

IRS Solutions
SOFTWARE
A Tax Pro's Best Friend

Penalties An IRS Profit Center




Upcoming Webinars

<p>What's New</p> <p>Tuesday, January 14, 2025 10 AM PST or 1 PM EST</p>	<p>What To Look For During Tax Season</p> <p>Thursday, January 23, 2025 10 AM PST or 1 PM EST</p>
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Meet the Team

David, Suzanne & Cindy



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CPE Policy IRS Solutions SOFTWARE

REGISTRATION

- Must register for webinar in advance


ATTENDANCE

- Minimum 50 minutes on the call, No exceptions!

POLLING QUESTIONS

- Must answer 3 out of 4 questions
- (Tip: Try to answer all 4 for safety)

CERTIFICATE DELIVERY

-  CPE certificates emailed by end of next week

IRS Solutions is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be submitted to the National Registry of CPE Sponsors through its website: www.learningmarket.org.

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Time to Renew IRS Solutions SOFTWARE

All PTINs expire on December 31 of each year.

- PTIN open renewal season begins mid-October each year, for the following year.
- You can renew online by logging into your PTIN account or by submitting a paper Form W-12 with the "Renewal" box checked. Online renewal takes about 15 minutes; paper renewals take 4-6 weeks to process.
 - There is a **\$19.75 renewal fee**

Renew Enrolled Agent every 3 years based on the last digit of your SSN

- This year renewal cycle 1,2,3
- Due January 31, 2025
- There is a **\$140.00 renewal fee**


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Polling Question #1 IRS Solutions SOFTWARE



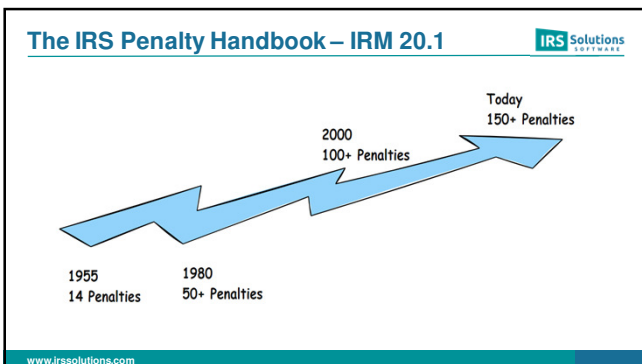
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The IRS Penalty Handbook – IRM 20.1 

- Primary source of authority for civil penalty administration by the IRS and serves as the foundation for addressing civil penalty administration by various IRS functions.
- Provides roadmap of what IRS employee will look at when analyzing any penalty abatement or waiver request.

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Policy Statement 20-1 IRS Solutions SOFTWARE

Penalties provide the IRS with important tools, to achieve its goal of collecting the proper amount of tax revenues in the most efficient manner.

- **Penalties enhance voluntary compliance.**
- In order to effectively use penalties to encourage compliant conduct, **examiners and their managers must consider the applicability of penalties in each case**, and fully develop the penalty issue when the initial consideration indicates that penalties should apply.

ATTENTION TAX PAYERS!
The beatings will continue until the moral improves

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Most Common Penalties IRS Solutions SOFTWARE

Failure to file (TC 160)

- Failure to timely file return by deadline results in penalty of 5% of the amount required per month of late filing up to 5 months = 25% max **IRC §6651(a)(2)**

Failure to pay (TC 270)

- Failure to timely pay tax results in penalty of 0.5% of the amount shown on the return, if not more than 1 month, with additional 0.5% for each additional month = 25% max **IRC §6651(a)(1)**

Failure to pay proper estimated tax (TC 170)

- When you don't pay enough taxes due for the year with your quarterly estimated tax payments, or through withholding, when required **IRC §6654**

Dishonored check

- For payments of \$1,250 or greater, the penalty is 2% of the amount of the payment. For payments less than \$1,250 the penalty is \$25. **IRC §6651(a)(3)**

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Failure to Deposit (TC 180) IRS Solutions SOFTWARE

Penalty applies if the taxpayer fails to deposit on the date prescribed any amount of tax imposed into a government depository.

"Applicable Percentage"

- 2% if failure not more than 5 days
- 5% if failure is more than 5 days but not more than 15 days
- 10% if failure is more than 15 days
- 15% if certain IRS notices sent to taxpayer regarding failure to deposit.

IRM 20.1.4 Failure to Deposit Penalty
IRC §6656

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Accuracy Related Penalties **IRS Solutions**
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If threshold requirements are met, the IRS may assess a penalty of 20% on a portion of underpayment of tax.

- Negligence/Disregard of Rules and Regulations.
- Substantial Understatement of Income Tax.

