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MEMORANDUM FOR TAXPAYER ADVOCATE SERVICE EMPLOYEES

FROM: /s/ Nina E. Olson
National Taxpayer Advocate

SUBJECT: Interim Guidance on Penalty Relief Advocacy, and
Using the Reasonable Cause Assistant (RCA)

The purpose of this memorandum is to help TAS employees discern how they can best advocate on behalf of taxpayers seeking penalty abatements, including abatement requests that the IRS considers using the Reasonable Cause Assistant (RCA). This memorandum consolidates and clarifies current guidance in the Internal Revenue Manual, Service Level Agreements, and Delegation Orders. Although this guidance is specific to penalty relief, Case Advocates can apply the general techniques and advocacy mindset to many other situations (e.g., examination cases).

Existing TAS guidance already provides some direction and information about advocating for penalty relief.

- In general, TAS employees do not have the delegated authority to make penalty abatement determinations on behalf of the IRS.¹
- TAS uses Operations Assistance Requests (OARs) as described in [IRM 13.1.19](#), *TAS OAR Process* (03-18-2011) to resolve requests for penalty relief.

¹ IRM 1.2.50.3, [Delegation Order No. 13-2 \(Rev. 1\)](#) (Mar. 3, 2008) states "This does not, however, include the authority to: ... accept/deny penalty abatement requests under the procedures contained in IRM 20.1.1.3 and IRM 21 (or successor provisions)." TAS does retain delegated authority to adjust Trust Fund Recovery Penalties (TFRP) in very narrow situations to reflect satisfaction of the TFRP by means other than payment by the taxpayer in question.

- TAS delegated authorities do not preclude TAS from making specific recommendations to the IRS to abate penalties. TAS employees can recommend the IRS reach a particular result in its penalty relief determination if TAS supports the recommendation with facts and appropriate documentation. See [IRM 13.1.4.2.3.4](#), *Recommendations vs. Determinations* (04-01-2003) for more information.

Background: Reasonable Cause Assistant (RCA)

Introduction

The Reasonable Cause Assistant is a decision-support software program designed to help IRS employees determine penalty relief for Individual Master File (IMF) Failure to File (FTF), IMF Failure to Pay (FTP), and Business Master File (BMF) Failure to Deposit (FTD) penalties through the Accounts Management Services (AMS) desktop application. See [IRM 20.1.1.3.6](#), *Reasonable Cause Assistant (RCA)* (12-11-2009). The IRS requires its employees (including Revenue Officers) to use the program where available for penalty abatement requests. RCA programming applies reasonable cause standards against the reasonable cause categories chosen by the user and the answers selected and dates entered in response to the questions posed by the RCA. To reach the correct determination, users must choose the applicable categories and answers based on the information provided by the taxpayer.

The RCA Conclusion

In specific circumstances, the RCA requires the taxpayer to provide documentation to support his or her claim before the system determines penalty relief. The RCA will reach one of five possible conclusions for the MFT and the tax period reviewed (listed in order of priority):

- Abate - reasonable cause established; remove penalty.
- Suspend - insufficient information; no conclusion reached.
- Sustain - reasonable cause not established.
- Mixed - abate one penalty/sustain the other.
- Other - not a reasonable cause issue. For example, a taxpayer disputes how the IRS computed a penalty.

Suspend Conclusion

The RCA reaches a Suspend conclusion if information about the taxpayer's claim is missing or incomplete. The Additional Information section explains what further information is required to substantiate the claim. The RCA displays all information needed to support a showing of reasonable cause.

Example: The taxpayer has not documented his statement that he was in the hospital at the time his tax return was due, which prevented him from timely filing.

Sustain Conclusion

When the RCA determines the taxpayer does not qualify for an abatement of penalties, it reaches a Sustain conclusion. The Module Conclusion section will explain the reasoning behind the conclusion.

Example: The taxpayer does not qualify for penalty relief under reasonable cause, statutory exception, or administrative waiver, so the RCA denies the FTP abatement request.

Mixed Conclusion

When the RCA reaches a mixed conclusion, the Additional Information Section only addresses the penalty sustained.

Example: The RCA may determine the taxpayer met reasonable cause for abatement of the FTF penalty but not for the FTP penalty.

