

# **Tax Rep Network: Our Five-Step Guide to Penalty Abatement**



Eric L. Green, Esq.  
<https://TaxRepLLC.com>

## About the Author

Eric is a managing partner in Green & Sklarz LLC, a boutique tax firm with offices in Connecticut and New York. The focus of Attorney Green's practice is civil and criminal taxpayer representation before the Department of Justice Tax Division, Internal Revenue Service and state Departments of Revenue Services. Eric is a nationally renowned tax expert and author/commentator of IRS civil and criminal tax matters. Having lectured to more than 70,000 practitioners on civil and criminal tax topics, he is one of the nation's best known lecturers in continuing professional tax education. Eric has been recognized by *Connecticut Super Lawyers* in the field of Tax. Attorney Green is a past Chair of the Executive Committee of the Connecticut Bar Association's Tax Section and is a Fellow of the American College of Tax Counsel ("ACTC").



Eric was the 2010 Nolan Fellow of the American Bar Association and has served as Chair of the American Bar Association's Closely Held Businesses Tax Committee.

Attorney Green is a frequent lecturer on tax topics for many national organizations, including Insightful Accountant, CCH, the NAEA, the NATP, the ABA Tax Section and the Connecticut Society of CPAs. Attorney Green has served as adjunct faculty at the University of Connecticut School of Law. He is the author and lecturer of the IRS Representation Certificate Program with the University of Connecticut School of Business. Eric is a contributing columnist for Bloomberg Tax and has served as a columnist for CCH's Journal of Practice & Procedure. He is the founder of Tax Rep LLC which coaches accountants and attorneys on building their own IRS Representation practices, and is the host of the weekly *Tax Rep Network Podcast*.

Mr. Green is the author of The Insider's Guide to IRS Offers, The Accountant's Guide to IRS Collection, The Accountant's Guide to Resolving Tax Debts and The Accountant's Guide to Resolving Payroll Tax Debts, and the Tax Rep Guide of Checklists, Letters and Forms. He is a contributing author for Advocating for Low Income Taxpayers: A Clinical

Studies Casebook, 3rd Edition, and has also been quoted in USA Today, Consumer Reports, The Wall Street Journal's Market Watch, TheStreet.com, The Wall Street Journal and CreditCard.com.

Attorney Green is also a member of the Connecticut, Massachusetts and New York Bar Associations, as well as the American Bar Association. Attorney Green is admitted to practice in Massachusetts, New York and Connecticut Superior Courts, the United States Tax Court, The Federal Court of Claims and the Federal District Court for Connecticut. Attorney Green received his Bachelor of Business Administration degree in Accounting with a minor in International Business from Hofstra University and is an honors graduate from New England School of Law. He earned a Masters of Laws in Taxation (LL.M.) from Boston University School of Law.

Green & Sklarz LLC,

One Audubon Street, 3<sup>rd</sup> Floor, New Haven, CT 06511

Ph. (203) 285-8545, Fax (203) 286-1311, [egreen@gs-lawfirm.com](mailto:egreen@gs-lawfirm.com)

.....

Eric's training program can be found at:

<https://TaxRepLLC.com>

## **PENALTY ABATEMENT: OVERVIEW**

The IRS will consider reducing or abating penalties when the taxpayer can show either they have reasonable cause for whatever caused the penalty, or they qualify for an administrative relief program the IRS has called “first-time penalty abatement.”

Penalties exist to encourage voluntary compliance by supporting the standards of behavior required by the Internal Revenue Code. For most taxpayers, voluntary compliance consists of preparing an accurate return, filing it timely, and paying any tax due. Efforts made to fulfill these obligations constitute compliant behavior. Most penalties apply to behavior that fails to meet any or all of these obligations.

Penalties encourage voluntary compliance by:

- Defining standards of compliant behavior,
- Defining consequences for noncompliance, and
- Providing monetary sanctions against taxpayers who do not meet the standard.

First Time Penalty Abatement is an administrative relief program created by the IRS and is provided to taxpayers who are in tax compliance, have made arrangements to pay any outstanding balance, and have not been penalized for the three prior tax years. It is meant as a relief for taxpayers that generally comply and just had an issue come up that caused them to fall out of compliance.

Reasonable cause relief is where the taxpayer can demonstrate that despite his or her reasonable attempts, they were just unable to comply. The burden here is on the taxpayer to provide

supporting documentation and paperwork to make sure the IRS can see why they failed to comply and abate the penalties.

However, before we start drafting arguments and gathering documents, we need to make sure our taxpayer is now in tax compliance.

## *Step 1. Taxpayer's Compliance*

What is “tax compliance?”

In order to work out any kind of a deal with the IRS and/or request penalties be abated, the taxpayer must be in tax compliance. What this means is that all tax returns have been filed and they are making their current tax payments properly.

I hope this just makes sense: how can we ask the IRS to grant relief if we cannot be bothered to even be in compliance. So tax compliance is the first step before seeking any sort of relief from tax penalties.

