

# 2023 National Income Tax Workbook

Chapter 3: Penalties & Defenses

PP 83 - 122



# Learning Objectives

P 83

- Determine the applicability of a penalty
- Calculate the correct amount of the penalty
- Explain the defenses to abate penalties
- Request penalty relief
- Appeal a denial of penalty relief
- Recognize and avoid international information reporting penalties
- Recognize and avoid preparer penalties

# Encouraging Compliance – 2021 Stats

- \$37.3 billion civil penalties
- \$17.1 billion = individual & estates/trust
- \$13.3 billion abated penalties
- \$2.7 billion = individual & estates/trust

# Individual & Business Penalties

- [www.irs.gov/irm/%20part20](http://www.irs.gov/irm/%20part20)
- I.R.M. §20.1.1.1.1
  - Failure-to-file & Failure-to-pay penalties
  - Estimated tax penalty
  - Failure-to-deposit penalty
  - Return-related penalties
  - Information reporting penalties

# Failure-to-File/Failure-to-Pay

P 84

- Voluntary compliance
- I.R.C. §6651 – Individuals
- I.R.C. §6698 – Partnerships
  - I.R.C. §6031 – all information on Partnership returns
- I.R.C. §6699 – S Corporations
  - I.R.C. §6037 – all information on S Corp returns

# Cross-Reference

P 84

- Timely Mailing of Returns
- I.R.C. §7502 – postmark date
- See IRS Chapter

- Disregarded Period
- I.R.C. §7508 & §7508A
- Exceptions – combat zones & federally declared disaster areas



# Computation Errors

P 85

- Computer generated calculations & letters
- Types of errors in penalty assessment:
  - Late-filing – discrepancy between postmark date
  - Missing payment or credit
  - Start date is incorrect
  - Amount is excessive based on underlying tax liability

- Verify Penalty Computation
- The Penalty & Interest Notice Explanation (PINEX) System
  - CP569 Notice

# Failure-to-File Penalty Rates

P 85

- 5% of unpaid tax per month
- up to 25% of unpaid liability
- I.R.C. §6651(a)(1)
- 60-day rule – lesser of Figure 3.1 amount or 100% of unpaid tax due

**FIGURE 3.1**  
**Minimum FTF Penalty**

<b>Return Due Date (without Extensions)</b>	<b>Minimum Penalty Amount</b>
On or before 12/31/2008	\$100.00
Between 01/01/2009 and 12/31/2015	\$135.00
Between 01/01/2016 and 12/31/2017	\$205.00
Between 01/01/2018 and 12/31/2019	\$210.00
Between 01/01/2020 and 12/31/2022	\$435.00
After 12/31/2022	\$450.00

# No Minimum Penalty

P 86

- Employment Tax
- Excise Tax
- Gift Tax
- Estate Tax
- UNLESS – SE Tax
  - Household Employment Tax
  - Taxes on Qualified Retirement Plans
  - 10% tax on early distributions on Retirement Plans

# Fraudulent & Willful

P 86

- 15% per month
- 75% of liability
- I.R.C. §6651(f)

# Burden of Proof – IRS

P 86

- Taxpayer refuses/unable to explain failure to file
- Taxpayer's statement doesn't agree with facts & circumstances
- Taxpayer has history of noncompliance & can pay
- Taxpayer conceals assets
- Taxpayer uses cash for personal & business – unusual
- Taxpayer is aware of filing requirement

# Failure-to-Pay Penalties

P 86

- 0.5% of unpaid tax per month
- increases 1% per month 10 days after IRS Notice
- up to 25% of unpaid tax
- I.R.C. §6651(a)(2)
- Installment Agreement – decrease 0.25% of unpaid tax per month
- I.R.C. §6651(h)



# Failure-to-File & Failure-to-Pay

P 86

- FTF reduced if both apply
- 4.5% -- I.R.C. §6651(c)(1)
- FTF maximum = 22.5%
- FTP is NOT reduced

# Waiver or Abatement

P 87

- Reasonable Cause
  - Ordinary business care & prudence
- No willful neglect
  - Timely filed but unable to pay
- Separate assessments = separate requests

