

First Time Penalty Abatements (FTA) Made Easy



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Roger Nemeth, EA, NTPI Fellow President, Tax Help Software

- Started managing tax franchises in 2006.
- Developed Audit Detective Transcript Reports in 2009.
- Qualified as an N.T.P.I. Fellow in 2015.
- Worked as a programmer for the largest Tax Resolution Company integrating automated transcript systems into workflow programs.
- Assisted in the downloading and research of over 30 million transcripts.



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Objectives

- Understand how the IRS First Time Penalty Abatement (FTA) Policy is currently being applied to taxpayers.
- What tax returns are eligible for FTA.
- What are the requirements to request FTA
- Best practices in applying for FTA.



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Introduction

Since the IRS introduced the FTA policy in 2001 it languished in obscurity and misunderstanding. There have been tax practitioners utilizing this policy since it's inception, but many tax practitioners and even more taxpayers were oblivious to this policy.

With the introduction of tax transcript software in 2013 which allowed bulk IRS transcript data to be acquired and researched this IRS FTA policy really took off. In the past couple years the IRS has included a flyer in most IRS notices instructing taxpayers how to apply as well as the creation of the IRS Penalty Abatement Unit to handle the increased volume of requests.

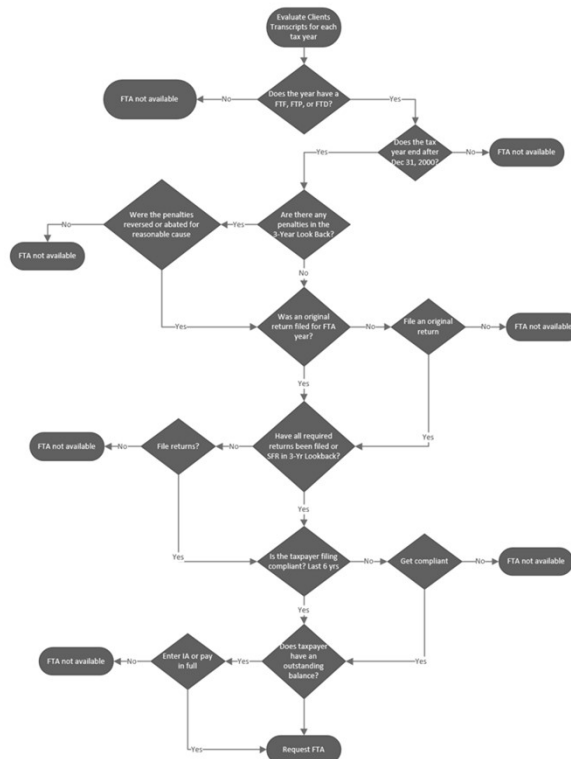
Handout Overview

- Presentation Slides.
- First Time Abatement (FTA) Flow Chart
- IRS Chief Counsel Memo Reference – Automation of the first time abatement administrative waiver policy September 28, 2017
- Sample Form 843

Acronyms Used in Presentation

ACRONYM	MEANING	CONTEXT
CNC	Currently Non Collectible Status	\$0 month resolution offered by the IRS. Have to prove that income is exceeded by the reasonable & necessary living expenses of the taxpayer. NOT a forgiveness program, the taxpayer still owes the balance due.
CSED	Collection Statute Expiration Date	The IRS has a limited time to collect a tax debt, starting 10 years from the date of assessment (plus tolling events). The CSED is the date the debt is no longer legally enforceable.
FTA	First Time Abatement	Administrative Penalty Abatement waiver, see IRM 20.1.1.3.3.2.1
IA	Installment Agreement	Monthly repayment plan to the IRS, may or may not have a set term.
IRC	Internal Revenue Code	Title 26 of the United States Code (USC). 1st Promulgated in 1939 the IRC is the body of law which codifies all federal tax laws.
IRM	Internal Revenue Manual	The IRM is the primary, official source of "instructions to staff" that relate to the administration and operation of the IRS. It details the policies, delegations of authorities, procedures, instructions and guidelines for daily operations for all IRS organizations
RSED	Refund Statute Expiration Date	The IRS limits the amount of time a refund may be issued to a taxpayer. The RSED is the date the refund is no longer payable.
SFR	Substitute for Return	Shorthand to indicate that an IRS prepared return is on file. SFRs prepared under IRC 6020(b).
TC	Transaction Code	Transaction Codes (TC) consist of three digits. They are used to identify a transaction being processed and to maintain a history of actions posted to a taxpayer's account on the Master File.