So what is “Tax Compliance”? Tax compliance to the IRS means:

- All tax returns due are filed when you begin trying to work out a deal with the IRS. This is defined in the Internal Revenue Manual as the last 6 years.<sup>1</sup>
- If your client is an employee, that sufficient taxes are withheld to cover the tax bill at the end of the year;
- If the clients are self-employed that they are making estimated tax payments each quarter as required; or
- If the client is a business, it is depositing its payroll taxes on time each period.

Clients need to understand that without their tax compliance there can be no deal reached with the IRS because lack of compliance automatically voids the deal the client just reached with the

---

<sup>1</sup> See Policy Statement 5-133, IRM § 1.2.1.6.18

government. In essence, why should the IRS agree to anything for the future when the client can't even stay compliant now?

Tax compliance is something the client must take care of immediately. Get the old returns completed and filed, and have the clients adjust their ways so they can make the proper tax payments to avoid running up yet another debt. Once we have the taxpayer in compliance, we can now move on to Step #2, which is seeing if they qualify for First Time Penalty Abatement.

## ***Step 2. First Time Penalty Abatement***

As discussed in the overview, the IRS created the First Time Penalty Abatement program (referred to as “FTA”) to allow taxpayers who are compliant one opportunity to get forgiveness for a mistake. Hence, to obtain an FTA the taxpayer must not have been penalized the previous three tax years.

First Time Penalty Abatement is an administrative relief program created by the IRS; there is no statutory authority for it that was laid out by Congress. It is designed to provide relief for taxpayers who are compliant but make a mistake. First-time abatement is found under IRM § 20.1.1.3.3.2.1, and is provided to taxpayers who are in tax compliance, have made arrangements to pay any outstanding balance, and have not been penalized for the three prior tax years.

First Time Abatement is available for the following penalties:

- Failure to file (FTF) penalty under IRC 6651(a)(1), IRC 6698(a)(1), or IRC 6699(a)(1),
- Failure to pay (FTP) penalty under IRC 6651(a)(2) and/or IRC 6651(a)(3), and
- Failure to deposit (FTD) penalty under IRC 6656.

First-time penalty abatement can be requested either in writing or over the phone with an IRS Representative.

To confirm the taxpayer qualifies we usually pull Account Transcripts to make sure there were no penalties in the prior three years. We actually have software now that also does this and will flag any First Time Penalty Abatement opportunities.<sup>2</sup>

---

<sup>2</sup> [www.TaxHelpSoftware.com](http://www.TaxHelpSoftware.com)



In the table below, the software has summarized the penalty and interest information from this particular taxpayer’s transcripts. The screen shot summarizes the penalty and interest charged to this taxpayer, and note that the third column is titled “FTA”, which is where the software has flagged any year that a First Time Penalty Abatement may be available (because there were no penalties in the three prior periods).

**PENALTY AND INTEREST DASHBOARD**

Year	Return Filed	FTA	PA	Penalties Failure to File	Penalties Failure to Pay	Accuracy Related Penalties	Accrued Penalty	Total Penalties*	Accrued Interest	Assessed Interest	Total Interest
2022	No						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2021	No						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2020	No						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2019	Original						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2018	No						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2017	Original						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2016	Original	N		\$13.00	\$72.24		\$0.00	\$85.24	\$15.19	\$69.46	\$84.65
2015	Original	Y		\$205.00	\$99.75		\$0.00	\$304.75	\$29.79	\$165.99	\$195.78
2014	Original						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2013	No						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2012	No						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2011	No						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2010	Original	N		\$687.00	\$4,187.00	\$3,350.00	\$0.00	\$8,224.00	\$1,173.34	\$9,857.69	\$11,031.03
2009	Original	N			\$4,006.74		\$0.00	\$4,006.74	\$0.00	\$8,315.82	\$8,315.82
2008	Original	N			\$1,392.56		\$0.00	\$1,392.56	\$0.00	\$857.32	\$857.32
2007	Original	N			\$1,133.15		\$0.00	\$1,133.15	\$0.00	\$679.79	\$679.79
2006	Original						\$0.00	\$0.00	\$0.00	(\$8.77)	(\$8.77)
2005	Original						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2004	Original	Y			\$183.99		\$0.00	\$183.99	\$0.00	\$254.44	\$254.44
2003	No						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2002	Original						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2001	Original						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2000	Original						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1999	Original						\$0.00	\$0.00	\$0.00	(\$17.16)	(\$17.16)

Whether you use software or do this manually, a review of the transcripts will let you know quickly whether the taxpayer is entitled to First Time Penalty Abatement.

Now, if the taxpayer is calling the IRS<sup>3</sup> (or you are on their behalf), perhaps to arrange a payment plan, they can always ask if they qualify for First Time Abatement. The IRS Collection Division representative can always check the system and confirm if the taxpayer qualifies or not and provide the FTA relief right over the phone. What I can assure you is the IRS will not offer the FTA unless you ask, so ask! Worse thing the IRS representative can say is ‘no.’

<sup>3</sup> The Automated Collection Phone Number is 800-829-3903

### ***Step 3. Reasonable Cause***

To obtain reasonable cause relief, the Taxpayer must establish that he or she practiced ordinary business care and prudence, including making provisions for business obligations to be met when reasonably foreseeable events occur. A taxpayer may establish reasonable cause by providing facts and circumstances showing that he or she exercised ordinary business care and prudence (taking that degree of care that a reasonably prudent person would exercise), but nevertheless were unable to comply with the law.