# Reasonable Cause

P 87

- Treas. Reg. §301.6651-1(c)
- I.R.M. §20.1.1.3.2.2
- Death, serious illness, unavoidable absence
- Fire, casualty, natural disaster, or other disturbance
- Inability to obtain records
- Erroneous advice or reliance

# Failure-to-File Partnership Return

P 87

- \$220 per partner per month
- Up to 12 months
- Reasonable Cause
  - 10 or fewer partners (with attribution)
  - All partners are individuals
  - Partner's income, deduction, credits allocated
  - Partner's report their share on their timely filed returns

# Partnership Penalty Waivers P 87

1. 10 or fewer partners
2. Partners are individuals
3. Partners income, deductions.... are pro-rata to ownership %
4. All partners reported timely reported K-1 information

# Failure-to-File S Corp Return

P 88

- I.R.C. §6699
- \$ 220 per Shareholder
- Per month
- Up to 12 months
- Reasonable Cause
- First-time Abatement
- Reb. Proc. 84-35 does not apply

# Individuals Estimated Tax Penalties

P 88

- Pay as you go system
- Underpayment of estimated tax
- Failure to make timely payments
- I.R.C. §6654 – failure to pre-pay
- I.R.C. §6655 – failure to make

# Required Est.Tax Payments

P 88

- Owe at least \$1,000 in the tax year
- 90% of current year tax
- 66% if at least two-thirds from gross farming
- 100% of prior year tax
- 110% if AGI > \$75,000/150,000



# No Required Est. Tax Payments

P 88

- No prior year tax liability
- US citizen or resident alien the whole year
- Prior tax year covered 12-month period

**FIGURE 3.2**  
**Estimated Tax Payment Due Dates**

<b>For the Period</b>	<b>Due Date</b>
January 1–March 31	April 15
April 1–May 31	June 15
June 1–August 31	September 15
September 1–December 31	January 15 of the following year*

\* If the taxpayer files Form 1040, U.S. Individual Income Tax Return, by January 31 of the following year and pays the remaining tax owed, then no January 15th estimated payment is required.

# Est. Tax Penalty

P 89

- I.R.C. §6621
- Assessed per quarter
- Multiply daily rate by underpayment amount
- I.R.C. §6654(e) – Penalty Relief

# I.R.C. 6654(e) – Penalty Waiver

P 89-90

- Equity & Good Conscience
  - NOT equivalent to Reasonable Cause Relief
- Casualty
- Disaster
- Other unusual circumstance
- Retired or Disabled

# Equity & Good Conscience Waiver

P 90

- Due to casualty, disaster, or other unusual (nonrecurring) circumstances, and not due to any other reason
- Facts dictate it would be against equity & good conscience
  - taxpayer's records were destroyed in casualty or natural disaster
  - taxpayer become seriously ill or injured
  - overpayment offset rather than overpayment credited toward estimated tax payment

# No Waiver

P 90

- Reliance on advice of a competent tax advisor
- Retroactive application of statute or regulation
- Erroneous advice from the IRS unless within provision of Treas. Reg. § 301.6404-3 or I.R.C. § 6404(f)
- Lack of funds
- Against Equity & Good Conscience
- Foreseeable event & Taxpayer's action or lack thereof

# Foreseeable Event or Taxpayer Action P90-91

- Scheduled surgery
- Taxpayer's house burns down & funds used for basic living
- Taxpayer's house burns down & they buy luxury items
- Taxpayer's house burns down & they don't make Est. Payments

# Requesting Waiver

P 91

- I.R.C. § 6654(e)(3)(A)
- Written Request
- I.R.C. 6654(e)(3)(B)
  - Retired or disabled; AND
  - Reasonable cause



# Corporate Estimated Tax Payments

P 91

- I.R.C. § 6655 – Estimated Tax Penalty
- Tax > \$ 500
- 100% of current-year/prior-year tax liability
- Example 3.1
  - Downtown Brewing Co
  - 2022 tax liability < \$ 0
  - 2023 projected liability

