

# **First Time Abatement (of Penalties) Made Easy**

## **Failure To File Failure To Pay Failure To Deposit**



**The Expert in Tax Education**

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## **First Time Penalty Abatement**

**FTA** is available for 3 Penalties:

**FTF** – Failure To File (Code 166)

**FTP** – Failure To Pay (Code 276)

**FTD** – Failure To Deposit (941s)

## **First Time Penalty Abatement Quick Update 11-21-2017**

IRM FTA reference changed to:  
**20.1.1.3.3.2.1** (Formerly 20.1.1.3.6.1)

### **Material Changes:**

FTA from Tax Year 2001 forward  
NO FTF/FTP Penalties in Prior 3 Yrs.

No FTD in prior 3 Years (12 Quarters)  
FTA for FIRST Qtr. of Qualifying FTD

## **FTF & FTP Penalties**

**FTF – Failure To File**

**FTP – Failure To Pay**

- Taxpayer files Timely - Balance Due - NO Payment
- Taxpayer files LATE – Payment (Full or partial)
- Taxpayer files LATE - NO Payment
- Taxpayer fails to file – IRS Prepares a SFR - Substitute For Return under IRS Code Section 6020(b).
- Taxpayer audited – Additional Tax Assessed

## Conditions for First Time Abatement

Taxpayer is compliant (Filed all Required Returns)

- Owes & is in an Installment Agreement
- No balance outstanding

Get a refund – Standard 6511 Rules

(Refund payments up to abatement amount made in last 2 years.)

### Prior 3 years are CLEAN

- **NO FTF**                      **NO Accuracy Penalties**
- **NO FTP**

#### NOTE:

2210 Penalty for Underpayment of Estimated Tax by Individuals does NOT disqualify a taxpayer from First Time Abatement.

## New Information for First Time Abatement Criteria

### ***Clarification:***

### Prior 3 years are CLEAN

- **NO FTF**
- **NO FTP**
- **NO Accuracy-Related Penalties**

**FTF / FTP Penalties in prior 3 years must be \$0.00**

# First Time Abatement of Penalties

**2012 Eligible for FTA - Prior 3 Years are CLEAN**

**\$8,663.62 FTF & \$4,428.07 FTP**

Year	Return Filed	FTA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties
2018	-				
2017	-				
2016	Original				
2015	Original				
2014	Original				
2013	Original		\$7,700.40	\$2,053.44	
2012	Original	Y	\$8,663.62	\$4,428.07	
2011	Original				
2010	Original				
2009	Original				
2008	Original				
2007	Original				
2006	Original				

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# First Time Abatement of Penalties

**2012 Eligible for FTA - Prior 3 Years are CLEAN**

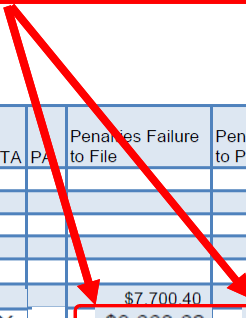
**Y =  
Qualifies  
for FTA**

Year	Return Filed	FTA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties
2018	-				
2017	-				
2016	Original				
2015	Original				
2014	Original				
2013	Original		\$7,700.40	\$2,053.44	
2012	Original	Y	\$8,663.62	\$4,428.07	
2011	Original				
2010	Original				
2009	Original				
2008	Original				
2007	Original				
2006	Original				

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## First Time Abatement of Penalties

**2012 Eligible for FTA - Prior 3 Years are CLEAN**



Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties
2018	-					
2017	-					
2016	Original					
2015	Original					
2014	Original					
2013	Original			\$7,700.40	\$2,053.44	
2012	Original	Y		\$8,663.62	\$4,428.07	
2011	Original					
2010	Original					
2009	Original					
2008	Original					
2007	Original					

**Script - I am calling under POA to verify that Taxpayer qualifies for First Time Abatement for Tax Year 2012**

## Taxpayer is compliant and is in an Installment Agreement

Assister volunteers to remove Failure to File penalty on the spot.