First-Time Abate – Clean Compliance History

The RCA provides an option for penalty relief if the taxpayer has not previously been required to file a return, or if the IRS has not assessed FTF, FTP, or BMF FTD penalties against the taxpayer in the past three years. First-Time Abate (FTA) is also available if the IRS fully abated penalties assessed in the prior three years for reasonable cause. See [IRM 20.1.1.3.6.1](#), *FTA* (12-11-2009). The RCA will attempt to apply relief based on FTA before considering reasonable cause. Since the FTA is an administrative waiver and not abatement for reasonable cause, IRS employees are not required to go through a reasonable cause analysis to use FTA. Users must manually review modules in the three-year penalty history that are in retention. Eighty-two percent of all FY 2009 penalties abated under the RCA were attributable to the FTA waiver.

Reasonable Cause Category Selection

The Reasonable Cause FTF/FTP Category Selection Screen displays a list of possible reasons users can select, if applicable, based on the nature of the taxpayer's penalty relief request. Some factors in the Category Selection are:

- Casualty – fire destroyed records;
- Records unobtainable / destroyed;
- Unavoidable absence;
- Death or serious illness in the taxpayer's immediate family;
- Illness – unable to manage affairs; and
- IRS error – programming problems.

Abort/Override Conclusion

The user can abort an incorrect conclusion.

Example: The taxpayer filed a 2010 tax return late. The RCA correctly concluded there was no reasonable cause to abate the penalty. However,

the RCA failed to allow First-Time Abate because the method used by the IRS to resolve a stolen identity problem on the 2008 tax return. The RCA incorrectly concluded the taxpayer is not eligible for First-Time Abate. The Case Advocate researches the taxpayer's compliance history and determines the penalties assessed and reversed two years ago are all attributable to another taxpayer filing under this taxpayer's Social Security number. The Case Advocate recommends that the IRS abort the RCA conclusion and allow First-Time Abate.

The abort conclusion requires an explanation, which the Office of Servicewide Penalties reviews. If the case includes unique individual facts and circumstances that the RCA cannot consider, those elements must be carefully analyzed and must show, in accordance with the reasonable cause guidelines, that despite the exercise of ordinary business care and prudence, the taxpayer was unable to comply within the prescribed time. A determination to abort/override the RCA's conclusion cannot conflict with law or IRS policy.

Building the Case for Penalty Relief

Researching Relief Standards for the Penalty

Case Advocates must apply their knowledge of reasonable cause criteria, statutory exceptions, and administrative waivers when they contact the taxpayer to explore what information the taxpayer has available to make the strongest case for penalty abatement. Different penalties can have different relief standards, and some do not allow for reasonable cause abatement at all. See [IRM 20.1](#), *Penalty Handbook*, for more information. Case Advocates should consult the Internal Technical Advisor Program (ITAP) staff if they need assistance in researching the relief standards for a particular penalty. See Attachment 1 of this memorandum for some examples.

Requesting Information from the Taxpayer

Review the taxpayer's request for penalty relief. During initial contact with the taxpayer, have a conversation before asking for documentation. Explain the penalties assessed by the IRS, and discuss the relief standards available, including reasonable cause if applicable. Verify your understanding of the circumstances the taxpayer wants the IRS to consider. Explain that you need to ask relevant questions to explore available options for penalty relief. Explain the documentation needed to support the request, including alternative sources if the taxpayer does not have access to the types of records initially requested. Ask open-ended questions and listen for cues that the taxpayer's individual circumstances may make it difficult to provide documentation. Start with the assumption that you believe the taxpayer, even though they may not be able to provide timely or fully consistent answers. Work with them to assemble the best documentation they can provide.

Establish a due date for the taxpayer to provide the information.

Case Advocates will also explain TAS will forward the relevant documents to the IRS to advocate for penalty relief. See [IRM 13.1.5.6](#), *Communicating Confidentiality Rules to Taxpayers and Taxpayers' Representatives* (02-01-2011), for more information.

