only), and 3503C (RCA only), as well as ICS (integrated collection system) macro letters 4722, 4723, and 4724, contain appropriate paragraphs to use for this notification requirement. The following is an example of this paragraph:

Example:

We approved your request to remove the penalties. However, we only granted penalty relief because you have a good history of filing and paying on time. This type of penalty removal is only available one time. We will base our decisions to remove any future penalties on reasonable cause criteria.

Note:

When applicable, include an explanation that educates the taxpayer how to be compliant in the future. Examples of when an explanation may not be applicable include deceased taxpayers and telephone contacts during which an explanation was provided verbally.

6. If the tax is not paid in full on the module that meets FTA criteria and the taxpayer is current with installment agreement payments (and has filed all returns currently due), allow abatement of the FTP penalty under the FTA waiver determined to the current date and use reason code **(RC) 062** with the TC 271. While the FTA waiver is an administrative waiver and not reasonable cause, the **RC 062** will not restrict Master File from continuing to compute the FTP penalty on the unpaid tax and is to be used in this instance only.

Note:

An open paragraph must be used in Correspondex Letters 168C, 3502C, and 3503C to inform the taxpayer that the FTP penalty will continue to apply to the unpaid tax. After the tax is paid in full, the additional FTP penalty can be removed under the FTA waiver.

Caution:

If the tax is paid in full or the taxpayer has agreed to pay the balance owed immediately upon receipt of notice of abatement of the penalty (see IRM 20.1.2.2.4.1(9), Penalty Abatements and Re-assessments), allow abatement or suppression of the assessed amount of FTP penalty (i.e., input TC 270 for $0.00 if the module only reflects accrued FTP). On IMF modules, use RC 065.

7. Per *IRM 20.1.1.5.1*, Master File Penalty Reason Codes, a PRC is required when abating an assessed penalty or suppressing a penalty that is otherwise applicable. The FTA waiver carries its own PRCs as follows:

- **PRC 018** - To be used when an independent determination of the taxpayer's eligibility for penalty relief under the FTA waiver is made. This includes situations where RCA is used but RCA did not determine FTA criteria have been met.
- **PRC 020** - To be used when RCA is used and RCA displays a message indicating the module under review meets FTA criteria. This includes situations where RCA displays a message indicating one or more modules in the three-year history have been moved to the retention register and manual review of the module(s) moved to the retention register confirms FTA criteria have been met.

8. Taxpayers are not required to specifically request penalty relief under the FTA waiver to be eligible for the waiver. If one or more penalties eligible for relief under the FTA waiver remain after all account discrepancies have been corrected, and/or are being proposed in the course of an examination, abatement or suppression of the penalty or penalties should be made if all FTA criteria have been met.

20.1.1.3.3.3 (08-05-2014)

Undue Hardship

1. An undue hardship may support the granting of an extension of time for paying a tax or deficiency (i.e., Form 1127, Application for Extension of Time for Payment of Tax Due to Undue Hardship). Treas. Reg. 1.6161-1(b), provides that an undue hardship must be more than an inconvenience to the taxpayer. The taxpayer must show that he or she would sustain a substantial financial loss if **required to pay** a tax or deficiency on the due date.

   A. Undue hardship generally **does not** affect a person's ability to file and therefore would not provide a basis for penalty relief in a failure to file situation. However, each request must be considered on a case-by-case basis.

   B. Undue hardship may establish reasonable cause for failure to file on magnetic media under Treas. Reg. 301.6724–1. See IRM 20.1.7, Information Return Penalties.

2. The extension of time to pay does not provide the taxpayer with an extension of time to file. Nor does the extension of time to pay relieve the taxpayer of any appropriate penalties. See IRM 20.1.2.2.3.2, Extensions of Time to Pay-IRC 6161.

3. Undue hardship **may** also support relief from the addition to tax for failure to pay tax if the explanation for the noncompliance supports such a determination. However, the mere inability to pay **does not** ordinarily provide the basis for granting penalty relief. Under Treas. Reg. 301.6651–1(c), the taxpayer must also show that he or she exercised ordinary business care and prudence in providing for the payment of the tax liability.

A. The taxpayer may claim that enough funds were on hand, but as a result of unanticipated events, the taxpayer was unable to pay the taxes.

B. Consider an individual taxpayer's inability to pay a factor when considering penalty relief if the taxpayer shows that, had the payment been made on the payment due date, undue hardship (as defined in Treas. Reg. 1.6161–1(b)) would have resulted.

C. In the case where a taxpayer files bankruptcy, consider inability to pay a factor if the insolvency occurred before the tax payment due date.

