

THE ART OF IRS PENALTY DEFENSE

Prepared and Presented by:

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Board Certified in Tax Law by the Texas Board of Legal Specialization



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The information included in these materials is for discussion purposes only and should not be relied on without seeking individual legal advice.



Joel N. Crouch

Partner

Mr. Crouch is a partner with Meadows, Collier, Reed, Cousins, Crouch & Ungerman, L.L.P., specializing in civil and criminal tax controversies. He represents a broad range of clients, including individual taxpayers, closely-held business enterprises, estates, corporations and tax advisors in all stages of federal civil and criminal tax proceedings. In over 20 years of practice, he has helped his clients resolve hundreds of civil and criminal tax matters, many of which involved sophisticated and complex legal and tax issues, both domestic and international.

Mr. Crouch has extensive experience in resolving tax matters at all stages of a tax dispute including IRS examinations, administrative appeals, and if necessary, litigation in the U.S. Tax Court, the U.S. Court of Federal Claims and U.S. District Courts. Mr. Crouch has tried civil cases in the U.S. District Court, the U. S. Court of Claims and U.S. Tax Court. He has also successfully argued cases at the U.S. Court of Appeals for the Fifth Circuit and represented clients in tax cases before the United States Supreme Court. Mr. Crouch has also tried criminal cases in the U. S. District Court. In partnership litigation, he has been involved in challenging IRS positions on the enforceability of several federal regulations, the applicable statute of limitations and application of penalties.

As a board certified tax lawyer by the Texas Board of Legal Specialization, Mr. Crouch has intimate knowledge of the tax laws, regulations, accounting standards and developments within the IRS and other federal government agencies. His specialized knowledge and experience allows him to effectively advocate on behalf of his clients in litigation against the federal government. He has represented accountants and attorneys in civil promoter examinations and criminal investigations arising from their involvement in structured transactions. He has successfully navigated these investigations so that his clients' exposure to penalties and criminal prosecution has been eliminated or significantly reduced.

Mr. Crouch has been recognized as one of the best in his field by *Texas Monthly* and *Law and Politics* magazines by being named a Texas Super Lawyer from 2003 through 2011. He has also been named one of the Best Lawyers in Dallas by D Magazine. He is a frequent speaker on both substantive and procedural tax issues for both legal and accounting professionals. Topics include Tax Shelter Defense, IRS Examinations, Appeals, Litigation and Collection Strategies, IRS Criminal Investigations, IRS Offshore Activities, IRS Focus on Tax Professionals, Employment Classification, IRS Penalties, and Litigating Partnership Tax Cases. Mr. Crouch has published various articles re: the IRS & tax procedures.

Education

J.D., University of Texas School of Law, 1988
B.A., Southern Methodist University, 1985

Bar Admissions

State Bar of Texas

Professional Associations and Memberships

American Bar Association, Taxation

Member, Court Procedure and Practice Committee

Member, Standards of Tax Practice Committee

Member, Civil and Criminal Penalties Committee

Member, Administrative Practice and Procedures Committee

State Bar of Texas

Member, Section of Taxation

Dallas Bar Association

Member, Tax Advisory Council, 2014-2016

Dallas Bar Foundation

Fellow

Collin County Bar Association

Member

Plano Symphony Orchestra

Board of Directors, Secretary and Treasurer

St. Andrews United Methodist Church –

Chairman, Building Committee

Administrative Council

Willow Bend Lakes Home Owners Association

Board Member

Secretary

Publications

"Understand the IRS Voluntary Disclosure Program", April 2012, *Texas Lawyer*

"Is Three Times a Charm? The IRS Announces a Third Offshore Voluntary Disclosure Initiative", February 2012, *BarTabs* published by the Collin County Bar Association

"6 Keys to Avoiding Section 6701 Penalties", *The Value Examiner*, May/June 2006 Issue, National Association of Certified Valuation Analysts

"Take Two: IRS Voluntary Disclosures and The Offshore Disclosure Initiatives", April 2011, *BarTabs* published by the Collin County Bar Association

"Avoiding Criminal Tax Problems: Voluntary Disclosure", Originally published in *Headnotes*, Vol. 36, No. 5, May 1, 2011, page 9 (published monthly by the Dallas Bar Association)

Honors and Awards

The Best Lawyers in America®, 2015, Tax Law

2013 Top Rated Lawyer in White Collar Criminal Defense Law by ALM as published in *The American Lawyer*, *Corporate Counsel* & *The National Law Journal*, October 2013

Texas Super Lawyers-Tax as listed in *Texas Super Lawyers Magazine* and *Texas Monthly*, 2003 through 2014

Best Lawyers in Dallas, D Magazine, 2012: Tax Litigation

AREAS OF PRACTICE

- Income Tax Litigation
- Estate and Gift Tax Litigation
- White Collar and Government Regulatory Litigation
- Commercial Litigation

Joel N. Crouch

Partner

2014 Speaking Engagements

American Association of Attorney-CPAs, "Self Employment Tax Issues for LLCs and S Corps" – 1/24/14

Corpus Christi Chapter/TSCPA 56th Annual Tax Conference, "Self Employment Tax for LLCs and S Corps" – 1/29/14

First Bank & Trust East Texas Seminar, Lufkin, "Judicial Update" – 4/25/14

Texas Bank & Trust Seminar, Tyler, "Self-Employment Tax for LLCs and S Corps" – 5/6/14

Texas Bank & Trust Seminar, Longview, "Self-Employment Tax for LLCs and S Corps" – 5/15/14

East Texas Chapter/TSCPA Annual CPE Expo, Tyler, "Judicial Update" – 5/19/14

Brazos Valley Chapter/TSCPA, College Station, Recent Developments in Federal Income Taxation" – 5/22/14

16th Annual 2014 San Antonio CPA CE Symposium, San Antonio, "What to Expect from a Rapidly Changing IRS in 2014" – 8/15/14

Panhandle Chapter/TSCPA 2014 Tax Institute, Amarillo, "What to Expect in 2014 from a Rapidly Changing IRS" – 8/27/14

Advanced Tax Law Course 2014 sponsored by TexasBarCLE, Dallas, "Foreign Asset Reporting Obligations to the IRS" – 8/28/14

