

## IRS First Time Abatements Made E-Z

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IRS account transcripts may have a substantial amount of “free” money trapped in them, and we, as tax practitioners, have an opportunity to release this money in the form of first time abatement (FTA) of penalties. FTA has been around since 2001, and e-Services has been around since 2004, but clever people have been around forever and have recently figured out how to quickly analyze transcripts for their clients' benefit.

The IRS FTA program was initiated as a reward for good behavior and to promote future tax compliance. FTA is a one-shot solution. As tax professionals, we get to choose how to use this silver bullet on the biggest qualifying penalty years, and we aim for the earliest year because interest on the penalties is abated as well. Right now, it seems that each taxpayer gets one FTA per lifetime, but I have observed cases where a single taxpayer received an FTA, then later married and he/she qualified for a second FTA as married filing jointly.

To receive any financial benefit from first time abatement, the taxpayer must currently owe the IRS or must have made payments against balances due within the last two years per IRC Sec. 6511. Taxpayers with no outstanding tax liabilities or no payments against liabilities made within the last two years are not candidates for FTA.

Based on Internal Revenue Manual Sec. 20. 1.1.3.6.1, FTA applies to the following penalties:

- failure to file (FTF)
- failure to pay (FTP)
- failure to deposit (FTD)  
(Payroll - Forms 941/944)

Note: The underpayment of estimated tax (ES) penalty (Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts) does not disqualify the taxpayer from FTA. Identified as Transcript Code 170, the ES penalty is primarily an interest charge, and it is specifically exempted from the FTA protocol.

### Failure to File and Failure to Pay

For the remainder of this discussion, we will focus on FTF and FTP for individual and business returns.

Most tax practitioners think of FTA when they, or their client, discover they did not file an extension and subsequently are being hit with a current-year FTF and/or FTP penalty. If the taxpayer or business is compliant and has not had any FTF or FTP penalties in the prior three tax years, FTA works like a charm! Because FTA is considered an administrative waiver, it has no defined dollar threshold ceiling. For instance, I once had an FTA of more than \$10,000 on a phone call.

Over a recent two-month period involving seven taxpayers, I successfully requested over the phone abatement of more than \$20,000 in prior-year FTA penalties. The IRS assistor runs the Reasonable Cause Assistant (RCA) program that provides an option for FTA penalty relief. Feedback is immediate, followed by IRS Letter 3503C in approximately ten days.

## Qualifications for FTA

As mentioned previously, to qualify for first time abatement, the three years prior to the penalty year must be clean, i.e., no FTF or FTP. The taxpayer must be in compliance (all returns filed or timely extended), and an installment agreement must be in place for any outstanding tax liabilities. If there are any outstanding tax liabilities and no installment agreement, FTA "wakes up" Collections.



### Example

This is an actual example of the analysis and request to IRS. Taxpayer Smith has a clean history for three or more years (2004-2006) and then stops filing. IRS creates a substitute for return (SFR) for 2007 and assesses a tax liability. Taxpayer Smith ultimately files a complete and accurate return for 2007 which reduces the balance due (but not to zero), and Taxpayer Smith's transcripts show FTF and FTP penalties for 2007. Taxpayer Smith is in a full-pay installment agreement for \$300 per month. Figure 1 shows the penalties eligible for FTA.

I called the IRS Practitioner Priority Service (PPS) and said, "I am calling under POA to determine if Taxpayer Smith qualifies for first time abatement for tax year 2007."

I received an immediate FTA on 2007 FTF and FTP penalties in the amount of \$6,702.61, plus interest on these penalties.

**Figure 1. Penalties Eligible for FTA**

Tax Year	Return Filed	FTF-Code 166 Failure to File	FTP-Code 276 Failure to Pay
2001	Original		
2002	Original		
2003	Original		
2004	Original	 <b>Prior 3 Years – NO FTF or FTP Penalties</b>	
2005	Original		
2006	Original		
2007	Original filed after SFR	\$4,315.27	\$2,387.34
2008	Original	 <b>Eligible for First Time Abatement</b>	
2009	Original		
2010	Original		\$102.96
2011	Original		
2012	Original		
2013	Original		
	<b>TOTALS</b>	\$4,315.27	\$2,490.30

## The FTA Process

The process is relatively simple:

- Obtain account transcripts.
- Analyze transcripts for FTA opportunities.
- Call or write the IRS.

## Account Transcripts

Transcripts can usually be obtained as far back as the 1980s using either Form 8821 (Tax Information Authorization) or Form 2848 (Power of Attorney and Declaration of Representative). Anyone enrolled in IRS e-Services can pull account transcripts using Form 8821. Circular 230 practitioners (EAs, CPAs, attorneys) can pull the transcripts with either the Form 8821 or Form 2848. To look for the best FTA, I recommend getting transcripts from 1990 to the present.

