

LEA Global

Understanding and Responding to IRS and State Tax Penalties

October 19, 2023



Rising Star Association



INTERNATIONAL ACCOUNTING BULLETIN

Welcome – This Webinar Will Begin Momentarily

Housekeeping Items

- This webinar will be recorded.
- The link to the recording and PowerPoint will be posted on the Events registration page on LEA's member portal post webinar. An email will also be sent to today's attendees with this information.
- Please use the chat box to share comments or questions.
- This webinar is eligible for 1 Continuing Professional Education (CPE) credit.
- Four (4) polling questions – will be initiated throughout this webinar to monitor engagement as required by NASBA standards.
- Your CPE certificate will be emailed to you in a couple of weeks.
- You will receive an email asking you to complete an evaluation of this webinar. Please take time to complete this as your input is valuable when planning for future webinars.



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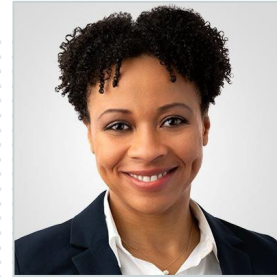


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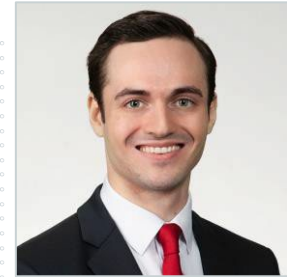


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IRS Tax Controversy

- James Pickett, CPA
- Brittany Francis, EA
- Luke Smith, Esq.

Admin Support

- Sana Holmes
Administrative Assistant
- Janet Myers
Tax Specialist

SALT Tax Controversy

- Peter Stathopoulos, Esq.
- Chris Stephens, Esq.
- Luke Smith, Esq.

Agenda

- IRS Penalty Assessment Procedures
 - IRS Penalty Appeal Procedures
 - State Dept of Revenue (DOR) Assessment Procedures
 - State DOR Penalty Protest/Appeal Procedures
 - Reasonable Cause Defenses – *in penalty cases*
 - Questions
-

A woman with short brown hair, wearing a teal t-shirt and a long necklace, is leaning over a desk. She is holding a black smartphone to her ear with her left hand and looking at a laptop screen with her right hand. The desk is cluttered with papers, a mouse, and other office supplies. In the background, there is a large window with a view of a city. A large blue curved graphic element is on the left side of the image.

IRS Penalty Assessment Procedure

IRS Pre-assessment Procedures

Proposed Penalty Notice

- Notice CG972 – Form W-2/Form 1099 Penalties

Proposed on Examination Report

- Form 4549 – Proposed Tax Examination Changes
 - Correspondence, Office, or Field Examinations (Audits)
-

The IRS Process in Responding to Non-assertion Requests

- IRS reviews the request
 - Considers the basis for non-assertion/abatement using all information provided and
 - Issues a decision
 - Guidance for IRS employees on how to evaluate requests for non-assertion/abatement is found in the IRM part 20
-

Notice 972CG – Proposed Information Return Penalty

IRS Department of the Treasury
Internal Revenue Service

PHILADELPHIA, PA 19255-0633

IF YOU WRITE OR
CALL US, REFER TO
THIS INFORMATION:

NOTICE NUMBER: 972CG
BOD CODE: LM9
DATE OF THIS NOTICE:

TAXPAYER IDENTIFICATION
NUMBER:
FORM: CVL PEN
TAX PERIOD: 201612
PENALTY REFERENCE
CODE: 502

FOR INFORMATION,
PLEASE CALL:
1-866-455-7438

A PENALTY IS PROPOSED FOR YOUR 2016 INFORMATION RETURNS

ACTION REQUIRED

OUR RECORDS SHOW THAT YOU DIDN'T FILE CERTAIN INFORMATION RETURNS CORRECTLY AS REQUIRED BY INTERNAL REVENUE CODE (IRC) SECTION 6721 FOR THE TAX PERIOD SHOWN ABOVE. THE LAW ALLOWS FOR A PENALTY FOR FILING INFORMATION RETURNS INCORRECTLY. A PENALTY IS PROPOSED IN THE AMOUNT OF INTEREST ON THIS PENALTY WILL NOT BE CHARGED UNTIL AFTER YOU RECEIVE A BILL.

