



2023
NATIONAL INCOME TAX WORKBOOK

CHAPTER 3: PENALTIES & DEFENSES
PP 83 - 122

LEARNING OBJECTIVES

P 83

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

IRS PENALTY HANDBOOK P 84

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

PRACTITIONER NOTE

P 85

Disregarded Period



I.R.C. §7508 & §7508A



Exceptions – combat zones & federally
declared disaster areas



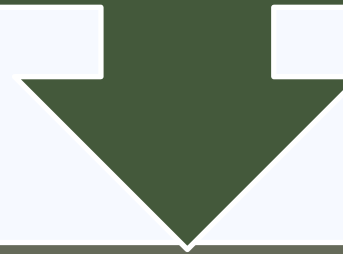
COMPUTATION ERRORS

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

**PRACTITIONER
NOTE
P 85**

Verify Penalty Computation



The Penalty & Interest Notice
Explanation (PINEX) System

CP569 Notice

POLLING QUESTION

#1

- Generally, a return is considered timely filed or paid if postmarked by the due date:

–True

–False



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

Return Due Date (without Extensions)	Minimum Penalty Amount
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

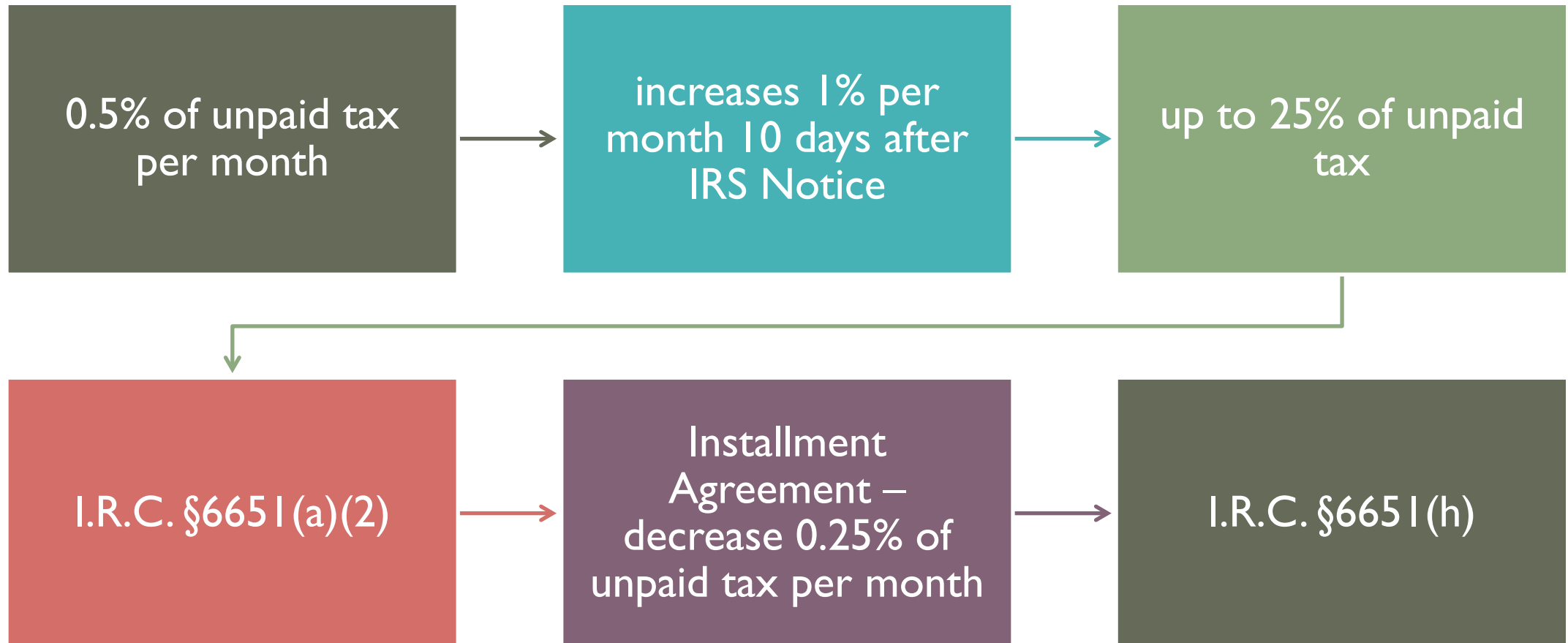
Taxpayer conceals assets

Taxpayer uses cash for personal & business – unusual behavior

Taxpayer is aware of filing requirement

FAILURE-TO-PAY PENALTIES

P 86



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

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 ESTIMATED 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

For the Period	Due Date
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.