Considering Taxpayer Burden

If the IRS will consider a penalty abatement request using the RCA, Case Advocates should weigh taxpayer burden when requesting information. If the taxpayer will qualify for FTA relief, and the documentation to support reasonable cause will be extensive or difficult for the taxpayer to gather, Case Advocates should discuss with the taxpayer or representative the option of submitting a signed written request for penalty abatement without documentation. Explain that using the First-Time Abate will exclude its use again for the next three years. Allow the taxpayer to make this decision, and document your explanation and the taxpayer's decision on TAMIS. See [IRM 13.1.18.3](#) (15), *Initial Contact* (02-01-2011) for TAMIS history documentation requirements. The IRS will abate the penalty using FTA. See Examples 1 and 2 in Attachment 1 of this memorandum.

Alternatively, if the taxpayer will qualify for FTA relief, but the taxpayer is willing to provide (without excess burden) reasonable cause documentation, they should do so. If TAS can advocate for reasonable cause, the taxpayer's compliance history will remain clean and the FTA is preserved if the taxpayer needs it in a future tax year. See Example 3 in Attachment 1 of this memorandum.

In cases where the IRS has not yet considered or received the taxpayer's penalty abatement request, Case Advocates should secure a signed written request for penalty abatement as a best practice if the Refund Statute Expiration Date (RSED) is near expiration, even if the amount of the penalty is below the oral statement criteria in [IRM 20.1.1.3.1](#), *Unsigned or Oral Requests for Penalty Relief* (12-11-2009). Case Advocates should send the written informal claim via OAR as soon as possible, so that the IRS receives it on or before the RSED. This will protect taxpayers from the RSED expiring while the IRS considers the abatement request.

Analyzing How Best to Advocate for Relief

Case Advocates will analyze the taxpayer's information to determine how best to advocate for penalty relief. If the penalty is an IMF Failure to File, IMF Failure to Pay, or BMF Failure to Deposit penalty, Case Advocates will use the RCA to analyze whether penalty relief may be appropriate due to reasonable cause, statutory exception, or administrative waiver.

Although TAS generally does not have the delegated authority to abate penalties, TAS employees nonetheless have access to the RCA because they must build their cases prior to sending an OAR to the Operating Division (OD)/Function. This includes determining whether the taxpayer is entitled to penalty abatement.

Case Advocates using the RCA will determine what category or categories (if any) will result in abatement. If the RCA decides to sustain the penalty, Case Advocates should review the facts and circumstances to determine if an RCA override is appropriate, and should consult ITAP if they need help making this determination.

IMPORTANT: After using the RCA, Case Advocates must always “Cancel” out of the RCA program before it makes any adjustments.

Deciding the Type of OAR Recommendation to Make to the IRS

Once Case Advocates receive the taxpayer’s information and evaluate it against penalty relief standards (including reasonable cause), Case Advocates must choose between two types of OAR recommendations.

Advocating For Penalty Relief

If analysis supports abatement, using neutral OAR language would not effectively advocate for the taxpayer. Case Advocates must direct the IRS to abate the penalty based on the law, facts, and supporting documentation. The OAR will include a request to contact the Case Advocate before sustaining the penalty and rejecting the OAR, so TAS can discuss the disagreement with the function before the taxpayer receives a denial letter.

Sample language for the OAR when TAS supports abatement: “Based on the information provided, it is TAS’s position that \$(insert dollar amount or “all” as applicable) of the (insert type) penalty is eligible for abatement based on (reasonable cause or first-time abate) due to (category of reasonable cause, statutory exception, or administrative waiver). (Insert an explanation of why the supporting documentation supports such a position.) We recommend you abate the penalty for reasons explained above. If you disagree and intend to sustain the penalty, contact me with an explanation and allow me three work days to review your reasoning before you sustain the penalty, per the Service Level Agreement (SLA).”

If the IRS function decides to sustain the penalty, the three-workday period TAS requested will give TAS a window of time to elevate the issue and consider a Taxpayer Assistance Order (TAO) before the IRS denies penalty abatement.

When documentation supports advocating for penalty relief, an OAR should not take a neutral stance and simply ask the IRS to make a penalty relief determination. Although neutral language can be appropriate in other situations (see the following section), it is not appropriate when the facts and circumstances allow TAS to advocate for penalty relief.

Example of an underdeveloped OAR when TAS can advocate for penalty relief: “Based on the information provided, consider the taxpayer’s request for (insert type of penalty) relief. Input the necessary adjustments for any penalty abated. If you deny the request, send the

proper disallowance letter with appeal rights to the taxpayer, and provide a copy to TAS.”