PLEASE READ THIS NOTICE CAREFULLY. IT EXPLAINS THE PROPOSED PENALTY AND WHAT YOU SHOULD DO IF YOU AGREE OR DISAGREE WITH THE PROPOSAL. THIS PENALTY WILL BE CHARGED IF YOU DON'T RESPOND TO THIS NOTICE. THE PROPOSED PENALTY IS EXPLAINED UNDER THE "EXPLANATION OF PENALTY" SECTION.

HOW YOU SHOULD RESPOND TO THIS NOTICE

PLEASE REVIEW YOUR RECORDS RELATED TO FILING THE RETURNS LISTED ON PAGE 2.

-- IF YOU AGREE TO THE FULL AMOUNT OF THE PROPOSED PENALTY, DO ALL OF THE FOLLOWING:

1. CHECK BOX (A) ON THE RESPONSE PAGE OF THIS NOTICE.
2. SIGN AND DATE THE CONSENT OF PENALTY ASSESSMENT.
3. ENCLOSE YOUR PAYMENT IN FULL. MAKE YOUR CHECK OR MONEY ORDER PAYABLE TO THE UNITED STATES TREASURY.
4. ENCLOSE THE APPROPRIATE MAILING STUB TO INDICATE WHETHER A PAYMENT IS INCLUDED.
5. ENSURE THE ADDRESS ON THE STUB APPEARS IN THE ENVELOPE WINDOW.

-- IF YOU DON'T AGREE WITH ALL OR PART OF OUR FINDINGS OR BELIEVE YOU HAVE A REASON ALL OR PART OF THIS PENALTY SHOULD NOT BE CHARGED, DO ALL OF THE FOLLOWING:

1. CHECK BOX (B) OR (C) ON THE RESPONSE PAGE OF THIS NOTICE.
2. ENCLOSE A SIGNED STATEMENT EXPLAINING WHY YOU DISAGREE.
3. INCLUDE ANY SUPPORTING DOCUMENTS YOU WISH TO HAVE CONSIDERED.
4. IF YOU AGREE TO PART OF THE PENALTY, ENCLOSE YOUR PAYMENT. MAKE YOUR CHECK OR MONEY ORDER PAYABLE TO THE UNITED STATES TREASURY.
5. ENCLOSE THE APPROPRIATE MAILING STUB TO INDICATE WHETHER A PAYMENT IS INCLUDED.
6. RETURN THE RESPONSE PAGE OF THIS NOTICE WITH YOUR STATEMENT AND DOCUMENTS IN THE ENCLOSED ENVELOPE (ENSURE THE ADDRESS APPEARS IN THE ENVELOPE WINDOW). PLEASE INCLUDE A TELEPHONE NUMBER, INCLUDING THE AREA CODE, AND THE BEST TIME TO CALL.

Response to IRS Notice 972CG

Department of the Treasury
Internal Revenue Service
Philadelphia, PA 19255-0633

Re: Notice 972CG Response (Request for Penalty Abatement)

TIN: [REDACTED]

Form: CIV PEN

Reference Code: 502

Tax Period: December 31, [REDACTED]

Dear Sir/Madam:

On behalf of [REDACTED] (“Taxpayer”), we are responding to your Notice 972CG dated October 15, 2018 (attached hereto as “Enclosure 1”). Notice 972CG assesses a proposed penalty of \$37,180 for missing or incorrect taxpayer identification numbers (“TINs”).

We respectfully disagree with the penalty proposed in Notice 972CG. The taxpayer has reasonable cause for the missing or incorrect TINs as explained below. As such, we respectfully request that the penalty be abated, in totality. Should the IRS not be inclined to grant the requests contained in this protest letter, we respectfully request the opportunity to discuss this matter in person at a conference with an Appeals Officer in the Appeals Office in Atlanta, Georgia.

