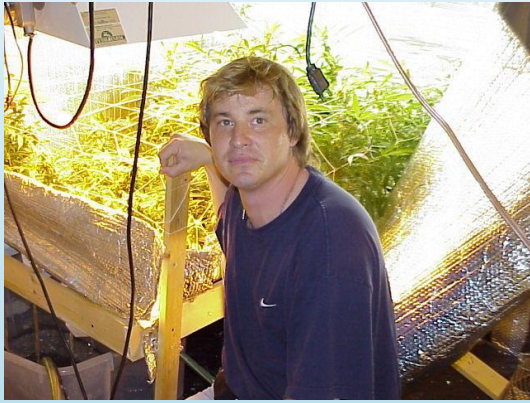


First Time  
Abatement  
(of Penalties)  
Made Easy

Failure To File  
Failure To Pay  
Failure To  
Deposit



# Presenter



**Working  
Undercover  
Narcotics in 2000**

**Roger Nemeth, EA & NTPI Fellow  
President & Developer Audit Detective,  
LLC**

- Worked 8 years in Law Enforcement.
  - Injured in the line of duty.
- Moved to something much safer.....Taxes.
  - Managed my parent's tax franchise in Atlanta for 6 years.
  - Over 18 EA's and CPA's on staff.
  - Tax Transcripts were our biggest payroll inefficiency.
- In 2013 was hired by one of the largest resolution firms in the country to integrate the product.
- To date our users have downloaded over 150 million transcripts and processed over 200,000 reports.

# First Time Penalty Abatement (FTA)

On November 21st, 2017 the IRS updated the FTA IRM  
IRS IRM 20.1.1.3.3.2.1 First Time Abate (FTA) (11-21-2017)

There have been several updates and clarifications in this update.

This presentation will cover these changes and the best practices in applying for FTA

# First Time Penalty Abatement (FTA)

**FTA** is available for 3 Penalties:

**FTF** – Failure To File

**FTP** – Failure To Pay

**FTD** – Failure To Deposit (941s)

# Penalty Definitions

## **FTF – Failure To File**

- The failure-to-file penalty is normally 5 percent of the unpaid taxes for each month or part of a month that a tax return is late. It will not exceed 25 percent of your unpaid taxes.

# Penalty Definitions

## **FTP – Failure To Pay**

- The failure-to-pay penalty is generally 0.5 percent per month of your unpaid taxes. It applies for each month or part of a month your taxes remain unpaid and starts accruing the day after taxes are due. It can build up to as much as 25 percent of your unpaid taxes.

# Penalty Definitions

## FTD – Failure To Deposit (941s)

- The three components of a correct deposit are:
  - the deposit is made timely,
  - in the correct amount, and
  - in the correct manner.
- A failure to comply with any of these components will subject the deposit to the FTD penalty. Additional details can be found here:

[IRS IRM 20.1.4 Failure to Deposit Penalty](#)

# Failure To Deposit Penalties

This presentation will focus on the Failure to File and Failure to Pay Penalties in reference to individual taxpayers.

Much of the information contained in this presentation will apply to FTD's as well, but no specific examples are given.



# 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.

## **Failure to Deposit Transcript Code 180 or 186**

Penalty for failure to deposit on payroll tax.

# Conditions for First Time Abatement (Updated Language)

## **From the IRS Website:**

The IRS may provide administrative relief from a penalty that would otherwise be applicable under its First Time Penalty Abatement policy.

You may qualify for administrative relief from penalties for failing to file a tax return, pay on time, and/or to deposit taxes when due under the Service's First Time Penalty Abatement policy if the following are true:

- You didn't previously have to file a return or you have no penalties for the 3 tax years prior to the tax year in which you received a penalty.
- You filed all currently required returns or filed an extension of time to file.
- You have paid, or arranged to pay, any tax due.

# Additional Info About Conditions for FTA

- 2210 Penalty for Underpayment of Estimated Tax by Individuals does NOT disqualify a taxpayer from First Time Abatement.
- A Substitute For Return (SFR) qualifies as a filed return.
- If a balance due is owed you have to be in an installment agreement and current to qualify for FTA.
- The failure-to-pay penalty will continue to accrue, until the tax is paid in full. It may be to your advantage to wait until you fully pay the tax due prior to requesting penalty relief under the Service's first time penalty abatement policy.