Recommending the IRS Consider the Penalty Relief Request

If the Case Advocate’s analysis of the facts and supporting documentation does not support abatement and the IRS has not yet made a determination on the penalty abatement request, then Case Advocates should use neutral language in their OAR recommendations to ask the IRS to consider the penalty abatement. The taxpayer is entitled to receive a decision on the abatement request, even if the information received does not support abatement. To do otherwise would create delays beyond those that brought the taxpayer to TAS in the first place, and would deny the taxpayer his or her proper appeal rights. See [IRM 13.1.19.4 \(4\)](#), *OAR Preparation* (02-01-2011) and Example 6 in Attachment 1 of this memorandum for examples of neutral language.

Sample neutral language for the OAR when TAS is unable to advocate for penalty relief: “Based on the information provided, consider the taxpayer’s request for (insert type of penalty) relief. Input the necessary adjustments for any penalty abated. If you deny the request, send the proper disallowance letter with appeal rights to the taxpayer, and provide a copy to TAS.”

Note: As advocates, TAS employees should advocate zealously for the best result possible for the taxpayer under the law, after conducting an independent and impartial review of the facts and explaining our position to the IRS. Case Advocates should only use neutral language if the facts and accompanying documentation do not support abatement.

Advocating for the “In Between” Cases

The two sections above describe situations where the taxpayer has a strong and a weak case, respectively. Case Advocates may also encounter “in between” cases.

Example: The taxpayer does not qualify for First-Time Abate, but does seek penalty relief for reasons that meet reasonable cause. However, the documentation received is incomplete, includes conflicting information, or only covers a portion of the period for which the taxpayer seeks penalty relief.

In these situations, Case Advocates must use their good judgment and discretion to determine if a follow-up request to the taxpayer for more information would be beneficial. The follow-up contact could point out the weaknesses in the information received and suggest additional information that would strengthen the case. Case Advocates should ask themselves the following questions when deciding whether to make a follow-up contact for additional information.

- During previous contacts, did the Case Advocate ask for the missing information, and did the taxpayer state whether it was available?
- Would a follow-up contact provide the Case Advocate an opportunity to explain why the IRS needs the information requested and to determine if the taxpayer had problems securing that information? The Case Advocate and taxpayer may be able to identify alternative documentation sources.
- Can TAS advocate for penalty relief by considering the existing information in a manner most favorable to the taxpayer?

After careful consideration of these questions, Case Advocates will again use their good judgment and discretion to determine whether to

- Make a follow-up contact to the taxpayer for additional information;
- Issue an OAR that advocates for penalty relief; or
- Issue an OAR that recommends the IRS consider the penalty relief request using neutral language.

Note: When making follow-up contacts for additional information, Case Advocates should avoid the perception that they are burdening the taxpayer with repeated information requests. The initial request for documentation should be as complete as possible, but must include only the information TAS needs to advocate for relief of the taxpayer's problem.

Deciding How to Resolve Disagreements with the IRS Penalty Determination

When the IRS disagrees with an OAR relief recommendation and sustains the penalty, Case Advocates should review the reasons given to determine if and how TAS should dispute the determination. If Case Advocates agree with the IRS's explanation, then Case Advocates will close their OARs without further action (or if the IRS suspended the request pending TAS review, Case Advocates should advise the employee assigned the OAR to proceed with sustaining the penalty). The taxpayer can still exercise appeal rights per the denial letter. Case Advocates will advise the taxpayer of their appeal rights provided in the denial letter during the closing contact per [IRM 13.1.21.1.2](#) (2)(f), *Closing Actions* (05-17-2010).

If TAS decides to dispute the IRS's OAR determination, the action can occur at three levels.

- Using the guidance in [IRM 13.1.19](#), *TAS OAR Process* (03-18-2011) and the applicable Service Level Agreement, Case Advocates can:
 - Negotiate with the assigned IRS employees; or
 - Elevate the disagreement so the managers of the employees involved can discuss the OAR.
- Using the guidance in [IRM 13.1.20](#), *TAS Taxpayer Assistance Order (TAO) Process* (02-01-2011), Local Taxpayer Advocates (LTAs) can

advocate for abatement with the appropriate IRS management official through a TAO.