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Company Facts

[REDACTED]

The corporate accounting department that oversees accounting, financial reporting, and tax compliance is a relatively small office consisting of three people. In 2016, the Form 1099 compliance responsibilities were overseen by an individual who had the requisite

IRS Determination – Notice 972 CG Case – Successful Resolution



PHILADELPHIA PA 19255-0633

In reply refer to: 0584955303
Apr. 09, 2019 LTR 1948C C3
[REDACTED] 201612 13 X
Input Op: 0584955303 00010504
BODC: LM

[REDACTED]
JAMES PICKETT
3300 RIVERWOOD PKWY SE STE 700
ATLANTA GA 30339

466

Taxpayer identification number: [REDACTED]
Tax period: Dec. 31, 2016
Types of information returns: 1099-MISC

Number of returns filed:
Number of returns penalized:

Dear Taxpayer:

Thank you for the inquiry dated Dec. 07, 2018.

On Oct. 15, 2018, we sent you a penalty notice for filing your information returns with missing or incorrect taxpayer identification numbers.

We considered your explanation regarding the penalty for not filing the information returns listed above as required. We determined that you showed reasonable cause and we won't charge the penalty of \$37,180.00.

Responding to Proposed Examination (Audit) Penalties

- The Form 4549
 - Penalty Non-assertion Memorandum to Revenue Agent or Examiner
 - Corrected Form 4549 Example
-

Form 4549 – Proposed Penalties

Form 4549-A (Rev. March 2013)	Department of the Treasury-Internal Revenue Service Income Tax Examination Changes (Unagreed and Excepted Agreed)		Page <u>2</u> of <u>2</u>
Name of Taxpayer [REDACTED]	Taxpayer Identification Number [REDACTED]		Return Form No.: 1040
17. Penalties/ Code Sections	Period End 12/31/2015	Period End	Period End
a. Accuracy-IRC 6662	90,371.20		
b. [REDACTED]			
c. [REDACTED]			
d. [REDACTED]			
e. [REDACTED]			
f. [REDACTED]			
g. [REDACTED]			
h. [REDACTED]			
i. [REDACTED]			
j. [REDACTED]			
k. [REDACTED]			
l. [REDACTED]			
m. [REDACTED]			
n. [REDACTED]			
18. Total Penalties	90,371.20		
Underpayment attributable to negligence: (1981-1987) A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.			
Underpayment attributable to fraud: (1981-1987) A tax addition of 80 percent of the interest due on the underpayment will accrue until it is paid or assessed.			
Underpayment attributable to Tax Motivated Transactions (TMT). Interest will accrue and be assessed at 120% of underpayment rate in accordance with IRC 6621(c).	0.00		
19. Summary of Taxes, Penalties and Interest:			
a. Balance due or (Overpayment) Taxes - (Line 16, Page 1)	451,856.00		
b. Penalties (Line 18) - computed to 07/31/2018	90,371.20		
c. Interest (IRC § 6601) - computed to 08/30/2018	54,508.39		
d. TMT Interest - computed to 08/30/2018 (on TMT underpayment)	0.00		
e. Amount due or refund - (sum of Lines a, b, c and d)	596,735.59		
Other Information:			

Penalty Non-assertion Memorandum to IRS

Memorandum

To: [REDACTED]
Internal Revenue Agent
SB/SE Group [REDACTED]

From: James M. Pickett, CPA
Power of Attorney

Subject: Response to Tax Years 2014, 2015 Forms 4549 (RAR) – Penalties

In RARs at W/P 300-2.1 you state “The Government is warranted to impose both the Substantial Understatement and Negligence Penalties in circumstances where non-deductible “passive” losses were improperly characterized as “non-passive” losses on the [REDACTED] filed 1040s.”

IRM 20.1.5.2.3.1 in addressing the assertion of penalties under IRC Section 6662 provides for a “no stacking” provision. At para 3 it states in pertinent part “If a portion of the underpayment of tax shown on a return is attributable to both negligence and a substantial understatement, the accuracy-related penalty would apply only once at the 20 percent rate to this portion of the underpayment. The examiner should assert the penalty that is most strongly supported by the facts and circumstances and write up the other as an alternative penalty position.”

Your report cites the assertion of both substantial understatement and negligence and fails to assert one of the two penalties as a primary position. Most of the language in your penalty workpaper appears related to the substantial understatement penalty.

