

First Time Abatement
(of Penalties) Made Easy
Failure To File
Failure To Pay
Failure To Deposit

**Tax Help
Software**TM

Presenter



**Working
Undercover
Narcotics in
2000**

**Roger Nemeth, EA & NTPI Fellow
President & Developer Audit Detective,
LLC**

**Tax Help
Software™**

- Worked 8 years in Law Enforcement.
 - Injured in the line of duty.
- Moved to something much safer.....Taxes.
 - Managed my parent's tax franchise in Atlanta for 6 years.
 - Over 18 EA's and CPA's on staff.
 - Tax Transcripts were our biggest payroll inefficiency.
- In 2013 was hired by one of the largest resolution firms in the country to integrate the product.
- To date our users have downloaded over 150 million transcripts and processed over 200,000 reports.

First Time Penalty Abatement (FTA)

FTA is available for 3 Penalties:

FTF – Failure To File

FTP – Failure To Pay

FTD – Failure To Deposit (941s)

Penalty Definitions

FTF – Failure To File

- The failure-to-file penalty is normally 5 percent of the unpaid taxes for each month or part of a month that a tax return is late. It will not exceed 25 percent of your unpaid taxes.

Penalty Definitions

FTP – Failure Io Pay

- The failure-to-pay penalty is generally 0.5 percent per month of your unpaid taxes. It applies for each month or part of a month your taxes remain unpaid and starts accruing the day after taxes are due. It can build up to as much as 25 percent of your unpaid taxes.

Penalty Definitions

FTD – **F**ailure **T**o **D**eposit (941s)

- The three components of a correct deposit are:
 - the deposit is made timely,
 - in the correct amount, and
 - in the correct manner.
- A failure to comply with any of these components will subject the deposit to the FTD penalty. Additional details can be found here:

[IRS IRM 20.1.4 Failure to Deposit Penalty](#)

Failure To Deposit Penalties

This presentation will focus on the Failure to File and Failure to Pay Penalties in reference to individual taxpayers.

Much of the information contained in this presentation will apply to FTD's as well, but no specific examples are given.

Transcript Penalty Codes

Failure to File Transcript Code 166

Penalty for filing tax return after the due date.

Failure to Pay Transcript Code 276

Penalty for late payment of Tax

It is possible to manually analyze these transcript codes but be aware that the Failure to Pay Code 276 is generally “sprinkled” throughout the account transcript and requires computation.

Failure to Deposit Transcript Code 180 or 186

Penalty for failure to deposit on payroll tax.

Conditions for First Time Abatement

From the IRS Website:

You may qualify for administrative relief from penalties for failing to file a tax return, pay on time, and/or to deposit taxes when due under the Service's First Time Penalty Abatement policy if the following are true:

- You didn't previously have to file a return or you have no penalties for the 3 tax years prior to the tax year in which you received a penalty.*
- You filed all currently required returns or filed an extension of time to file.
- You have paid, or arranged to pay, any tax due.

*IRM 20.1.1.3.6.1.5(b) (08-05-2014) refers to "An unreversed penalty for a significant amount".

Additional Info About Conditions for FTA

- 2210 Penalty for Underpayment of Estimated Tax by Individuals does NOT disqualify a taxpayer from First Time Abatement.
- A Substitute For Return (SFR) qualifies as a filed return.
- If a balance due is owed you have to be in an installment agreement and current to qualify for FTA.
- The failure-to-pay penalty will continue to accrue, until the tax is paid in full. It may be to your advantage to wait until you fully pay the tax due prior to requesting penalty relief under the Service's first time penalty abatement policy.
- More on the “Significant Penalty” on the next slide.

No Significant Penalties

IRM 20.1.1.3.6.1.5(b) (08-05-2014) An **unreversed penalty for a significant amount** (see Caution for an explanation of significant amount) is present (except the ES penalty) on any tax period in the prior 3 years, for the same MFT (except MFT 30/31, and see the exception for MFTs 01 and 14 in paragraph (5)(f)), and a notice was issued showing the assessed penalty(ies).

The “Caution” in the IRM is redacted. We have learned that the significant amount is anything greater than \$1. Unless the tax professional is negotiating with an RO on the case directly, we have not heard of anyone getting FTA approved.

No Significant Penalties (cont'd)

The IRS now considers a significant penalty greater than \$1 (used to be \$100). Our recommended appeal procedure is as follows:

1. Try to call back to see if you get the same answer from a different assister.
2. Send a letter requesting FTA, citing IRM 20.1.1.3.6.1.5(b) (08-05-2014).
3. File a form 911 to Taxpayer Advocate claiming the taxpayer has tried to resolve a problem through normal IRS channels but those channels have broken down.
Channel = FTA attempted in Reasonable Cause Assistor(RCA) software tool.
4. Problem = prior tax period is under "significant" threshold, but RCA fails.