[Internal Revenue Code \(IRC\) § 7811 \(b\)\(2\)\(D\)](#) permits TAS to issue a TAO that requires the IRS to take any action permitted by law, with respect to a taxpayer as described in IRC § 7811 (b). If the LTA believes the taxpayer is entitled to penalty relief, use the TAO to persuasively advocate for such relief. State your position and the desired action in the TAO, and require the IRS to expedite, reconsider, or review its position in light of the information provided. See [IRM 13.1.20.3.1](#), *Terms of a TAO* (12-15-2007) for more information. LTAs should not write the TAO passively to ask the IRS simply to review the prior decision to sustain the penalty. The TAO must argue convincingly that expedited consideration, reconsideration, or review at a higher level is warranted.

Sample language for the TAO: “It is TAS’s position that the IRS should abate the penalties described below. Reconsider abating \$(insert dollar amount) of the (insert type) penalty for (MFT YYYYMM) based on (reasonable cause, statutory exception, administrative waiver, etc.) due to (category of reasonable cause, exception, or waiver). (Explain why the documentation supports a request to reconsider the IRS’s previous penalty determination.)”

OAR dispute elevation can occur at all three levels, even if the IRS initially ignored TAS’s request to suspend a denial of penalty abatement, to allow a discussion between TAS and the function. Even if the OD/Function issued a denial letter and input the disallowance adjustment, the OD/Function can reverse that decision and abate the penalty without Appeals involvement.

Advocating During the Appeals Process

At any level of OAR disagreement, it may be more productive for the taxpayer to raise the issue in Appeals, rather than continuing to dispute the abatement denial with the OD/Function. Appeals can consider case law and hazards of litigation. If the issue is grey or mixed, Appeals may be a better option for settlement. Discuss this with the taxpayer or his or her representative, and if the taxpayer decides to go to Appeals, the taxpayer must file an appeal to the denial of penalty relief. Once the taxpayer’s penalty appeal package is in Appeals, Case Advocates can use the OAR process to advocate for penalty relief to Appeals. Case Advocates will keep the TAS case open until Appeals makes its penalty relief decision. See [IRM 13.1.21.1.3.2](#) (1)(b), *Appeals* (02-01-2011) for more information.

If TAS does not extend its involvement into the penalty appeal, taxpayers can still exercise the appeal rights described in the disallowance letter on their own.

Note: Even though this memorandum is specific to penalties, TAS employees can use the advocacy process described here to help taxpayers facing other issues. When TAS can make a case for relief, Case Advocates should direct the

IRS to take a specific course of action to provide relief. Limit the use of neutral language to situations where TAS is unable to advocate for relief based on the available information.

Effect on Other Documents

This guidance will be incorporated into a new section of IRM 13.1, *Taxpayer Advocate Case Procedures, Legislative History and Organizational Structure*.

Contact

If you have any questions, please contact Mara Christian, Chief, Policy Group, at 505-837-5707.

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Examples

Example 1: Advocating for First-Time Abate Rather Than Reasonable Cause

The First-Time Abate (FTA) is an administrative waiver that generally allows a taxpayer relief from certain penalties if the taxpayer had not been previously required to file a return, or if the IRS has not assessed certain penalties in the prior three years. FTA is also available if the IRS fully abated for reasonable cause penalties assessed in the prior three years. See [IRM 20.1.1.3.6.1](#), *FTA* (12-11-2009) for more information. The Reasonable Cause Assistant prompts users to abate penalties via the FTA option by default for qualified taxpayers. Case Advocates will recommend use of the FTA when no other options apply. If using FTA will result in a larger penalty abatement or when the other options would burden the taxpayer due to documentation requirements, the Case Advocate should discuss the FTA option with the taxpayer. If the taxpayer decides to pursue the FTA option, TAS will recommend the IRS use FTA to abate the penalty.

If a taxpayer requests Failure To Pay (FTP) penalty abatement, but can only support reasonable cause for a short period, the RCA will allow FTP abatement only for the period in question, not in full. Case Advocates should use their judgment in these situations to determine if advocating for use of the FTA would be in the best interest of the taxpayer and discuss the various options for relief with the taxpayer. For example, if a taxpayer with a clean compliance history requests FTP penalty abatement due to a two-week illness but the tax remained unpaid for one year, then the Case Advocate should recommend that the taxpayer seek full abatement based on FTA, not reasonable cause. Case Advocates should access the RCA to confirm it will abate the FTP penalty based on FTA.