Assister will tell you that Failure to Pay Penalty will be abated when the taxpayer pays off the balance.

It has been my experience on over 20 calls that they then abate BOTH Penalties plus the interest accumulated on the Penalties.

The assisters really enjoy this part of their job and are in a great mood !!

## **Assister is using a computerized tool to determine FTA**

IRS assister is using decision-support software called the **R**easonable **C**ause **A**ssistant (RCA).

I have had an assister deny a FTA based on a prior year – when I challenged the assister and assured him that the Failure To Pay Penalty for the prior year was indeed zero, he then continued and abated over \$1,600. The benefit of knowing the answer before you call is always gratifying.

## **Real-Time Feedback**

### **IRS assister will go through their script:**

- Taxpayer will be receiving a letter in 10-14 days
- Penalty was abated based on good history of timely filing and timely paying.

Text of IRS Letter 3503C is shown on the following page.

**This is my NEW Favorite Letter !!!**

## IRS Letter 3503

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Thank you for your recent inquiry of April 16, 2014 that asked us to remove the failure to file and pay penalties.

We are pleased to inform you that your request to remove the failure to file and failure to pay penalties has been granted. However, this action has been taken based solely on the fact that you have a good history of timely filing and timely paying. This type of penalty removal is a one-time consideration. The IRS will base decisions on removing any future Failure to File and Failure to Pay penalties on any information you provide that meets reasonable cause criteria. You should receive a notice of penalty adjustment within the next few weeks.

If you have any questions, please call us toll free at 1-800-829-8374.

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## Failure to Pay Penalty

Taxpayer filed 2010 timely but did NOT pay timely.

There was a \$2,000 Failure to Pay Penalty.

Called in March – Assister said this penalty could be abated when balance is paid off in 5 years.

Called July 21<sup>st</sup> and got a different assister who abated the Failure to Pay Penalty on the spot !!

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## Who Can Call the IRS ?

**Taxpayer** – Tax Pro feeds him the script  
Tax Pro could get transcript info from:  
Form 8821 or Form 2848

Taxpayer can call: **1-800-829-1040 (TAX-1040)**

Or

**NEWLY-Released IRS Penalty Assistance Line:**  
**1-855-223-4017 X-225**

**POA** (under Form 2848) – EA or CPA or Lawyer:

Call IRS PPS Line – **1-866-860-4259**

Or

**NEWLY-Released IRS Penalty Assistance Line:**  
**1-855-223-4017 X-225**

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In early July the IRS began sending out the enclosed  
insert with balance due notices. Hold Time on July 17  
was 1 minute !!! **1-855-223-4017 X-225**

**July 17, 2015**



You may qualify for  
penalty relief.



**Call the  
Penalty  
Assistance Line  
to see if you  
qualify.**

1-855-223-4017 ext. 225  
7 a.m. to 7 p.m. local time

We base penalty relief  
on the facts and  
circumstances you  
provide on the call.

**If we charged you a penalty for failing  
to file your return or pay your taxes on  
time, you may be eligible for penalty  
relief:**

☒ If you filed your tax returns and paid your  
taxes on time for the past 3 years, we may be  
able to remove the penalties based on First  
Time Abatement.

OR

☒ If you believe the circumstances that  
prevented you from meeting your tax  
obligation were beyond your control, we  
may be able to remove the penalties based on  
Reasonable Cause.

**Your Reasonable Cause explanation must:**

1. Explain why you didn't file your return or pay  
the tax you owed by the return due date
2. Provide the dates of the event that prevented  
you from meeting your tax obligations
3. Explain why you couldn't have anticipated  
this situation
4. Explain how this event prevented you from  
meeting your tax obligations, as well as other  
obligations (unable to: work, pay bills, attend  
to other financial matters, etc.)