ESTIMATED TAX PAYMENTS

P 89

**SPECIAL RULES APPLY FOR FARMERS/FISHERMEN,
NONRESIDENT ALIENS, & SHORT TAX YEARS**

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

taxpayer's records were destroyed in casualty or natural disaster

Facts dictate it would be against equity & good conscience to apply the penalty

taxpayer become seriously ill or injured

community property state – filed original joint return then filed separate amended return

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)

NO WAIVER P 90

- Lack of funds
- Against Equity & Good Conscience
- Foreseeable event
- Taxpayer's action

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

POLLING QUESTION

#2

- Even if a taxpayer cannot pay all of a balance due, timely filing will ensure a failure to file (FTF) penalty is not assessed:

– True

– False



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

Investment Credit
Recapture
Build-In Gains
Passive Investment Income

LARGE CORP. & EST. TAX PAYMENTS

P 92

- 100% of current tax year
- Taxable income \$ 1mil or more for 3 preceding years
- 100% of prior-year tax liability
- Example 3.2
 - Blacktail Sports, Inc
 - \$1.4mil 2022 tax liability
 - \$ 1.6mil 2023 tax liability
 - Est. Tax based upon 2023 tax liability

ABATEMENT OR WAIVER OF PENALTY P 92

- Legislative provision
- Administrative provision
- Automatic – federally declared disaster areas
- No Reasonable Cause

ABATEMENT OR WAIVER OF PENALTY P 92

- No unusual circumstances
- Waive Penalty
 - Misapplied payment/refund
 - Equity & Good conscience
- Written Requests

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

FAILURE-TO-DEPOSIT PENALTIES

P 92-93

- 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
- 1-5 days late = 2%
- 6-15 days late = 5%
- Greater than 15 days = 10%
 - Add 5% is unpaid more than 10 days from date of 1st IRS Notice

FAILURE-TO-DEPOSIT PENALTY P 93

- 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

**PRACTITIONER
NOTE
P 93**

Allgreens, LLC v. Commissioner

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

1st Quarter required to deposit

Timely filed employment tax return

DEPOSIT SCHEDULE CHANGE

P 94

- Monthly
- Semi-weekly
- \$ 100,000 next-day
- 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