Suggested language for the OAR: “The taxpayer provided a signed written statement requesting the FTP penalties be removed in full. The taxpayer experienced a medical emergency that prevented him from paying on time, and has a clean compliance history. The taxpayer full paid the tax on the account. Because the medical emergency was for such a short period, it is TAS’s position that the entire FTP penalty is eligible for abatement under the First-Time Abate waiver per [IRM 20.1.1.3.6.1](#), *First Time Abate* (12/11/2009). We recommend you abate the penalty for the reasons explained above. If the RCA conclusion is to sustain any part of the FTP penalty, please suspend the case, contact me with an explanation, and allow me three work days to review your reasoning before you sustain the penalty, per the Service Level Agreement (SLA).”

Example 2: Advocating Use of First-Time Abate

The taxpayer requests abatement of FTF and FTP penalties in a written, signed statement which explains that the taxpayer usually files timely and pays in full, but does not give a reason for filing and paying late this year. The Case Advocate contacts the taxpayer to ask relevant and appropriate questions but finds no specific reason why the taxpayer did not file or pay timely. The taxpayer fully paid the tax owed with the late return. Accessing the RCA, the Case Advocate finds the RCA concludes the taxpayer compliance history qualifies the taxpayer for First-Time Abate.

Suggested language for the OAR: “The taxpayer provided a signed written statement requesting abatement of the FTF and FTP penalties. I verified the taxpayer has not been charged FTF or FTP penalties in the past three years. The taxpayer paid the tax in full. It is TAS’s position that all of the FTF and FTP penalties on the account are eligible for abatement under the First-Time Abate waiver per [IRM 20.1.1.3.6.1](#), *First Time Abate* (12-11-2009). We recommend you abate the penalties for the reasons explained above. If the RCA conclusion is to sustain either penalty, please suspend the case, contact me with an explanation, and allow me three work days to review your reasoning before you sustain either penalty, per the Service Level Agreement (SLA).”

Example 3: Advocating Not To Use First-Time Abate

The use of FTA is sometimes not in the best interest of the taxpayer. If TAS can advocate for the IRS to abate the penalty for reasonable cause rather than FTA, the taxpayer’s compliance history will remain clean and the FTA is preserved for a future tax year if the taxpayer needs it.

The taxpayer requests Failure to File (FTF) and FTP penalty abatement due to a fire (casualty), and provides a report from the Fire Department stating an electrical short caused a fire that extensively damaged the taxpayer’s home two weeks before the filing deadline. The taxpayer filed two months later after recreating records. Accessing the RCA, the Case Advocate confirms the casualty causing lost records will abate the FTF and FTP penalties based on reasonable cause, but also finds the RCA could remove the penalty based on FTA. After discussing the options with the taxpayer, the Case Advocate recommends that the IRS abate the penalty due to reasonable cause, not FTA.

Suggested language for the OAR: “A fire in the taxpayer’s home destroyed records needed to file a return. See the supporting documentation provided. It is TAS’s position that the entire FTF and FTP penalty is eligible for abatement due to reasonable cause (casualty destroyed records) as the taxpayer filed the return with full payment two months after the fire. The two-month delay represented the time it took

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the taxpayer to recreate the records necessary to file an accurate return. We recommend you abate the penalties for the reasons explained above. If the RCA conclusion is to sustain either penalty or to utilize FTA, please suspend the case, contact me with an explanation, and allow me three work days to review your reasoning before you sustain the penalty, per the Service Level Agreement (SLA).”

Example 4: Advocating for Relief Due to IRS Error

The taxpayer receives a balance due notice, pays the amount due, receives a refund for the same amount, then receives another balance due notice (and the cycle repeats several times). Case Advocate research finds the balance owed is due to adjustments of timely withholding credits. The Case Advocate also discovers this is a known IDRS programming problem that requires manual restriction of the FTP penalty.

Many IDRS programming problems can cause over-assessment of the FTP penalty.²

- Multiple transaction codes 520 and 521 on the account;
- Multiple collection status codes of 60 and 64 on the account; and
- Reversed refundable credits.