# Corporate Estimated Tax Payments P 91-92

- Form 1120-W: Est. Tax Worksheet
- Form 990-W: Unrelated Business Taxable Income for Tax-Exempt Org.
- Form 2220 – annualize income and/or adjust for seasonal income
- Practitioner Note – S Corp may have Est. tax (prior C-corp.)
  - Investment Credit Recapture
  - Build-In Gains
  - Passive Investment Income

# S- Corporations

P 92

- S-Corps may have estimate tax responsibilities
- Recapture of credits
- Built in gains tax
- Accumulated earnings tax

# Large Corps. & Est. Tax Pymts

P 92

- 100% of current tax year
- Taxable income \$ 1million or more for 3 preceding years
- 100% of prior-year tax

## Example 3.2 Large Corp.

P 92

- Blacktail Sports Inc (calendar year corp.)
- 2022 tax liability \$1,400,000
- 2023 has a tax liability of \$1,600,000 (estimated)
- Estimate tax liability for 2023 is \$1,600,000
- 1<sup>st</sup> qtr. payment \$350,000 ( $1,400,000/4$  qtrs.)
- 2<sup>nd</sup> qtr. payment must be \$450,000 ( $\$400K - 350K + 400K$ )

# Abatement or Waiver of Penalty

P 92

- Legislative provision
- Administrative provision
- Automatic – federally declared disaster areas
- No Reasonable Cause
- No unusual circumstances
- Waive Penalty
  - Misapplied payment/refund
  - Equity & Good conscience

# Failure-to-Deposit Penalties

P 92-93

- I.R.C. § 6656
- Payroll Taxes
- Trust Fund moneys – EE withholding
- Cross-Reference: 2018 National Income Tax Workbook
- Safe Harbor
  - 100% of tax liability
  - No penalty if < 2% of the amount required
  - Must make up shortfall by due date

# Failure-to-Deposit Penalty

P 93

## ➤ I.R.C. §6656(b)(1) – four-tier penalty system

1. 1-5 days late = 2%

2. 6-15 days late = 5%

3. Greater than 15 days = 10%

➤ Add 5% is unpaid more than 10 days from date of 1<sup>st</sup> IRS Notice

4. Failure to use EFTPS = 10%

➤ Reasonable Cause Relief

➤ First-Time Abatement Relief

➤ Designate application of payment – Trust Fund \$\$



# Practitioner Note

P 93

- Unbanked Taxpayers
- Reasonable Cause Relief
- Unable to use EFTPS
- Make all payments on-time
- Signed statements of explanation
  - Attempt to obtain bank account
  - Include denial, bank correspondence
- Tax Court determined there should be no penalty for not using EFTPS
- All payments made timely in cash at IRS Service Center

# First-Time Abatement

P 94

- Administrative Waiver
- Inadvertent failure-to-deposit
- Net Worth
  - \$ 2,000,000 individuals
  - \$ 7,000,000 partnerships & corps
- 1<sup>st</sup> Quarter required to deposit
- Timely filed employment tax return

# Deposit Schedule Change

P 94

- Monthly to Semi-weekly
- \$ 100,000 next-day rule
- Full penalty abatement or waiver
- Application of Late Deposits
  - I.R.C. §6656(e)
  - 90-days from deposit date
  - Trust Fund Monies

# Return-Related Penalties

P 94-101

- Accuracy-Related
- Civil Fraud
- Erroneous Claim for refund or credit

# Accuracy-Related Penalties

P 94

- **I.R.C. §6662(d)**
- 20% of underpayment amount
- Negligence
- Disregard of the rules & regulation
- Substantial understatement of income tax
  - Greater of 10% of tax required or \$ 5,000

# Corporations

P 94

- If the understatement exceeds the lesser of 10% of tax (or, if greater, \$10,000) or \$10,000,000
- I.R.C. §199A
  - Greater of 5% of tax required or \$5,000

# Reasonable Cause Relief

P 94

- I.R.C. § 6664(c)
- Acted in Good Faith
- Does not apply to
  - Lacking economic substance
  - Gross valuation overstatement charitable deduction
- Cross-Reference: substantial authority

# Reasonable Cause Relief

P 94

- Taxpayer's effort to report the proper tax liability
- Taxpayers experience, knowledge & education
- Taxpayer's reliance on advice of tax advisor
- Complexity of the tax issue
- Competence of the tax advisor