With respect to the substantial understatement penalty at IRC Section 6662(b)(2), this penalty is not applicable if there was substantial authority for the tax treatment of the item(s) in question per IRC Sec. 6662(d)(2)(B)(i). Our position is that on all the material adjustments on the RAR, the taxpayer had substantial authority.

The taxpayer clearly had substantial authority for the tax return positions taken per Treas. Reg. Sec. 1.469-5T as well as substantial authority for the records reconstruction to include the case precedent established in *Cohan v. Comm.*, 39 F.2d 540 and the provisions at Treas. Reg. Sec. 1.469-5T(f)(4).

Form 4549 – Penalties Removed

Form 4549-A (Rev. March 2013)		Department of the Treasury-Internal Revenue Service Income Tax Examination Changes (Unagreed and Excepted Agreed)		Page 2 of 2
Name of Taxpayer [REDACTED]		Taxpayer Identification Number [REDACTED]		Return Form No.: 1040
17. Penalties/ Code Sections		Period End 12/31/2014	Period End 12/31/2015	Period End
a.				
b.				
c.				
d.				
e.				
f.				
g.				
h.				
i.				
j.				
k.				
l.				
m.				
n.				
18. Total Penalties				
Underpayment attributable to negligence: (1981-1987) A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.				
Underpayment attributable to fraud: (1981-1987) A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.				
Underpayment attributable to Tax Motivated Transactions (TMT). Interest will accrue and be assessed at 120% of underpayment rate in accordance with IRC 6621(c).		0.00	0.00	
19. Summary of Taxes, Penalties and Interest:				
a. Balance due or (Overpayment) Taxes - (Line 16, Page 1)		168,161.00	451,856.00	
b. Penalties (Line 18) - computed to 03/21/2019				
c. Interest (IRC § 6601) - computed to 04/20/2019		30,065.87	64,804.99	
d. TMT Interest - computed to 04/20/2019 (on TMT underpayment)		0.00	0.00	
e. Amount due or refund - (sum of Lines a, b, c and d)		198,226.87	516,660.99	
Other Information:				

Result From Memorandum to IRS

Total Proposed Penalties

- 2014 - \$ 33,632
- 2015 - \$ 90,371

Penalties after Memorandum to IRS Revenue Agent

- 2014 - \$ 0
 - 2015 - \$ 0
-

IRS Post-assessment Procedures

Two Basic Penalty Case Categories

- Summary Assessments by Service Center

or

- Taxpayer Failed to Respond to Proposed Penalty Notice
-

Failure to File & Failure to Pay Penalties

IRC Sec 6651(a) – Forms 1040, 1120

- Failure to File - 5% per month of tax due – not exceeding 25% of tax due (aggregated with Failure to Pay)
 - Failure to Pay - 0.5% per month of tax due – not exceeding 25% of tax due (aggregated with Failure to File)
-

Penalty Notice – Failure to File/Pay



Department of the Treasury
Internal Revenue Service
Cincinnati OH 45999-0039

Notice	CP161
Tax period	December 31, 2015
Notice date	November 20, 2017
Employer ID number	[REDACTED]
To contact us	Phone 1-800-829-0115

Page 1 of 5

You have unpaid taxes for December 31, 2015

Amount due: \$ [REDACTED]

Our records show you have unpaid taxes for the tax period ending on December 31, 2015 (Form 8804).

Billing Summary

Tax you owed	[REDACTED]
Payments you made	0.00
Failure-to-file penalty	841,736.47
Failure-to-pay penalty	374,105.10
Failure to pay proper estimated tax penalty	38,345.00
Interest charges	[REDACTED]
Amount due by December 6, 2017	[REDACTED]

Penalty Abatement Requests

- If the penalty hasn't been paid or was paid within the past two years, a written request to the IRS requesting penalty abatement can be made.
 - The IRS will abate penalties if the taxpayer can establish a reasonable cause for the tax compliance failure.
 - The IRS will abate penalties if the taxpayer can establish the IRS was erroneous in its assessment.
-

