

Do's & Don'ts of
Requesting IRS
Penalty Abatement



Jim Buttonow, CPA, CITP
SVP Post-Filing Tax
Services

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Taxpayers hate paying IRS penalties. Unfortunately, most taxpayers assessed an IRS penalty request relief or are denied relief because they do not follow some basic do's and don'ts

In some cases, requesting post-filing relief or "abatement" of penalties is not practical. However, for two of the most common relief is available if you follow some simple rules for requesting and securing abatement.

Common IRS penalties

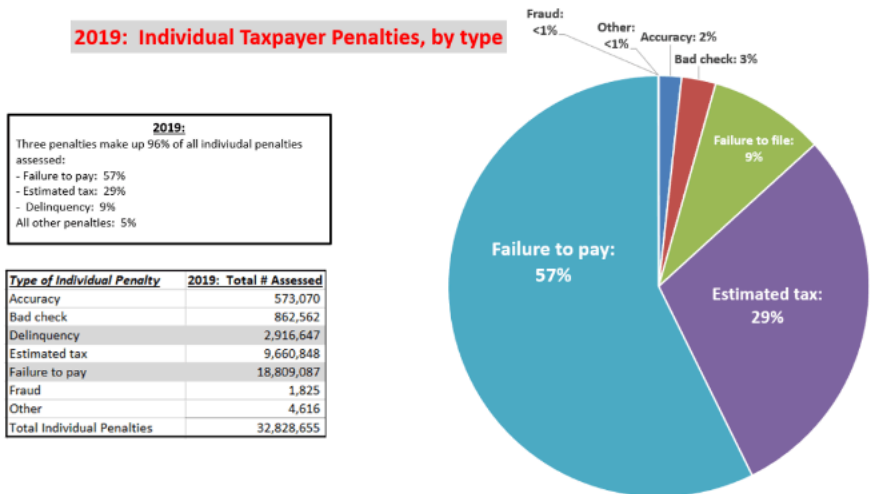
There are over 150 different IRS penalties for late filing, late payment, return errors, and other noncompliant activity. The most common IRS penalties are related to late filing and late payment of taxes. The penalties are:

The failure to file penalty: 5% per month on the balance due, maximum of 25%.

The estimated tax penalty: Equal to the interest lost by not having sufficient withholding or paying estimated taxes through

The failure to pay penalty: 0.5% per month of balance due, maximum of 25%.

In 2019, these penalties made up 95.5% of all IRS civil penalties for individual taxpayers.



Individual IRS Civil Penalties Assessed: 2019

These penalties can be costly. The average penalty amounts for 2019 for individuals were:

Type of Individual Penalty	2019 Totals		
	\$ Assessed	% of amount	Average Penalty Amount
Accuracy	\$ 1,164,789,294	8%	\$ 2,032.54
Bad check	\$ 76,150,269	1%	\$ 88.28
Delinquency	\$ 4,323,076,727	31%	\$ 1,482.21
Estimated tax	\$ 2,225,146,154	16%	\$ 230.33
Failure to pay	\$ 6,225,366,486	44%	\$ 330.98
Fraud	\$ 89,810,568	1%	\$ 49,211.27
Other	\$ 65,509,115	0%	\$ 14,191.75
Total Individual Penalties	\$ 14,169,848,612		\$ 431.63

Relief from IRS penalties

Taxpayers can request relief from penalties. For the failure to file or pay penalty, taxpayers can request that the IRS “abate” the penalty. Abatement is simply removing the penalties after they are assessed to the taxpayer. Failure to File (FTF) and Failure to Pay (FTP) generally require abatement because the IRS assesses these penalties electronically (through its computer systems) when a transaction is made on a balance due account.

Other penalties generally require different procedures to request relief. For example, the estimated tax penalty is generally assessed on the taxpayers. Rather, taxpayers can request an exclusion from the penalty when filing their tax return (individuals use Form 941).

Other penalties are proposed during IRS audits and investigations. These include accuracy or fraud penalties, and usually taxpayers deal with IRS auditors or appeals officers prior to the assessment of the penalty. Taxpayers can request abatement of penalties after they are assessed, but the abatement process may require using special IRS procedures or taking the IRS to court, which can take years to resolve.

Few penalties are abated each year

In 2019, only 12% of the FTF and FTP penalties were abated. For individual penalties, only 9% were abated.

Type of Individual Penalty	2019: Total # Assessed	% of total	2019: Total # abated	% abated
Accuracy	573,070	2%	49,318	9%
Bad check	862,562	3%	9,774	1%
Delinquency	2,916,647	9%	362,780	12%
Estimated tax	9,660,848	29%	478,080	5%
Failure to pay	18,809,087	57%	2,188,926	12%
Fraud	1,825	0%	150	8%
Other	4,616	0%	2,300	50%
Total Individual Penalties	32,828,655		3,091,328	9%

IRS individual civil penalties abated: 2019

There are several reasons for the low abatement rate. First, many taxpayers do not ask for abatement. Second, if they do, the IRS commonly denies many initial abatement requests. Finally, taxpayers may not appeal the adverse determination from the IRS. To request penalty relief for the FTF and FTP penalties, taxpayers need to follow some simple rules to increase their chances of success.

Increase your chances of FTF and FTP penalty abatement

For the FTF and FTP penalties, the IRS has two primary reasons that it abates these penalties:

Reasonable Cause Relief (RC): Where the taxpayer can show that they used ordinary care and prudence, but they could not pay on time due to unforeseen circumstances outside of their control (“Reasonable Cause” excuse for noncompliance).