# Reliance on Advice

P 95

- Reasonable cause & good faith relief
- Supply all necessary information
- Advisor discloses:
  - Conflict of interest
  - Lack of expertise
- Factual or legal assumptions

## Example 3.3

P 95

- Chip Adams engaged Diva Gupta
- SALT deduction
- Chip disclosed all facts & circumstances
- Diva advised him of SALT deduction
- Good faith reliance on advice
- Reasonable cause relief is met

# Civil Fraud Penalty

P 96

- I.R.C. §6663(a)
- Penalty = 75% of underpayment due to fraud
- Court defined
- Intent
- IRS has burden of proof
- Joint return – each spouse or not at all
- No penalty relief

# Erroneous Claim for Refund or Credit Penalty

- I.R.C. §6676
- Excessive
- No reasonable basis for claimed tax treatment
- 20% of excessive amount claimed
- Reasonable cause relief – I.R.C. §6664(c)

# Information Return Penalties

P 96

- I.R.C. §6721 – failure to file
- I.R.C. §6722 – failure to furnish correct payee statements
- W-2, W-3, 1099, 1096, 1098 series, etc.
- Cross-Reference

# Figure 3.3

P 97

**FIGURE 3.3**  
Information Return Due|Dates and Penalties

Form	Due Date (Paper)	Due Date (E-File)	Information Return Penalty Code Section
Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding	3/15	3/15	6721, 6722
Form 1095-B, Health Coverage	2/28	3/31	6721, 6722
Form 1095-C, Employer-Provided Health Insurance Offer and Coverage	2/28	3/31	6721, 6722
Form 1097-BTC, Bond Tax Credit	2/28	3/31	6721, 6722
Form 1098, Mortgage Interest 2/28		3/31	6721, 6722
Form 1098-E, Student Loan Interest Statement	2/28	3/31	6721, 6722
Form 1098-T, Tuition Statement	2/28	3/31	6721, 6722
Form 1099-A, Acquisition or Abandonment of Secured Property	2/28	3/31	6721, 6722
Form 1099-B, Proceeds from Broker and Barter Exchange Transactions	2/28	3/31	6721, 6722
Form 1099-C, Cancellation of Debt	2/28	3/31	6721, 6722
Form 1099-DIV, Dividends and Distributions	2/28	3/31	6721, 6722
Form 1099-H, Health Coverage Tax Credit (HCTC) Advance Payments	N/A	3/31	6721, 6722
Form 1099-INT, Interest Income	2/28	3/31	6721, 6722
Form 1099-K, Payment Card and Third-Party Network Transactions	2/28	3/31	6721, 6722
Form 1099-LS (starting TY2019), Reportable Life Insurance Sale	2/28	3/31	6721, 6722
Form 1099-LTC, Long-Term Care and Accelerated Death Benefits	2/28	3/31	6721, 6722
Form 1099-MISC (without NEC), Miscellaneous Information	2/28	3/31	6721, 6722
Form 1099-NEC, Nonemployee Compensation	1/31	1/31	6721, 6722
Form 1099-OID, Original Issue Discount	2/28	3/31	6721, 6722
Form 1099-PATR, Taxable Distributions Received From Cooperatives	2/28	3/31	6721, 6722
Form 1099-R, Distribution From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.	2/28	3/31	6721, 6722

(Continued on next page)