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graph TD; A[Accuracy-Related] --> B[Civil Fraud]; B --> C[Erroneous Claim for refund or credit];
```

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
- \$ 5,000

ACCURACY-RELATED PENALTIES

P 94

Corporations

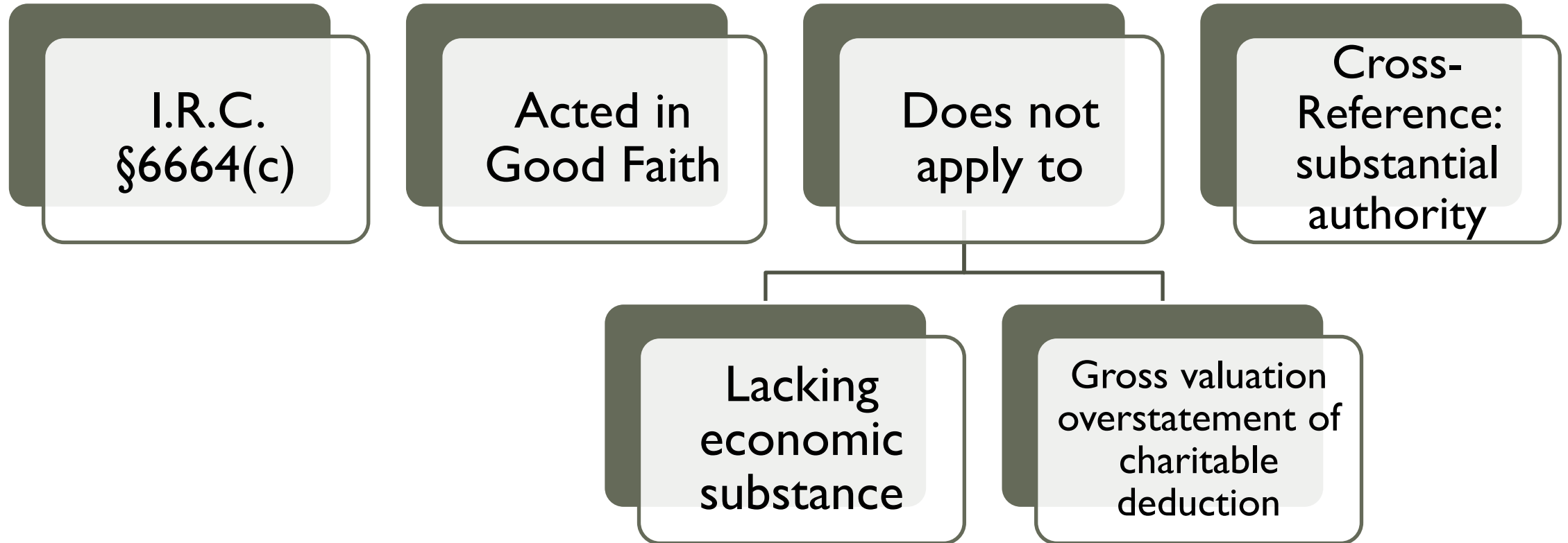
- Greater of 10% of tax required or \$ 10,000
- \$ 10,000.000

I.R.C. §199A

- Greater of 5% of tax required
- \$ 5,000

REASONABLE CAUSE RELIEF

P 95



REASONABLE CAUSE RELIEF

P 95

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

Commissioner v.
Groetzinger

CORRECTING TAX LIABILITY P95

- Erroneous information
 - Taxpayer did not know
 - Taxpayer didn't have reason to know
- Isolated computational or transcription error
- Inadvertent errors
 - Data
 - Financials
 - Internal controls & procedures

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
definition

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
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 Statement	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 97

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

- I.R.C. §6011(e)
 - Less than 10 same document types
 - I.R.C. §6721 penalties apply
 - Form 8508, Request for Waiver from Filing Information Returns Electronically
 - Economic hardship
- 


ELECTRONIC FILING WAIVER

P 99

- Cross-Reference – IRS Chapter
 - Extension of Time to File
 - 30-day
 - Form 8809, Application for Extension of Time to File Information Returns
 - FIRE system
- 


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 August 1st
 - \$ 110 per failure
 - \$ 1,766,000 max
 - \$ 588,500 max for small business
- 

2023 PENALTY AMOUNTS

P 99

- After August 1st
 - \$ 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
- 

**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

POLLING QUESTION

#3

- The IRS will abate a failure-to-file (FTF) or failure-to-pay (FTP) penalty when a taxpayer can show the failure was due to ____ and not due to neglect.

- Reasonable cause

- The dog eating the tax return

- Ignoring it



STATE OF MICHIGAN PENALTIES

MI PENALTIES & INTEREST P 16

Penalties and Interest Imposed Under the Revenue Act (Public Act 122 of 1941, as Amended)

<u>Section No.</u>	<u>Condition</u>	<u>Provision</u>
19(3)	Nonnegotiable remittance	\$50
21(4)	Frivolous protest	\$25 or 25% of the amount of tax under protest, whichever is greater
23(2)	Interest	1% above the prime interest rate to be adjusted on January 1 and July 1 of each year
23(3)	Negligence	10% of the deficiency (minimum \$10)
23(4)	Intentional disregard of the law	25% of the deficiency (minimum \$25)
23(5)	Civil fraud	100% of the deficiency
24(2)	Failure or refusal to file a return	5% of the tax due for the first two months, then 5% per month of the tax due (maximum 25%)
24(2)	Failure or refusal to pay a tax	5% of the tax due for the first two months, then 5% per month of the tax due (maximum 25%)
24(5)	Failure or refusal to file an informational return	\$10 per day (maximum \$400)
30(1)	Interest on refund returns	1% above the prime interest rate to be adjusted on January 1 and July 1 of each year

MI CRIMINAL PENALTIES & INTEREST P 17

Criminal Penalties and Interest Imposed Under the Revenue Act (Public Act 122 of 1941, as Amended)

<u>Section No.</u>	<u>Condition</u>	<u>Provision</u>
27(1)(a)(2)	False or fraudulent return or false statement in return	Felony (maximum fine of \$5,000, imprisonment for not more than five years, or both)