IRS’s First-time Penalty Abatement Relief (FTA): Can be used to abate both the FTF and FTP penalties for a taxpayer (filed all returns, paid all taxes or in an IRS agreement on the balances owed) with clean compliance history (no penalty years prior to the penalty year).

When requesting FTF and/or FTP penalty relief, it is important to follow some best practices. Here are some do’s and don’ts for requesting abatement for the FTF and FTP penalties:

The “Do’s”:

Always utilize FTA: All first-year FTF and FTP penalties, regardless of whether the taxpayer qualifies for reasonable cause to use FTA. Taxpayers, if they qualify, should call the IRS and request abatement of any FTF or FTP penalty FTA. All FTA requests can be done by phone, regardless of the amount of the penalty assessed

Request reasonable cause in writing: Taxpayers often try to call the IRS to request penalty abatement. This works all the time. However, phone requests rarely work for reasonable cause abatements. Taxpayers can complete Form 843: Claim for Abatement, and attach their rationale and evidence to support their reasonable cause claim. Note: the IRS will take the request from the taxpayer. Form 843 is preferable because it contains the minimum requirements to identify a penalty abatement.

Appeal adverse determinations: Many IRS penalty abatement determinations do not consider the totality of the taxpayer's circumstances. If any of the criteria, on its own merits, does not qualify the taxpayer for abatement, the other reasons may occur because the IRS has a computer tool to assist in penalty abatement determinations that is flawed. Many requests are rejected due to this flawed IRS tool. Taxpayers should request an appeal so that a live person can hear all of their arguments and make an informed decision.

Be sure to include these items in a reasonable cause abatement request: First, be clear on specific circumstances that were out of your control that caused the noncompliance (illness, incapacitation, lost records, etc.). Second, be able to demonstrate how your life was affected by the reasonable cause. For example, the illness that caused you not to file on time may have affected your ability to work. Lastly, make sure you provide specific evidence and a chronology of events for the time period of non-compliance. A timeline of an illness and a doctor's letter showing your incapacitation and inability to perform normal activity support your request due to an illness.

Show prior compliance: IRS Policy Statement 20-1 states that the IRS should use penalties to deter noncompliance. Taxpayers should be prepared to explain any small amounts of prior year penalties. Here is a common example: a taxpayer has reasonably filed their 2018 return but does not qualify for FTA due to a small FTP penalty on a 2015 return. If this taxpayer has a history of late filing, they should highlight their past compliance history and explain the small FTP circumstances in a prior year. A strong compliance history will weigh in favor of reasonable cause abatement for the 2018 return.

Follow up on abatement requests: Sometimes IRS penalty abatement requests are lost within the IRS. Abatement requests are tracked on an IRS transcript. How does a taxpayer know if the IRS is actively working their request? They have to call. If the IRS does not have your abatement request, you will need to refile it. Taxpayers with multiple lost requests should go to the Taxpayer Advocate's office to intervene. The Taxpayer Advocate cannot make the abatement decision, but they can make sure that the request is not lost again. One other important action: if the penalty is not paid, taxpayers should make sure that the IRS has put a lien on their account while the abatement request is being worked.

The “Don’ts”:

Do not pay the penalty: Paying the penalty before requesting reasonable cause may remove an important IRS appeals option. The Collection Due Process or “CDP” hearing. Taxpayers who have an unpaid balance can eventually request a formal CDP hearing. In a CDP hearing, the IRS will thoughtfully consider a penalty abatement request, increasing the chance of receiving an abatement. Also, CDP hearings have another advantage: they can take much less time than informal IRS Service Center appeals hearings.

Don't use these two reasonable cause excuses for FTF: The IRS will reject any FTF penalty abatement based on reliance on financial hardship. The IRS has strong backing for these decisions based on court rulings. FTF abatement requests usually receive a quick adverse determination letter from the IRS and little consideration from IRS appeals.

Don't forget to request timely abatement before the statute expires: Taxpayers can generally request abatement of penalties under the normal refund statute of limitations which is three years from the date the return was filed or two years after the penalty was assessed. In the past, the IRS has sometimes allowed abatements past the refund statute expiration date. However, the IRS has corrected this and most requests outside of these timeframes are met with rejection by the IRS. Taxpayers who complete an IRS installment agreement and qualify for FTA should request abatement of the FTP penalty within two years after the payment arrangement.

Timing expectations

Successful penalty abatement can take some time. FTA can be approved by phone instantly. However, the final reduction take place in about three weeks. Taxpayers should always review their account to make sure the IRS correctly abates the can review their account transcript for the years in question to verify the abatement.

Abatement for reasonable cause can take a considerable amount of time, depending on whether an appeal is needed. Initial requests usually take 2-3 months for an initial determination. If an appeal is required, it can add 6-12 months to the process. For more information on creating a strategy to address your tax issue, visit [Jackson Hewitt's Tax Resolution Hub](#) to see the various ways we can help.



About the Author

Jim Buttonow, CPA, CITP, is the Senior Vice President for Post-Filing Tax Services at Jackson Hewitt. He's been a leader in helping taxpayers and tax professionals resolve tax problems with the IRS, where he had worked for 19 years in various complicated positions. Prior to his current role, Jim's consulting practice focused on the areas of tax controversy and tax administration, leading product development on tax problem software for tax professionals, testifying before Congress, advocating for IRS efficiency, and proposing innovative large-scale solutions for taxpayers and tax professionals. Jim is also the author of 'Solutions Handbook', a publication aimed at helping tax pros work more effectively in post-filing matters and resolving the most common tax problems.