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PRODUCT & SERVICE GUIDE

The Almost (But Not Quite) Automatic First Time Penalty Abatement

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Dave DuVal, EA • Aug. 17, 2017



Has a client ever forgotten to give you a reporting document while you were preparing their taxes? Have you ever had a new client who needs your help addressing a notice or audit letter? In circumstances like these, in which the tax liability may have been incorrectly assessed on the Form 1040 or other returns, an amount owing will very likely generate additional penalties and interest. If your client does not dispute the change in tax liability, not much can be done about that or the interest that has accrued, but you might be able to help by addressing the penalties.

First Time Abate

Among the most common of the penalties assessed by the IRS are the Failure to File, or Failure to Pay penalties. But if your client is eligible, these penalties are not difficult penalties to have abated. The IRS has a program in place that is called First Time Abate, or FTA for short. FTA is an administrative waiver of certain penalties if the taxpayer:

- Has not been previously required to file a return or has no prior significant penalties (estimated tax penalties are not included) for the prior three years, and

- Has filed (or filed a valid extension) all currently required returns and has paid all taxes due on those returns. If the taxpayer has not paid all taxes that were due, but has in place a valid installment agreement that they are current on, that still counts.

Automatic By Request

If your client has had a clean compliance history for the prior three years, having the Failure to File or Failure to Pay penalties reversed is almost automatic. “Almost” means it is not automatic, and the IRS will not abate these penalties without being requested to do so. Therefore, asking the IRS to abate these penalties under FTA can be a valuable service to offer your client. You can make the request by phone or by sending a letter. If your client has had a penalty assessed in the prior three years, but it was removed for reasonable cause, then it will not count against them.

Alternatively, if the compliance history is not clean but the penalty assessed in the prior year was small, then your client should only be ineligible if the prior penalty was “significant.” Thus, if the IRS makes a possible incorrect eligibility determination on the first request, a reversal is possible.

Caveats

What are the caveats? Only one abatement is possible every three-year period under FTA. If your client has penalties for multiple years, the IRS will consider FTA only for the first tax year under consideration, regardless of the amounts of penalties or number of years involved. This program applies generally to Failure to File and Failure to Pay penalties for individuals, partnerships, and S-corporations (for business taxpayers it also applies to certain first-time Failure to Deposit penalties).

Reasonable Cause

Finally, it is important to remember that like many IRS penalties, Failure to File and Failure to Pay penalties may also be granted abatement if your client had reasonable cause and the situation that caused the penalty was not due to willful neglect. Reasonable cause situations include illness, casualties, or erroneous advice. They can also include ignorance or not knowing, inability to obtain records, or error if ordinary business prudence was exercised. The IRS will generally consider abating Failure to File and Failure to Pay penalties first under FTA, and then only consider reasonable cause if they did not abate the penalty under FTA. This is of great advantage to the taxpayer. If your client does not have reasonable cause, they may

still be eligible for FTA. If they do have reasonable cause, then you can still request abatement, even if they do not qualify for FTA.

The important take-away here is that Failure to File or Failure to Pay penalties are not irreversible penalties just because they may be assessable. In general, it never hurts to ask for abatement – perhaps more than once depending on the circumstances.

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