27(1)(b)(c)(2)	Aid, abet, or assist another in attempt to evade the payment of a tax, or part of a tax, or file false claim for credit or refund, either in whole or in part	Felony (maximum fine of \$5,000, imprisonment for not more than five years, or both)
27(3)	Perjury (a person knowingly swears to or verifies a false or fraudulent return or a return containing a false or fraudulent statement, with the intent to aid, abet, or assist in defrauding the State)	Fines and/or imprisonment as provided under the general provisions of the Michigan Compiled Laws. This may be imposed in addition to the provisions of Section 27(1) and (2) of the Revenue Act.
27(4)	Person is not guilty under subsection (2) but knowingly violates any other provision of the Revenue Act	Misdemeanor (fine of not more than \$1,000, or imprisonment for not more than one year, or both)

MI PENALTY WAIVER

P 17

Reasonable
Cause

Death or
serious illness

Extenuating
circumstances

Fire, theft or
criminal acts
against the
taxpayer

Misapplication
of payment by
Treasury

NOT lack of
Funds

NOT poor
bookkeeping

Written
request with
explanation

RAB 2022-224

RAB 2022-24 PENALTY PROVISIONS

P 48

Penalty Waiver

Discretionary

Non-Discretionary

Waiver : MI Dept. of
Treasury, Collection
Services Bureau, P.O.
Box 30199, Lansing
MI 48909

Reasonable Care &
Prudence

Taxpayer-Initiated
Disclosure

RAB 2023-14 COVID-19 PENALTIES & STATUTES

- Statute of Limitation on Assessments
 - 4-years after original due date (qualified extension) OR
 - Date return was filed
 - Whichever is later
- SUW – unchanged
- 2019 Due Date – July 15, 2020
- 2020 Due Date – May 17, 2021



**INDIVIDUAL & BUSINESS
PENALTIES DEFENSES &
RELIEF**

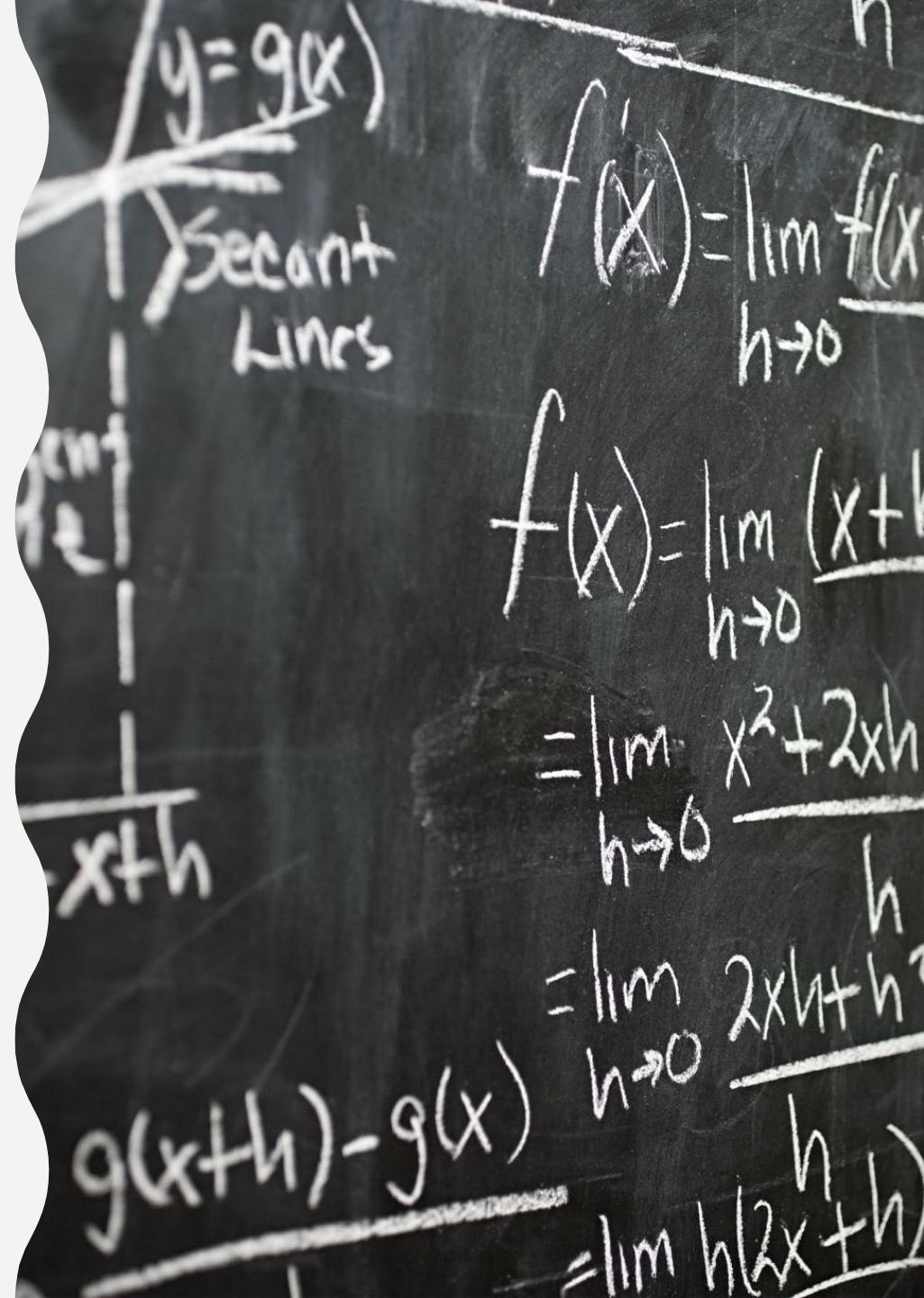
I.R.M. 20.1.1.3

P 101

- 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 Federally Declared Disaster



ADMINISTRATIVE WAIVERS P 102

Policy Statements

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 ¹	Yes
I.R.C. § 6662A	Accuracy-related penalty on understatements with respect to reportable transactions	Yes ¹	Yes
I.R.C. § 6663	Fraud penalty	No ²	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 P 104

FIGURE 3.4 (Continued)
Table of Penalties and Relief

Statute	Type of Penalty	Reasonable Cause Relief	Other Relief
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

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

² Although section 6664(c)(1) provides that the reasonable cause and good-faith defense applies to the section 6663 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
after noncompliance

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 – 2022 FTX
Bankruptcy

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

**PENALTY
ABATEMENT
REQUEST &
APPEALS**

REQUEST FOR PENALTY RELIEF

P 108

- Taxpayer has Burden of Proof
- Request as early as possible
- Explain the following:
 - What facts & circumstances prevented the taxpayer from filing a return, paying a tax or otherwise complying with the law?
 - How do the 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



SAMPLE REQUEST P 109- 110

Department of the Treasury
Internal Revenue Service
P.O. Box 409101
Ogden, UT 84409

Re: Request for reasonable cause penalty abatement
Taxpayer Willow Stewart
Taxpayer identification number XXX-XX-XXXX
2023 Form 8288
Notice number 12345, Dated October 30, 2023

To Whom It May Concern:

I am writing on behalf of taxpayer Willow Stewart, tax ID number XXX-XX-XXX. My Form 2848, Power of Attorney and Declaration of Representative, is on file and a copy is enclosed. This letter is to respectfully request reasonable cause relief from the \$3,000 penalty asserted in the enclosed notice.

According to I.R.M. § 20.1.1.3.2, the IRS provides relief from a penalty based on reasonable cause 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 because of events beyond the taxpayer's control.

Reasonable cause penalty relief is warranted because the taxpayer acted with ordinary business care and prudence [I.R.M. § 20.1.1.3.2.2] and was unable to meet the timely filing requirement because there were unanticipated events beyond the taxpayer's control [I.R.M. § 20.1.1.3.2.2.2].

The taxpayer sold her US vacation home on January 9, 2023. Her Form 8288, U.S. Withholding Tax Return for Certain Dispositions by Foreign Persons, and accompanying payment of \$35,000 were due January 30, 2023. On January 11, 2023, a severe snowstorm damaged the taxpayer's primary residence in Alberta, Canada. The storm interrupted power to the home for 3 days, during which freezing temperatures caused pipes to break and flood the residence. I have enclosed a copy of her insurance claim showing the date and a description of the damages.

During her temporary absence, the taxpayer struggled to handle her financial affairs. She could not access records necessary to timely file the return and made unsuccessful efforts to obtain those records from her realtor and the title company (copies of her email correspondence is enclosed). She attempted to call the IRS three times to ask for additional time, and each time received a message that the phone assistance system was receiving unusually high call volumes, and to please try again later (see the enclosed notes documenting these attempts).

The taxpayer returned to her residence on February 2, 2023, and she filed the return on February 3, 2023 (a copy of the certified mail receipt is enclosed).

Based on these facts, we respectfully request that the taxpayer's penalty be removed based on reasonable cause. If you have any questions, please call me. Thank you for your consideration.

SAMPLE REQUEST P 109-110

Sincerely,
Gretta Gunderson, CPA

Encl: Form 2848
Copy of insurance claim
Email correspondence
Taxpayer's notes
Certified mail receipt

I, Willow Stewart, under penalty of perjury, declare that the above-described facts are true and correct.

Dated December 11, 2023.

Willow Stewart

REQUEST FOR PENALTY RELIEF P 110

- Appeals Rights
 - Formal Request
 - Taxpayer did not commit prohibited action or failure to act
 - Hazards of litigation
- Practitioner Note – Preassessment Appeals



**INTERNATIONAL
PENALTIES &
DEFENSES**

FOREIGN BANK ACCOUNT REPORTING

P 111

US Citizens,
residents & certain
other persons

Annual Reporting

Direct or indirect
financial interest in
or signature
authority

Aggregated value >
\$ 10,000 at any time
during the calendar
year

Form 114 – FinCEN

- Due April 15th
- 6-month automatic extension

Non-willful = \$
15,611

Willful = 50% of
account value
or \$ 156,107

Negligence =
\$ 1,350

Patter of
negligence =
\$ 105,083

Examiners
discretion

FBAR PENALTIES P 111

FIGURE 3.6
FBAR Penalty Mitigation Guidelines—Nonwillful Violations

Mitigation Level	If the Maximum Aggregate Balance For All Accounts to Which the Violations Relate	The Mitigated Penalty Amount Is