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Common Types of Penalty Abatement

First Time Penalty Abatement

- This process is fairly straight forward. If the taxpayer qualifies, they will almost always get it.
- Can usually be completed in minutes over the phone with minimal research.
- See IRM 20.1.1.3.3.2

Reasonable Cause Penalty Abatement

- This process is usually challenging.
- It is a subjective determination and often will have to be appealed with no certainty of outcome.
- These also take longer and require the submission to be in writing.
- See IRM 20.1.1.3.2

First Time Penalty Abatement Synopsis

For a year to qualify for First Time Abatement the taxpayer:

- Needs to be compliant (last 6 tax returns filed)
- Be in an Installment Agreement for outstanding tax debt. (No CNC)
- The year with the penalty cannot be a Substitute for Return (SFR), it must be an original return.

Year with penalty (Failure to file, pay and/or deposit)	
One year previous	No penalties (unless abated by reasonable cause/reversed) or no filing requirement
Two years previous	No penalties (unless abated by reasonable cause/reversed) or no filing requirement
Three years previous	No penalties (unless abated by reasonable cause/reversed) or no filing requirement

FTA Year

Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties	Accrued Penalty	Total Penalties*
2022	No						-	-
2021	Original						\$0.00	\$0.00
2020	Original	Y		\$1,458.62	\$855.33		\$256.18	\$2,570.13
2019	Original						\$0.00	\$0.00
2018	Original						\$0.00	\$0.00
2017	Original						\$0.00	\$0.00
2016	Original						\$0.00	\$0.00
2015	Original						\$0.00	\$0.00

- Find a year after 2000 that has any or all of the following: FTF, FTP or FTD.
- The 3-Year Lookback must be clear (meets FTA criteria-see next slide).
- The FTA year must have an original return filed.
- The taxpayer must be in filing compliance for the last 6 tax years.
- If the taxpayer has a balance on any year the account must be in an arrangement to pay (Installment Agreement).

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3-Year Lookback

Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties	Accrued Penalty	Total Penalties*
2022	No						-	-
2021	Original						\$0.00	\$0.00
2020	Original	Y		\$1,458.62	\$855.33		\$256.18	\$2,570.13
2019	Original						\$0.00	\$0.00
2018	Original						\$0.00	\$0.00
2017	Original						\$0.00	\$0.00
2016	Original						\$0.00	\$0.00
2015	Original						\$0.00	\$0.00

- There cannot be any penalties (except for estimated tax penalty).
 - If there are any penalties the year still meets the FTA "Clean" criteria ONLY IF they were completely reversed or abated by reasonable cause).
- The tax years in the 3-Year Lookback MUST be filed if there is a filing requirement.

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FTA Eligible

2020 Qualifies for FTA. Prior 3 years clean.

Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties	Accrued Penalty	Total Penalties*
2022	No						-	-
2021	Original						\$0.00	\$0.00
2020	Original	Y		\$1,458.62	\$855.33		\$256.18	\$2,570.13
2019	Original						\$0.00	\$0.00
2018	Amended						\$0.00	\$0.00
2017	Original						\$0.00	\$0.00
2016	Original						\$0.00	\$0.00
2015	Original						\$0.00	\$0.00
2014	Original						\$0.00	\$0.00
2013	Original						\$0.00	\$0.00

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FTA – Year Not Eligible

Any Penalty in prior 3 years makes year ineligible for FTA

Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties	Accrued Penalty	Total Penalties*
2022	No						-	-
2021	Original						\$0.00	\$0.00
2020	Original	N		\$1,458.62	\$855.33		\$256.18	\$2,570.13
2019	Original			\$123.00			\$0.00	\$0.00
2018	Amended						\$0.00	\$0.00
2017	Original						\$0.00	\$0.00

Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties	Accrued Penalty	Total Penalties*
2022	No						-	-
2021	Original						\$0.00	\$0.00
2020	Original	N		\$1,458.62	\$855.33		\$256.18	\$2,570.13
2019	Original						\$0.00	\$0.00
2018	Amended						\$0.00	\$0.00
2017	Original						\$0.00	\$0.00

Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties	Accrued Penalty	Total Penalties*
2022	No						-	-
2021	Original						\$0.00	\$0.00
2020	Original	N		\$1,458.62	\$855.33		\$256.18	\$2,570.13
2019	Original						\$0.00	\$0.00
2018	Amended						\$0.00	\$0.00
2017	Original						\$123.00	\$0.00

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A Computerized Tool is Used by the IRS to Determine FTA

- IRS assister/representative is using decision-support software called the Reasonable Cause Assistant (RCA).
- A lack of training at the IRS has shown that different IRS representatives come to different conclusions for the same case.
- The RCA checks if a year qualifies for FTA before considering Reasonable Cause, even if it is a Reasonable Abatement Request.

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Which Tax Returns Qualify for FTA?

Qualifies for FTA

- 1040 (Including Separate Assessments)
- 1120
- 1120-S
- 1065
- 940
- 941 (all other 94# series)
- 2290
- 720

Does NOT Qualify for FTA

- Form 706
- U.S. Estate Tax Return
- Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return
- Returns with an event-based filing requirement
- W&I Informational Returns
- Daily Delinquency Penalty (DDP)
- Employee Plans and Exempt Organization Penalties

Note: If an entity does not appear on this list you should apply and let the IRS advise if there is a reason it does not qualify for FTA.

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Which Penalties Can Be Abated Through FTA?

FTA is Available for 3 Penalty Types

FTF – Failure To File

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

FTP – Failure To Pay

- The failure-to-pay penalty is generally 0.5% 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% of your unpaid taxes.

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.

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

Failure to Deposit Transcript Code 180 or 186

- Penalty for failure to deposit on payroll tax.

Qualifications for FTA

Qualifications for FTA

- IRS allows for any tax year after 2001.
- Is there a year with FTF, FTP, and or FTD?
 - If the year with penalty has an SFR but no original return it does not qualify.
- Is the taxpayer compliant (last 6 years)?
- If the taxpayer owes, are they in an installment agreement?
- Have any penalties been assessed (Except Estimated Tax Penalty) in the prior 3 years? If yes, then disqualified unless those penalties were abated for reasonable cause or reversed.

IRS IRM 20.1.1.3.3.2.1 (10-19-2020) First Time Abate (FTA)

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FTA- Eligible If No Filing Requirement

Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties	Accrued Penalty	Total Penalties*
2022	No						-	-
2021	Original						\$0.00	\$0.00
2020	Original	Y		\$1,458.62	\$855.33		\$256.18	\$2,570.13
2019	Original						\$0.00	\$0.00
2018	Original						\$0.00	\$0.00
2017	Original						\$0.00	\$0.00
2016	No							\$0.00
2015	Original						\$0.00	\$0.00



MUST be filed OR No Filing Requirement per IRS

For a taxpayer to qualify for any FTA they must be compliant with tax return filings. Compliance = Last 6 years all returns with a filing requirement must be filed. SFR qualifies for filing compliance (but not if year of FTA).

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FTA - How Far Back?

- IRS allows FTA on any tax year back to 2001. (FTA does not apply to 2000 and before)
- **IRS IRM 20.1.1.3.3.2.1.4 (a)** - The tax period ending date is later than Dec. 31, 2000

FTA-Eligible Once Return Is Filed

This year qualifies due to the 3-Year Look Back, but an original return needs to be filed

Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties	Accrued Penalty	Total Penalties*
2022	No						-	-
2021	Original						\$0.00	\$0.00
2020	SFR	Y		\$1,458.62	\$855.33		\$256.18	\$2,570.13
2019	Original						\$0.00	\$0.00
2018	Amended						\$0.00	\$0.00
2017	Original						\$0.00	\$0.00

The year being reviewed for FTA has to have an original return on file. An SFR does not qualify for purpose of FTA based on current language of the IRM.

