

SPECIAL REPORT



Removal of IRS Penalties

TAX LAW OFFICES

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This SPECIAL REPORT is aimed at explaining the process in which you should request the removal, reduction, or avoidance of penalties. This is a general reference guide, and should not be relied upon in substitute of legal advice for your particular situation.

IRS penalties are imposed for “noncompliance” events, such as late-filing of a return, non-filing of a return, under-reporting of tax liability, late payment of liability, etc. IRS may grant relief (removal, reduction, or non-assessment), if you have established a “reasonable cause” for the non-compliance.

Your reasonable cause may entitle you to relief from penalty. First, let’s figure out whether you qualify.

To be relieved of an IRS penalty, you must establish a “reasonable cause” by providing facts and circumstances showing that you exercised “ordinary business care and prudence”, but nevertheless were unable to comply with the law. But IRS will only remove a penalty if, no matter what your reason may be, that you exercised “Ordinary Business Care and Prudence”.

“Ordinary Business Care and Prudence” & “Reasonable Cause”

There are numerous, case-by-case examples. Every situation is considered uniquely, on its own merits. But “ordinary business care and prudence” here basically means that you took the degree of care that any reasonably prudent person would have taken. Let’s just call this “ordinary care”, and you must establish:

- 1. That you provided that your business obligations be met (such as, timely filing tax returns)**
- 2. Whenever reasonably foreseeable events might occur.**

In determining whether you exercised ordinary care, IRS will review and consider any available information, but especially including the following:

- Your reason;
- Your compliance history;
- Length of time between the event causing your noncompliance, and your subsequent compliance;
- Circumstances beyond your control.

Key 1: Generally, reasonable cause is established when you exercise ordinary business care and prudence. However, due to circumstances beyond your control, you were unable to timely meet the tax requirement.

Key 2: Keep in mind that your obligation to meet any particular requirement is ongoing. Ordinary care requires that you continue to attempt to meet the requirements, even though you may be late doing so.

First Request for Penalty Relief

Relief is best requested by completing and filing IRS Form 843 (attached to this report). Before doing so, you should draft your explanation, and gather any applicable documents that might serve as support of your explanation

Your **initial** request for relief may occur:

- Either during or after an examination (but before a penalty is actually assessed);
- With a return that is either filed or paid late; or
- After the penalty is assessed and you are given notice.

When the request is received, IRS will carefully analyze your reasons to determine if penalty relief is justified. Basically, you have the burden of proving entitlement to relief.

Note: You should be aware that prior to considering your reason(s), IRS will analyze your account and history to determine if penalty relief cannot be considered, or if relief can only be considered by another IRS function.

Your request will be evaluated by IRS, on its own merits, and not related to any other request. IRS will consider:

- The events or parties involved, and
- If you exercised “ordinary business care”, but due to circumstances or events beyond your control, you were unable to meet the tax requirement (in other words, **reasonable cause**); or
- If other penalty relief applies (not discussed here, i.e. an exception, or an administrative waiver).

From your request, IRS will determine if your explanation actually addresses the penalty imposed. Therefore:

- The dates and explanations should clearly correspond with events on which the penalties are based, to show that you are entitled to relief from the penalty, and
- IRS may request additional information from you to clarify any explanations, especially if the dates and explanations do not correspond with the events on which the penalty is based.

Note: IRS will also review its own available information in determining whether or not you exercised ordinary business care and prudence. The IRS analyst will go back and check at least 3 years or 12 quarters (for payroll related penalties) for payment patterns, and your overall history of accurate, timely filing.

Understand:

- If IRS previously assessed the same penalty in your account history, it may be viewed as your habitual failure to exercise “ordinary business care”.
- If this is your first incident of noncompliance (ie: late filing, etc), IRS will weigh this factor with your other reasons given for relief. (You must give other reasons, since merely a first time failure to comply does not by itself establish reasonable cause, for example, late filing.)
- If you had multiple incidents, IRS will consider the length of time between 1) the event you cited as a reason, for example, the late filing, and 2) the subsequent compliance. That length of time between events may serve to cancel or reduce the event’s effect. Penalty relief may be denied if, after considering all facts and circumstances, you failed to correct the behavior within a reasonable period of time.
- IRS will also consider if you could have anticipated the event that caused the non-compliance.

The following are examples where penalty relief is typically denied:

- Ex 1.** You claim that you were unable to comply with the filing requirement due to a death in the family. The death occurred several months BEFORE the due date of the return. The return was not filed until a year after the due date of the return.
- Ex 2.** You claim that you were unable to comply with the filing requirement because the records necessary for filing were in the control of a third party, e.g., a bankruptcy trustee or an accountant. The records were returned to you well in advance of the time the tax return was required to be filed. However, the tax return was not filed until several months after the records were returned.

In both of the examples, the timing of the event may prevent you from receiving penalty relief, unless there were other factors that justified, for example, the delay in filing.

Subsequent Requests for Penalty Relief

If the first request gets denied, you may still make a subsequent request for relief. IRS generally considers any subsequent request to be an appeal of the previous penalty relief denial. Consequently, the IRS analyst will review the circumstances of the previous denial, along with the additional information provided.

If you submit new information, and the facts presented in the new information do meet penalty relief criteria, IRS will remove (or “abate”) the penalty.

Editor’s Note:

IRS penalties add an extra burden to paying tax liability. Requesting relief is almost always worth the effort. Take action. You can do it.

IRS Circular 230 regulates written communications about federal tax matters between tax advisors and their clients. To the extent the preceding correspondence and/or any attachment is a written tax advice communication, it is not a full “covered opinion”. Accordingly, this advice is not intended and cannot be used in substitute of legal advice for your particular situation.

Our attorneys are licensed to represent serious matters before the IRS, throughout the United States and all U.S. territories.

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