Level I-NW	Did not exceed \$50,000 at any time during the calendar year, then Level I-NW applies to all violations, and	\$500 per nonwillful violation not to exceed \$5,000 per year
Level II-NW	Exceeds \$50,000, but does not exceed \$250,000, then Level II-NW applies to all violations	\$5,000 per nonwillful violation
Level III-NW	Exceeds \$250,000, then Level III-NW applies to all violations	The statutory maximum per nonwillful violation

FIGURE 3.7
FBAR Penalty Mitigation Guidelines—Willful

Mitigation Level	If the Maximum Aggregate Balance For All Accounts to Which the Violations Relate	The Mitigated Penalty Amount Is
Level I-Willful	Did not exceed \$50,000 during the calendar year, then Level I-Willful mitigation applies to all violations	The greater of \$1,000 per year or 5% of the maximum aggregate balance of the accounts to which the violations relate during the year (Allocate the total penalty for the year among all willful violations being penalized in that year.)
Level II-Willful	Exceeds \$50,000 but does not exceed \$250,000, then Level II-Willful mitigation applies to all violations	For each account for which there was a violation, the greater of \$5,000 or 10% of the maximum account balance during the calendar year at issue
Level III-Willful	Exceeds \$250,000 but does not exceed \$1,000,000, then Level III-Willful mitigation applies to all violations	For each account for which there was a violation, the greater of 10% of the maximum account balance during the calendar year at issue or 50% of the account balance on the violation date
Level IV-Willful	Exceeds \$1,000,000, then Level IV-Willful mitigation applies to all violation	For each account for which there was a violation, the greater of 50% of the account balance on the violation date or the statutory maximum penalty for willful violations.

FBAR PENALTIES P 113

- Practitioner Note: Brittner v. United States
- Reasonable Cause Penalty Relief
 - Non-willful violations
- Practitioner Note: Voluntary Compliance Program
 - OVDP
 - Non-willful
 - Streamline Compliance
 - Before IRS examination

REASONABLE CAUSE RELIEF P 113

- The reason for not meeting the filing obligation
- The taxpayer's compliance history relating to all tax obligations
- The length of time between the failure to meet the obligation and subsequent compliance & correction of the error when discovered
- Whether circumstances beyond the taxpayer's control existed
- Ignorance of the law, if the taxpayer made a reasonable & good-faith effort to comply with FBAR laws and general tax law

REASONABLE CAUSE RELIEF P 113

- Whether the taxpayer was aware of the specific obligation, considering the following:
 - Taxpayer's education level and any related level of sophistication or professional background
 - Whether the taxpayer has been penalized before for this penalty
 - The level of complexity of the tax or compliance issue
 - Whether there were recent changes in the laws that were not reasonable to know
 - Whether there was any intentional effort to conceal the reporting of income or assets

OTHER PENALTIES

P 114-115

- Form 8938, Statement of Specified Foreign Financial Assets
 - \$ 10,000 + \$ 10,000 added every 30-days
 - \$ 50,000 max penalty
- Form 3520, Annual Return to Report Transactions With Foreign Trusts & Receipt of Certain Foreign Gifts
 - \$ 10,000 or 35% of gross reportable amount
 - 5% of gift per month up to 25% max