Relief is requested by using IRS Form 843, and practitioners should include any and all documentation that supports their contentions as to why the taxpayer should be given penalty abatement.

Documentation can include any of the following:

- Emails with the tax professional to support the contention that the professional had the correct information and just failed to alert the taxpayer to the issue
- Medical documentation for any health related issues that impacted their tax compliance
- Notices of death if a death in the family caused the issue
- An opinion letter from a professional that the taxpayer relied upon
- Correspondence with the IRS that caused the taxpayer to either take a position or some action that caused the non-compliance
- Affidavits in support of the taxpayer's story by third party witnesses

The critical thing about the supporting documentation is that it actually supports the taxpayer's story, meaning it explains what happened and it lines up in time with what happened. For instance,

a death in the family at the end of March 2021 would explain why that 2020 tax return was not extended and was filed late in May, creating a penalty. If the death didn't happen until July, it doesn't explain why the extension/return was not filed three months earlier in April.

Also included in any penalty abatement request is a cover letter with the narrative of what happened. This is where you can explain the taxpayer's history, what happened that caused them to fall out of compliance, and highlight the information you want the IRS to focus on. It is also an opportunity to tie in the supporting documents so that the IRS employee reviewing the request can follow your arguments as to why abatement is appropriate for this particular taxpayer. There is a sample abatement letter in this guide to give you an example of what we mean.

#### ***Step 4. Filing the Request***

The penalty abatement request is filed on IRS Form 843. If penalty abatement is being sought on multiple tax periods, then a separate Form 843 is filed for EACH period. Along with the abatement request you should include:

- A copy of your Form 2848 – Power of Attorney (assuming you are the representative)
- A narrative of what happened and why the taxpayer was unable to comply
- Copies of the documentation that you believe supports your taxpayer’s story as to why they deserve penalty relief

## *Step 5. Appeal if Denied*

It is not uncommon that, despite all our best efforts, the IRS denies the penalty abatement initially. Often you will get the sense that no-one read it and, if they did read it, they certainly didn't understand the arguments. And you would be correct.

The reason you would be correct is often the abatement is determined by the IRS computer program. The taxpayer's facts are input and the answer spits out, usually rejection. Hence why we need to take advantage of the right to have a hearing with an Independent Appeals Officer.

We generally advise our Tax Rep Members to discuss all of this with their client upfront so they are aware there is a good chance we will need to take this case to Appeals. The reason to have this conversation upfront is it manages the client's expectations and avoids a fight later if the automated rejection letter shows up.

### Refund Suit?

When a penalty abatement request is filed, and even if the Appeal is pending, IRS Collection does not stop. Hence it is possible, and even probable, that the client will need to either pay the penalty in full or get into a payment plan. If the penalty ends up being paid, the taxpayer must make their claim for a refund of the amounts paid and then wait at least six months but no more than two years before bringing a suit in Federal District Court or the Federal Court of Claims.<sup>4</sup>

---

<sup>4</sup> IRC § 6532 Practitioners and taxpayers should make sure they have an attorney involved if they believe the abatement will not be resolved within the twenty-four month time frame to bring the suit.

## *Penalty Abatement Workflow*

1. Client information taken on Intake Form
2. Retainer Agreement and POA sent to Client
3. Document Checklist sent to Client
4. Pull IRS Transcripts
  - Review history for compliance
  - Review history for prior abatements
  - Determine if TP qualifies for First Time Penalty Abatement
5. Client provides supporting documentation:
  - Medical history/documentation
  - Accident or Illness
  - Anything that supports the client's reason for failing to comply
6. Prepare Form 843 for each year and file with supporting documentation
7. If abatement is denied, file Appeal

***Sample Abatement Letter – Reasonable Cause***

April 9, 2020

Internal Revenue Service  
Service Center Penalty Appeals Coordinator  
P.O. Box 9941 TPR M/S 6731  
Ogden, UT 84409

**Re: Taxpayer's Father**

Dear Sir or Madam:

I am writing regarding the above referenced taxpayer to respectfully request penalty abatement for tax periods 3/2017, 12/2017, 6/2018, 9/2018, 12/2018, 3/2019, 6/2019, and 9/2019.

The above referenced taxpayer suffered from Alzheimer's disease and Dementia which was diagnosed in December 2011. In 2013 the taxpayer required 24/7 home care and hired caregivers as household employees. As the taxpayer's health started deteriorating, he had a friend handle payroll for the household employees through Paychex. The taxpayer died 5 months ago. Copies of his medical diagnosis and his death certificate are attached, as is a copy of our IRS Form 2848.

The taxpayer's son then received correspondence from Payroll Company that made him realize Payroll Company had not filed quarterly 941s or the annual 940 return. Once it was brought to his attention that Paychex was not filing or paying quarterly and annual payroll tax returns and taxes, the son immediately filed missing returns and mailed payments for tax assessments.

Prior to this disease the taxpayer always maintained a good history of compliance and had no intentions on disobeying the taxing statutes. For these reasons I am respectfully requesting abatement of all penalties and interest associated with late filing and failure to pay taxes due for 2017-2019.

