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Internal Revenue Manual Section 20.1.1.3.3.2.1 (11-21-2017)

First Time Abate (FTA)

1. IRS provides administrative relief from the following penalties if the qualifying criteria contained in this subsection are met:

- A. Failure to file (FTF) penalty under IRC 6651(a)(1), IRC 6698(a)(1), or IRC 6699(a)(1),
- B. Failure to pay (FTP) penalty under IRC 6651(a)(2) and/or IRC 6651(a)(3), and
- C. Failure to deposit (FTD) penalty under IRC 6656.

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:

- A. The taxpayer has filed, or filed a valid extension for, all required returns currently due, AND
- B. The taxpayer has paid, or arranged to pay, any **tax** currently due.

Note:

Although reported as a tax on Form 1040, this does not include an unpaid Shared Responsibility Payment (SRP) applicable under IRC 5000A(b).

- When determining if the taxpayer has filed, or filed a valid extension for, all returns currently due, consider the taxpayer current with this requirement if the taxpayer states they filed any missing return or extension to file whose due date is 45 days or fewer than the current date. For returns or extensions to file whose due date is more than 45 days from the current date, secure a processable copy of each return and/or extension.

Example:

If considering penalty relief on May 25, 2017 and the taxpayer otherwise meets FTA criteria but we have no record their 2016 Form 1040 nor an extension of time to file has been filed, consider the taxpayer current for the 2016 Form 1040.

- When determining if the taxpayer has paid, or arranged to pay, any tax currently due, consider the taxpayer current with this requirement if he or she has an open installment agreement and is current with his or her installment payments.

3. The Reasonable Cause Assistant (RCA) is programmed to determine if FTA criteria are met. Refer to *IRM 20.1.1.3.6, Reasonable Cause Assistant*, for RCA policy and additional FTA guidelines when RCA is used.

Exception:

RCA is unable to determine if the taxpayer has filed all returns and paid, or arranged to pay, all tax currently due. The account must be reviewed manually to determine if these criteria have been met prior to removing any penalties under the FTA waiver.

4. The following FTA waiver eligibility criteria applies to all taxpayers:

Note:

When determining if FTA criteria are met, the criteria below applies to the same MFT as the penalized MFT unless the penalized MFT is 01, 14, 30, or 31. If the penalized MFT is 01 or 14, the criteria applies to both MFTs 01 AND 14. If the penalized MFT is 30 or 31, the criteria applies to both MFTs 30 AND 31.

- . The tax period ending date is later than Dec. 31, 2000, and
- A. The taxpayer has not been required to file the same return, or no tax modules for the same return are in TDI Status 02, 03, or 04 (IMF), for the 3 years preceding the penalized tax period (see Exception), and
- B. 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), and
- C. If required to file the same return during the preceding 3 years, has no penalties manually suppressed or reversed with Penalty Reason Code (PRC) 018 (*FTA, RCA not used*), 020 (*FTA, RCA used*), or 021 (*Tolerance*). See *Exhibit 20.1.1-2, Penalty Reason Code Chart* (see Exception).

Exception:

If subsequent information shows the taxpayer was either not required to file a return or that they did in fact comply and were not subject to any penalty on a module on which a penalty abatement was input with PRC 018, 020, or 021, consider the taxpayer compliant for that module.

5. When determining if FTA criteria are met for penalties assessed on MFT 30 or 31, the taxpayer(s) must meet FTA criteria on all returns required to be filed as a primary and secondary taxpayer, if applicable.

Example:

If the filing status of the return on the penalized period is Married Filing Joint and the required returns in the preceding 3 years were not filed under the same primary SSN and with the same filing status and same primary and secondary SSNs, FTA criteria for both SSNs must be met.

Example:

If the filing status on the return on the penalized period is other than Married Filing Joint and the taxpayer filed, or was required to file, as a secondary taxpayer during the preceding 3 years, FTA criteria must be met for all returns on which the taxpayer was reported, or was required to be reported, as the secondary taxpayer on a joint return.

6. In addition to the criteria in paragraph (4), FTA criteria will not be met on BMF accounts if any of the following is true:

. A total of four or more FTD penalty waiver codes are present in the taxpayer's three-year penalty history. Waiver Code 24 is set when the FTD penalty is waived due to a change in deposit frequency. Waiver Code 25 is set when the FTD penalty is waived per IRM 20.1.4.3, *Restrictions on Assessments*, criteria. Waiver codes, if posted, are shown in Command Code (CC) BMFOL definer R with the literal FTD PEN WAIVER CD.

A. The FTD penalty is charged for EFTPS avoidance. However, if the taxpayer made some deposits electronically by EFTPS as required but not all and all other FTA criterion are met, any portion of an FTD penalty not attributable to EFTPS avoidance can be removed or suppressed. If the portion of the penalty attributable to EFTPS avoidance meets IRM 20.1.4.3, *Restrictions on Assessments*, criteria, remove the penalty in full.

B. For a Form 1120, *U.S. Corporation Income Tax Return*, or Form 1120-S penalty, a Form 1120-S, *U.S. Income Tax Return for an S Corporation*, in the 3-year look-back period was filed late but not penalized.

Note:

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C. The penalty is charged for an incomplete Form 1120-S under IRC 6699(a)(2) or Form 1065 under IRC 6698(a)(2). See IRM 20.1.2.5, *Failure to File S Corporation Return-IRC 6699*, and IRM 20.1.2.3, *Failure to File a Partnership Return*. An incomplete return penalty is assessed on MFT 02 or 06 with a TC 246 or a TC 240 without a 3-digit penalty reference number (PRN). Taxpayers that file an incomplete Form 1120-S or Form 1065 are provided an opportunity to submit the missing information before the incomplete return penalty is assessed.