FTA Examples

The following graphics are examples of First Time Abatements. You can create your own spreadsheets using Excel. These examples are from Tax Help Software's Patent Pending transcript analysis report. The report is available 10 minutes after the 2848 or 8821 is processed by the IRS CAF unit allowing you to check for FTA opportunities on any client back to 1990 in just minutes.

FTA's are great for offsetting current year CP 2000 issues your independent contractors and elderly clients are always receiving.

First Time Abatement of Penalties

Eligible for FTA – Prior 3 Years are clear

Year	Return Filed	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties
2016	No			
2015	Original	\$1,458.62	\$855.33	
2014	Original*			
2013	Amended			
2012	Original			
2011	SFR	\$399.40	\$648.64	
2010	SFR			\$8,362.00
2009	Original*			
2008	Original		\$1,431.24	
2007	Original			
2006	Original		\$89.16	
2005	Original			
2004	Original	\$12,839.74	\$3,622.18	
2003	Original	\$0.00	\$0.00	

First Time Abatement of Penalties

Not eligible for FTA – Prior 3 Years are not clear

Year	Return Filed	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties
2016	No			
2015	Original	\$1,458.62	\$855.33	
2014	Original*	\$0.00	\$0.00	
2013	Amended			
2012	Original			
2011	SFR	\$399.40	\$648.64	
2010	SFR			\$8,362.00
2009	Original*			
2008	Original		\$1,431.24	
2007	Original			
2006	Original		\$89.16	
2005	Original			
2004	Original	\$12,839.74	\$3,622.18	
2003	Original	\$0.00	\$0.00	

\$0.00 indicates there are abated penalties for tax year

First Time Abatement of Penalties

Eligible for FTA – Prior 3 Years are clear

Year	Return Filed	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties
2016	No			
2015	Original	\$1,458.62	\$855.33	
2014	Original*			
2013	Amended			
2012	Original	\$32.62	\$11.24	
2011	SFR	\$399.40	\$648.64	
2010	SFR			\$8,362.00
2009	Original*			
2008	Original		\$1,431.24	
2007	Original			
2006	Original		\$89.16	
2005	Original			
2004	Original	\$12,839.74	\$3,622.18	
2003	Original	\$0.00	\$0.00	

Penalties are under \$100 and considered not significant

Assister is using a computerized tool to determine FTA

IRS assister is using decision-support software called the Reasonable Cause Assistant (RCA).

Even if an assister denies the FTA check your transcripts and challenge them. We have had reports of the assister denying the claim because of a penalty in the previous 3 years that did not exist. The benefit of using the Tax Help Software reports is that the accurate information is at your finger tips.

Usually Approved Instantly

IRS assister will go through their script:

- Taxpayer will be receiving a letter in 10-14 days
- Penalty was abated based on good history of timely filing and timely paying.

Text of IRS Letter 3503C is shown on the following page.

IRS Letter 3503

Thank you for your recent inquiry of April 16, 2016 that asked us to remove the failure to file and pay penalties.

We are pleased to inform you that your request to remove the failure to file and failure to pay penalties has been granted. However, this action has been taken based solely on the fact that you have a good history of timely filing and timely paying. This type of penalty removal is a one-time consideration. The IRS will base decisions on removing any future Failure to File and Failure to Pay penalties on any information you provide that meets reasonable cause criteria. You should receive a notice of penalty adjustment within the next few weeks.

If you have any questions, please call us toll free at 1-800-829-8374.

Who Can Call the IRS ?

Taxpayer:

Taxpayer can call: **1-800-829-1040 (TAX-1040)**

Or

**NEWLY-Released IRS Penalty Assistance Line:
1-855-223-4017 X-225**

Tax Professional (under Form 2848):

Call IRS PPS Line – **1-866-860-4259**

Or

**NEWLY-Released IRS Penalty Assistance Line:
1-855-223-4017 X-225**

Unable to request FTA with just an 8821 on file.

In early July the IRS began sending out the enclosed insert with balance due notices. Hold Time on July 17

was 1 minute !!! 1-855-223-4017 X-225



You may qualify for penalty relief.



**Call the
Penalty
Assistance Line
to see if you
qualify.**

**1-855-223-4017 ext. 225
7 a.m. to 7 p.m. local time**

We base penalty relief on the facts and circumstances you provide on the call.

If we charged you a penalty for failing to file your return or pay your taxes on time, you may be eligible for penalty relief:

If you filed your tax returns and paid your taxes on time for the past 3 years, we may be able to remove the penalties based on First Time Abatement.

OR

If you believe the circumstances that prevented you from meeting your tax obligation were beyond your control, we may be able to remove the penalties based on Reasonable Cause.