There are multiple methods available to obtain account transcripts:

- Call IRS and request a faxed or mailed copy.
- Use e-Services to pull transcripts in paginated, 8.5 x 11-inch print format.
- Use e-Services to store the transcripts in the e-Services secure repository (mailbox) and then view, print, or download the HTML files for subsequent importing into a spreadsheet program for analysis.
- Use a commercial software tool to download the transcripts, give them meaningful and unique names, and then analyze them to produce an information report from a substantial amount of data. One of the byproducts of the report is the identification of all FTA opportunities.

Although taxpayers can pull their own transcripts using the IRS Get Transcript app, they can only go back ten years. This may not give the taxpayer any benefit if no year in the last ten years qualifies for FTA, but there actually is a qualifying FTA in the last twenty-five years.

## Analysis for First Time Abatement

The basic logic behind an FTA is to locate and identify the following two penalty codes in the account transcripts for each year:

- Code 166: FTF - Penalty for filing tax return after the due date
- Code 276: FTP - Penalty for late payment

This is complicated by the fact that there may be partial removal of these penalties when the taxpayer files an actual return to replace an SFR, which reduces the tax due, or the taxpayer files an amended return, which reduces (but does not eliminate) the penalties. Watch for the following codes which may appear in the transcripts:

- Code 161 - Reduced or removed penalty for filing tax return after the due date
- Code 271 - Reduced or removed penalty for late payment of tax
- Code 197 - Reduced or removed interest charged for late payment. (Interest is statutory and cannot be abated, but a 1040 replacing an SFR usually reduces the tax due and so the interest is recalculated and reduced; likewise, an amended return may reduce the tax due.)

In addition, when an FTA is successful, the FTA year transcripts will be updated to reflect codes 161 and 271, which will zero out codes 166 and 276.

Visually scanning twenty-five years of transcripts and recording the results is time-consuming. Using a program that creates a spreadsheet is much more efficient. Commercially available software that analyzes transcripts is very fast and correctly handles the complicated codes 161, 271, and 197.

While analyzing the transcripts, practitioners may find multiple code 276 (FTP) entries for the same tax year "sprinkled" throughout a complex transcript. Be sure to total the dollar amounts to find the net FTP penalty for each year.

If a refund from another year is applied to the year in question, the balance is reduced and the account transcript will reflect the reduced interest due to the offset refund with Code 277 (Reduced or Removed Penalty for Late Payment of Tax). This does not affect FTP penalty calculations; but some IRS assistors will not process an FTA if they see code 277. The options in this case are to call back and get a more knowledgeable assistor or reference IRM 20.1.1.3.6.1 for first time abatement.

## **Making the Call: Requesting First Time Abatement**

Follow these steps when requesting FTA:

1. Call the IRS using either PPS or 1-800-TAX-1040.
2. Ask for FTA for a specific tax year. The representative must have POA authorization on the selected FTA year and the prior three years. The practitioner must identify the FTA year as the IRS assistor will not "go fishing" to find an FTA opportunity.

Some IRS personnel are not familiar with the process and will tell you the penalty is too old or does not qualify for some other reason. You can either try to escalate to a supervisor or reference IRM 20.1.1.3.6.1 for first time abatement.

3. You should have your answer immediately. The IRS assistor will tell you during the call if the FTA is granted. If approved, the taxpayer will receive IRS Letter 3503C in the mail. Taxpayers may also benefit from the reduction of interest charged on the penalties.

### **Internal Revenue Manual Guidance**

IRM 20.1.1.3.6.1 (08-05-2014) provides guidance on modified FTA policy.

Reasonable cause assistant (RCA) provides an option for penalty relief for the FTF, FTP, and/or FTD penalties if the taxpayer:

- 1** Has not previously been required to file a return or has no prior penalties (except the ES penalty) for the preceding three years
- 2** Is current with all return filing requirements and has paid or is paying any balance due.

## **FTA: Pitfalls and Strategies**

If the taxpayer owes less than \$10,000 and IRS Collections is not active, consider delaying the request for FTA. The taxpayer is "under the radar" and may not appreciate having collection activity restarted.

### **Example**

Taxpayer Jones timely filed her 2010 1040, but she did not pay timely. Taxpayer Jones has \$3,150 FTP and is in a full-pay installment agreement with \$50,000 remaining balance. It took three attempts to get IRS to grant FTA. Some assistants will say that FTP qualifies after the IRS debt is satisfied. IRM Sec. 20.1.1.3.6.1 item (10) does not require that the debt has to be fully paid in order to be abated, but be aware that TIGTA has recommended that in order to better ensure future tax compliance, the FTA waiver should not be applied until the outstanding tax is paid.

### **Conclusion**

Enrolled agents can use the FTA identification strategy to demonstrate that EAs are indeed America's tax experts. I describe this specialized knowledge to my clients as the EA secret handshake. It plays very well.

### **About the Author:**

Bill Nemeth, EA, and his wife Merry Brodie, EA, are partners in Tax Audit Guardian, assisting troubled taxpayers. Bill serves on the NAEA Affiliate Council and is president and Education chair of GAEA. He has been quoted in USA Today and the Wall Street Journal. The author is also an amateur beekeeper.