16th Annual Meadows Collier Taxation Conference, Dallas – 10/28/14

Austin Chapter/TSCPA Annual Tax Conference, Austin – 11/17/14

TSCPA CPE Expo, Houston "What is Happening to Taxpayers in Court?" – 12/4/14

TSCPA CPE Expo, San Antonio "What is Happening to Taxpayers in Court?" – 12/8/14

2013 Speaking Engagements

Corpus Christi Chapter/TSCPA 55th Annual Tax Conference, Corpus Christi, "What Can We Expect From the IRS in 2013" – 2/1/13

Dallas Bar Association - Tax Section, Dallas, "Conservation and Facade Easements: Are They for Real or a Facade?" – 4/1/13

Texas Bank and Trust Seminar, Tyler, "What We Can Expect from the IRS in 2013" – 5/1/13

Convergence 2013 sponsored by the Dallas CPA Society, Dallas, "Panelists - Criminal Tax" – 5/8/13

Texas Bank and Trust Seminar, Longview, "What We Can Expect from the IRS in 2013" – 5/16/13

North American Petroleum Accounting Conference (NAPAC), Dallas, "Self-Employment and Employment Tax Issues in LLCs and S Corporations" – 5/17/13

Wichita Falls Chapter/TSCPA Free CPE Seminar, Wichita Falls, "What We Can Expect from the IRS in 2013" and "Self-Employment and Employment Tax Issues in LLCs and S Corporations" – 5/22/13

Central Texas Chapter/TSCPA CPE Expo, Waco, "What We Can Expect from the IRS in 2013" – 5/29/13

2013 Speaking Engagements (cont.)

Dallas Bar Association - Real Property Section, Dallas, "Conservation and Facade Easements: Are They for Real or a Facade?" – 7/8/13

UT Law 2013 LLCs, LPs and Partnerships Conference, Austin, "Dysfunctional Family Limited Partnerships" – 7/11/13

Brazos Valley Chapter/TSCPA, College Station, "What We Can Expect from the IRS in 2013" – 6/12/13

Fort Worth Chapter/TSCPA Tax Institute, Fort Worth, "Offers in Compromise: Is the IRS Really Becoming Kinder and Gentler", – 8/2/13

Texas Association of Certified Public Accountants, Houston, "What to Expect from a Rapidly Changing IRS", – 8/16/13

15th Annual Meadows Collier Taxation Conference, Dallas, "Judicial Update:", 10/29/13

Accounting Continuing Professional Education Network (ACPEN), Dallas, "Procedural Issues in Partnership Audits and Litigation, Return Preparer Penalties and Hot Litigation Topics", – 10/30/13

TSCPA CPE Expo, San Antonio – 12/10/13 and Houston – 12/17/13, "What to Expect in 2014 from a Rapidly Changing IRS"

2012 Speaking Engagements

Corpus Christi Chapter/TSCPA, Corpus Christi, "How to Make Sure Your Client Does Not Have IRS Employment Tax Problems" – 1/13/12

Montgomery Coscia Greilich LLP, Dallas, "Current Trends in IRS Examinations and Appeals" – 4/23/12

Texas Bank and Trust Seminar, Tyler, "Civil and Criminal Fraud Audits and Investigations" – 5/2/12

Texas Bank and Trust Seminar, Longview, "The Valuator/Appraiser: Perspectives and Guidance in Navigating Through Valuation Engagements" – 5/8/12

Dallas Bar Association Health Law Section, Dallas, "Health Care and Independent Contractors: How to Avoid Being A Target" – 5/16/12

North American Petroleum Accounting Conference (NAPAC), Dallas, "Compliance Issues for U.S. Partnerships with Foreign Partners and U.S. Partners with Foreign Partnerships" – 5/17/12

Corpus Christi Estate Planning Council, Corpus Christi, "Using Family Limited Partnerships and What to Expect from the IRS" – 5/18/12

Dallas Bar Association Small & Solo Practice Section, Dallas, "What Every Attorney Should Know About the IRS" – 8/1/12

Law Review CLE, Dallas, "Worker Classification" – 8/9/12

Fort Worth Chapter/TSCPA Tax Institute, Fort Worth, "Worker Classification" – 8/10/12

Panhandle Chapter/TSCPA Tax Institute, Amarillo, "IRS Priority #1: Foreign Transactions, Entities and Bank Accounts" – 8/23/12

Dallas CPA Society's Member Appreciation Series, Dallas, "IRS Exams and Collections" – 9/19/12

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2012 Speaking Engagements (cont.)

14th Annual Meadows Collier Taxation Conference, Dallas, "Judicial Update" – 10/30/12

Austin Chapter/TSCPA Annual Tax Conference, Austin, "Judicial Update" – 11/8/12

TSCPA CPE Expo, San Antonio, "What We Can Expect from the IRS in 2013" – 12/3/12

TSCPA CPE Expo, Houston, "What We Can Expect from the IRS in 2013" – 12/10/12

2011 Speaking Engagements

Denton Bar Association, Denton, "Divorce and Separation: A Taxing Experience" – 1/4/11

Dallas Bar Association Tax Section, Dallas, "The Changing Relationship Between Taxpayers and the IRS Examination Division" – 2/7/11

Dallas Collaborative Law Group, Dallas, "Tax Issues in Divorce and Separation" – 4/21/11

Taxation and Estate Planning Update for Professionals Seminar sponsored by Texas Bank and Trust, Tyler, "Don't Give Up on Family Limited Partnerships (FLPs)" – 5/4/11

Taxation and Estate Planning Update for Professionals Seminar sponsored by Texas Bank and Trust, Longview, "Don't Give Up on Family Limited Partnerships (FLPs)" – 5/18/11

Wichita Falls Chapter/TSCPA, Wichita Falls, "What are our Friends at the IRS Doing to us Now?" – 5/25/11

Dallas CPA Society's Continuing Education Day Conference, "Resolving Conflicts Through the IRS Taxpayer Advocate's Office" – 5/26/11

Fort Worth Chapter/TSCPA Tax Institute Fort Worth, "The IRS and the Tax Professional: Friends or Foes?" – 8/4/11

2010 Speaking Engagements

13th Annual Meadows Collier Taxation Conference, Dallas, "The Offshore Voluntary Disclosure Initiative is Done: Now What?" – 10/25/11

Accounting Continuing Professional Education Network (ACPEN) Live Webcast, Dallas – 10/26/11

Rio Grande Valley Chapter/TSCPA Expo, South Padre Island, "The Changing Relationship between Taxpayers and the IRS Examination Division" – 10/28/11

