

Tax Penalties & Penalty Abatement

Strategies for the Practitioner

Eric L. Green, Esq.



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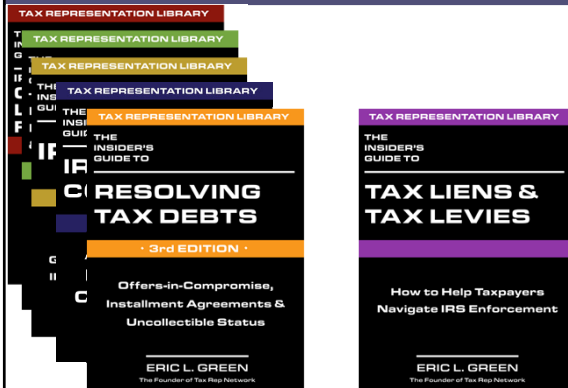
- ▶ Managing partner in Green & Sklarz LLC, a boutique tax firm with offices in Connecticut and New York.
- ▶ Focus is civil and criminal taxpayer representation before the Department of Justice Tax Division, Internal Revenue Service and state Departments of Revenue Services.
- ▶ Eric is a contributing columnist for Bloomberg Tax and has served as a columnist for CCH's Journal of Practice & Procedure.
- ▶ Attorney Green is the past Chair of the Executive Committee of the Connecticut Bar Association's Tax Section.
- ▶ Eric is a Fellow of the American College of Tax Counsel ("ACTC").



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Eric Green, Esq.



- Eric is the host of the weekly Tax Rep Network Podcast
- Eric is the founder of Tax Rep Network, an online community designed to help tax professionals build their IRS Representation Practice
- He is the author of the Accountant's Guides in IRS Representation
- Partnered with UConn and creator of the IRS Representation Certificate Program
- Creator of the Tax Rep App

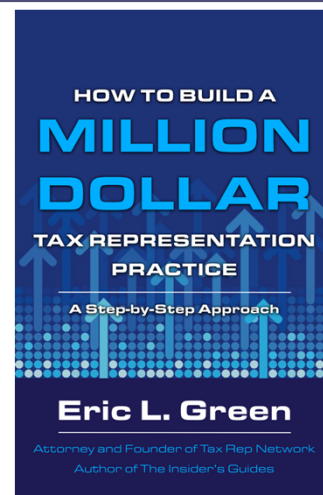


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Build Your Million \$ Rep Practice in 2023

- ▶ IRS enforcement tidal wave is coming
- ▶ You have the skills
- ▶ The demand is there
- ▶ <https://taxrepllc.com>



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Scaling New Heights – 6/25 – 6/27, 6/28

- ▶ We are doing 5 presentations – St. Louis, MO
- ▶ On Thursday June 28th we will do our own workshop, 8 hours of case studies!
- ▶ <https://www.woodard.com/scaling-new-heights>

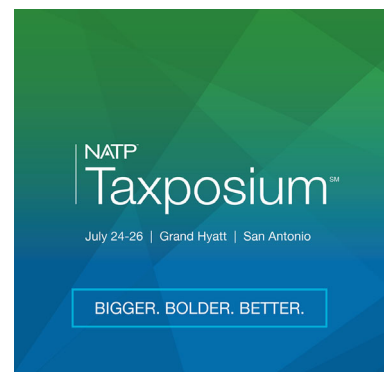


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NATP Taxposium – 7/23 – 7/26, 7/27

- ▶ We will be doing several tracks
- ▶ San Antonio, TX
- ▶ Tax Rep Workshop on 7/27, just 8 hours of case studies
- ▶ <https://www.taxposium.com/>



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Upcoming Programs

TRN Live: 8 hours of case studies

- ▶ St. Louis (6/29) following Scaling New Heights
- ▶ San Antonio (7/27) Following NATP's Taxposium

Join us at either, both in-person or via webcast

<https://taxrepllc.com/2023-trn-live/>



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10th Annual NE IRS Rep Conference

- ▶ Back at Mohegan Sun
- ▶ 11/30/23 (QU) and 12/1/23 (Mohegan)
- ▶ Free for Members
- ▶ <https://irsrepconference.com>



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Vegas was a great time...



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Orlando will be even better!!!!