Reasonable Cause – IRM 20.1.1.3.2

➤ 20.1.1.3.2.2 Ordinary Business Care and Prudence

- Death, Serious Illness, or Unavoidable Absence
 - Fire, Casualty, Natural Disaster, or Other Disturbance-Reasonable Cause
 - Unable to Obtain Records
 - Mistake Was Made
 - Erroneous Advice or Reliance
 - Ignorance of the Law
 - Forgetfulness
-

Penalty Notices – Response to IRS



December 12, 2018

VIA CERTIFIED MAIL

Department of the Treasury
Internal Revenue Service
Attn: Abatement Request
Cincinnati, OH 45999-0039

Re:

Request for Abatement I.R.C. § 6651 and § 6655 Penalties (tax year 2015)

To whom it may concern:

[REDACTED] or "Taxpayer") hereby requests abatement of all penalties imposed by the IRS relating to its 2015 tax reporting and payment obligations. The penalties imposed by the IRS are as follows: (1) a failure to-file penalty of \$841,736.47, pursuant to I.R.C. § 6651; (2) a failure to pay penalty of \$374,105.10, pursuant to I.R.C. § 6651; and, (3) a failure to pay proper estimated tax penalty of \$38,345 pursuant to I.R.C. § 6655. Combined, the assessed penalties total \$1,254,186.57. These penalties are set forth in greater detail in the IRS's Notice CP161, dated November 20, 2017 ("Penalty Notice"). See Enclosure 1.

The Taxpayer's name, address and employer identification number are:



Per the instructions in the Penalty Notice, the Taxpayer can submit a signed statement with supporting documentation identifying which penalties it would like the IRS to reconsider and explaining why such penalties should be abated. In accordance with the Penalty Notice, [REDACTED] hereby submits this letter and accompanying exhibits.

I. SUMMARY OF THE ARGUMENT

In support of its protest, the Taxpayer relies primarily on the following:

BETTER TOGETHER

A Limited Liability Partnership of Certified Public Accountants & Consultants
Riverwood 200 3300 Riverwood Parkway Suite 700 Atlanta, GA 30339 phone 770.396.2200 fax 770.390.0394
www.btcpa.net

First Time Abatement (FTA) – FTF/FTP Penalties

- Not applicable to information return penalties
 - Compliance history – 3-year look back
 - FTA CANNOT be saved for future use!
-

IRS Penalty Appeal Procedures



Penalty Notices – Service Center Appeals

File within 60-days of denial of abatement request

- Currently, the IRS is not enforcing the 60-day filing deadline

Letter format


- IRS Publication 5
- A well written abatement request can form the basis for the appeal

Telephone Hearing with Appeals Officer

- make an oral argument summarizing key points
- can provide additional info to clarify
 - new factual information may result in appeal being sent back to originating office for consideration

Hazards of Litigation Settlement is possible with IRS Appeals

Service Center Appeals Coordinator Letter 853 Abatement Denial and Appeals Rights

 IRS Department of the Treasury Internal Revenue Service 2970 Market St. BLN 4-P17.144 Philadelphia PA 19104	In reply refer to: [REDACTED] Dec. 26, 2017 LTR 853C 13 [REDACTED] 201512 30 1 00002498 BODC: SB
---	--

Taxpayer Identification Number: [REDACTED]
Tax Period: Dec. 31, 2015
Form: 1040
Kind of Penalty(s): Failure to File, Failure to Pay

WE ARE SORRY THAT WE COULD NOT GRANT YOUR REQUEST

In this letter, we will explain why we could not grant your request to remove the penalty charges to your account.

Dear Taxpayer:

WHY WE ARE CONTACTING YOU

Thank you for your inquiry dated Nov. 14, 2017 asking us to remove failure to file and pay penalties.

We have carefully reviewed your case. However, the information provided did not establish reasonable cause. Thus, we are unable to remove your penalties for failure to file and failure to pay.

WHY WE COULD NOT REMOVE YOUR PENALTY CHARGES

You explained that an absence prevented you from meeting your tax obligations on time. In order for us to remove your penalty, you must show that the absence was both unforeseen and unavoidable. However, a foreign residence or military post of duty does not extend the time to file beyond the additional time you received based on an extension request. Also, you did not timely pay the tax due within 60 days of the original due date.