Your Reasonable Cause explanation must:

1. Explain why you didn't file your return or pay the tax you owed by the return due date
2. Provide the dates of the event that prevented you from meeting your tax obligations
3. Explain why you couldn't have anticipated this situation
4. Explain how this event prevented you from meeting your tax obligations, as well as other obligations (unable to: work, pay bills, attend to other financial matters, etc.)

Not all taxpayers will qualify for penalty relief.

In some situations, we may need you to fax us a signed written request or supporting documentation.

Form 2848 must cover ALL years

In order for a tax professional to request an FTA they must have POA for the year in question and the previous 3 or the assister will not continue.

Example: If you are calling about a 2005 Tax Year FTA you must have POA for 2002 through 2005 at a minimum.

How HIGH can you go ?

\$ Threshold on Phone Call

Tax Pros have reported up to **\$10,000** so far.

More than \$10K abatement request usually requires a letter.

The highest first time abatement I am aware of is over \$125,000 in California.

UPDATE!!!!

One of the attendees on this presentation advised they got a \$77,000 FTA approved over the phone 2 weeks ago!!!!

Actual Example over \$10,000 FTA With One Phone Call

One of our users shared the following real example. Tax pro was trying to get the taxpayers balance below \$50k to qualify for a Streamlined IA. The taxpayer was able to get their \$100k debt paid down to about \$64k with savings, but were still short. Both spouses had \$100k+ jobs that would have been at risk if liens were filed. The tax pro used FTA to get a \$9,753 FTA with one 10 minute phone call. With interest the total amount abated including the interest on the abated penalties was \$13,300.

Year	Return Filed	Penalties Failure to File	Penalties Failure to Pay
2015	No		
2014	Original		
2013	Original	\$7,700.40	\$2,053.44
2012	Original	\$8,663.62	\$4,428.07
2011	Original		
2010	Original		
2009	Original		

Before FTA

Year	Return Filed	Penalties Failure to File	Penalties Failure to Pay
2016	-		
2015	No		
2014	Original		
2013	Original	\$7,700.40	\$2,053.44
2012	Original	\$0.00	\$0.00
2011	Original		
2010	Original		
2009	Original		

After FTA

How Is The FTA Applied

1. If the taxpayer does not have a balance due and the Refund Statute Expiration date has not expired (3 years since original filed or 2 years since tax was paid) the taxpayer should receive a refund.
2. If the RSED has expired and the taxpayer does not have a balance the taxpayer receives no benefit.
3. If the RSED has expired and the taxpayer does have a balance the FTA amount will be applied to the oldest balance first until it is depleted.

Note: The IRM does not state how far a taxpayer can go back. Our users have successfully gone into the 1990's, but recently we have reports of the IRS claiming claims on years prior to 1995 are too old. Use the appeal process listed previously.

What Happens If The FTA Amount Is More Than What Is Owed & RSED Is Expired.

FTA amounts can be applied to any outstanding balances on the day the FTA is approved. If there is excess amounts the amount can not be carried forward.

Example: If taxpayer gets an FTA approved today and is assessed by the IRS for an additional amount tomorrow any leftover FTA amount can not be used on the new balance.

How Many FTA's Can Taxpayer A Taxpayer Receive

According to IRM 20.1.1.3.6.1.3 (08-05-2014)

First Time Abate (FTA)

The FTA administrative waiver can only apply to a single tax period for a given MFT.

With that being said we have received reports from tax professionals that IRS assisters have advised them they can request and get FTA on multiple tax years as long as each year meets the requirements. Only one FTA can be applied for at a time. Each user should review the IRM and come up with their own opinion.

Interesting Scenario

- Taxpayer is assessed FTF & FTP penalties for tax year 2003 on February 1, 2005.
- Taxpayer never makes a payment on any balance for tax year 2003.
- February 2, 2015 the 2003 balance due is written off (CSED expired).
- Today can the taxpayer request FTA for the 2003 FTF & FTP plus the interest if all the other requirements for FTA are met?

Reasonable Cause **Abatement**

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

Reasonable Cause

Examples

- Fire, casualty, natural disaster or other disturbances
- Inability to obtain records
- Death, serious illness, incapacitation or unavoidable absence of the taxpayer or a member of the taxpayer's immediate family
- Other reason which establishes that you used all ordinary business care and prudence to meet your Federal tax obligations but were nevertheless unable to do so

Questions ? ? ?



If you would like to try the Tax Help Software Program use coupon code: ASTPSTRIAL (case sensitive) for a FREE 14 day trial.

If you would like to purchase the software use coupon code: ASTPS10 (case sensitive) for 10% off the \$350 Price. (Price with discount is \$315 for a one year license).

TaxHelpSoftware.com