If you have any questions or concerns please feel free to contact me at (\_\_\_\_)\_\_\_\_-\_\_\_\_.

Very truly yours,

NAME, EA



## Claim for Refund and Request for Abatement

▶ See separate instructions.

Use Form 843 if your claim or request involves:

- (a) a refund of one of the taxes (other than income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding) or a fee, shown on line 3,
- (b) an abatement of FUTA tax or certain excise taxes, or
- (c) a refund or abatement of interest, penalties, or additions to tax for one of the reasons shown on line 5a.

**Do not** use Form 843 if your claim or request involves:

- (a) an overpayment of income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding (use the appropriate amended tax return),
- (b) a refund of excise taxes based on the nontaxable use or sale of fuels, or
- (c) an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.

Name(s)	Your social security number
Address (number, street, and room or suite no.)	Spouse's social security number
City or town, state, and ZIP code	Employer identification number (EIN)
Name and address shown on return if different from above	Daytime telephone number

<b>1 Period.</b> Prepare a separate Form 843 for each tax period or fee year. From _____ to _____	<b>2 Amount</b> to be refunded or abated: \$ _____
--	---

**3 Type of tax or fee.** Indicate the type of tax or fee to be refunded or abated or to which the interest, penalty, or addition to tax is related.

Employment    
  Estate    
  Gift    
  Excise    
  Income    
  Fee

**4 Type of penalty.** If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). IRC section: \_\_\_\_\_

**5a Interest, penalties, and additions to tax.** Check the box that indicates your reason for the request for refund or abatement. (If none apply, go to line 6.)

Interest was assessed as a result of IRS errors or delays.  
 A penalty or addition to tax was the result of erroneous written advice from the IRS.  
 Reasonable cause or other reason allowed under the law (other than erroneous written advice) can be shown for not assessing a penalty or addition to tax.

**b** Date(s) of payment(s) ▶ \_\_\_\_\_

**6 Original return.** Indicate the type of fee or return, if any, filed to which the tax, interest, penalty, or addition to tax relates.

706      709      940      941      943      945  
 990-PF      1040      1120      4720      Other (specify) ▶ \_\_\_\_\_

**7 Explanation.** Explain why you believe this claim or request should be allowed and show the computation of the amount shown on line 2. If you need more space, attach additional sheets.

**Signature.** If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the claim. Claims filed by corporations must be signed by a corporate officer authorized to sign, and the officer's title must be shown.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

-----  
 Signature (Title, if applicable. Claims by corporations must be signed by an officer.) \_\_\_\_\_ Date \_\_\_\_\_

-----  
 Signature (spouse, if joint return) \_\_\_\_\_ Date \_\_\_\_\_

<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name ▶				Firm's EIN ▶
	Firm's address ▶				Phone no.



# Instructions for Form 843

(Rev. December 2021)

(For use with Form 843 (Rev. August 2011))

## Claim for Refund and Request for Abatement

Section references are to the Internal Revenue Code unless otherwise noted.

## General Instructions

### Future Developments

For the latest information about developments related to Form 843 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form843](https://www.irs.gov/Form843).

### What's New

**Penalty for erroneous claim for refund.** The information under what had been *Penalty for Erroneous Claim for Refund* has been moved to a parenthetical in a bullet under [Use Form 843 to claim or request the following](#).

### Purpose of Form

Use Form 843 to claim a refund or request an abatement of certain taxes, interest, penalties, fees, and additions to tax.

**Note.** If you are filing Form 843 to claim a refund of the branded prescription drug fee, please write "Branded Prescription Drug Fee" across the top of Form 843.



**Do not use Form 843 to request an abatement of income, estate, or gift taxes. Do not use Form 843 to request a refund of income tax or Additional Medicare Tax. Employers cannot use Form 843 to request a refund or abatement of Federal Insurance Contributions Act (FICA) tax, Railroad Retirement Tax Act (RRTA) tax, or income tax withholding. Also, do not use Form 843 to amend a previously filed income or employment tax return. Do not use Form 843 to claim a refund of agreement fees, offer-in-compromise fees, or lien fees.**

### Use Form 843 to claim or request the following.

- A refund of tax, other than a tax for which a different form must be used. (See *Do not use Form 843 when you must use a different tax form* next.)
- An abatement of tax, other than income, estate, or gift tax. Employers cannot use Form 843 to request an abatement of FICA tax, RRTA tax, or income tax withholding.
- A refund to an employee of excess social security, Medicare, or RRTA tax withheld by any one employer, but only if your employer will not adjust the overcollection. See the instructions for line 7.
- A refund to an employee of social security or Medicare taxes that were withheld in error, but only if your employer will not adjust the overcollection. See the instructions for line 7. If you are a nonresident alien, see Pub. 519, U.S. Tax Guide for Aliens, for specific instructions.
- A refund of excess tier 2 RRTA tax when you had more than one railroad employer for the year and your total tier 2 RRTA tax withheld or paid for the year was more than the tier 2 limit. See the instructions for line 3.
- A refund or abatement of interest, penalties, or additions to tax, caused by certain IRS errors or delays, or certain erroneous written advice from the IRS.