Dallas Bar Association - Tort & Insurance Practice Section, Dallas, "The CPAs Continuing Role in Family Limited Partnerships" and "Compliance Issues for U.S. Partnerships with Foreign Partners and U.S. Partners in Foreign Partnerships" – 11/1/11

Austin Chapter/TSCPA Annual Tax Conference, Austin, "Practical Suggestions and Traps to Avoid When Working with the IRS" – 11/14/11

TSCPA CPE Expo, "The Evolving Relationship Amongst the IRS, Taxpayers and Tax Professionals" – 12/1/11- San Antonio, 12/5/11-Arlington and 12/8/11-Houston

2010 Speaking Engagements (cont.)

National Constitution Center Audio Conference, Dallas, "Tax Disputes Before the IRS: Audit, Appeal & Tax Litigation" – 2/17/10 & "IRS Criminal Tax Investigations: Successfully Representing Your Client" 6/15/10

San Angelo Chapter/TSCPA, San Angelo, "Circular 230" – 5/19/10

Central Texas Chapter/TSCPA CPE Expo, Waco, "Tax Disputes Before the IRS: Audit, Appeal and Tax Litigation" – 5/20/10

American Society of Women Accountants, Ft. Worth Chapter, Fort Worth, "Tax Disputes Before the IRS: Audit, Appeal and Tax Litigation" – 5/26/10

Comerica Bank Counsel, Dallas, "Family Limited Partnership Update" – 8/5/10

Panhandle Chapter/TSCPA MIGI Conference, Amarillo, "Employment Tax Law" – 10/21/10

Meadows Collier Taxation Conference, Dallas, "IRS Alternative Resolution Options" – 10/26/10

National Constitution Center Audio Conferences, Dallas, "Tax Disputes Before the IRS: Audit, Appeal & Tax Litigation" – 11/3/10

Tax Executives Institute Dallas Chapter, Dallas, "The Changing Relationship Between Taxpayers and the IRS Examination Division" – 11/16/10

TSCPA CPE Expo, San Antonio, Houston & Arlington, "Judicial Update: What's Happening in the Courts?" – 12/3/10, 12/7/10 & 12/10/10

Civil Tax Controversies Representation Matters

Represented client in appeal to the U.S. Supreme Court regarding the IRS attempt to invoke a six year statute of limitations.

Represented client in an appeal to the U.S. Fifth Circuit regarding the IRS attempt to impose a substantial penalty.

Represented client in an appeal to the U.S. Fifth Circuit and successfully argued that the IRS cannot invoke a six year statute of limitations.

Represented client in a successful challenge to the IRS' attempt to retroactively apply a Treasury regulation.

Represented client in successfully resolving issues regarding unfiled payroll tax returns for multiple years.

Represented numerous clients through the IRS Offshore Voluntary Disclosure initiatives and other voluntary disclosure programs.

Represented family in challenge to IRS disallowance of tax benefits and prepared imposition of penalties.

Represented estate in an IRS challenge to the value of interest in a closely-held business. Successfully settled case for significantly less than the IRS's proposed assessment.

Represented a client in IRS challenge to losses arising from investment in distressed assets.

Represented attorney in a challenge to IRS summons for records related to attorney's client's offshore activities.

Represented numerous clients in tax shelter examinations and civil litigation.

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Civil Tax Controversies Representation Matters (cont.)

Represented clients in IRS attempt to reclassify losses associated with horse and cattle activities as hobby losses under IRC § 183.

Represented numerous clients in tax shelter examinations and civil litigation.

Represented clients in IRS attempt to reclassify losses associated with horse and cattle activities as hobby losses under IRC § 183.

Represented clients in IRS challenges to classification of independent contractors versus employees.

Represented numerous tax professionals under investigation for alleged ethical and IRS Circular 230 violations.

Represented large public company in an IRS challenge to deduction of expenses related to merger with competitor.

Represented owner and closely-held business in IRS examination of issues related to change in accounting method.

Represented client in IRS attempt to impose penalties during litigation of civil tax matter. Successfully convinced court that the government could not propose penalties.

Represented client in connection with IRS challenge to losses arising from failed tender offer for a foreign publicly-traded company.

Represented numerous estates in IRS challenges to the valuation of closely-held businesses and estate planning vehicles fractionalizing ownership and control.

Represented numerous estates in IRS challenges to family limited partnerships involving IRC §§ 2703, 2704 and 2036 and other substance-over-form attacks.

White Collar and Criminal Tax Controversies Representation Matters

Represented a CPA subject of an investigation by the Tax Inspector General's Office and negotiated a resolution involving no criminal charges.

Hired by client post-indictment in mail and wire fraud case and convinced the government to dismiss the indictment before trial.

Successfully avoided criminal prosecution and civil fraud penalties for numerous taxpayers in civil IRS examinations and IRS administrative proceedings with high risk of civil fraud penalties, criminal prosecution or both.

Represented numerous clients in making voluntary disclosures to the IRS regarding unfiled tax returns, substantiation tax issues and offshore activities to avoid criminal prosecution.

Represented large national corporation in investigation of potential environmental criminal violations. Convinced the government that no criminal charges should be brought.

Represented an attorney in an IRS investigation of failure to file tax returns.

Represented a hospital chain in a healthcare fraud investigation following the execution of search warrants based on allegations made by a qui tax relation.

White Collar and Criminal Tax Controversies Representation Matters (cont.)

Represented a real estate investor indicted for tax fraud associated with losses for investment in bank-related real estate. The client was acquitted on all counts.

Represented a banker indicted for allegedly failing to disclose relationship to borrowers who later defaulted on loan. The client was acquitted on all counts.

THE ART OF IRS PENALTY DEFENSE

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- I. Introduction.** There are over 150 penalties in the Internal Revenue Code (“IRC”). Although this outline only discusses the most common penalties and defenses, these same concepts and defenses apply to many of the other penalties in the IRC.
- II. IRS Policy on Penalties.** The IRS Penalty Handbook provides:
- A. Penalties exist to encourage voluntary compliance by supporting the behavioral standards expected by the Code. Although penalties also serve to bring additional revenue and indirectly fund enforcement costs, these results are not reasons for creating and imposing penalties. Nor should they be used as a bargaining point in resolving a taxpayer’s other tax adjustments.
 - B. Voluntary compliance is achieved when taxpayers make a good faith effort to meet their tax obligations.
 - C. To be fair and effective, penalties should be severe enough to deter noncompliance, encourage noncompliant taxpayers to comply, be objectively proportioned to the offense, and be used as an opportunity to educate taxpayers and encourage their future compliance.
 - D. Penalty administration should ensure consistency, accuracy, impartiality and representation.
 - E. IRS should collect information to evaluate penalties and penalty administration, and to determine the effectiveness of penalties in promoting voluntary compliance. The IRS continually evaluates the impact of the penalty program on compliance and recommends changes when the Code or penalty administration does not effectively promote voluntary compliance.
- III. Accuracy-Related Penalties – IRC § 6662.**
- A. **Amount.** The penalty equals 20% of the portion of the underpayment.
 - B. **Application.** An underpayments attributable to one or more of the following:
 - 1. Negligence or disregard of rules and regulations.
 - 2. Any substantial understatement of income tax.