- ▶ 12/13/23 – 12/15/23
- ▶ Drury Plaza Hotel – Disney Springs
- ▶ Members pay cost
- ▶ Includes breakfast, cocktail reception and wifi
- ▶ <https://taxrepllc.com/2023-summit>



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The Practitioner's Advisory Summit

- ▶ June 14th, 11:00 am – 4:30 pm EST
- ▶ 6 cpe credits for CPAs
- ▶ FREE!
- ▶ <https://taxrepllc.com/2023-advisory-summit/>

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Before we get started....

- ▶ 8 Attendance polls
- ▶ Please do the polls
- ▶ We will take a 5 minute break at the top of the hour
- ▶ Link to claim your certificate emailed tonight



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5-Minute Break



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Agenda

1. Background and Issue with Penalties
2. Civil Penalty Structure
3. Civil Fraud Penalty
4. Abatement Strategies



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Penalty Policy Considerations

- Encourage voluntary compliance
- Conserve IRS resources
- Provide clear guidance to taxpayers and practitioners
- Ensure consistent and fair treatment of the issues
- Ensure noncompliant behavior is penalized



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First Time Abatement

- IRS allows a first time penalty abatement for failure to file and failure to pay penalty
- See IRM 20.1.1.3.3.2.1 (11-21-2017)
- IRS provides administrative relief from the following penalties if the qualifying criteria contained in this subsection are met:
 - 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.



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First Time Abatement

- This administrative waiver, implemented in 2001, is referred to as First Time Abate (FTA) and is available for penalty relief the first time a taxpayer is subject to one or more of the referenced penalties for a single return. When FTA criteria have otherwise been met, do not provide penalty relief under the FTA waiver unless the following are true:
 - The taxpayer has filed, or filed a valid extension for, all required returns currently due, AND
 - The taxpayer has paid, or arranged to pay, any **tax** currently due.
- Does not apply to anything prior to 2001!



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Critical Considerations

- ▶ FTA applies only to taxpayers not penalized for the three years prior
- ▶ Pull transcripts to confirm this!
- ▶ This case – “Has never owed anything”
- ▶ So far looks good....

IRS ACCOUNT STATUS DASHBOARD

Year	Return Filed	Filing Status	Extension Date	Lien Active	Collections Active	Examination Active	Assessed Balance	Accrued Balance	Transcript Date
2020	No	S					\$0.00	\$0.00	7/1/2020
2019	No	S					\$0.00	\$0.00	7/1/2020
2018	Original	MFJ	10/15/2019		4/22/2020	4/27/2020#	\$269,636.55	\$278,353.58	7/1/2020
2017	Original	MFJ	10/15/2018				\$0.00	\$0.00	7/1/2020
2016	Amended	MFJ	10/15/2017			Closed	\$0.00	\$0.00	7/1/2020
2015	Amended	MFJ	10/15/2016			Closed	\$0.00	\$0.00	7/1/2020
2014	Amended	MFJ	10/15/2015			Closed	\$0.00	\$0.00	7/1/2020
2013	Original	MFJ	10/15/2014				\$0.00	\$0.00	7/1/2020
2012	Original	MFJ	10/15/2013			Closed#	\$0.00	(\$0.73)	7/1/2020
2011	Original	MFJ	10/15/2012				\$0.00	\$0.00	7/1/2020
2010	Original	MFJ	10/15/2011			Closed	\$0.00	\$0.00	7/1/2020
2009	Original	MFJ	10/15/2010				\$0.00	\$0.00	7/1/2020
2008	Original	MFJ	10/15/2009	Removed			\$0.00	\$0.00	7/1/2020
2007	Original	MFJ	10/15/2008				\$0.00	\$0.00	7/1/2020
2006	Original	MFJ	10/15/2007				\$0.00	\$0.00	7/1/2020
2005	Original	MFJ	10/15/2006			ASED exp	\$0.00	\$0.00	7/1/2020
2004	Original	MFJ	10/15/2005				\$0.00	\$0.00	7/1/2020
2003	No	S					\$0.00	\$0.00	7/1/2020
2002	Original	MFJ	10/15/2003				\$0.00	\$0.00	7/1/2020
2001	Original	MFJ	10/15/2002				\$0.00	\$0.00	7/1/2020

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Ooops.....