- A refund or abatement of a penalty or addition to tax due to reasonable cause or other reason (other than erroneous written advice provided by the IRS) allowed under the law. (This includes a request for an abatement or refund of the section 6676 penalty for an erroneous claim for refund, where the claim was due to a reasonable cause. The penalty is assessed at 20% of the amount determined to be excessive.)
- A refund of the penalty imposed under section 6715 for misuse of dyed fuel.
- A refund or abatement of tier 1 RRTA tax for an employee representative.
- A refund of a branded prescription drug fee.



**TIP** *If you received an IRS notice notifying you of a change to an item on your tax return, or that you owe interest, a penalty, or addition to tax, follow the instructions on the notice. You may not have to file Form 843.*

### Do not use Form 843 when you must use a different tax form.

- Use Form 1040-X, Amended U.S. Individual Income Tax Return, to change any amounts reported on Form 1040, 1040-SR, 1040A, 1040EZ, 1040-NR, or 1040-NR-EZ, to change amounts previously adjusted by the IRS, or to make certain elections after the prescribed deadline (see Regulations sections 301.9100-1 through -3).
- Use Form 1040-X and attach a corrected Form 8959, Additional Medicare Tax, to correct your liability for Additional Medicare Tax. If your Medicare wages, RRTA compensation, or self-employment income is adjusted, you may need to correct your liability, if any, for Additional Medicare Tax.
- Use Form 8379, Injured Spouse Allocation, to claim your portion of a joint refund used to offset your spouse's past due obligations.
- Individuals, estates, and trusts, filing within 1 year after the end of the year in which a claim of right adjustment under section 1341(b)(1), a net operating loss (NOL), a general business credit, or net section 1256 contracts loss arose, can use Form 1045, Application for Tentative Refund, to apply for a "quick refund" resulting from any overpayment of tax due to the claim of right adjustment or the carryback of the loss or unused credit. Individuals can also get a refund by filing Form 1040-X instead of Form 1045. An estate or trust can file an amended Form 1041, U.S. Income Tax Return for Estates and Trusts.
- Use Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, for the tax year being amended to amend a previously filed Form 940. See the Instructions for Form 940.
- Employers must use the tax form that corresponds to the tax return previously filed to make an adjustment or claim a refund or abatement of FICA tax, RRTA tax, or income tax withholding.

IF you filed...	CORRECT using...
Form 941 or Form 941-SS	Form 941-X
Form 943	Form 943-X
Form 944 or Form 944-SS	Form 944-X
Form 945	Form 945-X
Form CT-1	Form CT-1 X
Formulario 941-PR	Formulario 941-X (PR)
Formulario 943-PR	Formulario 943-X (PR)
Formulario 944-PR	Formulario 944-X (PR)
Formulario 944 (SP)	Formulario 944-X (SP)
If you filed Schedule H (Form 1040 ) or Anexo H-PR (Formulario 1040-PR), see Pub. 926, Household Employer's Tax Guide, for how to correct that form.	

For more information, see Treasury Decision 9405 at [IRS.gov/irb/2008-32\\_IRB#TD-9405](https://www.irs.gov/irb/2008-32_IRB#TD-9405).

- Use Form 1120-X, Amended U.S. Corporation Income Tax Return, to correct Form 1120 or 1120-A as originally filed, or as later adjusted by an amended return, a claim for refund, or an examination, or to make certain elections after the prescribed deadline (see Regulations sections 301.9100-1 through -3).
- Use Form 720-X, Amended Quarterly Federal Excise Tax Return, to make adjustments to liability reported on Forms 720 you have filed for previous quarters. Do not use Form 720-X to make changes to claims made on Schedule C (Form 720), except for the section 4051(d) tire credit and section 6426 fuel credits.
- Use Form 730, Monthly Tax Return for Wagers, to claim a credit or refund of wagering tax. You may also use Schedule 6 (Form 8849).
- Use Form 4136, Credit for Federal Tax Paid on Fuels, to claim a credit against your income tax for certain nontaxable uses (or sales) of fuel during the income tax year. Also, use Form 4136 if you are a producer claiming a credit for alcohol fuel mixtures or biodiesel mixtures. However, you can use Form 8849, Claim for Refund of Excise Taxes, to claim a periodic refund instead of waiting to claim an annual credit on Form 4136.
- Use Form 8849, Claim for Refund of Excise Taxes, to claim a refund of excise taxes other than those resulting from adjustments to your reported liabilities. See Pub. 510, Excise Taxes, for the appropriate forms to use to claim excise tax refunds.
- Corporations (other than S corporations) can use Form 1139, Corporation Application for Tentative Refund, to apply for a "quick refund" of taxes from an overpayment of tax due to a claim of right adjustment under section 1341(b)(1); or the carryback of any NOL, the carryback of a net capital loss, or the carryback of an unused general business credit.

## Separate Form Required

Generally, you must file a separate Form 843 for each tax period or fee year or type of tax or fee. There are exceptions for certain claims. See the instructions for line 5.