3. Any substantial valuation misstatement.
4. Any substantial overstatement of pension liability.
5. Any disallowance of claimed tax benefits by reason of a transaction lacking economic substance.
6. Any undisclosed foreign financial asset understatement.

C. Negligence or Disregard - IRC § 6662(c).

1. **Negligence.** Negligence includes any failure to make a reasonable attempt to comply with the IRC.
2. **Disregard.** Disregard includes any careless, reckless or intentional disregard.

D. Substantial Understatement of Income Tax – IRC § 6662(d).

1. **Generally.** There is a substantial understatement if the amount of the understatement exceeds the greater of
 - a. 10% of the tax required to be shown, or
 - b. \$5,000.
2. **Corporate Rule.** For corporations other than S corps or personal holding companies, there is a substantial understatement if the amount of the understatement exceeds the lesser of:
 - a. 10% of the tax required to be shown on the return (or if greater than \$10,000); or
 - b. \$10,000,000.
3. **Understatement.**
 - a. **Generally.** Excess of the amount of tax required to be shown on the return for the taxable year over the amount of the tax imposed which is shown by the return.
 - b. **Reduction for Understatement Due to Position of Taxpayer or Disclosed Items.** The amount of any understatement is reduced by the portion of the understatement for which
 - (1) The taxpayer has substantial authority, or

(2) Adequate disclosure on the return or in a statement attached to the return and there is a reasonable basis for the tax treatment.

c. **Tax Shelters.** The disclosure defense does not apply to items attributable to tax shelters.

E. **Substantial Valuation Misstatement - IRC § 6662(e).**

1. **Generally.** The value of any property (or the adjusted basis of any property) is 150% or more of the amount determined to be the correct amount of such valuation or adjusted basis.

2. **Transfer Pricing Adjustments.**

a. The price of any property or services claimed on any return in connection with any transactions between persons in § 482 is 200% or more (or 50% or less) of the amount determined under § 482 to be correct amount of such price.

b. The net § 482 transfer price adjusted for the taxable year exceeds the lesser of \$5,000,000 or 10% of the taxpayer's gross receipts.

F. **Substantial Overstatement of Pension Liability – IRC § 6662(f).**

1. 200% or more.

2. Understatement must exceed \$1,000 to be applicable.

G. **Substantial Estate or Gift Tax Valuation Understatement - IRC § 6662(g).**

1. Applicable if the value of any property is 65% or less of the amount determined to be the correct amount of such valuation.

2. Understatement must exceed \$5,000 to be applicable.

H. **Gross Valuation Misstatements - IRC § 6662(h).** The 20% penalty is increased to 40% when there is a “gross valuation misstatement.”

1. Valuation misstatement is 200% or more.

2. The § 482 adjustment is 400% or more (or 25% or less).

3. The § 482 adjustment is \$20,000,000 or more (or 20% or less).

4. The pension overstatement is 400% or more.

5. In an estate or gift valuation, the value of any property is 40% or less of the amount determined to be the correct amount of such valuation.

I. Non-Disclosed Non-Economic Substance Transactions - IRC § 6662(i).

1. 40% penalty.
2. “Non-disclosed non-economic substance transactions” means with respect to which the relevant facts affecting the tax treatment are not adequately disclosed in the return or in a statement attached to the return.
3. The IRS will not consider any amendment or supplement if it is filed after being notified of an IRS examination.

J. Undisclosed Foreign Financial Asset Understatement - IRC § 6662(j).

1. “Undisclosed foreign financial asset” means any asset which information was required to be provided under §§ 6038, 6038B, 6038D, 6046A or 6048 and was not disclosed.
2. The penalty is 40%.

IV. Understatements With Respect to Reportable Transactions – IRC § 6662A.

A. Applies to:

1. Listed transactions; or
2. Any reportable transaction if a significant purpose of the transaction is avoidance or evasion of income tax.

B. Penalty Amount.

1. Generally 20%
2. 30% non-disclosed listed transaction.

C. Reportable Transaction. Reportable transaction means any transaction with respect to which information is required to be included with a return or statement because such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

D. Listed Transaction. Listed transactions means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction.

V. **Fraud Penalty – IRC § 6663.**

- A. **Penalty Amount.** 75% Penalty.
- B. **Burden of Proof.** The burden of proof is on the IRS to establish fraud by a preponderance of the evidence.
- C. **Impact on Statute of Limitations.** There is no statute of limitations for assessment if a court determines the civil fraud penalty is applicable.
- D. **Badges of Fraud.** The following is a general list of badges of fraud.
 - 1. Understatement of income;
 - 2. Inadequate books and records;
 - 3. Failure to file tax returns;
 - 4. Implausible or inconsistent explanations of behavior;
 - 5. Concealing assets; and
 - 6. Failure to cooperate with tax authorities.
- E. **Practice Tip.** In the case of a joint return, the IRS will need to establish fraud by both the husband and wife. Therefore, it is important to determine if one the spouses could or should file for innocent spouse relief.

VI. **Erroneous Claims for Refund - § 6676.**

- A. 20% unless it is due to reasonable cause.
- B. Non-economic substance transactions are treated as lacking reasonable basis.

VII. **Preparer Penalties.**

- A. **IRC § 6694 – Understatement of Taxpayer’s Liability by Tax Return Preparer.**
 - 1. **Understatement Due to Unreasonable Positions.** (Greater of \$1,000 or 50% of the income derived by the TRP with respect to the return or claim.
 - 2. **Unreasonable Position.**
 - a. Must be substantial authority.
 - b. If disclosed, there must be a reasonable basis.