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
2020	No						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2019	No						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2018	Original	N			\$147,801.15		\$0.00	\$147,801.15	\$8,717.03	\$121,835.40	\$130,552.43
2017	Original	N			\$63,295.94		\$0.00	\$63,295.94	\$0.00	\$48,928.11	\$48,928.11
2016	Amended	N	Y		\$93,701.63		\$0.00	\$93,701.63	\$0.00	\$52,011.86	\$52,011.86
2015	Amended	N	Y		\$18,314.56		\$0.00	\$18,314.56	\$0.00	\$74.80	\$74.80
2014	Amended	N	Y		\$62,065.80		\$0.00	\$62,065.80	\$0.00	(\$715.32)	(\$715.32)
2013	Original	N			\$21,256.24		\$0.00	\$21,256.24	\$0.00	\$9,829.42	\$9,829.42
2012	Original	N			\$21,156.48		\$0.00	\$21,156.48	(\$0.73)	\$9,694.70	\$9,693.97
2011	Original	N			\$22,879.56		\$0.00	\$22,879.56	\$0.00	\$10,798.64	\$10,798.64
2010	Original	N			\$13,672.62		\$0.00	\$13,672.62	\$0.00	\$7,838.33	\$7,838.33
2009	Original	N			\$9,100.33		\$0.00	\$9,100.33	\$0.00	\$5,867.29	\$5,867.29
2008	Original	N			\$49,332.13		\$0.00	\$49,332.13	\$0.00	\$28,906.92	\$28,906.92
2007	Original	N			\$58,617.62		\$0.00	\$58,617.62	\$0.00	\$40,252.35	\$40,252.35
2006	Original	N			\$14,215.04		\$0.00	\$14,215.04	\$0.00	\$13,972.08	\$13,972.08
2005	Original	N			\$1,928.49		\$0.00	\$1,928.49	\$0.00	\$2,514.92	\$2,514.92
2004	Original	N			\$6,166.78		\$0.00	\$6,166.78	\$0.00	\$6,290.80	\$6,290.80
2003	No						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2002	Original	N			\$15,795.96		\$0.00	\$15,795.96	\$0.00	\$11,335.74	\$11,335.74
2001	Original	?			\$15,528.70		\$0.00	\$15,528.70	\$0.00	\$15,165.28	\$15,165.28

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Strategies for Exam

- Build credibility with the examiner through cooperation, timeliness, and transparency
- Assume penalties will be imposed and build defense throughout the exam
- Seek to discuss the examiner's position and negotiate before it goes to 30-day letter



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Strategies for Appeals

Appeals will not
simply concede

Use it as a bargaining
chip

Look at timing, taxpayer
history, specific
circumstances
Make sure the story fits!



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Appeals

- ▶ Wont just concede because of the policy considerations
- ▶ Argue for conceding but request the abatement
- ▶ Make sure to point out factors that support your argument:
 - a. Client actually incurred the expense
 - b. Client hired a competent-appearing professional
 - c. Client provided all info and was attempting to comply
 - d. Client has a good history

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Reasonable Cause - *Appeals*

- Does T/P explanation relate to the penalty?
- Do dates and times coincide?
- Could the non-compliance have been anticipated/prevented?
- Was it an honest mistake?
- Has T/P presented sufficient detail to determine if ordinary business care/prudence was used?



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Reasonable Cause - *Appeals*



- Is the T/P a financial professional?
- What is the T/P's history with compliance?
- Has the T/P had this issue before?
- Have there been prior abatements?



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Practice Tips

- ▶ Pull account transcripts to review history
- ▶ Charge the consult fee to review
- ▶ Get the documentation in advance and make sure it supports/lines up with the story

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Reasonable Cause

Use Form 843

Request abatement

Document your case

Appeal (30 days)

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Form 843
(Rev. August 2011)
Department of the Treasury
Internal Revenue Service

Claim for Refund and Request for Abatement

OMB No. 1545-0046

▶ 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 Forms 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 _____

1 Period. Prepare a separate Form 843 for each tax period or fee year.
From _____ to _____

2 Amount 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 relative to a joint return, both you and your spouse must sign the claim.

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Reasonable Cause - *Failure to File/Pay*

- Must be due to reasonable cause and not willful neglect
- Multiple years are bad
- Medical problems are good
- Death is better
- Insufficient funds are not a defense unless can show hardship



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Example

- Taxpayer files 8 years of late returns ('03-'10)
- Daughter had brain cancer in '05 at age 16, has surgery and recovers in '06
- Older brother and daughter both out of the house now and graduated from college
- Owes \$145,000 for the unfiled years, plus penalties and interest
- Wants to seek penalty relief, which should be easy like they say on late night TV commercials



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Example

- She sends us lots of medical documentation
- Consider
 - Could the non-compliance have been avoided
 - T/P's History
 - Does the story fit
 - What about the medical documentation?