4. If payroll was met, taxes were withheld and should be available for deposit. Employers must reserve money withheld from employees' wages in trust until deposited. The employer should not use the money for any other purpose. Undue hardship does not support relief from the penalty under IRC 6672, Failure to Collect and Pay Over Tax, or Attempt to Evade or Defeat Tax (Trust Fund Recovery Program).

5. Information to consider when evaluating a request for penalty relief includes, but is not limited to, the following:

A. When did the taxpayer know he or she could not pay?

B. Why was the taxpayer unable to pay?

C. Did the taxpayer explore other means to secure the necessary funds?

D. What did the taxpayer supply in the way of supporting documentation, such as copies of bank statements?

E. Did the taxpayer pay when the funds became available?

6. Use the appropriate PRC if penalty relief is warranted. See *Exhibit 20.1.1-2*.

20.1.1.3.3.4 (08-05-2014)

Advice

1. This section discusses the following three basic types of advice that may qualify for statutory, regulatory, or administrative penalty relief:

A. Written advice provided by IRS

B. Oral advice provided by IRS

C. Advice provided by a tax professional

2. Information to consider when evaluating a request for abatement or non-assertion of a penalty due to reliance on advice includes, but is not limited to, the following:

A. Was the advice in response to a specific request and was the advice received related to the facts contained in that request?

B. Did the taxpayer reasonably rely on the advice?

3. The following instances address some situations where penalty relief may not be appropriate even though the taxpayer relied on written advice from the IRS regarding an item on a filed return:

A. The taxpayer did not reasonably rely on the advice regarding an item **included on a return** if the advice was received after the date the return was filed.

Note:

A taxpayer may be considered to have reasonably relied on advice received after the return was filed if he or she then filed an amended return that conformed with such written advice.

B. A taxpayer may not be considered to have reasonably relied on written advice **unrelated** to an item included on a return, such as advice on the payment of estimated taxes, if the advice is received after the estimated tax payment was due.

C. If the taxpayer, or his or her authorized representative, provided the IRS or the tax professional with adequate and accurate information, the taxpayer is entitled to penalty relief for the period during which he or she relied on the advice. The period continues until the taxpayer **is placed on notice** that the advice is no longer correct or no longer represents the IRS's position.

4. The taxpayer is **placed on notice** as the result of any of the following events that present a contrary position and occur after the issuance of the written advice:

A. Written correspondence from the IRS that its advice is no longer correct or no longer represents the IRS's position.

B. Enactment of legislation or ratification of a tax treaty.

C. A U.S. Supreme Court decision.

D. The issuance of temporary or final regulations.

E. The publication of a revenue ruling, revenue procedure, or other statement in the Internal Revenue Bulletin (IRB).

5. Generally, Form 843, Claim for Refund and Request for Abatement, is required to be filed to request penalty abatement based on erroneous written advice by the IRS. However, if Form 843 is not filed and the information provided demonstrates that abatement of the penalty is warranted, the penalty should be abated, whether or not a Form 843 is provided. Information required to be provided includes the following:

A. The taxpayer's written request for advice,

B. The erroneous written advice furnished by the IRS to the taxpayer and relied on by the taxpayer, and

C. The report (if any) of tax adjustments that identifies the penalty or addition to tax and the item relating to the erroneous written advice.

20.1.1.3.3.4.1 (11-25-2011)

Written Advice From the IRS

1. The IRS is required by IRC 6404(f) and Treas. Reg. 301.6404-3 to abate any portion of any penalty attributable to erroneous written advice furnished by an officer or employee of the IRS acting in his or her official capacity.

2. If the taxpayer does not meet the criteria for penalty relief under IRC 6404(f), the taxpayer may qualify for other penalty relief. For instance, taxpayers who fail to meet all of the IRC 6404(f) criteria may still qualify for relief under reasonable cause if the IRS determines that the taxpayer

exercised ordinary business care and prudence in relying on the IRS's written advice. See *IRM 20.1.1.3.2.2.5*, Erroneous Advice or Reliance.

3. Requests that qualify for penalty relief based on erroneous written advice from the IRS under IRC 6404(f) must be filed according to the following under Treas. Reg. 301.6404-3(e):

A. Within the period allowed for collection of the penalty or addition to tax, or

B. If the penalty or addition to tax has been paid, within the period allowed for claiming a credit or refund of such penalty or addition to tax.

20.1.1.3.3.4.2 (12-11-2009)

Oral Advice From IRS

1. The IRS may provide penalty relief based on a taxpayer's reliance on erroneous oral advice from the IRS where the penalty allows relief for reasonable cause. The IRS is required by IRC 6404(f) and Treas. Reg. 301.6404–3 to abate any portion of any penalty attributable to erroneous **written** advice furnished by an employee acting in his or her official capacity. Administratively, the IRS has extended this relief to include erroneous oral advice when appropriate.