**Not all taxpayers will qualify for  
penalty relief.**

**In some situations, we may need you to fax  
us a signed written request or supporting  
documentation.**

Publication 5219 (5-2015) Catalog Number 67771K  
Department of the Treasury Internal Revenue Service www.irs.gov

**ASPEXITS**



## The Rest of the Story

**IRS did NOT publish Dollar Threshold on:**

**IRS Penalty Assistance Line:**

**1-855-223-4017 X-225**

**Abate penalties up to \$1,000 on the spot.**

**Good News:**

- They will qualify penalties available to be abated.

**Bad News:**

- Have to call PPS if over \$1,000
- Have to write a letter if over \$10K-ish

**BEST News:**

- Call Collections for FTA – up to \$15K on the phone
- Set up Installment Agreement with FTA – works GREAT!!

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## Penalty Abatement Letter

**IRS has confirmed FTA qualifies but is over the Telephone Threshold:**

**Form 843 Claim for Refund and Request for Abatement**

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Request Penalty Abatement per

**IRM 20.1.1.3.3.2.1 First Time Abatement**

See the instructions for Form 843 for the mailing address.

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# Form 2848 must cover ALL years

## Typical Range: 1990 thru 2021 INCLUSIVE

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
INCOME	1040	1990 through 2021
SEPARATE ASSESSMENT	1040	1990 through 2021
INCOME	GA500	1990 through 2021

4 **Specific use not recorded on Centralized Authorization File (CAF).** If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for **Line 4, Specific Use Not Recorded on CAF** . . . . . ☐

5a **Additional acts authorized.** In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):  
☒ Access my IRS records via an Intermediate Service Provider;  
☐ Authorize disclosure to third parties; ☐ Substitute or add representative(s); ☐ Sign a return;

Note: State of GA will accept Federal Form 2848 POA  
(Some states accept 2848 – Others do not)

**Can go up to 3 years into the FUTURE**  
**(2018 Calendar Year + 3)**

# Jan 2018 Revised Form 2848

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
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☒ Access my IRS records via an Intermediate Service Provider;  
☐ Authorize disclosure to third parties; ☐ Substitute or add representative(s); ☐ Sign a return;



**Access my IRS records via an Intermediate Service Provider;**

## **Abated over \$105,000 in FTA in the last 2 years**

My business model is troubled taxpayers  
( Many have not filed in this century ! )

**I always have Form 8821 or 2848 POA on every client  
Condition of my engagement letter**

I only noticed the First Time Abatement potential when I  
employed a computerized analysis of IRS transcripts. I  
have had POA on these clients for up to 5 years and  
NEVER noticed FTA Opportunity.

It is possible to do the analysis manually but it may take 2-5  
hours.

## **Contingency Fees on FTA ?**

Contingency fees are allowable on FTA since there  
is a dispute over whether the taxpayer qualifies for  
First Time Abatement.

Some practitioners use the following business  
model:

Taxpayer owes – 10% of tax reduction

Taxpayer owes and FTA pays off the entire debt –  
10% of tax reduction and 20% of any refund.

## How HIGH can you go ?

### \$ Threshold on Phone Call

Penalty Abatement Hot Line - \$ 948

PPS – Up to \$9K

Collections - \$14K (in conjunction with IA)

Collections generally seems to be pleased to give FTA – it is only nice activity they can engage in.

## 2848 or 8821 ? ? ?

I always have a Form 8821 or 2848 POA on my clients. Allows me to monitor their returns for CP2000 Flags (Code 922) and Exam Flags (Code 420).

Form 8821 works just fine for getting transcripts via e-Services but the Taxpayer has to call the IRS.

I have provided the script to taxpayers and had them call the IRS themselves (FTA less than \$3,500).

### Taxpayer Script:

I am calling to see if I qualify for First Time Abatement of Penalties for Tax Year 2012.

## Year in question must be a rifle-shot

IRS Assister will generally NOT go “fishing” using their RCA (Reasonable Cause Assistant) Tool.

Since the transcript analysis is available, we always chose the LARGER FTA. It is our choice whether to go after a recent FTA or a FTA back to 2001 Tax Year.