Generally, you must file a claim for a credit or refund within 3 years from the date you filed your original return or 2 years from the date you paid the tax, whichever is later. If you do not file a claim within this period, you may no longer be entitled to a credit or refund. See Pub. 556, Examination of Returns, Appeal Rights, and Claims for Refund, for more information. But see *Requesting Abatement or Refund of a Penalty or Addition to Tax as a Result of Written Advice*, later, for when to file a request for abatement or refund of a penalty or an addition to tax as a result of erroneous written advice.

## Who Can File

You can file Form 843 or your authorized representative can file it for you. If your authorized representative files Form 843, the original or copy of Form 2848, Power of Attorney and Declaration of Representative, must be attached. You must sign Form 2848 and authorize the representative to act on your behalf for the purposes of the request. See the Instructions for Form 2848 for more information.



If you are filing as a legal representative for a decedent whose return you filed, attach to Form 843 a statement that you filed the return and you are still acting as the decedent's representative. If you did not file the decedent's return, attach certified copies of letters testamentary, letters of administration, or similar evidence to show your authority. File Form 1310, Statement of Person Claiming Refund Due a Deceased Taxpayer, with Form 843 if you are the legal representative of a decedent. See the instructions for Form 1310 for full details.

## Taxpayers With Visual Impairments and Disabilities

If you were unable to read and timely respond to a standard print notice from the IRS, you may be able to request a refund or abatement of assessed penalties, interest, or additions to tax. The following list illustrates the types of items you may want to include in your explanation on line 7 when completing Form 843 for this purpose.

- The nature of the disability that prevents you from reading and timely responding to notices in a standard print format.
- The date you received the standard print notice from the IRS and a description of the notice.
- The date you learned of the issue described in the standard print notice.
- Whether you requested that the IRS provide the notice (or previous notices) in an alternative format and, if so, the date of the request and the format requested.

## Where To File

IF you are filing Form 843...	THEN mail the form to...
in response to an IRS notice regarding a tax or fee related to certain taxes such as income, employment, gift, estate, excise, etc.	the address shown in the notice.
to request a claim for refund in an estate tax matter	Internal Revenue Service Attn: E&G Mail Stop 824G 7940 Kentucky Drive Florence, KY 41042-2915
for penalties, or for any other reason other than an IRS notice or estate tax claim (described above) or Letter 4658, Letter 5067C, net interest rate of zero request, or a nonresident alien's claim for refund of social security or Medicare taxes withheld in error (see below)	the service center where you would be required to file a current year tax return for the tax to which your claim or request relates. See the instructions for the return you are filing.
in response to Letter 4658 (notice of branded prescription drug fee)  <b>Note.</b> To ensure proper processing, write "Branded Prescription Drug Fee" across the top of Form 843.	Internal Revenue Service Mail Stop 4921 BPDF 1973 N. Rulon White Blvd. Ogden, UT 84201   <i>Use this address only if you are claiming a refund of the branded prescription drug fee.</i>
in response to Letter 5067C (Annual Fee on Health Insurance Providers Final Fee)  <b>Note.</b> To ensure proper processing, write "Annual Fee on Health Insurance Providers Final Fee" across the top of Form 843.	Internal Revenue Service Mail Stop 4921 IPF 1973 N. Rulon White Blvd. Ogden, UT 84201   <i>Use this address only if you are claiming a refund of the health insurance providers fee.</i>
for requests of a net interest rate of zero	the service center where you filed your most recent return.
as a nonresident alien requesting a refund of social security or Medicare taxes withheld in error from pay that is not subject to these taxes	the address in Pub. 519 for nonresident aliens requesting such refunds and follow the specific instructions in Pub. 519 regarding the documents to be filed and the conditions under which the form can be filed.
<b>Note.</b> If you have mailed the form to an address that has changed, the form will be forwarded.	

## Paid Tax Return Preparer

A paid tax return preparer who files Form 843 for you must sign the form and fill in the identifying information at the bottom of the form. The tax preparer must give you a copy of the completed Form 843 for your records. Someone who prepares your Form 843 but does not charge you should not sign it.

## Specific Instructions

**Social security number.** Enter your social security number (SSN). If you are filing Form 843 relating to a joint return, enter the SSNs for both you and your spouse. If you have an individual taxpayer identification number (ITIN) rather than an SSN, enter

your ITIN (and your spouse's ITIN if this relates to a joint return) whenever an SSN is requested.

## Line 1

Enter the tax period for which you are making the claim for refund or request for abatement. If you are requesting a refund of a branded prescription drug fee, enter the fee year on the "From" line.

## Line 3

Check the appropriate box to show the type of tax or fee for which you are claiming a refund or requesting an abatement. If the claim relates to interest, a penalty, or addition to tax, check the box to indicate the type of tax to which the claim or request relates.



*Do not use Form 843 when another tax form must be used. See Purpose of Form, earlier.*

**Excess tier 2 RRTA tax.** Complete lines 1 and 2. On line 3, check the box for "Employment" tax. Skip lines 4, 5, and 6. On line 7, identify the claim as "Excess tier 2 RRTA" and show your computation of the refund. You must also attach copies of your Forms W-2 for the year to Form 843. See the worksheet in Pub. 505, Tax Withholding and Estimated Tax, to help you figure the excess amount.