Preparing an Appeal – Extract from Letter 853C

whether you had reasonable cause.

WHAT TO DO IF YOU DISAGREE

If you have additional information and want your case to receive further consideration by the Office of Appeals, please provide a detailed written statement of the disputed issues, along with supporting documentation, to the Service Center Appeals Coordinator within 60 days from the date of this letter. It should include:

1. Your name and address;
2. Your social security number;
3. A statement that you want to appeal the findings;
4. A statement of facts supporting your position on the issues you are appealing;
5. If possible, a statement outlining the law or other authority on which you rely;
6. A copy of your original request, if available; and
7. A copy of this letter.

The statement of facts, in 4 above, should be detailed and complete, including specific dates, names, amounts, and locations. You must declare the statement true under penalties of perjury. You may do this by adding to your statement the following signed declaration:

"Under penalties of perjury, I declare that the facts presented in my written protest, which are set out in the accompanying statement of facts, schedules, and other statements are, to the best of my knowledge and belief, true, correct, and complete."

If your authorized representative sends us the protest for you, he or she may substitute a declaration stating that he or she prepared the statement and accompanying documents and whether he or she knows that the statement and accompanying documents are true and correct.

Please address your response to:

Internal Revenue Service
Service Center Penalty Appeals Coordinator

Response to Letter 853C – Successful in Appeals



Internal Revenue Service
Service Center Penalty Appeals Coordinator
ATTN: Thomas J. Joyce

2970 Market St. BLN 4-P17.144
Philadelphia, PA 19104

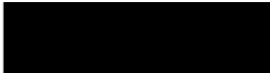
Re:



Social Security Number:



POA:



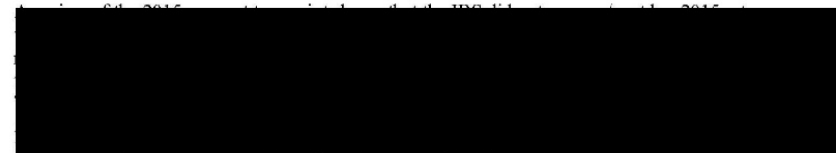
Dear Sir/Madam:

We are writing to you to appeal the findings as shown on the Letter 853C dated Dec. 26, 2017 regarding the Failure to File penalty for the taxpayer's 2015 tax year. As directed in this notice, we are providing a detailed written statement of the disputed issues along with supporting documentation within sixty days of the notice date.

Summary of Taxpayer Position:



Facts:

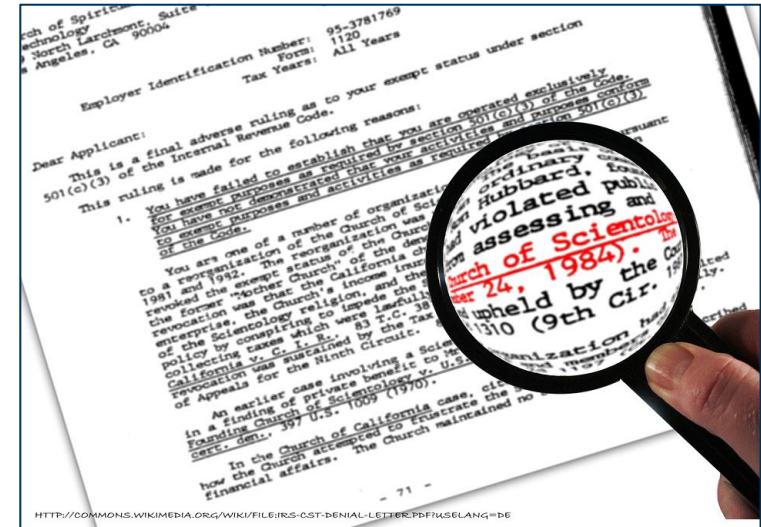


Subsequent to the timely filing of the return, the IRS asserted a failure to file penalty of \$67,460. This penalty was disputed on our letter dated November 14, 2017 (Enclosure 1). Our request to

Examination Appeals


If Unagreed:

- Written Protest in accordance with IRS Publication 5
 - Respond within 30-days of Final Report with Letter 950 (or similar letter)
 - Letter 950 - commonly known as a “30-day letter”