The Case Advocate conducts a compliance check and finds the IRS charged a correct FTP penalty in a prior year, so full abatement of the FTP penalty under First-Time Abate is not available. However, the taxpayer is still eligible for partial penalty relief due to the IRS error for the tax period open in TAS. The case advocate makes a referral to a Campus Technical Advisor (CTA) for assistance due to the complexity of a manual FTP computation. Accessing the RCA, the Case Advocate identifies an IRS error category, but finds the RCA cannot compute the erroneous penalty, and the IRS must input the abatement manually. The Case Advocate and CTA manually compute the proper FTP penalty for the period.

Suggested language for the OAR: “The balance due on the account is the result of an IRS programming problem for the FTP penalty. (Include a description of the programming problem identified.) The balance due is the result of an adjustment of timely credits. I have provided a computation showing the correct FTP penalty. I recommend assignment of this OAR to a penalty computation specialist to verify our computation. It is TAS’s position that the FTP penalty on the account is excessive due to IRS error. We recommend you abate the FTP penalty so it matches the FTP computation I provided. If the RCA conclusion is to sustain the FTP penalty, please suspend the case, contact me with an explanation, and

² [IRM 20.1.2.1.5](#), *Manual Penalty Adjustments* (Apr. 19, 2011).

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allow me three work days to review your reasoning before you sustain the penalty, per the Service Level Agreement (SLA).”

Example 5: Advocating for Unavoidable Absence

The taxpayer requests FTF and FTP penalty abatement because he was hospitalized due to an accident, and provides a doctor-signed statement confirming the hospitalization. The taxpayer also states there was no one to handle his affairs. The Case Advocate verifies the taxpayer has a clean compliance history. The taxpayer filed and paid the tax in full in mid-May. The doctor’s statement shows the span of hospitalization began before April 15 and ended a few days before the taxpayer filed. Accessing the RCA, the Case Advocate selects all appropriate categories, and verifies the RCA will reach a conclusion to abate the penalties in full for reasonable cause.

Suggested language for the OAR: “The taxpayer was hospitalized unexpectedly from April xx through May xx, preventing him from filing and paying his taxes timely. The doctor’s statement verifies hospitalization through the dates indicated. The taxpayer filed and paid the tax in full promptly once released from the hospital. The taxpayer states there was no one to handle his affairs. It is TAS’s position that all of the FTF and FTP penalties are eligible for abatement due to unavoidable absence. We recommend you abate the penalties for the reasons explained above. If the RCA conclusion is to sustain either penalty, please suspend the case, contact me with an explanation, and allow me three work days to review your reasoning before you sustain either penalty, per the Service Level Agreement (SLA).”

Example 6: Advocating When the Explanation Does Not Meet Reasonable Cause

The taxpayer requests abatement of FTF and FTP penalties. The Case Advocate conducts a compliance check and finds recent assessments of both penalties. During initial contact, the Case Advocate has a conversation with the taxpayer, and explains acceptable reasonable cause standards for both penalties. The Case Advocate explains the need to ask some respectful but specific questions to determine if there are circumstances that may merit reasonable cause. *Why are you filing your tax returns late? Did you file an extension? Are there circumstances preventing you from filing and paying timely?* The taxpayer states he works a lot, did not have time to file his return or request an extension, and could not pay the tax timely. Accessing the RCA, the Case Advocate explores the available categories, but cannot find a reason to abate the penalty, and sees no facts or circumstances that will justify overriding the RCA decision to sustain the penalties.

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The Case Advocate has an honest discussion with the taxpayer, stating TAS can forward the abatement request to the IRS for consideration. However, the circumstances described do not appear to meet the standard of ordinary business care and prudence needed to abate the penalties for reasonable cause. Based on the reason the taxpayer came to TAS, the Case Advocate might also say that even though the IRS will most likely deny the abatement request, it still has a responsibility to timely consider and respond to the request. TAS will make sure the IRS does so, and if the IRS denies the abatement request, TAS will make sure the taxpayer receives the proper appeal rights.

Suggested neutral language for the OAR: “Based on the information provided, consider the taxpayer’s request for FTF and FTP penalty relief. Input the necessary adjustments for any penalty abated. If you deny the request, send the proper disallowance letter with appeal rights to the taxpayer, and provide a copy to TAS.”