We can request Abatement of any FTF or FTP if the prior 3 years are “CLEAN” and covered by our POA.

## Which FTA would you chose?

PENALTY AND INTEREST DASHBOARD

Year	Return Filed	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties	Accrued Penalty	Total Penalties*
2016	-					-
2015	No				\$0.00	\$0.00
2014	Original				\$0.00	\$0.00
2013	Original				\$0.00	\$8.07
2012	Original		\$3,044.48		\$0.00	3,044.48
2011	Original				\$0.00	\$0.00
2010	Original				\$0.00	\$0.00
2009	Original				\$0.00	\$0.00
2008	Original				\$0.00	\$0.00
2007	Original				\$0.00	\$0.00
2006	SFR	\$29.00	\$7.25		\$0.00	\$36.25
2005	SFR	\$100.00	\$97.24		\$0.00	\$197.24
2004	SFR	\$1,445.17	\$1,605.75		\$0.00	\$3,050.92
2003	Original				\$0.00	\$0.00
2002	Original				\$0.00	\$0.00
2001	Original				\$0.00	\$0.00

**2012 FTA  
\$3,044.48**

**2004 FTA  
\$3,050.92**

## Which FTA would you chose?

PENALTY AND INTEREST DASHBOARD

Year	Return Filed	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties	Accrued Penalty	Total Penalties*
2016	-					
2015	No				\$0.00	\$0.00
2014	Original				\$0.00	\$0.00
2013	Original		\$8.97		\$0.00	\$8.97
2012	Original		\$3,044.48		\$0.00	\$3,044.48
2011	Original				\$0.00	\$0.00
2010	Original				\$0.00	\$0.00
2009	Original				\$0.00	\$0.00
2008	Original				\$0.00	\$0.00
2007	Original				\$0.00	\$0.00
2006	SFR	\$29.00	\$7.25		\$0.00	\$36.25
2005	SFR	\$100.00	\$87.24		\$0.00	\$187.24
2004	SFR	\$1,445.17	\$1,605.75		\$0.00	\$3,050.92
2003	Original				\$0.00	\$0.00
2002	Original				\$0.00	\$0.00
2001	Original				\$0.00	\$0.00

**2012 FTA  
\$3,044.48**

**2004 FTA  
\$3,050.92**

2004 FTA for \$3,050.92 + Assessed Interest  
would be the smarter choice for FTA

## 2002 First Time Abatement FTP I chose 2002 (\$33.33) rather than 2011 (\$37.48) due to Higher Assessed Interest. Refund was \$33.33

PENALTY AND INTEREST DASHBOARD

Year	Return Filed	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties	Accrued Penalty	Total Penalties*	Accrued Interest	Assessed Interest	Total Interest
2016	-								
2015	Original				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2014	Original		\$54.30		\$0.00	\$54.30	\$0.00	\$26.08	\$26.08
2013	Original				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2012	Original		\$48.96		\$0.00	\$48.96	\$0.00	\$22.03	\$22.03
2011	Original		\$37.48		\$0.00	\$37.48	\$0.00	\$16.90	\$16.90
2010	Original				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2009	Original				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2008	Original				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2007	Original				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2006	Original				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2005	Amended				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2004	Original				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2003	Original				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2002	Amended		\$33.33		\$0.00	\$33.33	\$0.00	\$82.13	\$82.13
2001	Amended				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2000	Original				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1999	Original				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1998	Original				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1997	Original				\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

## **Closed Years Eligible for FTA**

**I have called PPS and start with my script:**

**Hello – I’m calling under POA to see if my taxpayer qualifies for First Time Abatement Of Penalties for Tax Year 2004.**

**Occasionally, the assister will tell you it’s a Closed Year and doesn’t qualify.**

**At that point you can:**

- 1. Argue with them and cite the code (not a great idea).**
- 2. Ask for a manager call-back (not a great idea).**
- 3. Thank them for their time and end the call.**  
**Immediately call back & get a better trained assister.**

## **FTA ALSO works for:**

**Failure to File Penalty:**

**1120**

**1120-S**

**1065 Partnerships – See next page**

**990 (Must write a letter)**

**Same Rules – Prior 3 years must be “CLEAN”**

## 2016 Partnership Due Dates moved up to March

A number of partnerships missed this change and the returns were filed “late”.