- Form 3520-A, Information Return of Foreign Trust With a U.S. Owner

OTHER PENALTIES

P 114-115

- Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations
 - Officer, directors or shareholders
 - \$ 10,000 + \$ 10,000 added every 30-days
 - \$ 50,000 max penalty
- Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation engaged in U.S. Trade or Business
 - 25% ownership transaction
 - \$ 25,000 + \$ 25,000 added every 30-days

OTHER PENALTIES

P 115

- Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation
 - 10% of the value transferred
 - \$ 100,000 max
 - No limit
- Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships
 - \$ 10,000 + \$ 10,000 added every 30-days
 - \$ 50,000 max AND 10% of contributed property value
 - \$ 100,000 limit

FIGURE 3.8
Reasonable Cause Relief for International Penalties

Penalty Code Section	Form	Reasonable Cause Relief
I.R.C. § 965(i)(7)(C)	Form 965-A	No
I.R.C. § 6038(b)	FCs—Form 5471 FPs—Form 8865 FCs and FPs with Foreign Disregarded Entities—Form 8858	Yes
I.R.C. § 6038(c)	FCs—Form 5471 FPs—Form 8865 FCs and FPs with Foreign Disregarded Entities—Form 8858	Yes
I.R.C. § 6038A(d)	Form 5472	Yes
I.R.C. § 6038A(e)	Not applicable	Not applicable
I.R.C. § 6038B(c)	Form 926 Form 8865, Schedule G, H, or O Form 8838-P; I.R.C. § 367 documents [e.g., Gain Recognition Agreement (GRA); Form 8838, Annual Certification]	Yes
I.R.C. § 6038C(c)	Form 5472	Yes
I.R.C. § 6038C(d)	Not applicable	Not applicable
I.R.C. § 6038D	Form 8938	Yes
I.R.C. § 6039E	Not applicable	Yes
I.R.C. § 6039F(c)	Form 3520	Yes
I.R.C. § 6039G	Form 8854, Form W-8CE	Yes
I.R.C. § 6652(f)	Not applicable	Yes
I.R.C. § 6677(a)	Form 3520	Yes
I.R.C. § 6677(b)	Form 3520-A	Yes
I.R.C. § 6679	Form 5471, Schedule O for I.R.C. § 6046 Form 8865, Schedule P for I.R.C. § 6046A	Yes
I.R.C. § 6686	Form 1120-IC-DISC, or Form 1120-FSC	Yes
I.R.C. § 6688	Form 5074 Form 8689 Form 8898	Yes
I.R.C. § 6689	Form 1116 or Form 1118 (attach to Form 1040-X or Form 1120-X)	Yes

Source: I.R.M. Exhibit 20.1.9-5

POLLING QUESTION

#4

- Individual taxpayers may have to make ___ if they have no or low withholding on their income during the year:
 - Amends
 - Estimated tax payments
 - A better effort



END SESSION #1



**PREPARER
PENALTIES &
DEFENSES**

PREPARER PENALTIES

P 117

Office of Professional Responsibility



I.R.C. §6695 – unreasonable position on tax return



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

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

AMOUNT OF PENALTY P 118

**\$ 1,000 or 50% of
income derived**

**Reasonable Cause
Relief & Good Faith**

**Reliance on third-
party advice**

RELIANCE ON 3RD 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 3rd party adviser was not aware of all relevant facts


➤ The tax return preparer knew or should have known at the time the return or claim for refund 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

- Complex, uncommon, or highly technical
 - Understatement was the result of an isolated error rather than a number of errors
 - Understatement was material in relation to the correct tax liability
 - Preparer's normal office practice
- 

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

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

POLLING QUESTION #1

- If an employer does not timely deposit the employer & employee portion of social security & medicare taxes, they may be subject to ____;
 - A stern warning
 - Mean looks from the employees