# Figure 3.3

P 98

**FIGURE 3.3 (Continued)**  
**Information Return Due Dates and Penalties**

Form	Due Date (Paper)	Due Date (E-File)	Information Return Penalty Code Section
Form 1099-S, Proceeds From Real Estate Transactions	2/28	3/31	6721, 6722
Form 1099-SB, Seller's Investment in Life Insurance Contract	2/28	3/31	6721, 6722
Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner	See form instructions	See form instructions	6722
Form 3921, Exercise of Incentive Stock Option Under Section 422(b)	2/28	3/31	6721, 6722
Form 3922, Transfer of Stock Acquired Through an Employees Stock Purchase Plan Under Section 423(c)	2/28	3/31	6721, 6722
Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips	2/28	3/31	6721
Form 8282, Donee Information Return	See form instructions	See form instructions	6721, 6722
Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business	Within 15 days of transaction	Within 15 days of transaction	6721, 6722
Form 8308, Report of a Sale or Exchange of Certain Partnership Interests	Partnership return's due date	Partnership return's due date	6721, 6722
Form 8594, Asset Acquisition Statement	Income tax return's due date	Income tax return's due date	6721
Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax	Partnership return due date	Partnership return due date	6721, 6722
Form 8937, Report of Organizational Actions Affecting Basis of Securities	See form instructions	See form instructions	6721, 6722
Form 8966, FATCA Report	3/31	3/31	6721, 6722
Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent	See form instructions	See form instructions	6721, 6722
Form W-2, Wage and Tax Statement	1/31	1/31	6721, 6722
Form W-2G, Certain Gambling Winnings	2/28	3/31	6721, 6722

# Electronic Filing Waiver

P 99

- Generally, if 10 or more same document types – E-file
- I.R.C. §6721 penalties apply
- Form 8508, Request for Waiver - info Returns Electronically
  - Economic hardship
- Cross-Reference – IRS Chapter
- Extension of Time to File
  - 30-day
  - Form 8809, Application for Extension of Time to File Information Returns



# 2023 Penalty Amounts

P 99

- **Within 30 days**
  - **\$50 per failure**
  - **\$588,500 maximum**
  - **\$206,000 maximum for small business**
- **After 30 days but before 8/1**
  - **\$110 per failure**
  - **\$1,766,000 max**
  - **\$588,500 max for small business**
- **After August 1<sup>st</sup>**
  - **\$ 290 per failure**
  - **\$ 3,532,500 max**
  - **\$ 1,177,500 max for small business**
- **Intentional disregard**
  - **\$ 580 per failure**
- **Non-compliance**
  - **\$ 50 per failure**
  - **\$ 100,000 max**

# Individual & Business Penalties Defenses & Relief

# Reasonable Cause

P 99-100

- No willful intent
- No first-time abatement
- Written statement
  - Specific provision & Facts & circumstances
  - Signature of filer
  - Declaration under penalties of perjury
  - Circumstances beyond filer's control

# Reasonable Manner

P 100

- Treas. Reg. 301.6724-1(d)
- Reasonable care
  - Request appropriate extensions
  - Attempting to prevent a failure if foreseeable
  - Acting to remove an impediment or the cause of the failure
  - Correcting the failure promptly or within 30 days

# Significant Mitigating Factors

P 100

- Prior to failure – return was not required
- Taxpayer's compliance history
- Beyond the Taxpayer's Control
  - Availability of relevant business records
  - Undue economic hardship
  - Reliance on erroneous written information from the IRS
  - Actions of an agent

- Penalty Relief Ordering
  - Correction of IRS error
  - Statutory & regulatory exceptions
  - Administrative waivers
  - Reasonable cause
- Not applied equally to all civil penalties
- Cross-Reference: Power of Attorney

# Statutory & Regulatory Exceptions P 101

- Rev. Proc. 84-35: Small Partnership failure-to-file relieve
- I.R.C. §6654(e): Waiver for individual estimated tax penalty
- I.R.C. §6404(f) & Treas. Reg. §301.6404-3: Erroneous Advice
- Practitioner Note: other penalty relief
- I.R.C. §7508A & Treas. Reg. §301.7508A-1: Federally Declared Disaster
  - Postpone certain deadlines
  - Mandatory 60-day postponement FDD

# Administrative Waivers

P 102

- Policy Statements or New Release
- Formal Communication from IRS
- First-Time Abatement
  - Failure-to-pay
  - Failure-to-deposit
  - Filed all required returns
  - Paid all applicable tax or active installment agreement
  - Not have requested within 3 years prior



