

The University of Texas School of Law
71st Annual Taxation Conference

December 13-14, 2023

AT&T Conference Center, Austin, TX

Penalty Abatement Strategies That Work

Daniel N. Price

Author Contact Information:

Dan Price

Law Offices of Daniel N. Price, PLLC
San Antonio, Texas

dan@pricetaxlaw.com

www.pricetaxlaw.com

210-960-2920

Penalty Abatement Strategies That Work

Table of Contents

1. Theory underlying penalties - IRS penalty policy	3
2. Typical IRS Civil Penalties	4
3. Administrative Relief.....	4
a) Administrative waivers.....	4
b) First Time Abate	4
c) Other Avenues for Administrative Relief	5
4. Reasonable cause- general concept	6
5. Reasonable cause based on reasonable reliance on professional	7
a) Boyle and nonfiling/late filing	7
b) Arguing against Boyle in e-filing age, an uphill battle	8
c) Neonatology factors	9
i. advisor is competent	9
ii. taxpayer provided necessary and accurate information to the advisor	12
iii. taxpayer relied in good faith	13
d) Potential waiver of privilege	14
e) Practical strategies for reasonable reliance defenses.....	15
6. Reasonable cause – other reasons.....	15
a) Incapacity – individuals.....	15
b) Incapacity – business entities	17
c) substantiating the claim of incapacity	17
7. I.R.C. § 6751(a) penalty computation	17
8. I.R.C. § 6751(b)(1) supervisory approval.....	18
a) Background	18
b) Importance to penalty disputes.....	19
9. Other potential penalty arguments	20
a) Reliance on FAQs.....	20
b) Reliance on IRS oral advice	21

- c) Other arguments and claim variance 21
- 10. Penalty resolutions 22
 - a) Binary (all or nothing) resolutions 22
 - b) Hazards of litigation 22
 - c) Penalty mitigation..... 23
 - d) Unpalatable settlements and options 24
- 11. Drafting the abatement or refund request 25

Copyright 2023 Daniel N. Price, Managing Member of Law Offices of Daniel N. Price, PLLC

Hyperlinked Resources: This outline contains hyperlinked resources for your convenience. If you notice that a hyperlink no longer works, please email me at info@pricetaxlaw.com.

Warning: This outline is not legal or tax advice. This outline is being submitted as part of a presentation for a continuing legal education program. Do not quote from or copy-paste from this outline for any legal document including any submission to a government agency or court. If you're not an attorney, hire an attorney. If you are an attorney, check citations and do your research.

1. Theory underlying penalties - IRS penalty policy

IRS penalty policy focuses on using penalties to encourage voluntary compliance and to raise revenue for the Treasury. Voluntary compliance is a bedrock to the tax system of the United States. “The Government has millions of taxpayers to monitor, and our system of self-assessment in the initial calculation of a tax simply cannot work on any basis other than one of strict filing standards. Any less rigid standard would risk encouraging a lax attitude toward filing dates.” United States v. Boyle, 469 U.S. 241, 249 (1985).

The Internal Revenue Manual attempts to harmonize the two-fold goal of penalties this way:

(1) Taxpayers in the United States assess their tax liabilities against themselves and pay them voluntarily. This system of self-assessment and payment is based on the principle of voluntary compliance. Voluntary compliance exists when taxpayers conform to the law without compulsion or threat. ...

(4) Although penalties support and encourage voluntary compliance, they also serve to bring additional revenues into the Treasury and indirectly fund enforcement costs. However, these results are not reasons for creating or imposing penalties.

(5) Penalties advance the mission of the IRS when they encourage voluntary compliance. The IRS has formalized this obligation to the public in its mission statement.

(6) Voluntary compliance is achieved when a taxpayer makes a good faith effort to meet the tax obligations defined by the Internal Revenue Code.
...

(10) Penalties should relate to the standards of behavior they encourage. Penalties best aid voluntary compliance if they support belief in the fairness and effectiveness of the tax system. This belief encourages compliance in areas that cannot be reached through audits or other programs. ...

I.R.M. 20.1.1.2.1 Encouraging Voluntary Compliance.

As a practical observation, the IRS has strayed from its stated penalty policy. In many areas of tax administration, IRS asserts penalties completely disconnected from underlying taxpayer conduct and intent. This leads to the conclusion that IRS penalty

policy focuses more on penalties as a source of revenue than to encourage voluntary compliance.

Practice point:

- In writing persuasive penalty abatement requests, include reasoning on how the IRS' assertion of a specific penalty may run contrary to the IRS' penalty policy.

2. Typical IRS Civil Penalties

The IRS may administer more than 150 separate civil penalties (estimates of the number of civil penalties vary). Some common examples include:

- [Information Return](#)
- [Failure to File](#)
- [Failure to Pay](#)
- [Accuracy-Related](#)
- [Civil Fraud](#)
- [Erroneous Claim for Refund or Credit Penalty](#)
- [Failure to Deposit](#)
- [Tax Preparer Penalties](#)
- [Dishonored Checks](#)
- [Underpayment of Estimated Tax by Corporations](#)
- [Underpayment of Estimated Tax by Individuals](#)
- [International Information Return](#)

Beyond those common penalties, the IRS has been delegated enforcement authority for certain penalties originally administered by the Financial Crimes Enforcement Network or FinCEN. Those penalties relate to reports of foreign bank accounts or [FBARs](#), recordkeeping relating to foreign bank accounts, and similar matters.

3. Administrative Relief

a) Administrative waivers

The IRS may administratively waive penalties connected to certain events or conditions. A recent example was [IRS Notice 2022-36](#) waiving certain penalties citing the COVID-19 pandemic as a key reason for offering penalty relief. See generally IRM 20.1.1.3.3.2.

b) First Time Abate

The IRM and IRS.gov provide guidance on First Time Abate (FTA). The essence of FTA is offering taxpayers a “mulligan” if they have been fully compliant for the most

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Penalty Abatement Strategies That Work

Also available as part of the eCourse

[2023 Taxation eConference: Day 2 - Focus on Tax Controversy](#)

First appeared as part of the conference materials for the
71st Annual Taxation Conference: Day 2 - Focus on Tax Controversy session
"Penalty Abatement Strategies That Work"