2. In addition to considering the criteria provided in Treas. Reg. 301.6404–3, *IRM 20.1.1.3.3.4*, Advice, and *IRM 20.1.1.3.3.4.1*, Written Advice From the IRS, consider the following:

A. Did the taxpayer exercise ordinary business care and prudence in relying on that advice?

B. Was there a clear relationship between the taxpayer's situation, the advice provided, and the penalty assessed?

C. What is the taxpayer's prior tax history and prior experience with the tax requirements?

D. Did the IRS provide correct information by other means (such as tax forms and publications)?

E. What type of supporting documentation is available?

3. The following is supporting documentation:

A. A notation of the taxpayer's question to the IRS,

B. Documentation regarding the advice provided by the IRS,

C. Information regarding the office and method by which the advice was obtained,

D. The date the advice was provided, and

E. The name of the employee who provided the information.

20.1.1.3.3.4.3 (11-21-2017)

Advice From a Tax Advisor

1. Reliance on the advice of a tax advisor generally relates to the reasonable cause exception in IRC 6664(c) for the accuracy-related penalty under IRC 6662. See IRM 20.1.5.7.4, Reliance on Advice, and Treas. Reg. 1.6664–4(c).

2. However, in very limited instances, reliance on the advice of a tax advisor may provide relief from other penalties when the tax advisor provides advice on a substantive tax issue.

Example:

The employer researched all available IRS publications on the subject of contract labor, provided clear and convincing documentation as to the duties of the workers to the tax advisor, and requested an opinion from the tax advisor as to whether the workers were "contract labor" or "employees." As a result, the tax advisor advised the employer that the workers were "contract labor." However, the IRS later determined that the workers were "employees" and not "contract labor."

3. Penalty relief based on reliance on the advice of a tax advisor is limited to issues generally considered technical or complicated. **The taxpayer's responsibility to file, pay, or deposit taxes generally cannot be excused by reliance on the advice of a tax advisor.**

4. Because the IRC and treasury regulations sections that provide penalty relief criteria for erroneous advice from a tax advisor are generally limited to the accuracy-related penalty, relief from other penalties must meet the reasonable cause standards. See *IRM 20.1.1.3.2*, Reasonable Cause.

20.1.1.3.3.5 (10-19-2020)

Fire, Casualty, Natural Disaster, or Other Disturbance-Major Disasters

1. This section discusses penalty relief provisions for circumstances that generally fall under the definition of "major disaster" (such as a hurricane, tornado, earthquake, etc.) or "emergency" (see IRM 25.16.1.5, Disaster Tax Relief Options) and that affect a significant number of taxpayers located within a designated geographical area (see IRM 25.16.1.7, Disaster Zip Code Communication).

2. Generally, relief is provided in the form of extensions of time to file or pay and is usually provided systemically with the setting of an "-O" Freeze or "-S" Freeze posted to the account. See IRM 25.16.1.8.2, -O Freeze, and IRM 25.16.1.8.1, -S Freeze.

3. The determination to grant relief from each penalty must be based on the facts and circumstances surrounding each individual case.

4. For additional guidelines, including guidelines for reasonable cause consideration where systemic penalty relief is not applicable, see *IRM 20.1.1.3.2.2.2*, Fire, Casualty, Natural Disaster, or Other Disturbance-Reasonable Cause.

20.1.1.3.3.6 (11-25-2011)

Official Disaster Area

1. When a significant disaster occurs affecting a wide area of taxpayers, the IRS often issues special instructions to facilitate evaluating the request for penalty relief.

2. Because these are one-time instructions, they will not be incorporated in this IRM. Territories, campuses, and customer service sites will be kept informed of any special instructions affecting their areas.

20.1.1.3.4 (08-05-2014)

Correction of Service Error

1. An IRS error can be any error made by the IRS in computing or assessing tax, crediting accounts, etc. See *Exhibit 20.1.1-2*, Penalty Reason Code Chart, for the appropriate **PRC** to be used when abating either a systemically-generated or manually-input penalty.

2. When an analyst from any area of the IRS identifies a **computer programming application** that caused a penalty to be assessed in error, that analyst should coordinate the following with OSP:

A. Contact Information Technology (IT) to resolve the inadequate **computer application**, and

B. Include on the unified work request (UWR) a statement indicating that **PRC 015** must be used to identify any abatement of a penalty resulting from reversal of the **computer application**.

3. Other IRS error examples include the following:

A. A math error when manually computing a penalty.

B. An extension of time to file that did not post to the Master File (and manual input of a TC 460 did not, or will not, result in an automatic penalty reversal, if input of a TC 460 is appropriate in accordance with IRM 20.1.2.2.3.1.1, Extension of Time to File Not Found).

