

Penalty Abatement Consultation Service

How to deliver the correct information, at the right time, to the client and to the IRS.

Service Description:

PENALTY ABATEMENT CONSULTATION - TDN will assign a Tax Professional to consult with Client to determine if Client is a suitable candidate for a Penalty Abatement petition. Specifically, the Tax Professional will attempt to determine which of the Reasonable Cause Criteria (if any) best applies to Client's situation. If the Tax Professional determines that Client is in fact a suitable candidate, the Tax Professional will prepare all appropriate forms, letters and documents related to the Penalty Abatement Request and then make the submission to the #IRSST#. The objective of this effort is to reduce or eliminate the penalty portion of Client's tax debt. Client understands that this service is being provided to Client on a "best-efforts" basis. This means that the #IRSST# is the final determining authority and that neither the Tax Professional nor TDN can guarantee the results or predict the outcome.

The first part of the conversation about Penalty Abatement should cover how penalties are applied to tax debts. Specifically:

There are essentially two types of penalties that can be abated when dealing with individual accounts. They are:

1. **Penalty for the late payment of tax due (late payment penalty)** – this penalty is applied at the rate of 0.5%/month, beginning with the month following when the tax was due, up to a maximum penalty of 25% of the tax due. If an installment agreement is established, then the penalty applied will be reduced to 0.25%/month. Therefore, with no installment agreement in place it takes 50 months for the entire late payment penalty to accrue. If an installment agreement is in place, then it can take up to 100 months for the entire penalty to accrue.
2. **Penalty for the late filing of a tax return (failure to file penalty)** – this penalty is applied at the rate of 5%/month, beginning with the month following when the return was due, up to a maximum penalty of 25% of the tax due. Therefore, let's just say that the taxpayer did NOT file an extension, and did not file the return. In this case, the penalty begins to accrue in the month of May, and will completely accrue in five (5) months – September. If the taxpayer filed an extension, then the penalty would not begin to accrue until November, and would be completely accrued by March of the following year.

It is important to explain the penalty accrual process to clients so that they understand why they receive statements that not only tell the client how much they owe, but also how much they are accruing in penalties. Client's will often make the comment, "Hell, half the debt is nothing but penalties and interest, at this rate, I will never get them paid off." While they are correct, you can tell them (if enough time has gone by) that no more penalties will accrue, and explain to them how the penalties accrue.

1. **First Time Abatement** – there are specific rules associated with First Time Abatement that everyone (including the client) needs to be aware of. Specifically:
 - a. Failure to file, failure to pay, and/or failure to deposit penalties can be abated if the taxpayer has not previously been required to file a return, or if no prior penalties have been assessed in the prior 3 years.
 - b. First Time Abatement applies to ONLY ONE (1) tax period.

Example: So, let's say that a tax payer owed taxes for every tax year from 2004 until 2014 (not uncommon). In this case, the Tax Professional would need to check the tax payer's Account Transcripts for 2001 through 2003 to see if the client had any penalties applied in those years. If the client DID NOT have any penalties applied, then tax payer should be able to receive First Time Abatement of penalties for the 2004 tax year ONLY. **Some very important points to make:**

1. In your Affiliate Partner Packet documents are the following:
 - a. IRM on Penalty Abatement
 - b. Copy of the Penalty Abatement GUIDE by American Institute of CPAs
 - c. Example of a properly completed Form 843 requesting penalty abatement for
 - i. First Time Abatement, and
 - ii. Reasonable Cause Abatement
2. This service ENDS with the filing of Form 843, you DO NOT need to wait for the IRS response to the request for penalty abatement to close out this service.
3. We should all investigate the likelihood of First Time Abatement with EVERY client. If they qualify then when you are on the phone with the IRS setting up the resolution you should also request First Time Abatement.
4. In your closing case notes, please note your discussion with the client about Penalty Abatement, type of penalty abatement that we attempted, and whether or not Form 843 was prepared and sent to the IRS. Also save a copy of the 843 to the client's file.

Timing of the Penalty Abatement Consultation

Client should know that Penalty Abatement will be one of the very last items that is discussed with them. Why:

1. If the client is CNC, then Penalty Abatement does not matter.
2. If the client is not in compliance, Penalty Abatement cannot be applied for.
3. If the client is going into a PPIA, then Penalty Abatement is not necessarily applicable because the client is not paying off the entire debt anyway.
4. IRS is more likely to agree to penalty abatement after the Installment Agreement has been established.
5. If the penalty abatement for a specific tax year is denied, make certain that you tell the client to not attempt penalty abatement a second time for that tax year. The second attempt will be seen as a "frivolous filing" by the IRS, and the IRS will impose a \$5,000.00 civil penalty (\$10,000 if Married Filing Joint).

6. Prior to requesting penalty abatement – YOU MUST CHECK THE ACCOUNT TRANSCRIPTS TO MAKE CERTAIN THAT PENALTY ABATEMENT FOR A SPECIFIC TAX YEAR HAS NOT ALREADY BEEN APPLIED FOR AND DENIED. You could inadvertently create a very large civil penalty for the client, and open us all up to a lawsuit.