# FTA Examples

The following graphics are examples of First Time Abatements. You can create your own spreadsheets using Excel. These examples are from Tax Help Software's transcript analysis report. The report is available 10 minutes after the 2848 or 8821 is processed by the IRS CAF unit allowing you to check for FTA opportunities on any client back to 1990 in just minutes.

FTA's are great for offsetting current year CP 2000 issues your independent contractors and elderly clients are always receiving.

# First Time Abatement of Penalties

Qualifies for FTA. Prior 3 years clean.

Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related	Accrued Penalty	Total Penalties*
2018	Original						-	-
2017	Original						\$0.00	\$0.00
2016	Original	Y		\$1,458.62	\$855.33		\$256.18	\$2,570.13
2015	Original		N	\$0.00	\$0.00		\$0.00	\$0.00
2014	Amended						\$0.00	\$0.00
2013	Original						\$0.00	\$0.00
2012	SFR	Y		\$2,399.40	\$1,648.64		\$718.92	\$4,048.04
2011	SFR						\$0.00	\$0.00
2010	Original*						\$0.00	\$0.00
2009	Original						\$0.00	\$0.00
2008	Original						\$0.00	\$0.00
2007	Original	N			\$0.89		\$0.00	\$0.89
2006	Original						\$0.00	\$0.00
2005	Original	N		\$12,839.74	\$3,622.18		1523.13	\$16,461.92
2004	Original		N	\$0.00	\$0.00		\$0.00	\$0.00
2003	SFR					\$963.40	\$0.00	\$963.40
2002	Original						\$0.00	\$0.00

# First Time Abatement of Penalties

Qualifies for FTA. 2015 penalties were reversed

Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related	Accrued Penalty	Total Penalties*
2018	Original						-	-
2017	Original						\$0.00	\$0.00
2016	Original	Y		\$1,458.62	\$855.33		\$256.18	\$2,570.13
2015	Original*		N	\$0.00	\$0.00		\$0.00	\$0.00
2014	Amended						\$0.00	\$0.00
2013	Original						\$0.00	\$0.00
2012	SFR	Y		\$2,399.40	\$1,648.64		\$718.92	\$4,048.04
2011	SFR						\$0.00	\$0.00
2010	Original*						\$0.00	\$0.00
2009	Original						\$0.00	\$0.00
2008	Original						\$0.00	\$0.00
2007	Original	N				\$0.89	\$0.00	\$0.89
2006	Original						\$0.00	\$0.00
2005	Original	N		\$12,839.74	\$3,622.18		1523.13	\$16,461.92
2004	Original		N	\$0.00	\$0.00		\$0.00	\$0.00
2003	SFR					\$963.40	\$0.00	\$963.40
2002	Original						\$0.00	\$0.00

Does not qualify for FTA because of the Accuracy Related Penalty in prior 3 years.

# First Time Abatement of Penalties

Does not qualify for FTA due to an abatement in the 3 year lookback.

PA = Prior Abatement. The software can distinguish between a reversal and an abatement.

Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related	Accrued Penalty	Total Penalties*
2018	Original						-	-
2017	Original						\$0.00	\$0.00
2016	Original	N		\$1,458.62	\$855.33		\$256.18	\$2,570.13
2015	Original*		Y	\$0.00	\$0.00		\$0.00	\$0.00
2014	Amended						\$0.00	\$0.00
2013	Original						\$0.00	\$0.00
2012	SFR	Y		\$2,399.40	\$1,648.64		\$718.92	\$4,048.04
2011	SFR		N	\$0.00	\$0.00		\$0.00	\$0.00
2010	Original*						\$0.00	\$0.00
2009	Original						\$0.00	\$0.00
2008	Original						\$0.00	\$0.00
2007	Original	N			\$0.89		\$0.00	\$0.89
2006	Original		N	\$0.00	\$0.00		\$0.00	\$0.00
2005	Original	N		\$12,839.74	\$3,622.18		1523.13	\$16,461.92
2004	Original						\$0.00	\$0.00
2003	SFR					\$963.40	\$0.00	\$963.40
2002	Original						\$0.00	\$0.00

# Assister is using a computerized tool to determine FTA

IRS assister is using decision-support software called the Reasonable Cause Assistant (RCA).