- c. If it involves a tax shelter or a reportable transaction the penalty applies unless it is reasonable to believe that the position would more likely than not be sustained on the merits.
- 3. **Reasonable Cause Exception.** No penalty will be imposed if it is shown that there is reasonable cause and the TRP acted in good faith.
- 4. **Understatement Due to Willful or Reckless Conduct.**
 - a. **Penalty Amount.** Penalty is the greater of \$5,000 or 50% of the income derived by the TRP with respect to the return or claim.
 - b. **Willful or Reckless Conduct.** Willful or reckless conduct means a willful attempt in any manner to understate the liability for tax on the treatment as claim or a reckless or intentional disregard of rules and regulations.
- 5. **Special Rules for Disputing the Penalty.** The IRS will not pursue collection of the penalty if:
 - a. Within 30 days of motion and demand for payment, the TRP pays at least 15% of the proposed penalty and files a claim for refund.
 - b. Within 30 days of denial of the claim for refund, the TRP files an action in district court to determine the liability.
- 6. **Abatement of Penalty.** The penalty will be abated if there is a final determination that the taxpayer owes no additional tax.

B. IRC § 6695 – Other Assessable Penalties.

- 1. Failure to furnish copy of the return of claim for refund to the taxpayer - \$50 per up to \$25,000 annually.
- 2. Failure to sign return. \$50 per up to \$25,000 annually.
- 3. Failure to retain copy or list - \$50 per up to \$25,000 annually.
- 4. Failure to file correct information returns - \$50 per up to \$25,000 annually.
- 5. Negotiation of check - \$500 per check.
- 6. Failure to be diligent in determining eligibility for Earned Income Credit - \$500 per each return.

VIII. Failure to File Tax Return or to Pay Tax – IRC § 6651.

- A. **Failure to File.** 5% per month of delinquency, not to exceed 25%. The penalty will not be less than the lesser of \$135 or the amount shown on the return.
- B. **Failure to Pay.** 0.5% per month of delinquency, not to exceed 25%.
 - 1. If there are adjustments to a return, the failure to pay penalty is not assessed unless the taxpayer fails to pay the liability within 21 calendar days from the date of notice and demand.
 - 2. If the amount due is \$100,000 or greater, the 21 days is reduced to 10 days.
- C. **Reasonable Cause Defense.** The failure to file penalty and failure to pay penalty will not be imposed where it is shown that the failure is due to reasonable cause and not due to willful neglect.
- D. **Reduction in Failure to File Penalty.** For any month in which both the failure to file and failure to pay penalty, the amount of the failure to file penalty will be reduced by the failure to pay penalty.

IX. Fraudulent Failure to File - IRC § 6651(f).

- A. **Penalty.** The penalty is 15% per month not to exceed 75%.
- B. **Government Processing.**
 - 1. **Initial Screening.** On the initial screening of a non-filer case, the IRS will attempt to determine if the facts indicate potential fraud.
 - 2. **Indicators of Fraud in IRM.**
 - a. History of non-filing or late filing and an apparent ability to pay.
 - b. Repeated contacts by the IRS.
 - c. Knowledge of the filing requirements (i.e., advanced education, business/tax experience, record of previous filing, etc.).
 - d. Experience of the taxpayer in tax matters such as CPA or tax attorney.
 - e. Failure to reveal an attempt to conceal assets.
 - f. Age, health and occupation of the taxpayer.

- g. Substantial tax liability after withholding credits and estimated tax payments.
 - h. Large number of cash transactions.
 - i. Indicators of significant income per IRP documents.
 - j. Refusal or inability to explain the failure to file; and
 - k. Prior history of criminal prosecutions.
3. **Solicit Returns?** Agent is not to solicit returns.
4. **Related Returns.** Business returns, employment taxes and excise tax returns.
5. **Spin-Off Cases.** Partners, relatives, employees, employers, subcontractors or return preparers.
6. **Interview of Taxpayer.** The IRS agent will want to interview the taxpayer.
- a. Determine the reason or the intent of the taxpayer's non-compliance.
 - b. Determine the extent of the delinquency, including the periods and tax due.
 - c. Document the questions and answers verbatim.
 - d. Personal reasons that could affect ability to comply.
 - e. What are the deductions and expenses not on the books and records.
 - f. Establish year-end cash on hand.
7. **Substitute for Return.** With sufficient information, the IRS will prepare substitutes for returns and will assess tax.

X. Foreign-Related Penalties.

A. Report of Foreign Bank and Financial Accounts.

1. **Fin CEN Report 114.**

- a. **Generally.** US citizens, residents and certain other persons must annually report their direct or indirect financial interest in, or signature authority over a financial account that is maintained with

a financial institution located in a foreign country, if, for any calendar year, the aggregate value of **all** foreign accounts exceeded \$10,000 at any time during the year.

- b. **Non-Willful Penalty.** Up to \$10,000 per account per year.
- c. **Willful Penalty.** Higher of \$100,000 or 50% of the total balance of the foreign financial account per violation.
- d. Subject to reasonable cause defense.

2. **Form 8938 – Statement of Foreign Financial Assets.**

- a. Reports the taxpayer's interest in certain foreign financial assets, including financial accounts, certain foreign securities and interest in foreign entities as required by IRC Section 6038D.
- b. \$10,000 per return, with an additional \$10,000 per month of delinquency beginning 90 days after the taxpayer is notified of the delinquency.
- c. Maximum of \$50,000 per return.

3. **Form 3520 - Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts.**

- a. Includes creation of a foreign trust, transfers of property to a foreign trust, and receipt of distributions from a foreign trust. Penalty is the greater of \$10,000 or 35% of the gross reportable amount.
- b. Also used for receipt of gifts from a foreign entity, including a foreign estate. Penalty is 5% of the value of the gift per month up to a maximum of 25% of the value of the gift.

4. **Form 3520-A - Information Return of a Foreign Trust with a U.S. Owner.**

- a. Taxpayers must report ownership interests in foreign trusts, by US persons with various interests in and powers over those trust under IRC Section 6048(b).
- b. Greater of \$10,000 or 5% of the gross value of trust assets determined to be owned by the U.S. person.

5. **Form 5471 – Information Return of U.S. Persons with Respect to Certain Foreign Corporations.**
 - a. Applies to U.S. persons who are officers or directors of foreign corporations.
 - b. \$10,000 with an additional \$10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency.
 - c. Maximum of \$50,000 per return.

6. **Form 926 – Return by a U.S. Transferor of Property to a Foreign Corporation.**
 - a. Pursuant to IRC § 6038B, taxpayers are required to report transfers to foreign corporations and other information.
 - b. Penalty is 10% of the value of the property transferred, up to \$10,000.
 - c. No limit for an intentional failure to report a transfer.