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Now Consider This

- Husband is self-employed financial professional
- Two small children
- Wife is bi-polar and becomes suicidal after second child is born in '04
- Ceases filing and paying his taxes for '04-'05
- Owes \$62,000 of tax plus penalties and interest
- Sends medical documentation for his wife, who is now stable



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What is Different Here?

- Brief period of time
- Extreme family situation
- Medical documentation to support the story
- The story fits – non-compliance started immediately after medical crisis, ceased when under control



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Drafting the request

- ▶ Make the request – we are requesting penalty abatement for the following period(s)
- ▶ Factual background – how the client got here
- ▶ History – if a good history explain that
- ▶ Review the documentation – tab exhibits

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PRACTICE TIP!

- ▶ Make the reviewer's job easy
- ▶ Give them what they need to agree with you
- ▶ Do NOT expect them to go searching for information to help you
- ▶ Understand they are working remotely and limited, so make their decision to agree with you easy

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Stupid Comments Actually Heard...

- ▶ We gave all that to the auditor!
- ▶ Do they expect me to do their job for them?
- ▶ It's in the audit file!

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Google Reality!

- ▶ Assume they do not have it
- ▶ Assume they are working remotely
- ▶ Your package must have everything you want them to consider!
- ▶ When in doubt include it!

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Google Reality!

- ▶ Offers-in-Compromise: proof of compliance
- ▶ Appeals: copies of what was given to the auditor and ignored
- ▶ Penalty Abatement: include everything that is relevant regardless if its in a prior audit file, as ell as all new documentation (medical, insurance, etc)

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Reasonable Cause: *Reliance on Tax Advice*



- Relying on a tax opinion by a tax advisor may serve as a defense to the accuracy related penalty
- Must be objectively reasonable
- Must be based upon all pertinent facts
- Advice must not be based upon unreasonable factual or legal assumptions
- Does not cover the filing of a return that is missed



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Lindsay vs. US

- ▶ Taxpayer was incarcerated
- ▶ Hired someone to handle his taxes and gave them money
- ▶ Person claimed they were doing what they were supposed to and instead was actually embezzling
- ▶ Taxpayer had no problem communicating back and forth
- ▶ Court refused to abate penalty because taxpayer failed to properly oversee
- ▶ See Payroll/TFRP later

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Preparer/Promoter Penalties

- IRC §6694(a)—Unreasonable position
- IRC §6694(b)—Willful conduct or intentional or reckless disregard of rule/regs
- IRC §6695—Miscellaneous preparer misdeeds
- IRC §6695A—Appraisers
- IRC §6700—Promoters of abusive tax shelter



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Preparer/Promoter Penalties

- IRC §6701—Aiding/abetting understatement of tax
- IRC §6702—Frivolous returns
- IRC §6707 and 6707A—Information returns for reportable/listed transactions
- IRC §6708—List of advisees
- IRC §6713—Improper disclosure/use of return info by preparer



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You MUST Fight any preparer penalty

- ▶ Its not about the dollars
- ▶ Its about your ability to practice
 - a. always appeal
 - b. Always challenge
 - c. Never just pay no matter how trivial
- ▶ You must deal with this



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The Practitioner's Advisory Summit

- ▶ June 14th, 11:00 am – 4:30 pm EST
- ▶ 6 cpe credits for CPAs
- ▶ FREE!
- ▶ <https://taxrepllc.com/2023-advisory-summit/>

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New/Updated Books Released 5/1



<https://TGPublish.com>

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Live Events

- ▶ TRN Live (St. Louis and San Antonio) (6/29 and 7/27)

<https://taxrepllc.com/2023-trn-live/>

- ▶ New England IRS Rep (11/30 & 12/1)

<https://irsrepconference.com>

- ▶ Tax Rep Summit in Orlando (12/13 -12/15)

<https://taxrepllc.com/2023-summit/>

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Special Offer, good until 5/1

How about just Join Tax Rep and get everything!

- **TRN Gold Monthly**
 - Promotion: \$100 Off TRN Gold Monthly for 3 Months (\$315 to \$215)
 - Discount Code: **PENALTY100**
 - Order Form URL: <https://taxrepllc.com/annual>
- **TRN Gold Annual**
 - Promotion: \$600 Off TRN Gold Annual for 1 Year (from \$3,720 to \$3,120)
 - Discount Code: **PENALTY600**
 - Order Form URL: <https://taxrepllc.com/monthly>



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Questions?



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