IRC §6662(a)

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Polling Question #2 **IRS Solutions**
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Penalty Defenses **IRS Solutions**
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- Reasonable Cause
- Section 6751(b)
- Disclosure of Item on Return
- First Time Penalty Abatement
- Voluntary Disclosure
- Streamlined Filing Compliance Procedures

IRC §20.1.1.3

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Penalty Abatement IRS Solutions SOFTWARE

The IRS will consider any sound reason for failing to file a tax return, make a deposit, or pay tax when due.

- Did the TP exercise ordinary business care and prudence? #1 they look at
- The IRS typically looks at four factors when deciding to abate a tax penalty because of reasonable cause.

Always determine if you will qualify for reasonable cause before asking for FTA.

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FTA every 4 years

Reasonable Cause IRS Solutions SOFTWARE

- The taxpayer should have a **compelling reason** for seeking the penalty abatement. All appropriate explanations should sync with the dates and circumstances on which the penalties were based.
- The IRS looks at the **compliance history** of the taxpayer. Not to say that taxpayers with past non-compliance issues will be denied tax penalty relief, but sometimes bad behavior can weigh negatively on the taxpayer's circumstances.
- The **length of time** that it took for the taxpayer to become compliant must be reasonable under the circumstances.
- The circumstances cited as the **underlying reason** for tax penalty abatement must be truly beyond the taxpayer's control.


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Penalty Abatement - Reasonable Cause IRS Solutions SOFTWARE

- 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

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TP in hospital but wife paying bills. Did not pay IRS. Abate denied.

Penalty Abatement - Reasonable Cause 

- Cite the applicable authority when asking for relief
- Explain facts as they occurred **Make it personal. Don't use "taxpayer", but "Jim", etc.**
- Tell the IRS that the mistake will not happen again
- Make sure that it does not happen again

This being said, reasonable cause is tough to get these days

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Penalty Abatement - §6751(b) 

IRC §6751(b)

- Provides that the IRS may not assess certain penalties "unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate."

IRC §6662 (accuracy-related penalty)


- If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this section applies.

IRC §6663 (fraud)

- If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud.

Failure to file international information returns (e.g., Forms 3520, 5471, etc.)

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Penalty Abatement - §6751(b) 

The Tax Court held that the IRS must obtain written managerial approval of a penalty in a deficiency case **no later than** when the IRS Revenue Agent Report (RAR), coupled with a 30-day Appeals letter, is sent to the TP.

In that case, because the IRS obtained written managerial approval **after issuance** of the RAR and Appeals letter to the TP, the accuracy-related penalty was invalid and could not be sustained.

Clay v. Commissioner, 152 T.C. 223 (2019)

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Disclosure of Tax Items 

TP may avoid accuracy-related penalties if:

- Substantial authority for the item; or
- Relevant facts affecting the item's treatment are adequately disclosed on the return or in a statement attached to the return and there is a reasonable basis for the tax treatment.

IRC §6662(d)(2)(B)


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Bad Check Penalty (TC 280 or TC 286) 

Reasons for abatement for bad check penalty:

- The taxpayer furnished evidence that the taxpayer's bank account contained sufficient funds at the time the payment, but due to a bank error, the payment was dishonored. In this situation, the taxpayer should include a letter of explanation from the taxpayer's bank.
- A payment was not honored because of the death of the taxpayer after the date the payment was originated and/or issued. Penalty relief may be granted
- Bad checks penalties are NOT assessed on checks or other forms of payment that have a "stop payment." TP provides proof.

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Bad Check Penalty (TC 280 or TC 286) 

Bad Check Penalty Abatement: Valid Reasons

BANK ERROR

- Sufficient funds existed and the bank made the error
- Required: Bank letter explaining error

DEATH OF TAXPAYER

- Death occurred after payment issued but before check processed

STOP PAYMENT

- Not subject to bad check penalty
- Must have proof of stop payment
- Original tax still owed

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Polling Question #3 IRS Solutions SOFTWARE



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First Time Abatement IRS Solutions SOFTWARE

The first-time penalty abatement (FTA) is an administrative waiver that allows the IRS to grant relief to taxpayers from certain penalties. IRM 20.1.1.3.3.2.1 (10-19-20)

- Available for failure-to-file, failure-to-pay, and failure-to-deposit penalties.
- Rewards taxpayers who have a good history of compliance

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2023 Penalties Assessed & Abated IRS Solutions SOFTWARE

[Money amounts are in thousands of dollars]