# Figure 3.4

P 103

**Figure 3.4**  
**Table of Penalties and Available Relief**

Statute	Type of Penalty	Reasonable	
		Cause Relief	Other Relief
Cause Relief	Other	Yes	Yes
Relief	Failure to file tax return	Yes	Yes
I.R.C. § 6651(a)(2)	Failure to pay tax when due	Yes	Yes
I.R.C. § 6651(a)(3)	Failure to pay within 10 days of notice of additional tax due (notices issued prior to 01/01/1997)	Yes	Yes
I.R.C. § 6651(a)(3)	Failure to pay within 21 days of notice of additional tax due (10 business days if amount is \$100,000 or more; notices issued after 12/31/1996)	Yes	Yes
I.R.C. § 6651(f)	Fraudulent failure to file	No	No
I.R.C. § 6652(a)(1)	Failure to file certain information returns	Yes	Yes
I.R.C. § 6652(c)(1)	Failure to file annual return by exempt organization	Yes	Yes
I.R.C. § 6652(c)(2)	Failure to file returns under I.R.C. 6034 or I.R.C. 6043(b)	Yes	Yes
I.R.C. § 6652(d)(2)	Notification of change in status of a plan	Yes	Yes
I.R.C. § 6652(e)	Information required in connection with certain plans of deferred compensation—Form 5500, Annual Return/Report of Employee Benefit Plan	Yes	Yes
I.R.C. § 6652(h)	Failure to give notice to recipients of certain pension, etc., distributions	Yes	Yes
I.R.C. § 6652(i)	Failure to give written explanation to recipients of certain qualifying rollover distributions	Yes	Yes
I.R.C. § 6652(j)	Failure to file certification with respect to certain residential rental projects	Yes	Yes
I.R.C. § 6654	Estimated tax penalty on individuals	No	Yes
I.R.C. § 6655	Estimated tax penalty on corporations	No	No
I.R.C. § 6656(a)	Failure to deposit penalty	Yes	Yes
I.R.C. § 6657	Bad checks	Yes	Yes
I.R.C. § 6662	Accuracy-related penalty on underpayments	Yes <sup>1</sup>	Yes
I.R.C. § 6662A	Accuracy-related penalty on understatements with respect to reportable transactions	Yes <sup>1</sup>	Yes
I.R.C. § 6663	Fraud penalty	No <sup>2</sup>	No
I.R.C. § 6676	Erroneous claim for refund or credit	Yes	No
I.R.C. § 6692	Failure to file actuarial report	Yes	Yes

Continued on next page

**FIGURE 3.4 (Continued)**  
**Table of Penalties and Relief**

<b>Statute</b>	<b>Type of Penalty</b>	<b>Reasonable Cause Relief</b>	<b>Other Relief</b>
I.R.C. § 6698	Failure to file partnership return	Yes	Yes
I.R.C. § 6699	Failure to file S corporation return	Yes	Yes
I.R.C. § 6721	Failure to file correct information reporting returns	Yes	Yes
I.R.C. § 6722	Failure to furnish correct payee statements	Yes	Yes
I.R.C. § 6723	Failure to comply with other information reporting requirements	Yes	Yes

<sup>1</sup> Reasonable cause does not apply to any portion of the underpayment (section 6662) or understatement (section 6662A) attributable to a transaction lacking economic.

<sup>2</sup> Although section 6864(c)(1) provides that the reasonable cause and good-faith defense applies to the section 6863 civil fraud penalty, the fraudulent intent that is required for imposition of the civil fraud penalty is difficult to reconcile with reasonable cause and good faith, and I.R.M. Exhibit 20.1.1-1 states that reasonable cause relief is not available for the civil fraud penalty.

# Reasonable Cause Relief

P 104

- Facts & Circumstances
- Good faith
- No willful neglect
- Ordinary business care & prudence
- What happened & when?
- How did taxpayer do to comply?

# Ordinary Business Care & Prudence P 105

- Taxpayer's reason – dates/explanations clearly correspond
- Compliance history – 3 year look-back
- Length of time – compliance history, corrective actions
- Circumstances beyond the taxpayer's control
- Taxpayer's with lavish or extravagant lifestyles
- Taxpayer's with clear financial need – unexpected medical
- Taxpayer invest in speculative or illiquid assets

# Events outside the Taxpayer's Control

- Practitioner Note: Undue Hardship
- Death, Illness, or Absence
- Fire, Casualty or Disaster
- Unable to Obtain Records
- Mistake, Reliance, Ignorance, and Forgetfulness
- Practitioner Note: Reliance on Electronic Filing
  - United States v. Boyle, 469 U.S. 241(1985)
  - I.R.C. §6651

# Penalty Abatement Request & Appeals

# Request for Penalty Relief

P 108

- Taxpayer has Burden of Proof
- Request as early as possible
- Explain the following:
  - Facts & circumstances prevented the taxpayer from filing a return, paying a tax or otherwise complying with the law?
  - How did facts & circumstances result in the taxpayer not complying?
  - How did the taxpayer handle the remainder of his/her affairs during this time?
  - What attempt did the taxpayer make to comply?