7. In addition to the criteria contained in paragraphs (4)-(6), penalty relief under the FTA waiver does not apply to the following:

- Returns with an event-based filing requirement, generally returns filed once or infrequently such as Form 706, *U.S. Estate Tax Return*, and Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*.
- The daily delinquency penalty (DDP), see e.g., IRC 6652(c)(2)(A) and IRM 20.1.8, *Employee Plans and Exempt Organization Penalties*.
- Information reporting that is dependent on another filing, such as various forms that are attached.

Example:

Penalties assessed against a late-or unfiled Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*, or Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*. See IRM 20.1.9, *International Penalties*.

- This list is not all inclusive.

8. FTA is an administrative waiver and does not carry any oral statement authority (OSA) threshold. See *IRM 20.1.1.3.1, Unsigned or Oral Requests for Penalty Relief*, for OSA guidelines.

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.

Example:

If the same Form 941 filer was not compliant during calendar year(s) 2013, 2014, and/or 2015 but didn't request penalty relief for those years and their first request for penalty relief is for the 4 FTD penalties on their 2016 returns, penalty relief under the FTA waiver is not appropriate for any of the 2016 penalties.

10. An FTA waiver is not penalty-specific. In other words, if the taxpayer has any unreversed penalties (except an ES penalty) on a module in the 3-year look-back period, or any penalties reversed with PRC 018, 020, or 021, the FTA waiver does not apply to any penalty on the module under consideration.

Example:

If a taxpayer was assessed an FTD penalty and no other penalties on Form 941 for tax period 201703 and a review of the 3-year look-back period shows an unreversed FTP penalty ≡≡≡≡≡≡≡≡≡≡ (and a notice was issued), or the FTP penalty was removed with PRC 018, 020, or 021, the FTA waiver does not apply for 201703 tax module.

11. Per *IRM 20.1.1.3*, penalty relief under Administrative Waivers, including FTA, is to be considered and applied before reasonable cause. If FTA criteria are met, the FTA waiver will be applied before reasonable cause and the taxpayer must be notified that we removed their penalty or penalties based on their prior history of compliance and not based on their reasonable cause statement.

Caution:

Do not provide relief under the FTA waiver if there is clear and convincing evidence that the taxpayer did in fact comply and is not subject to any penalties or if the penalty or penalties is/are the result of an IRS error. Take appropriate corrective actions that will result in systemic reversal of the penalty or penalties. If the module is restricted from removing the penalty or penalties systemically or the penalty or penalties is/are clearly the result of an IRS error then input the penalty abatement transaction(s) with penalty reason code (PRC) 045.

12. When penalty relief under the FTA waiver is granted, notify the taxpayer we have removed the penalty or penalties based on their prior history of compliance and not based on a reasonable cause explanation provided, if applicable. Correspondence Letters 168C, 3502C (RCA only), and 3503C (RCA only), as well as ICS (integrated

collection system) macro letters 4722, 4723, and 4724, contain appropriate paragraphs to use for this notification requirement. The following is an example of this paragraph:

Example:

We approved your request to remove the penalties. However, we only granted penalty relief because you have a good history of filing and paying on time. This type of penalty removal is only available one time. We will base our decisions to remove any future penalties on reasonable cause criteria.

Note:

When applicable, include an explanation that educates the taxpayer how to be compliant in the future. Examples of when an explanation may not be applicable include deceased taxpayers and telephone contacts during which an explanation was provided verbally.

13. If the tax is not paid in full on the module that meets FTA criteria and the taxpayer is current with installment agreement payments (and has filed all returns currently due), allow abatement of the FTP penalty under the FTA waiver determined to the current date and use reason code **(RC) 062** with the TC 271. While the FTA waiver is an administrative waiver and not reasonable cause, the **RC 062** will not restrict Master File from continuing to compute the FTP penalty on the unpaid tax and is to be used in this instance only.

Note:

An open paragraph must be used in Correspondex Letters 168C, 3502C, and 3503C to inform the taxpayer that the FTP penalty will continue to apply to the unpaid tax. After the tax is paid in full, the additional FTP penalty can be removed under the FTA waiver.

Caution:

If the tax is paid in full or the taxpayer has agreed to pay the balance owed immediately upon receipt of notice of abatement of the penalty (see IRM 20.1.2.1.4.1(9)), allow abatement or suppression of the assessed amount of FTP penalty (i.e., input TC 270 for \$0.00 if the module only reflects accrued FTP). On IMF modules, use RC 065.

14. Per *IRM 20.1.1.5.1*, a PRC is required when abating an assessed penalty or suppressing a penalty that is otherwise applicable. The FTA waiver carries its own PRCs as follows:

- **PRC 018** - To be used when an independent determination of the taxpayer's eligibility for penalty relief under the FTA waiver is made. This includes situations where RCA is used but RCA did not determine FTA criteria have been met.
- **PRC 020** - To be used when RCA is used and RCA displays a message indicating the module under review meets FTA criteria. This includes situations where RCA displays a message indicating one or more modules in the 3-year history have been moved to the retention register and manual review of the module(s) moved to the retention register confirms FTA criteria have been met.

15. Taxpayers are not required to specifically request penalty relief under the FTA waiver to be eligible for the waiver. If one or more penalties eligible for relief under the FTA waiver remain after all account discrepancies have been corrected, and/or are

being proposed in the course of an examination, abatement or suppression of the penalty or penalties should be made if all FTA criteria have been met.