How Reasonable Cause Abatements Impact FTA

- The Reasonable Cause Assister (RCA) will attempt to apply relief based on FTA before considering reasonable cause.
 - Example if a request for Reasonable Cause is submitted by the taxpayer and that tax year qualifies for FTA the abatement is coded as an FTA.
- Any year in the 3 Year Lookback where the penalties are completely removed by reasonable cause abatement or reversal are considered a clean year.
 - Clean Year = Does not disqualify the FTA request.

IRS IRM 13.1.24.6.1.1.2 (05-11-2018) First-Time Abate – Clean Compliance History



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FTA- Prior Reasonable Cause Abatements Still Qualify

Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties	Accrued Penalty	Total Penalties*
2022	No						-	-
2021	Original						\$0.00	\$0.00
2020	Original	N		\$1,458.62	\$855.33		\$256.18	\$2,570.13
2019	Original		Y	\$0.00	\$0.00		\$0.00	\$0.00
2018	Original						\$0.00	\$0.00
2017	Original						\$0.00	\$0.00
2016	No						\$0.00	\$0.00

In the 3-Year Look Back if you see an abated or reversed penalties you need to determine if they were reversed (qualifies), reasonable cause abatement (qualifies) or FTA (does not qualify) to determine eligibility.

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FTA Best Practices

Applying for FTA

- Phone Call
 - Can call Practitioner Priority Service (PPS) or Automated Collections System (ACS) to make a verbal request for FTA
 - Denial of a verbal request does not preclude making additional request over the phone or in writing.
- Written Request
 - Can use form 843 or write a letter. Mail to the address on the most recent IRS notice OR processing center where taxpayer would file a paper return.
 - Written requests should generally only be made once.

Usually Approved Instantly

- If approved over the phone it is generally instant, though it will take several cycles to show up on a transcript.
- **The IRS assister will read from their script and advise:**
 - Taxpayer will receive 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

- Call 1-800-829-1040 (TAX-1040) OR
- IRS Penalty Assistance Line: 1-855-223-4017 X-225

Tax Professional

- Call IRS PPS Line – 1-866-860-4259 OR
- NEWLY-Released IRS Penalty Assistance Line: 1-855-223-4017 X-225

Presentation Note: A Tax Professional is unable to request FTA with just an 8821 on file.

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Form 2848 must cover ALL years including the three-year lookback

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.

Presentation Note: A practitioner cannot request an FTA for a client with only an 8821 on file.

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How Is The Abatement Amount from the FTA Applied???

- For the year of the FTA, if there is a balance then the balance is reduced by the amount of the FTA.
 - If the abatement is greater than the balance due for that year, then a refund is issued IF the RSED is not expired.
- For the year of the FTA, if Refund Statute Expiration date has not expired (3 years since timely original filed or 2 years since tax was paid) the taxpayer should receive a refund that qualifies under the RSED Rules.

NOTE: If the RSED has expired and the taxpayer does not have a balance the taxpayer receives no benefit.



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Is a Refund Available?– Evaluating RSED

Year	Return Filed	Original Return Filed Date	Return Due Date	Est ASSED*	3 Yrs After Due Date (RSED)*	3 Yrs After Original Return Filed (RSED)*	If 3 Yr RSED Not Expired, Estimated Amount Available*	Credit/Payment Amounts Made Within Past 2 Years (RSED)*
2022	-							
2021	No	none	4/15/2022	open	4/15/2025	not filed	\$0.00	\$0.00
2020	Original	5/14/2021	10/15/2021	10/15/2024	10/15/2024	10/15/2024	\$101,254.00	\$101,254.00
2019	Original	8/18/2020	10/15/2020	10/15/2023	10/15/2023	10/15/2023	\$94,912.26	\$94,912.26
2018	Original	9/26/2019	10/15/2019	10/15/2022	10/15/2022	10/15/2022	\$123,006.94	\$0.00
2017	Original	10/15/2018	10/15/2018	10/15/2021	10/15/2021	10/15/2021	expired	\$0.00
2016	Amended	10/12/2017	10/15/2017	10/15/2020	10/15/2020	10/15/2020	expired	\$0.00
2015	Original	10/17/2016	10/15/2016	10/17/2019	10/15/2019	10/17/2019	expired	\$0.00
2014	Original	10/14/2015	10/15/2015	10/15/2018	10/15/2018	10/15/2018	expired	\$0.00
2013	Original	10/15/2014	10/15/2014	10/15/2017	10/15/2017	10/15/2017	expired	\$0.00
2012	Original	10/14/2013	10/15/2013	10/15/2016	10/15/2016	10/15/2016	expired	\$0.00

The Refund Statute Expiration Date (RSED) defines how long a taxpayer has to claim a refund. To determine if the taxpayer can get a refund from the FTA the RSED needs to be checked.