**Branded prescription drug fee.** Write "Branded Prescription Drug Fee" across the top of Form 843. On line 1, enter the fee year on the "From" line. Complete line 2. On line 3, check the box for "Fee." Skip lines 4 and 5. On line 6, check the "Other" box and enter "BPD Fee" in the space provided. On line 7, identify the claim as "branded prescription drug fee" and explain why you are claiming a refund.

Attach a copy of the Form 8947, Report of Branded Prescription Drug Information, that provided the basis for the fee as calculated by the IRS, as well as any additional information on the amount to be refunded. You must tell us whether you or anyone else has filed a previous claim for any amount covered by this claim. Fee claims should not be combined with any other claims.

**Note.** Interest related to the branded prescription drug fee cannot be abated.

## Line 4

If you are requesting a refund or abatement of an assessed penalty, enter the applicable Internal Revenue Code section. Generally, you can find the Code section on the Notice of Assessment you received from the IRS.

## Line 5

### Requesting Abatement or Refund of Interest Due to IRS Error or Delay

The IRS can abate interest if the interest is caused by IRS errors or delays. The IRS will abate the interest only if there was an unreasonable error or delay in performing a managerial or ministerial act (defined next). The taxpayer cannot have caused any significant aspect of the error or delay. In addition, the interest can be abated only if it relates to taxes for which a notice of deficiency is required. This includes income taxes, generation-skipping transfer taxes, estate and gift taxes, and certain excise taxes. Interest related to employment taxes or other excise taxes cannot be abated. See Pub. 556 for more information.

**Managerial act.** The term "managerial act" means an administrative act that occurs during the processing of your case

involving the temporary or permanent loss of records or the exercise of judgment or discretion relating to management of personnel. A decision regarding the proper application of federal tax law (or other federal or state law) is not a managerial act. See Regulations section 301.6404-2 for more information.

**Ministerial act.** The term “ministerial act” means a procedural or mechanical act that does not involve the exercise of judgment or discretion and that occurs during the processing of your case after all prerequisites of the act, such as conferences and review by supervisors, have taken place. A decision regarding the proper application of federal tax law (or other federal or state law) is not a ministerial act. See Regulations section 301.6404-2 for more information.

## How To Request an Abatement of Interest

**Abatement of interest on a tax.** Request an abatement of interest on a tax by writing “Request for Abatement of Interest Under Section 6404(e)” at the top of Form 843.

Complete lines 1 through 3. Check the first box on line 5a. On line 5b, show the dates of any payment of interest or tax liability for the tax period involved.

On line 7, state:

- The type of tax involved,
- When you were first notified by the IRS in writing about the deficiency or payment,
- The specific period for which you are requesting abatement of interest,
- The circumstances of your case, and
- The reasons why you believe that failure to abate the interest would result in grossly unfair treatment.

**Multiple tax years or types of tax.** File only one Form 843 if the interest assessment resulted from the IRS's error or delay in performing a single managerial or ministerial act affecting a tax assessment for multiple tax years or types of tax (for example, where 2 or more tax years were under examination). Check the applicable box(es) on line 3 and provide a detailed explanation on line 7.

## Requesting Abatement or Refund of a Penalty or Addition to Tax as a Result of Written Advice

The IRS can abate or refund any portion of a penalty or addition to tax caused by erroneous advice furnished to you in writing by an officer or employee of the IRS acting in his or her official capacity.

The IRS will abate the penalty or addition to tax only if:

1. You reasonably relied on the written advice,
2. The written advice was in response to a specific written request for advice made by you (or your representative who is allowed to practice before the IRS), and
3. The penalty or addition to tax did not result from your failure to provide the IRS with adequate or accurate information.

See Regulations section 301.6404-3 for more information.

## How To Request an Abatement or Refund of a Penalty or an Addition to Tax as a Result of Written Advice

Request an abatement or refund of a penalty or addition to tax because of erroneous written advice by writing “Request for Abatement of Penalty or Addition to Tax Under Section 6404(f)” at the top of Form 843.

Complete lines 1 through 4. Check the second box on line 5a. On line 5b, enter the date of payment if the penalty or addition to tax has been paid.

You must attach copies of the following information to Form 843.

1. Your written request for advice.
2. The erroneous written advice you relied on that was furnished to you by the IRS.
3. The report, if any, of tax adjustments identifying the penalty or addition to tax and the item(s) relating to the erroneous advice.

**When to file.** An abatement of any penalty or addition to tax as a result of written advice will be allowed only if:

- You submit the request for abatement within the period allowed for collection of the penalty or addition to tax, or
- You paid the penalty or addition to tax within the period allowed for claiming a credit or refund of such penalty or addition to tax.

## Line 6

Check the appropriate box to show the type of fee or return, if any, to which your claim or request relates. Check the box labeled “1040” to indicate other individual income tax returns (such as Form 1040-SR, Form 1040A, or Form 1040EZ). You must use Form 843 to request an abatement of the tax reported on the Form 4720. You cannot use Form 843 and you must use Form 4720 to request a refund of an overpayment computed on Form 4720, Part III, line 4.



