

IRS DELINQUENCY PENALTIES

Bob Kane
LeSourd & Patten, P.S.
600 University Street, Suite 2401
Seattle, Washington 98101
(206) 624-1040
rkane@lesourd.com

1. Examples:

- Late filing
- Late payment
- Late deposit

2. IRS Abated 41% of all Civil Penalties Assessed (FYE 2006)

- But the abatement statistics of commonly-assessed delinquency penalties are not so promising:
 - Individual income tax late filing: 20%
 - Individual income tax late payment: 12%
 - Corporation income tax late filing: 15%
 - Corporation income tax late payment: 19%
 - Employment taxes late filing: 13%
 - Employment taxes late payment: 15%
 - Employment taxes late deposit: 24%

3. Generally Worth Requesting Abatement

- Above statistics suggest either that taxpayers concede and do not fight penalties or they do not present their arguments in a convincing manner
- Not worth appealing every penalty but "IF YOU DON'T ASK, YOU DON'T GET"

4. Standards: Reasonable Cause/Lack of Willful Neglect/Good Faith

- Facts and circumstances test
- Each case is different
- Demonstrate ordinary business care and prudence; unexpected occurrence beyond control; could not reasonably anticipate

5. Fact Development is the Key

- Suggest client take time to do written narrative of excuses
- Follow up with questions
- Anticipate what IRS will want to know

6. Tell a Story

- Focus on the basics – who, what, when, where and why
- Address the specific penalty asserted
- Make sure addressing excuses that tie to time frame of the penalty

7. Know Big Picture Before Submitting to IRS

- Is brevity a good idea?
- Consider developing the facts in full the first time so ready to appeal if necessary
- Avoids possibility of inconsistency in facts/argument on appeal
- Adding arguments on appeal can be difficult

8. Goal is Reasonable Administrative Settlement

- Litigation is expensive
- Case law can be brutal
- IRS employee may be more sympathetic

9. Three Bites at Apple, Not Counting Litigation

- 1) Service Center; 2) Appeals Penalty Coordinator; 3) Appeals Office
- Two bites if revenue officer involved: 1) revenue officer and 2) Appeals Office

10. Looking for Excuses

- Excuses are not limited to those in IRS Manual
- Trying to generate sympathy

11. Sample Helpful Excuses

- Death
- Serious illness
- Unavoidable absence
- Severe alcohol or drug problem
- Severe cash flow problem
- Undue hardship
- Written advice from the IRS
- Oral advice from IRS
- Fire, casualty, natural disaster or other disturbance
- IRS error
- One-time problem
- Short-lived problem
- First-time problem (excellent compliance history)

- Unable to obtain records
- Reliance on tax advisor
- Someone embezzled
- “Disabling” of corporate taxpayer
- Delay by post office
- Official disaster area

12. Sample Excuses Potentially of Lesser Value

- Forgot
- Made a mistake
- Too busy
- Delegated the duty (employee dropped the ball)
- Ignorance of the law
- Divorce or separation
- Family member suffering from illness
- Mild depression or illness
- Lack of knowledge of seriousness of delinquency penalties
- With penalties this large, no one in their right mind would have been delinquent knowingly
- Subsequent compliance excellent

13. Strategy

- Seek abatement after tax and interest (at minimum) paid in full
- Chance of trading immediate payment of tax and interest for penalty abatement?
- Consider whether best to pay penalty first
- Watch out for conflict of interest (e.g., reliance on tax advisor)
- Deal with revenue officer or pay and go to Service Center?
- Use "buzz words" particularly if dealing with Service Center
- Sign and have taxpayer sign declaration under penalty of perjury
- Consider having client meet with IRS (especially if credibility at issue)