7. **Form 8865 – Return of U.S. Persons with Respect to Certain Foreign Partnerships.**
 - a. Pursuant to IRC §§ 6038, 6038B and 6046A, U.S. persons with certain interests in foreign partnerships must report interest in and transactions of foreign partnerships, transfers of property to the foreign partnerships and acquisitions, dispositions and changes in foreign partnership interests.
 - b. Penalty for failure to file is \$10,000; with an additional \$10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency up to a maximum of \$50,000.
 - c. Penalty also includes 10% of the value of any transferred property that is not reported, up to a maximum of \$100,000.

XI. Strict Liability Penalties.

A. Transactions Which Lack Economic Substance – IRC § 6662(b)(6). As discussed above, the § 6662(b)(6) is not eligible for the reasonable cause defense.

B. Penalty for Failure to Include Reportable Transaction Information with Return - § 6707A.

1. Any person who fails to include information on any return or any statement with respect to a reportable transaction which is required under § 6601 to be included with such return or statement shall pay the penalty of 75% of the decrease in tax shown on the return as a result of the transaction.
2. The penalty shall not exceed:
 - a. \$200,000 in the case of a listed transaction (\$100,000 for a natural person).
 - b. \$50,000 for a reportable transaction (\$10,000 for a natural person).
3. The minimum penalty is \$10,000.
4. The IRS may rescind the penalty for a reportable transaction if it will promote compliance with requirements of the Internal Revenue Code. The penalty cannot be rescinded for a listed transaction.
5. There is no judicial appeal of the denial of a request to rescind the penalty.

C. Failure to Furnish Information Regarding Reportable Transactions – IRC § 6707.

1. Any person who is required to file a return with respect to any reportable transaction, who fails to timely file such return or file incomplete or inaccurate information with the IRS will pay a penalty of \$50,000.
2. In the case of a listed transaction, the penalty is increased to the greater of \$200,000 or 50% of the income derived for the transaction.
3. If there is an intentional failure, the 50% is increased to 75%.
4. The penalty is subject to the same recission rules of § 6707A.

XII. Defenses to Penalties.

A. Reasonable Cause.

1. Accuracy Related Penalties and Fraud.

- a. **Generally.** No penalty shall be imposed under §§ 6662, 6662A or 6663, if it is shown there was a reasonable cause and that the taxpayer acted in good faith.
- b. **Lack of Economic Substance.** The reasonable cause defense is not available as a defense to penalties applied to transactions that lack economic substance.
- c. **Specific Rules for Valuation Overstatements.** The reasonable cause defense is not available if the underpayment is due to a substantial or gross valuation overstatement unless:
 - (1) The valuation was based on a qualified appraisal made by a qualified appraiser; and
 - (2) The taxpayer made a good faith investigation of the value of the contributed property.
- d. **Reportable Transactions.** Reasonable cause defense is not allowed for reportable transactions unless:
 - (1) The relevant facts affecting the tax treatment of the items are adequately disclosed;
 - (2) There is substantial authority for the treatment; and
 - (3) The taxpayer reasonably believed that such treatment was more likely than not the proper treatment.
- e. **Reasonable Belief.**
 - (1) Must be based on the facts and law that exist at the time of the return.
 - (2) Must relate solely to the taxpayer's chances of success on the merits and does not take into account that a return may not be audited or the treatment will be resolved by the settlement.
- f. **Disallowed Opinions.** A taxpayer cannot rely on the opinion of a tax advisor to establish reasonable cause if the tax advisor:

- (1) Is a material advisor and participates in the organization, management, promoter on sale of the transaction or is related to any person who so participates;
- (2) Is compensated directly or indirectly by a material advisor with respect to the transaction;
- (3) Has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained; or
- (4) Has a disqualifying financial interest with respect to the transaction.

g. **Disqualified Opinions.** An opinion is disqualified if it:

- (1) Is based on unreasonable factual or legal assumptions.
- (2) Unreasonably relies on representations, statements, finding or agreements of the taxpayer or any other person;
- (3) Does not identify and consider all relevant facts; or
- (4) Fails to meet any other requirements prescribed by the Secretary.

2. **What is Reasonable Cause?**

a. **Reasonable Cause Standard.**

- (1) The “reasonable cause” standard draws on a broad range of potentially applicable guidance, including the I.R.C., Treasury Regulations, the IRS’s Penalty Handbook contained in the I.R.M. (I.R.M. 20.1), and case law. “Reasonable cause is based on all the facts and circumstances. . . .” I.R.M. 20.1.1.3.2 (Nov. 25, 2011).
- (2) “Reasonable cause relief is generally granted when the taxpayer exercised ordinary business care and prudence in determining their tax obligations but nevertheless failed to comply with those obligations.” *Id.*
- (3) Mistake,” “forgetfulness,” or ignorance of the law typically will not establish reasonable cause and are sometimes pointed to as indicating a lack thereof. See, e.g., I.R.M. 20.1.1.3.2.2.4 ¶ 1 (Dec. 11, 2009) (“mistake” generally not sufficient); I.R.M. 20.1.1.3.2.2.7 ¶ 1 (Dec. 11, 2009) (“forgetfulness” or oversight typically not sufficient);

I.R.M. 20.1.1.3.2.2.6 ¶ 1 (ignorance of the law generally not sufficient).

- (4) Practice Pointer: Avoid using phrases such as these in requests for reasonable cause relief.

b. **Important Factors.**

(1) **Taxpayer's Compliance History.**

- (a) IRS Penalty Handbook directs IRS personnel assessing requests for reasonable cause relief to consider taxpayer's compliance history for the three preceding tax years. I.R.M 20.1.1.3.5 ¶ 6.
- (b) Certain Treasury regulations governing the extension of reasonable cause relief consider a taxpayer's compliance history. Treas. Reg. § 301.6724-1(b)(2) (reasonable cause for certain information reporting penalties).
- (c) Courts, e.g., *Payless Drugstores Northwest Inc. v. United States*, 73 A.F.T.R. 2d 94-370 (D. Or. 1993), have cited a taxpayer's compliance history as support for finding reasonable cause for failures to comply with tax requirements.

- (2) **Length of Time.** The length of time between the event cited as a reason for noncompliance and the subsequent compliance.