C. Any other error, when it can be shown that; (1) the taxpayer did in fact comply with the law, and (2) the IRS did not initially recognize that fact.

20.1.1.3.5 (10-19-2020)

Evaluating Penalty Relief Requests

1. The **initial** request for relief may occur either during or after an examination (but before a penalty is actually assessed), with a return that is either filed or paid late, or after assessment of the penalty or penalties and notification issued to the taxpayer.

2. When the request is received, carefully analyze the taxpayer's reasons to determine if penalty relief can be considered and is warranted. The burden of proving entitlement to relief is generally upon the taxpayer.

Caution:

Prior to analyzing the taxpayer's reason(s), analyze the account to determine if penalty relief cannot be considered, or if relief can only be considered by another IRS function. An example includes, but is not limited to, Freeze Codes "F-," "-N" , "-V" , "-W" , "-Y" , "-Z" , or "Z-" .

3. The following guidelines generally apply to all penalties for which the IRC provides relief. As stated in *IRM 20.1.1.3*, Criteria for Relief From Penalties, the penalty relief criteria contained throughout *IRM 20.1.1*, Introduction and Penalty Relief, do not apply to all penalties referenced in IRM 20.1, Penalty Handbook. Refer to the applicable IRM 20.1, Penalty Handbook, section(s) for additional criteria depending on the penalty or penalties for which relief is requested. See *IRM 20.1.1.1.2*, Authority.

4. Each request must be evaluated on its own merit, including the following:

A. The events or parties involved,

B. If the taxpayer exercised ordinary business care and prudence, but due to circumstances or events beyond the taxpayer's control the taxpayer was unable to meet the tax requirement,

C. If other penalty relief criteria apply (such as a statutory or regulatory exception or an administrative waiver).

5. The taxpayer's obligation to meet the requirement is ongoing. Ordinary business care and prudence requires that the taxpayer continue to attempt to meet the requirements, even though late.

6. The request must identify the penalty or penalties for which relief is requested and address the reason(s) applicable to the penalty or penalties since each penalty is for a different type of failure. If one specific penalty is not identified, but it's clear the taxpayer is requesting relief from all penalties on the module, then all may be considered. However, if the taxpayer specifically requests relief from only one penalty, then only that one penalty should be considered. (If FTA criteria are met, the FTA waiver would apply to all applicable penalties on the module. Refer to *IRM 20.1.1.3.3.2.1*, First Time Abate (FTA), for penalty relief under the FTA administrative waiver.) Determine if the taxpayer's explanation addresses the penalty or penalties imposed.

   A. The dates and explanations should clearly correspond with events on which the penalties are based to show that the taxpayer is entitled to relief from the penalty.

   B. Request additional information from the taxpayer to clarify any explanations if the dates and explanations do not correspond with the events on which the penalty is based.

   Note:

   See *IRM 20.1.1.3.3.2.1*, First Time Abate (FTA). If the penalty or penalties being considered is/are eligible for relief under the FTA waiver, determine if the taxpayer meets FTA criteria before requesting additional information.

7. Review available IRS information in determining whether or not the taxpayer exercised ordinary business care and prudence. Check the **preceding tax years (go back at least three years or twelve quarters)** for payment patterns and the taxpayer's overall compliance history.

   A. Assertion of the same penalty or penalties in the taxpayer's history may indicate that the taxpayer is not exercising ordinary business care.

   B. If this is the taxpayer's first incident of noncompliant behavior, weigh this factor with other reasons the taxpayer gives for relief since a first time failure to comply does not by itself establish reasonable cause. However, see the *IRM 20.1.1.3.3.2.1*, First Time Abate (FTA), administrative waiver.

8. Consider the length of time between the event cited as a reason for the noncompliance and subsequent compliance. The length of time between events may serve to cancel or reduce the event's effect. Penalty relief may not be appropriate if, after considering all facts and circumstances, the taxpayer failed to correct his or her noncompliant behavior within a reasonable period of time.

9. The following are examples where penalty relief may **not** be appropriate:

   A. The taxpayers claim that they were unable to comply with the filing requirement due to a death in the family. The death occurred several months prior to the due date of the return. The return was not filed until a year after the due date of the return.

   B. Taxpayers claim that they were unable to comply with the filing requirement because the records necessary for filing were in the control of a third party, e.g., a bankruptcy trustee or an accountant. The records were returned to the taxpayer well in advance of the time the return was required to be filed. The return was not filed until several months after the records were returned.

C. In both of the examples, the timing of the event may prevent the taxpayer from receiving penalty relief unless other factors justify the delay in filing.

10. Consider if the taxpayer could have anticipated the event that caused the non-compliance. See *IRM 20.1.1.3.2.2*, Ordinary Business Care and Prudence.