 - Failure-to-deposit (FTD) penalty





SUBSTANTIAL AUTHORITY

CHAPTER 14

§6662 PENALTIES

P 521

- Negligence or disregard of rules or regulations
- Substantial understatement of income tax
- Substantial valuation misstatement
- Substantial overstatement of pension liabilities
- Substantial estate or gift tax valuation
- Disallowance of claimed tax benefits – lacks economic substance
- Undisclosed foreign financial asset understatement
- Inconsistent estate basis
- Any overstatement of 2021 above-the-line deduction for charitable cash contributions
- Disallowance of a deduction for qualified conservation contribution

P 521 - 522



Negligence – failure to make a reasonable attempt to comply



Disregard – careless, reckless, or intentional disregard



Substantial Understatement – greater of

10% of tax (5% for QBI) OR
\$ 5,000



Practitioner Note – Rules for Corporations



Practitioner Note – Reasonable Basis

SUBSTANTIAL AUTHORITY P 522

Position taken on tax return

Relationship between weight of authorities & contrary position

Does not have to meet More-likely-than-not standard

Greater-than 50% likelihood

Treas. Reg. 1.6662-4(d)(2) -- Analyze law & apply to relevant facts

**SUBSTANTIAL
AUTHORITY
P 522**

Practitioner Note – Taxpayer intent

Statutes

Regulations

Revenue Rulings

Procedures

Relevance & persuasiveness

Type of document providing authority

**NOT
SUBSTANTIAL
AUTHORITY
P 522**

Private Letter Rulings

General Counsel Memoranda

IRS Information Releases or Reports

Tax Opinions

IRS FAQ's – penalty defense only

**SUBSTANTIAL
AUTHORITY
P 523**

Proposed, Temporary & Final
Regs

Rev. Rulings & Rev.
Procedures

Tax Treaties

Federal Court Cases

FIGURE 14.1
Jurisdiction of the Courts

Jurisdiction of Circuit Courts of Appeals

- DC Circuit—District of Columbia
- First Circuit—Maine, New Hampshire, Massachusetts, Rhode Island, Puerto Rico
- Second Circuit—Vermont, New York, Connecticut
- Third Circuit—Pennsylvania, New Jersey, Delaware, US Virgin Islands
- Fourth Circuit—Maryland, Virginia, West Virginia, North Carolina, South Carolina
- Fifth Circuit—Texas, Louisiana, Mississippi
- Sixth Circuit—Michigan, Ohio, Kentucky, Tennessee
- Seventh Circuit—Wisconsin, Illinois, Indiana
- Eighth Circuit—Minnesota, Iowa, Missouri, Arkansas, Nebraska, North Dakota, South Dakota
- Ninth Circuit—Montana, Idaho, Washington, Oregon, California, Nevada, Arizona, Alaska, Hawaii, Guam, Northern Mariana Islands
- Tenth Circuit—Wyoming, Utah, Colorado, New Mexico, Kansas, Oklahoma
- Eleventh Circuit—Alabama, Georgia, Florida
- Federal Circuit—Nationwide jurisdiction

JURISDICTION OF THE COURTS P 524



Federal Circuit Court of Appeals – geography



Tax Court – United States & possessions

TAX COURT P 525

Decision overruled in Appeals – only taxpayers in Appeals jurisdiction affected

Regular Decisions (T.C.)

Memorandum Decisions (T.C. Memo.)

Summary Decisions (T.C. Summary Opinion)

**MAYBE
SUBSTANTIAL
AUTHORITY
P 526**

Congressional Committee Reports

Private Letter Ruling

Technical Advice Memorandum

Action on Decision

General Counsel Memorandum

**PROBABLY NOT
SUBSTANTIAL
AUTHORITY
P 526**

IRS Information Release

IRS Notices or
Announcements

Tax Opinions

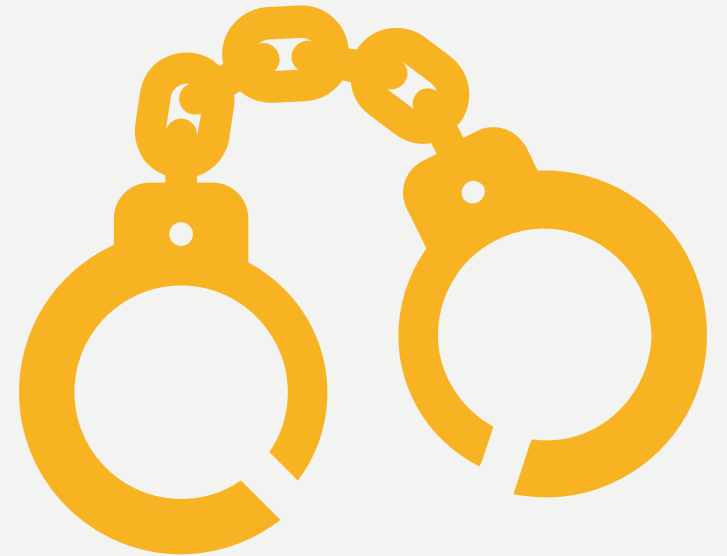
Practitioner Note – more than
one position

POLLING QUESTION #2

- The IRS can assess a penalty on preparers to stop fraudulent, unscrupulous or incompetent practices:

– True

– False





QUESTIONS