*You can use Form 843 to request a refund or an abatement of interest, penalties, and additions to tax that relate to your income tax return. However, you cannot use Form 843 to request a refund or an abatement of income tax. If you are an employer, you cannot use it to request abatement of FICA tax, RRTA tax, or income tax withholding.*

Check the box labeled “Other (specify)” if your claim relates to any of the following.

- Form 944, Employer's ANNUAL Federal Tax Return. Enter “944” (or “944-SS”) in the space provided.
- Form CT-2, Employee Representative's Quarterly Railroad Tax Return. Enter “CT-2” in the space provided.
- The branded prescription drug fee. Enter “BPD Fee” in the space provided.

## Line 7

Explain in detail your reasons for filing this claim and show your computation for the credit, refund, or abatement. If you attach an additional sheet(s), include your name and SSN, ITIN, or employer identification number (EIN) on it. Also attach appropriate supporting evidence. Include a statement that to the extent of equivalent amounts of underpayment and overpayment for the period(s) identified and established, the period(s) has (have) been used only once in a request to obtain the net interest rate of zero under section 6621(d). See *Requesting Net Interest Rate of Zero on Overlapping Tax Underpayments and Overpayments*, later, for more information.

**Refund of excess social security, Medicare, or RRTA tax.** If you are claiming a refund of excess social security, Medicare, or RRTA tax withheld by one employer, you must, if possible, attach a statement from the employer. The statement should indicate the following.

- The amount, if any, the employer has repaid or reimbursed you for excess taxes withheld.
- The amount, if any, of credit or refund claimed by the employer or authorized by you to be claimed by the employer. The employer should include in the statement the fact that it is made in support of your claim for refund of employee tax paid by the employer to the IRS.

If you cannot obtain a statement from the employer, you should attach a statement with the same information to the best

of your knowledge and belief and include in the statement an explanation of why you could not obtain a statement from the employer. Attach a copy of your Form W-2 to prove the amount of social security, Medicare, or RRTA tax withheld.

**Refund of social security and Medicare tax withheld in error.** The same supporting evidence described above must be provided. If you are a nonresident alien, see Pub. 519 for additional information.

## Requesting Net Interest Rate of Zero on Overlapping Tax Underpayments and Overpayments

If you have paid or are liable for interest on a tax underpayment and have received or are due interest on a tax overpayment for the same period of time, you can request that the IRS compute the interest using the net interest rate of zero.

### How To Request a Net Interest Rate of Zero

You can request a net interest rate of zero by writing on top of Form 843 "Request for Net Interest Rate of Zero under Rev. Proc. 2000-26." You must provide documentation to substantiate that you are the taxpayer entitled to receive the interest due on the overpayment.

Leave line 1 blank. You can enter a dollar amount on line 2 or leave it blank. Complete line 3 to indicate the type of tax. More than one box can be checked. Do not complete lines 4 and 5. Complete line 6 to indicate the type of return filed. More than one box can be checked.

On line 7, provide all of the following information.

1. The tax periods for which you overpaid and underpaid your tax liability. A separate Form 843 is not required for each separate tax period involved in the request.
2. When you paid the tax if the underpayment is no longer outstanding.
3. When you received your tax refund if the overpayment is no longer outstanding.
4. The period(s) that your overpayment and underpayment overlapped and the overlapping amount. You should provide any background material (such as copies of examination reports, notices, or prior interest computations provided by the IRS) relating to the overpayment and underpayment.
5. A computation, to the extent possible, of the amount of interest to be credited, refunded, or abated. If you are unable to provide a computation, provide an explanation of why you are unable to provide the computation. The computation should generally be made by applying section 6621(d) to reduce your underpayment interest payable to the IRS. However, if only the period of limitation for claiming additional overpayment interest is open on the date you file Form 843, you should make the computation by applying section 6621(d) to increase your overpayment interest payable by the IRS.
6. Section 6621(d) provides for a net interest rate of zero to the extent of the overlapping underpayment and overpayment of the same taxpayer. If your claim involves more than one taxpayer identification number (TIN), explain why the different TINs can be treated as the same taxpayer.

---

**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. Sections 6402 and 6404 state the conditions under which you may file a claim for refund and request for abatement of certain taxes, penalties, and interest. Form 843 may be used to file your claim or request. Section 6109 requires that you disclose your taxpayer identification number (TIN). Routine uses of this information include giving it to the Department of Justice for civil or criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws. We may also give this information to federal and state agencies to enforce federal nontax criminal laws and to combat terrorism. You are not required to claim a refund or request an abatement; however, if you choose to do so, you are required to provide the information requested on this form. Failure to provide all of the requested information may delay or prevent processing your claim or request; providing false or fraudulent information may subject you to civil or criminal penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

<b>Recordkeeping</b> . . . . .	26 min.
<b>Learning about the law or the form</b> . . . . .	20 min.
<b>Preparing the form</b> . . . . .	28 min.
<b>Copying, assembling, and sending the form to the IRS</b> . . . . .	20 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can send us comments through [IRS.gov/FormComments](https://www.irs.gov/FormComments). Or you can send your comments to:

Internal Revenue Service  
Tax Forms and Publications Division  
1111 Constitution Ave. NW, IR-6526  
Washington, DC 20224

Do not send the form to this address. Instead, see *Where To File*, earlier.

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax forms and instructions.

---