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How Many FTA's Can A Taxpayer Receive?

Chief Counsel Memo (See Handout) from September 28, 2017 advises that the Chief Counsel's Opinion was "First time abatement applies only to a single tax period, but because the policy requires only a three-year compliance history, it is possible for the same taxpayer to receive multiple first-time abatements."

13.1.24.6.1.1.2 (05-11-2018) First-Time Abate – Clean Compliance History

- 2) If the taxpayer will qualify for FTA relief, and the documentation to support reasonable cause will be extensive or difficult for the taxpayer to gather, TAS employees should discuss with the taxpayer or representative the option of submitting a signed written request under penalties of perjury for penalty abatement without documentation. Explain that using the First-Time Abate will exclude its use again for the next three years.

Based on these two cites it is this presenter's OPINION that multiple FTAs can be requested for the same taxpayer as long as each year meets the requirements.

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Multiple FTA Example

Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties	Accrued Penalty	Total Penalties*
2022	No						-	-
2021	Original						\$0.00	\$0.00
2020	Original	Y		\$1,458.62	\$855.33		\$256.18	\$2,570.13
2019	Original						\$0.00	\$0.00
2018	Original						\$0.00	\$0.00
2017	Original						\$0.00	\$0.00
2016	Original	Y		\$6,546.00	\$2,168.00		\$0.00	\$8,714.00
2015	Original						\$0.00	\$0.00
2014	Original						\$0.00	\$0.00
2013	Original						\$0.00	\$0.00
2012	Original	Y		\$873.00	\$532.00		\$0.00	\$1,405.00
2011	Original						\$0.00	\$0.00
2010	Original						\$0.00	\$0.00
2009	Original						\$0.00	\$0.00

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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.

Presentation 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.



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First Time Penalty Abatement Synopsis

For a year to qualify for First Time Abatement the taxpayer:

- Needs to be compliant (last 6 tax returns filed)
- Be in an Installment Agreement for outstanding tax debt. (No CNC)
- The year with the penalty cannot be a Substitute for Return (SFR), it must be an original return.

Year with penalty (Failure to file, pay and/or deposit)	
One year previous	No penalties (unless abated by reasonable cause/reversed) or no filing requirement
Two years previous	No penalties (unless abated by reasonable cause/reversed) or no filing requirement
Three years previous	No penalties (unless abated by reasonable cause/reversed) or no filing requirement



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Small \$ FTA – Best Practices

- There may not be enough profit margin to charge your client for all First Time Penalty Abatement (FTA) opportunities.
- If an abatement amount is under \$3,000 (or whatever amount you set as a threshold) you can provide to the client for requesting OR have a pre-completed Form 843 ready to mail in with instructions.
 - Tax Pro would just need to fill in the years and amount on the form 843.

E-Mail Example

Hello Mr Taxpayer.

We identified a First Time Penalty Abatement Opportunity for you that could result in a refund amount of \$2,500. You can claim this refund by simply calling the IRS at 1-800-829-1040 or 1-855-223-4017 ext 225 (whichever has the lowest hold time). Simply state that you are requesting First Time Penalty Abatement for Tax Year 2019 in the amount of \$2,500. They will ask you a series of questions to verify your identity. You should receive your refund in 14 to 60 days.

Have a great day and let us know if you have any questions.

Conclusion

With the varying amount of conflicting information it is the presenter's opinion to ask for any year that meets the three-year lookback criteria for FTA. If the IRS denies the request and the practitioner does not believe the decision was based on a valid reason multiple attempts for FTA should be attempted within reason. This in no way should be interpreted to take a frivolous positions in violation of Circular 230 as long as the information in the IRM and this presentation is used to justify those actions.



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QUESTIONS?

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