Type of tax and type of penalty	Civil penalties assessed [1]		Civil penalties abated [2]	
	Number	Amount	Number	Amount
	(1)	(2)	(3)	(4)
Civil penalties, total	45,645,154	65,574,052	4,664,075	13,012,834
Individual and estate and trust income taxes:				
Civil penalties, total [3]	38,165,237	44,436,047	3,185,987	2,850,144
Accuracy [4]	564,913	1,390,420	65,576	450,051
Bad check	1,447,607	158,981	115,705	41,784
Delinquency	3,292,863	20,678,979	402,834	1,078,669
Estimated tax	14,204,564	7,004,996	179,109	105,342
Failure to pay	18,599,109	14,874,227	2,418,745	1,143,468
Federal tax deposits	0	0	0	0
Fraud	1,232	96,589	126	17,846
Other [5]	54,949	231,854	3,892	12,984

IRS Data Book – SOI Tax Statistics 2023
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2022 Penalties Assessed & Abated IRS Solutions SOFTWARE

[Money amounts are in thousands of dollars]

Type of tax and type of penalty	Civil penalties assessed [1]		Civil penalties abated [2]	
	Number	Amount	Number	Amount
	(1)	(2)	(3)	(4)
Civil penalties, total	39,898,114	73,611,454	8,510,272	50,858,228
Individual and estate and trust income taxes:				
Civil penalties, total [3]	33,518,147	59,391,698	6,314,592	36,661,534
Accuracy [4]	647,348	1,894,512	61,827	476,294
Bad check	1,135,997	150,506	12,824	30,298
Delinquency	3,371,240	35,495,632	3,881,725	35,138,124
Estimated tax	12,166,191	1,811,762	237,769	83,059
Failure to pay	16,151,917	10,545,008	2,069,481	905,553
Federal tax deposits	3	3	0	0
Fraud	1,162	273,984	142	22,532
Other [5]	44,289	90,269	824	5,675

IRS Data Book – SOI Tax Statistics 2022
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Prior Approval Before Assessment IRS Solutions SOFTWARE

IRC § 6751(b)(1) provides: *"No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate."*

IRC § 6751(b)(2) carves out two categories of *exceptions* from this supervisory approval requirement: (i) the additions to tax for failure to file a tax return or pay the tax due (IRC § 6651) and the additions to tax for failure to pay sufficient estimated tax (IRC §§ 6654 and 6655) and (ii) any other penalty that is "automatically calculated through electronic means."

FOIA (Freedom of Information Act)

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First Time Abatement IRS Solutions SOFTWARE

An FTA can be obtained for a failure-to-file, failure-to-pay, or failure-to-deposit penalty.

- FTA does not apply to all types of penalties such as the accuracy-related penalty, erroneous claim for refund, negligence, fraud, etc.
- Does not apply to estate/gift tax returns or information returns that depend on another filing (e.g., Form 5471, 3520, etc.).
- FTA waiver applies only to penalties for tax periods ending after December 31, 2000

IRM 20.1.1.3.6.1

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Conditions for First Time Abatement



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:

- History of good compliance; all required returns must be filed and no penalties incurred during the prior 3 years. (Prior to November 2017 the IRS only considered significant penalties when evaluating FTA eligibility. Now any penalty incurred within the last 3 years will cause the taxpayer to be ineligible for FTA relief).
- You filed all currently required returns or filed an extension of time to file; and
- You have paid, or arranged to pay (installment agreement), any tax due.

CNC status does not qualify

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COVID Relief: Penalties



To help struggling taxpayers affected by the COVID-19 pandemic, the IRS announced that they will provide penalty relief to most people and businesses, who file certain 2019 or 2020 returns late.

- The IRS is also taking an additional step to help those who paid these penalties already. Nearly 1.6 million taxpayers will automatically receive more than \$1.2 billion in refunds or credits. Many of these payments will be completed by the end of September.
- To qualify for this relief, any eligible income tax return must be filed on or before September 30, 2022.

Notice 2022-36

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How to Request Penalty Relief



For FTA, TP and/or tax practitioner can call number on IRS notice asserting the penalty and/or the practitioner hotline and request FTA.

- IRS Form 843
- Attach explanation to late-filed return
- Write letter to IRS exam unit or office that asserted penalty
- File OIC-DAL (Doubt as to Liability)

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What To Do With the Money \$\$\$ IRS Solutions SOFTWARE

- On older periods
- Have it applied to an open period.
- If no RSED – have refunded

**If there is nothing to do with the refund,
do not ask for it at this time!**

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When to ask for Penalty Abatement IRS Solutions SOFTWARE

Penalties

Do you have to wait until the full tax balance due is paid, or can you file for a tax abatement at anytime during an installment agreement or OIC?

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Polling Question #4 IRS Solutions SOFTWARE



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Thank
You