# Request for Penalty Relief

P 108

- Practitioner Note: Cite Sources
- Examination – during or after
- Form 843, Claim for Refund and Request for Abatement
- Figure 3.5 – Pgs. 109 & 110
- Appeals Rights
  - Formal Request
  - Taxpayer did not commit prohibited action or failure to act
  - Hazards of litigation
- Practitioner Note – Preassessment Appeals



# Preparer Penalties & Defenses

# Preparer Penalties

P 117

- Office of Professional Responsibility
- I.R.C. §6695
- I.R.C. §7216 – non-disclosure of information
- I.R.C. §6713 – civil penalties
- Practitioner Note: definition of tax return preparer

# Tax Return Information

P 117

- All information collected for tax prep
- Obtained from all sources
- Used on tax return or not
- Civil penalty = \$ 250 per violation
  - \$ 10,000 max per person
- Criminal penalty = \$ 1,000
  - \$ 50,000 max per person

# Unreasonable Position

P 118

- I.R.C. §6694(a)
- Not properly disclosed
- Reasonable basis – higher standard
- Practitioner Note: Form 8275, Disclosure Statement
- \$ 1,000 or 50% of income derived
- Reasonable Cause Relief & Good Faith
- Reliance on third-party advice

# Reliance on 3<sup>rd</sup> Party Advice

P 118

- No Good Faith if:
  - The advice is unreasonable on its face
  - The tax return preparer knew or should have known that the 3<sup>rd</sup> party adviser was not aware of all relevant facts
  - The tax return preparer knew or should have known at the time the return was prepared, that the advice was no longer reliable due to developments in the law since the time the advice was given

# Factors for Penalty Relief

P 118

- Whether the error resulted from provision that was so complex, ghly technical that a competent preparer of returns or claims could reasonably have made the error
- Whether the understatement was the result of an isolated error or numerous errors
- Whether the understatement was material in relation to the correct tax liability
- Whether the preparer's normal office practice, indicates that the error in question would rarely occur or the normal office practice was followed in preparing the return or claim in question

# Willful or Reckless Understatement P 118-119

- I.R.C. §6694(b)
- Intentional disregard for rules & regulations
- IRS bears Burden of Proof
- Example 3.4 – Unallowed Expenses Claimed
- Example 3.5 – Expenses Overstated
- \$ 5,000 or 75% of income derived

# Other Preparer Penalties

P 119-121

- Failure to Furnish Copy of Return
- Failure to Sign Return – electronic signatures acceptable
- Failure to Furnish Identifying Number
- Failure to Retain Copy or List
- Failure to File Correct Information Returns
- Negotiating a Check



# Negotiating A Client Check

P 121

- Just don't do it .....please!!!
- IRC 6695(f) imposes a penalty of \$560 for each refund check
- There is no maximum amount
- There is no reasonable cause exception

# Due Diligence

P 121-122

- I.R.C. §6695(g)
- Treas. Reg. §1.6695-2(b)
- Complete Form 8867, Paid Preparer's Due Diligence Checklist
  - Information provided by taxpayer
  - Reasonably known by tax preparer
  - Records retention, documentation

# Due Diligence

P 122

- May not ignore the implications of information furnished to, or known by, the tax return preparer
- Make reasonable inquiries if information furnished appears incorrect, inconsistent, or incomplete
- Contemporaneously documentation
- Penalties – HoH, CTC, ACTC, ODC, AOTC & EIC
  - \$ 560 per failure
  - Multiple penalties can exist
  - No Reasonable Cause Relief
- Practitioner Note – Due Diligence Injunctions



Questions