Fast Track Settlement – Field Examinations Only

Letter 950 - the “30-day” Letter

 Department of the Treasury Internal Revenue Service Large Business and International	Date: [Redacted]
	Taxpayer ID number (last 4 digits): [Redacted]
[Redacted]	Form: [Redacted]
[Redacted]	Tax periods ended: [Redacted]
	Person to contact: [Redacted]
	Contact telephone number: [Redacted]
	Contact fax number: [Redacted]
	Employee ID number: [Redacted]
	Response due date: [Redacted]

Dear [Redacted]

I have enclosed an examination report and two copies of an agreement form showing proposed changes to your tax for the periods above. **Review the report, and tell us whether you agree or disagree with the changes by the response due date above.** If you have an interest in any partnerships, S corporations, trusts, etc., this report may not reflect examinations of those entities. Changes to those accounts could also affect your tax.

If you agree with the proposed changes in the report

1. Sign and date one copy of the agreement form and keep the other copy for your records. If you filed a joint return, both spouses must sign for the case to be fully agreed.
2. Include payment for the full amount you owe (if the report shows you owe additional tax) to limit penalty and interest charges to your account. Make your check or money order payable to the United States Treasury.
3. Return the signed and dated agreement form with your payment in the enclosed envelope by the response due date.

If you agree, but can't pay the full amount you owe

Pay as much as you can, and sign, date, and return one copy of the agreement form, as explained above. We explain payment options in the enclosed Publication 3498, The Examination Process. You can also find more information regarding payment options by visiting Tax Topic 202 at www.irs.gov/taxtopics/tc202.html and www.irs.gov/payments.

If you don't enclose full payment for the additional tax, interest, and penalties, we'll bill you for the unpaid amounts. If you are a C Corporation, the law requires us to charge an interest rate 2% higher than the standard rate on underpayments of \$100,000 or more (Section 6621(c) of the Internal Revenue Code).

Letter 950 (Rev. 4-2017)
Catalog Number 40390D



State Department of Revenue (DOR) Assessment Procedures

State Assessment Procedures

Typically begins with a proposed assessment

- Proposed assessments usually have an option to appeal informally within the DOR
- Often has a 30- or 60-day time limit to respond

Next an official assessment is usually issued

- Appealing an official assessment is often more formal and may require representation by a licensed attorney within the state

States can assess tax, penalties, and/or interest at any of these stages. Appeal procedures are usually similar whether tax, penalties, or interest is being assessed.

State DOR Penalty Protest/Appeal Procedures



State Penalty Appeals

- Most states have an exception that penalties will not be imposed if reasonable cause for the taxpayer's error exists
 - When appealing penalties it's important to build the case establishing reasonable cause, ideally based on case law from that state
 - Some states have a first-time abatement, but many do not.
-

State Penalty Appeals

- Typically, penalties may be abated but interest cannot
 - Usually, the only time you can abate interest is if the underlying tax appeal is successful
 - However, some states allow an interest abatement if you can establish that the interest accrued as a result of a delay on the part of the DOR
-

Reasonable Cause Defenses



Reasonable Cause Defenses

➤ **Fact Pattern**

- The story is key
- Requires client engagement

➤ **Legal Argument**

- Provides defense for fact pattern
 - Supplements story
-

Reasonable Cause – IRM 20.1.1.3.2

➤ 20.1.1.3.2.2 Ordinary Business Care and Prudence

- Death, Serious Illness, or Unavoidable Absence
 - Fire, Casualty, Natural Disaster, or Other Disturbance-Reasonable Cause
 - Unable to Obtain Records
 - Mistake Was Made
 - Erroneous Advice or Reliance
 - Ignorance of the Law
 - Forgetfulness
-

Reasonable Cause Example

➤ Failure to Timely File Information Returns

- Taxpayer has historically timely e-filed information returns
 - Taxpayer used a nationally-known third party accounting software provider
 - Third party accounting software provider partnered with an IRS-approved e-File provider to submit information returns
 - Taxpayer received confirmation from the IRS-approved e-File provider that all information returns were successfully and timely e-filed to the IRS
-