- (3) **Circumstances Beyond the Taxpayer's Control.** Could the taxpayer have anticipated the event that caused the noncompliance?

c. **Limitations on Requests for Reasonable Cause Relief—Potential Pitfalls.**

- (1) Circular 230 Section 10.34(b)(1), (2)(ii)—tax practitioner cannot advise a client to submit a reasonable cause statement that is frivolous.
- (2) Model Rules of Prof'l Conduct R. 3.1—Lawyer may not litigate a frivolous claim for reasonable cause relief.
- (3) I.R.C. Section 6676(a)—If reasonable cause statement is submitted along with claim for refund, tax practitioner must ensure that a “reasonable basis” for the claim exists.

- (4) I.R.C. Section 6673(a)(1)(B)—in Tax Court proceedings, the court may penalize a taxpayer up to \$25,000 if the taxpayer’s position is frivolous or groundless.
- (5) Asserting reliance on professional advice as the basis for reasonable cause puts that advice “at issue” and may waive the attorney-client privilege.

d. **Common Reasons for Reasonable Cause.**

- (1) Death, serious illness, or unavoidable absence
- (2) Fire, casualty, natural disaster, or other disturbance
- (3) Inability to obtain records
- (4) Erroneous advice or reliance
- (5) Ignorance of the law in conjunction with other facts and circumstances
- (6) Misfeasance by employee or agent leaving taxpayer “incapacitated” or “disabled”
- (7) Financial hardship

e. **Useful, Favorable Case Law.**

- (1) **Haynes v. Comm’r, T.C. Memo. 1990-135** (no penalty where taxpayer was audited for many years with no change to his method of accounting and IRS agent had advised that no change was necessary);
- (2) **Levine v. Comm’r, T.C. Memo. 1963-230** (exception to general rule that taxpayers have nondelegable duty to file timely returns where return was timely prepared, misplaced, and later filed late by taxpayer that had timely filed previous returns);
- (3) **Dillin v. Comm’r, 56 T.C. 228 (1971)** (exception to general rule that “mistake” is not grounds for reasonable cause relief where taxpayers mistakenly believed they were exempt from tax involving complex issues);
- (4) **In Re Sims, 92-1 U.S.T.C. 1991 WL 253017** (Bankr. E.D. La. 1991) (reasonable cause where information necessary to file return was unavailable);

- (5) *Payless Drug Stores Northwest Inc. v. United States*, 73 A.F.T.R. 2d 94-370 (D. Ore. 1993) (reasonable cause where taxpayer had a consistent tax compliance history).

f. **Reasonable Cause Assistant (“RCA”) - I.R.M. 20.1.1.3.6 ¶ 1.**

- (1) Support interactive software program developed to reach a reasonable cause determination designed to ensure consistent and equitable administration of penalty relief consideration.
- (2) Applicable to Failure-to-File, Failure-to-Pay and Failure-to-Deposit penalties.
- (3) Provides the option for first-time abatement.

B. First-Time Abatement Relief.

1. **Application.** First-Time Abate (FTA) relief is available for the Failure-to-File penalties (Sections 6651(a)(1), 6698(a)(1) and 6699(a)(1)), Failure-to-Pay penalties (Sections 6651(a)(2) and 6651(a)(3)), and Failure-to-Deposit penalty (Section 6656).
2. **Requirements.** FTA penalty relief is available if:
 - a. The taxpayer can demonstrate filing and payment compliance
 - (1) The taxpayer must have filed a return or valid extension for all currently required returns and not have an outstanding request from the IRS for an unfiled return.
 - (2) The taxpayer must have paid, or arranged to pay, a tax due. As long as payments are current, the taxpayer can have an open installment agreement.
 - b. The taxpayer has had no penalties of a “significant” amount assessed in the prior three years on the same tax return for which the taxpayer is requesting abatement.
3. A taxpayer will not be disqualified from receiving FTA relief based on lack of a clean penalty history if the taxpayer:
 - a. Had a penalty assessed more than three years prior to the tax return in question.
 - b. Had an estimated tax penalty assessed in the past three years.
 - c. Received reasonable-cause relief from penalties in the past.

- d. Received FTA relief more than three tax years prior to the tax return in question.
- e. Has penalties on subsequent tax years.

C. **Qualified Amended Returns.** If an amended return is treated as a Qualified Amended Return (QAR), the amounts of tax reported on the QAR will be treated as if they had been reported on the original return for purposes of computing the amount of tax “underpayment” unless the original return reported a fraudulent position.

1. **Defined.** To be a QAR, the amended return must be filed **before**:

- a. The date the taxpayer is first contacted by the IRS regarding an examination or criminal investigation;
- b. In the case of a promoted transaction, the date the tax shelter promoter is first contacted concerning an IRS examination;
- c. IN the case of a pass-through item, the date the pass-through entity is first contacted concerning an IRS examination;
- d. The date a John Doe summons is served on a third party with respect to an activity of the taxpayer for which the tax payer claimed a tax benefit; and
- e. The date on which the IRS announces a settlement initiative for a listed transaction.

2. **Undisclosed Listed Transaction.** If the taxpayer fails to disclose a listed transaction for which a tax benefit is claimed, an amended return will be treated as a QAR only if it is filed before:

- a. The dates described above for filing a QAR generally;
- b. The date the IRS first contacts a person regarding an examination of that person’s liability for penalties under IRC Section 6707(a) with respect to the undisclosed listed transaction of the tax payer; and
- c. The date on which the IRS requests from the taxpayer’s material advisor (or any person who made a tax statement fo the benefit of the taxpayer) the information required to be included in a list under IRS Section 6112 related to a transaction that is the same, or substantially similar to, the undisclosed listed transaction.

D. Revenue Procedure 94-69.

1. Allows a taxpayer to avoid the accuracy related penalty if they disclose any contrary positions in a written statement within the 15-day window beginning with the IRS's first written request for information.
2. To be effective, the taxpayer must have a reasonable basis for the position on the return as originally filed.
3. A written statement made under the rules of Rev. Proc. 94-69 is treated as a QAR for purposes of the accuracy related penalty.
4. The written statement must identify:
 - a. The item at issue;
 - b. The amounts at issue; and
 - c. The nature of the controversy.
5. If the taxpayer takes a position that is contrary to a rule or regulation, the statement must adequately identify the statutory or regulatory provision or the ruling in question.
6. The benefits of Rev. Proc. 94-69 are available to **all** taxpayers, although the language suggests it only applies to taxpayers designated as Coordinated Industry case taxpayers (previously known as CEP taxpayers).

