

# **FIRST TIME PENALTY ABATEMENT**

## **Internal Revenue Manual Part 20. Chapter 1. Section 1**

### **I. BACKGROUND**

- IRS implemented the “*First Time Penalty Abatement*” (“FTA”) penalty waiver in 2001.
- IRS’ purpose for this one-time consideration was to streamline abatements for late filers.
- FTA is an administrative waiver not outlined in the Internal Revenue Code (“IRC”).
- IRS considers and applies penalty relief in the following order:
  - CORRECTION OF IRS ERROR
  - STATUTORY & REGULATORY EXCEPTIONS
  - **ADMINISTRATIVE WAIVERS**
  - REASONABLE CAUSE
- FTA is covered under the Internal Revenue Manual (“IRM”) 20.1.1.3.6.
- IRM 20.1 Penalty Handbook is the primary source of authority for civil penalty administration.
- FTA is to be considered and applied before a waiver for reasonable cause.

### **II. MECHANICS**

- FTA applies to certain types of tax matters: Individuals, Corporations, Partnerships and Quarterly returns.
- FTA does not apply to Federal Estate and Generation Skipping Tax and Gift tax returns.
- Taxpayer must request FTA either in writing or orally.
- Tax Practitioner should include a valid power of attorney authorizing representation.
- FTA applies to a single return.
- FTA is applicable for the first taxable period for which the criteria are met.
- IRS grants FTA relief for penalty amount that is not a significant amount.
- IRS Account Transcripts proving no prior penalties existed in the previous three years.
- IRS can issue relief from one or more of these penalties on any given tax period.
- IRS does not dispute interest but will automatically reduce or remove the related interest if any of the penalties are reduced or removed under the FTA administrative waiver.
- IRS will notify Taxpayer that FTA has been granted or denied in writing.
- If FTA is granted, this relief is good for a three-year period look-back period.
- If FTA is denied, Taxpayer may consider abatement under reasonable cause basis by filing Form 843, Claim for Refund and Request for Abatement which requires substantiation.

### **III. CRITERIA**

Factors that the IRS consider when determining whether a Taxpayer qualifies for FTA:

- **FILING COMPLIANCE**: Taxpayer must have filed all required tax returns including an extension.
- **PAYMENT COMPLIANCE**: Taxpayer must have paid or arranged to pay all tax due (can be in an installment agreement as long as the payments are current).
- **HISTORY OF NO PENALTIES**: Taxpayer has no prior penalties (except an estimated tax penalty) for the preceding three years.

#### **IV. TYPES OF PENALTIES**

##### **A. FAILURE TO FILE – IRM 20.1.2**

- Applies when a tax return is not filed by the due date.
- Penalty is calculated as 5% of the unpaid taxes per month or part of the month not paid by the original due date (not the extension due date).
- Penalty cannot exceed 25% of the unpaid taxes.
- Penalty applies to:
  - Personal Tax Returns – [IRC §6651\(a\)\(1\)](#)
  - Partnership Returns – [IRC §6698\(a\)\(1\)](#)
  - S Corporation Returns – [IRC §6699\(a\)\(1\)](#)

##### **B. FAILURE TO PAY – IRM 20.1.2.**

- Applies when the tax shown on the return is not paid by the due date – [IRC §6651\(a\)\(2\)](#)
- If the tax was unpaid by the date stated in the notice or demand for payment under [IRC §6651\(a\)\(3\)](#)

##### **C. FAILURE TO DEPOSIT – IRM 20.1.4**

- Applies when the correct tax was not deposited timely [IRC §6656](#)

#### **V. STEPS TO REQUEST ABATEMENT FOR PENALTY RELIEF**

- Letter Heading contains Tax Practitioner's Contact Information.
- Date Abatement Request (*recommend making request within 30 days of notice date*).
- Identify Method of Filing.
- List Recipient Address (*use address on notice unless another address is indicated*).
- Subject at Issue.
  - Taxpayer's Name
  - Taxpayer's Identification Number
  - Reference Tax Form
  - List Tax Period
- Salutation: "To Whom It May Concern"
- Body of Correspondence:
  - Introductory Paragraph:
    - Include a valid Power of Attorney
    - State type of penalty requested for abatement.
  - Secondary Paragraph:
    - Identify the rule of law.
    - Provide analysis.
    - Make a clear statement that FTA criteria are met.
  - Closing Paragraph:
    - Restate request for FTA.
    - Express Gratitude.
- Signature
- Enclosures
- Carbon Copy: Taxpayer
- Set Reminder to Follow-Up within 30 days.