IRS is abating the late filing penalties.

**You do NOT have to waste the Taxpayer’s right to FTA.**

**<https://www.irs.gov/newsroom/irs-provides-penalty-relief-for-partnerships-that-filed-late-returns-in-2017>**

## Transcript Penalty Codes

### **Failure to File Transcript Code 166**

Penalty for filing tax return after the due date

### **Failure to Pay Transcript Code 276**

Penalty for late payment of Tax

It is possible to **manually** analyze these transcript codes but be aware that the Failure to Pay Code 276 is generally “sprinkled” throughout the account transcript and requires computation.

SFR transcripts trumped by a paper return are exceedingly difficult to interpret because they add an order of magnitude of complexity.



## **REASONABLE CAUSE**

### **When FTA Doesn't Apply**

- Any reason that establishes a taxpayer exercised ordinary business care and prudence but was unable to comply with the tax law may be considered for penalty relief.

## **Ordinary Business Care and Prudence**

- Ordinary business care and prudence includes making provision for business obligations to be met when reasonably foreseeable events occur.
- Facts and circumstances showing the taxpayer exercised ordinary business care and prudence (taking that degree of care that a reasonably prudent person would exercise), but nevertheless was unable to comply with the law

## Other Reasons for Penalty Relief

- Although the IRM provides:
- “When considering the information provided in the following subsections, remember that an acceptable explanation is **not** limited to those given in IRM 20.1. Penalty relief may be warranted based on an “other acceptable explanation,” provided the taxpayer exercised ordinary business care and prudence but was nevertheless unable to comply within the prescribed time.” **See IRM 20.1.1.3.2.2, Ordinary Business Care and Prudence.**
- Tax Pro’s chance of prevailing is better if he cites one of their favorite reasons:

## REASONABLE CAUSE

- Death, Serious Illness, or Unavoidable Absence
- Fire, Casualty, Natural Disaster, or Other Disturbance
- Unable to Obtain Records
- Mistake was Made
- Erroneous Advice or Reliance
- Ignorance of the Law
- Forgetfulness
- Statutory Exceptions or Waivers

## REASONABLE CAUSE - Continued

- Undue Hardship
- Written Advice From IRS
- Oral Advice From IRS
- Advice from a Tax Advisor
- Official Disaster Area
- Service Error

## IRS IRM FTA can be found at:

[https://www.irs.gov/irm/part20/irm\\_20-001-001r](https://www.irs.gov/irm/part20/irm_20-001-001r)

or

Google 20.1.1.3.3.2.1 first time abate

## 2210 Underpayment of Estimated Tax Penalty

### Who Must Pay the Underpayment Penalty ?

In general, Taxpayer may owe the penalty for 2014 if the total of withholding and timely estimated tax payments did not equal at least the smaller of:

1. 90% of your 2014 tax, or
- 2a. 100% of your 2013 tax. See 2b for Higher AGI

### Higher Income Taxpayers - Different Rules

Adjusted gross income (AGI) for 2014 was more than \$150,000 (\$75,000 if 2014 filing status is MFS)

- 2b. 110% of 2013 Tax

## SFR (Substitute For Return)

- **4.12.1.8.2.1 (10-05-2010)**  
**IRC 6020(b)** states, "If any person fails to make any return required by any Internal Revenue Law or regulation made there under at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise."
- IRC 6020(b)(2) states, "Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes."
- **This is an SFR.**
- See IRM 20.1.2, *Failure To File/Failure To Pay Penalties*, to determine applicable penalties.

# Questions ? ? ?