E. **Disclosure.** A properly filed disclosure can help both the taxpayers and Tax Return Preparer avoid penalties.

1. **Form 8275 Disclosure Statement.**

- a. Taxpayers can avoid the portions of the Section 6662, Accuracy Related penalty, due to disregard of rules or to a substantial understatement of income tax for non-tax shelter if the return position has a reasonable basis. It can also be used for disclosures relating to the economic substance penalty.
- b. Tax Return Preparers are protected from the preparer penalty under Section 6694 for tax understatements due to unreasonable positions or disregard of rules.

2. **Form 8275-R Regulation Disclosure Statement.**

- a. Taxpayers can avoid the portions of the Section 6662, Accuracy Related penalty, due to disregard of regulations or due to a

substantial understatement of income tax for non-tax shelter if the return position has a reasonable basis. It can also be used for disclosures relating to the economic substance penalty.

- b. Tax Return Preparers are protected from the preparer penalty under Section 6694 for tax understatements due to unreasonable positions taken contrary to regulations.

3. **Penalties to Which Disclosure is Not a Defense.**

- a. Negligence
- b. Substantial understatement of income tax on a tax shelter item
- c. Substantial valuation misstatement
- d. Substantial overstatement of pension liability
- e. Substantial estate or gift tax valuation understatement
- f. Claim of tax benefits from a transaction lacking economic substance or failing to meet requirements of any similar rule of law
- g. Undisclosed foreign financial asset understatement.

XIII. Procedures for Penalty Relief.

A. General.

- 1. Deficiency assessment procedures are not applicable to late payment and late filing penalties. Procedures to contest these penalties differ from taxes and penalties that must follow deficiency procedures.
- 2. Several options available to contest delinquency penalties all of which should provide opportunity, if needed, for IRS Appeals review of IRS' initial determination to deny penalty relief. Appeals review is often needed to achieve penalty relief.
- 3. Pre-payment judicial review of denial of penalty abatement request is generally not available. To obtain judicial review of penalty abatement denial, taxpayer must pay the penalty and file a refund suit. IRM 8.11.1.7.4. If refund of penalty is sought in refund suit, the claim is subject to standard refund claim IRS Appeals review procedures.

B. Procedures Available.

1. **Letter to IRS in Response to IRS Notice or Bill Asserting Penalty.**
This is the most common method used to pursue penalty abatement. If request is denied, it will be by letter giving taxpayer right to protest denial to IRS.
2. **Letter to IRS Penalty Abatement Coordinator (Centralized Penalty Abatement Request Processing).** Some protests to Appeals in penalty cases are made to this unit.
3. **Letter to IRS Accompanying Filing Asking IRS Not to Assert Penalty.**
Proactive approach does appear to succeed sometimes in preventing IRS from assessing delinquency penalty.
4. **Refund Claim for Paid Penalties.**
 - a. Informal claim via letter requesting penalties paid to be refunded
 - b. **Formal Claim - Form 843.** May obtain judicial review of denial.
5. Form 843 can also be used to request abatement of penalties (in addition to refund). IRS guidance states to use Form 843 to request abatement of penalties resulting from erroneous IRS advice.
6. Request for penalty relief from assigned Revenue Officer when working with him/her to, for example, set up installment agreement for tax. Revenue Officers may be more willing to grant penalty relief since they have more involvement with case, more direct contact/interaction with client/representative, may be able to reduce the taxpayer's balance and resolve remaining smaller balance. If Revenue Officer denies the request, taxpayer may protest the denial to IRS Appeals.
7. Collection due process hearing. Submitting Offer in Compromise based on doubt as to liability for assessed penalty or otherwise contesting penalty as part of CDP process could seem like pre-payment method to obtain judicial review. Has taxpayer, however, had prior opportunity to contest liability for the penalty and, thus, cannot raise this in CDP hearing?
8. Offer in Compromise based on doubt as to liability for the assessed penalty. How does this differ from a letter to the IRS requesting penalty relief?

C. Best Practices in Presenting Position.

1. Should you pursue multiple procedures simultaneously seeking penalty relief? Possibly. Only have to convince one IRS person to agree and abate penalties.
2. Refund statute of limitation applies if seeking refund of paid penalties.
3. With the initial penalty abatement request include factual statement outlining taxpayer's compliance history if compliance is good and all facts supporting reason for abatement. Also include supporting documentation. If reason is financial hardship, for example, include copies of documents showing taxpayer's financial hardship during the failure to pay period. If due to illness, include documents related thereto.
4. Request should be signed under penalty of perjury. Regs. Sections 301.6651-1(c), 301.6656-2(c).
5. When requesting late payment penalty relief for employment taxes based on financial hardship, IRS automatically denies stating that lack of funds is not reasonable cause for failure to pay employment taxes. This is the law in the 5th Circuit (*Brewery, Inc. v. United States*, 33 F.3d 589 (5th Cir. 1994)). However, the 2nd, 3rd and 9th Circuits hold differently. *East Wind Indus, Inc. v. United States*, 196 F.3d 499, 507 (3d Cir. 1999); *Fran Corp. v. United States*, 164 F.3d 814, 818 (2d Cir. 1999); *Van Camp & Bennion v. United States*, 251 F.3d 862 (9th Cir. 2001). Many businesses get behind on payroll taxes and are assessed late penalties thereon. Anytime a business retains you with payroll tax problems, consider seeking penalty relief for late penalties.

D. Appealing Denial of Penalty Relief Request.

1. Unless the request is granted under the "first time violator" rule, penalty abatement requests are usually denied at the first level. Chances of success are much higher with IRS Appeals. Letters denying penalty relief and permitting protesting denial to IRS Appeals usually state time period in the letter to protest the denial but this timeframe in the letter is sometimes hard to find. Generally, deadline to protest denial is 90 days from the date of the denial letter.
2. If penalty abatement request is made to Revenue Officer assigned to case and denied, taxpayers may have only 15 days to file an administrative appeal. Regs. Sections 601.106(a)(1)(ii)(c), (a)(1)(iii).

3. Often the amount of the penalty does not justify pursuing the matter beyond IRS Appeals. Procedurally, the taxpayer generally must pay the tax and file a refund claim to obtain judicial review of a penalty relief request.

XIV. Alternatives to Seeking Penalty Relief.

- A. Offer in Compromise.
- B. Installment Agreement.
- C. Taxpayer Assistance Order.
- D. Innocent Spouse Relief.
- E. Bankruptcy.