Even if an assister denies the FTA check your transcripts and challenge them. We have had reports of the assister denying the claim because of a penalty in the previous 3 years that did not exist. The benefit of using the Tax Help Software reports is that the accurate information is at your finger tips.



# Usually Approved Instantly

## 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.

# IRS Letter 3503

Thank you for your recent inquiry of April 16, 2016 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.

# Who Can Call the IRS ?

## Taxpayer:

Taxpayer can call:

**1-800-829-1040 (TAX-1040)**

Or

**IRS Penalty Assistance Line:**

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

**Tax Professional** (under Form 2848):

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

Or

**NEWLY-Released IRS Penalty Assistance Line:**

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

Unable to request FTA with just an 8821 on file.

**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**



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.**

# Form 2848 must cover ALL years

**In order for a tax professional to request an FTA they must have POA for the year in question and the previous 3 or the assister will not continue.**

Example: If you are calling about a 2005 Tax Year FTA you must have POA for 2002 through 2005 at a minimum.

# The Rest Of The Story

**IRS did not publish Dollar Amount 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.
- Some times you will have to write a letter.

Best News:

- Call Collections for FTA – up to \$15,000 on the phone.
- Set up Installment Agreement with FTA – Works Great!!!

# How HIGH can you go ?

## \$ Threshold on Phone Call

There used to be a \$10,000 limit before the IRS required the request in writing. IN the past 12 months I have had several reports of FTA's over \$100,000 being approved verbally over the phone.

The IRS can still request the FTA request be submitted in writing, but we are hearing less and less of that being required.

# Actual Example over \$10,000 FTA With One Phone Call

One of our users shared the following real example. Tax pro was trying to get the taxpayers balance below \$50k to qualify for a Streamlined IA. The taxpayer was able to get their \$100k debt paid down to about \$64k with savings, but were still short. Both spouses had \$100k+ jobs that would have been at risk if liens were filed. The tax pro used FTA to get a \$9,753 FTA with one 10 minute phone call. With interest the total amount abated including the interest on the abated penalties was \$13,300.

Year	Return Filed	Penalties Failure to File	Penalties Failure to Pay
2015	No		
2014	Original		
2013	Original	\$7,700.40	\$2,053.44
2012	Original	\$8,663.62	\$4,428.07
2011	Original		
2010	Original		
2009	Original		

Before FTA

Year	Return Filed	Penalties Failure to File	Penalties Failure to Pay
2016	-		
2015	No		
2014	Original		
2013	Original	\$7,700.40	\$2,053.44
2012	Original	\$0.00	\$0.00
2011	Original		
2010	Original		
2009	Original		

After FTA



# How Is The FTA Applied

1. If the taxpayer does not have a balance due and the Refund Statute Expiration date has not expired (3 years since original filed or 2 years since tax was paid) the taxpayer should receive a refund.
2. If the RSED has expired and the taxpayer does not have a balance the taxpayer receives no benefit.
3. If the RSED has expired and the taxpayer does have a balance the FTA amount will be applied to the oldest balance first until it is depleted.

# What Happens If The FTA Amount Is More Than What Is Owed & RSED Is Expired.

FTA amounts can be applied to any outstanding balances on the day the FTA is approved. If there is excess amounts the amount can not be carried forward.

If the year still has an open RSED a refund is possible if the FTA results in a negative balance for the year being applied to.

Example: If taxpayer gets an FTA approved today and is assessed by the IRS for an additional amount tomorrow any leftover FTA amount can not be used on the new balance.

# How Many FTA's Can Taxpayer A Taxpayer Receive

According to IRM 20.1.1.3.6.1.3 (08-05-2014)

First Time Abate (FTA)

The FTA administrative waiver can only apply to a single tax period for a given MFT.

With that being said we have received reports from tax professionals that IRS assisters have advised them they can request and get FTA on multiple tax years as long as each year meets the requirements. Only one FTA can be applied for at a time. Each user should review the IRM and come up with their own opinion.

**Note:** Multiples under the same account are probably no longer possible under the new definition.

# Interesting Scenario

- Taxpayer is assessed FTF & FTP penalties for tax year 2003 on February 1, 2005.
- Taxpayer never makes a payment on any balance for tax year 2003.
- February 2, 2015 the 2003 balance due is written off (CSED expired).
- Today can the taxpayer request FTA for the 2003 FTF & FTP plus the interest if all the other requirements for FTA are met?

# Reasonable Cause Abatement

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.

# Reasonable Cause Examples

- Fire, casualty, natural disaster or other disturbances
- Inability to obtain records
- Death, serious illness, incapacitation or unavoidable absence of the taxpayer or a member of the taxpayer's immediate family
- Other reason which establishes that you used all ordinary business care and prudence to meet your Federal tax obligations but were nevertheless unable to do so

# NEW FTA IRM Changes

The following slides highlight how the new IRM differs from the old.

# FTA only applies to Tax Periods after 2000

**IRS IRM 20.1.1.3.3.2.1.4 (a)** - The tax period ending date is later than Dec. 31, 2000

**Note:** Prior to this clarification we had numerous reports of users getting FTA back as far as the early 1990's. THS does view this as a positive because we have had numerous users advise they were told FTA's less than 5 years old were too old and did not qualify. With this new definition it should enable all users to get FTA back to Tax Year 2001.



# Only The First Qualifying Tax Period In A Tax Year Qualifies For FTA.

Tax Help  
Software

IRS IRM 20.1.1.3.3.2.1.9 - As stated in paragraph (2), penalty relief under the FTA waiver only applies to a single tax period. Further, penalty relief under the FTA waiver only applies to a tax period for which the qualifying criteria in paragraphs (4)-(6), as applicable, have been met. In addition, the FTA waiver is not applicable based solely on a taxpayer's first request for penalty relief.

## **Example:**

If a Form 941 filer was compliant for calendar years 2013, 2014, and 2015 but made late deposits and was assessed FTD penalties on all 4 2016 tax periods, FTA criteria can only be met and the waiver applied to the tax period ended 201603. Reasonable cause criteria must be met for tax periods 201606, 201609, and 201612."

**Note:** Prior to the updated IRM we had several reports of users who were able to request and obtain FTA for all four quarters of a 941 because the original IRM specified the prior 3 years needed to be clean and did not specify the individual periods. The new IRM clarifies that only the earliest qualifying period qualifies.

# Any penalty in the prior 3 years prevents FTA (Except Estimated Tax Penalty)

**IRS IRM 20.1.1.3.3.2.1.4(c)** - If required to file the same return during the preceding 3 years, has no unreversed penalties (except an estimated tax penalty, TC 17X) ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ and a notice was issued showing the assessed penalty or penalties (a module balance cleared with a TC 606 indicates a notice showing the assessed penalty or penalties was not issued)....

**Note:** Prior to the IRM update the IRS considered only significant penalties (anything over \$1) to be disqualifying. The portion about significant penalties is not longer in the IRM.

# Only one FTA Per Taxpayer per Module

**IRS IRM 20.1.1.3.3.2.1.2** - This administrative waiver, implemented in 2001, is referred to as First Time Abate (FTA) and is available for penalty relief the first time a taxpayer is subject to one or more of the referenced penalties for a single return. When FTA criteria have otherwise been met, do not provide penalty relief under the FTA waiver unless the following are true:

**Note:** Prior to the IRM update we had reports of user getting more than one FTA for the same module (example: 1040) for different years if each tax period qualified on it's own. We now believe you should ask for the largest FTA initially because if you do not you may not get another one at a later date.

# Currently Not Collectible does not qualify as compliant for FTA

**IRS IRM 20.1.1.3.3.2.1.2(b)** - The taxpayer has paid, or arranged to pay, any tax currently due.

**Note:** This has always been in the IRM, but we do believe the IRS is adhering to a more strict interpretation of the IRM since the update. CNC is not an arrangement to pay.

# Questions ? ? ?



If you would like to try the Tax Help Software Program use coupon code: THSTRIAL (case sensitive) for a FREE 14 day trial.

If you would like to purchase the software use coupon code: THS10 (case sensitive) for 10% off .

**[TaxHelpSoftware.com](http://TaxHelpSoftware.com)**