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# Fixing Missed Deadlines

## 2016 IRS Nationwide Tax Forum





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# Topics

- First-time penalty abatement (FTA)
- Offer in Compromise - Doubt as to Liability (DATL) & Audit Reconsideration
- Rule 9100
- IRA Rollover





# First-time penalty abatement (FTA)

- Qualifications
  - Must have filed or filed a valid extension for all required returns
  - Must have paid, or arranged to pay all tax due
  - No prior penalties (except estimated tax penalty) for the preceding three years.
  - A prior reasonable cause abatement granted in preceding three years, still eligible for FTA





# First-time penalty abatement (FTA)

- See IRM, pt. 20.1.1.3.6.1 (Aug. 5, 2014).
- IRS will abate failure to file, failure to pay, and failure to make timely deposits under IRC §§ 6651(a)(1), 6651(a)(2), 6651(a)(3), 6656, 6698(a)(1), and 6699(a)(1)
- The estimated tax and accuracy related penalties cannot be waived under FTA





# First-time penalty abatement (FTA)

- FTA only applies to one tax year/period
- If more than one period is being considered, the FTA will apply to the earliest year/period





# First-time penalty abatement (FTA)

- To request FTA - Call Practitioner's Priority line (PPL) – (866) 860-4259
- If case is managed by a local IRS office, call the Revenue Officer assigned
- At times the penalty amount may be too high for PPL to abate over the phone. Write to the IRS at any Service Center address, or the address where the return was filed





# Offer in Compromise

- An OIC is an agreement between a taxpayer and the Internal Revenue Service (“IRS” or “Service”) that settles a tax debt for less than the full amount owed
- Code section 7122 → Service has discretion to settle a tax liability for less than the full amount owed
- The Service’s policy towards OICs is expressed in Policy Statement P-5-100 (See IRM, pt. 5.8.1.1.3 (Feb. 26, 2013))





# Offer in Compromise – Doubt as to Liability (DATL)

- DATL exists where there is a genuine dispute as to the existence or amount of the correct tax
- DATL should stop the collection process
- See Taxpayer Bill of Rights





# Offer in Compromise – Doubt as to Liability (DATL)

- Doubt as to Liability is rarely granted, and reviews are “conducted in a manner similar to an audit reconsideration examination.” IRM pt. 4.18.2.4.1 (Dec. 09, 2008)
- Neither Appeals nor Tax Court will review a DATL Offer if Taxpayer had prior opportunity to contest underlying tax
  - Mailed Notice of Deficiency to last know address
  - Mailed Determination Notice to last known address





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# Offer in Compromise – Doubt as to Liability (DATL)

- Complete a Form 656-L
- No deposit or application fee is required
- Include a summary of the taxpayer's legal position as an attachment to Form 656-L, including an analysis of the litigation risks to the IRS





# Offer in Compromise – Doubt as to Liability (DATL)

- Hazards of litigation factors:
  - Appeals will apply the Hazards of Litigation Standards to figure out a settlement that is right for the Taxpayer
  - Example: Taxpayer disagrees with the underlying liability (SFR)

IRS has a hazard and usually settles on percentage of hazard





# Audit Reconsideration

## Pre-requisites

- Taxpayer did not appear for audit. Audit was concluded with an assessment of tax
- Taxpayer disagrees with assessment
- Taxpayer received 30-day and 90-day letter but did not respond
- Taxpayer moved and did not receive the IRS correspondence
- Taxpayer has new documentation to present
- Taxpayer disagrees with SFR assessment





# Audit Reconsideration

- Taxpayer must identify each adjustment being disputed and provide the additional information for each disputed item
- SFR - Mail information to ASFR unit
- Information based on audit assessment - mail information to Service Center where audit was conducted

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# Differences Between Audit Reconsideration and DATL

- Audit Reconsideration = discretionary vs. DATL = statutory;
- Audit Reconsideration = all prerequisites for filing must be met vs. DATL = same prerequisites not required;
- Audit Reconsideration decided on the merits and must be submitted with all supporting documentation;
- DATL = Appeals Officer can settle the issue based on hazards of litigation.





# 9100 Relief

- Automatic 12 or 6 month extensions.
- Non-Automatic Treas. Reg. § 301.9100-3 request.





# 9100 Relief – Automatic Extensions

- 6-month extension available for regulatory and statutory elections that are due on the due date of the return.
- The Taxpayer should have timely filed the return for the year that the election should have been made
- The Taxpayer should take corrective action within the 6-month extension period.





# 9100 Relief – Automatic Extensions

- 12-month extension is available for regulatory elections that are identified in Treas. Reg. §301.9100-2(a)(1).
- The extension is available even if the taxpayer did not timely file the return for the year in which the election should have been made.
- The taxpayer must take corrective action during the extension period.





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# 9100 Relief – Automatic Extensions

Statute	Election
IRC § 444	Use of another taxable year
IRC § 472	Use of the LIFO inventory method
IRC § 505	Filing an exemption application for 501(c)(9), 501(c)(17) or 501(c)(20) organizations
IRC § 508	Filing an exemption application for 501(c)(3)
IRC § 528	Treatment as a homeowner association
IRC § 754	Adjustment to partnership transfers and distributions
IRC § 2031A(d)(1)	Special valuation of qualified real property
IRC § 2701(c)(3)(C)(i)	Treatment of qualified payment as other than qualified payment
IRC § 2701(c)(3)(C)(ii)	Treatment of any distribution right as a qualified payment

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# 9100 Relief – Corrective Action

- Take steps to file the election in accordance with the applicable laws;
- If the election must be made with the return, the taxpayer must file an original or amended return for the year in which election must be made;
- Tax returns must be filed in a manner that is consistent with the election.





# 9100 Relief – Procedures

- The required return or form must be filed with the following statement on top “FILED PURSUANT TO § 301.9100-2”
- The filing to obtain the automatic extension must be made with the address where the return or form would have been filed with a timely election.
- No request for a letter ruling is required for automatic extensions.





# 9100 Relief – Non-automatic Extensions

- Taxpayer must provide evidence that:
  - The Taxpayer acted reasonably and in good faith;
  - The grant of relief will not prejudice the interest of the Government.





# 9100 Relief – Reasonableness

- Reasonableness presumed if:
  - Taxpayer requests relief before the IRS discovers failure to make election;
  - Taxpayer had intervening events beyond his control;
  - Taxpayer exercised reasonable diligence but was nevertheless unaware of the necessity of the election;
  - Taxpayer reasonably relied on IRS’s written advice; or
  - Taxpayer reasonably relied on a qualified professional who failed to advise on the need to make the election.





# 9100 Relief – Reasonableness

- Presumption of reasonableness is defeated when:
  - Taxpayer seeks to alter a return position for which an accuracy related penalty could be imposed;
  - Taxpayer was informed of election requirement and tax consequences but chose not to make election;
  - Taxpayer uses hindsight to request relief.





# 9100 Relief – Reasonableness

- Hindsight plays a role when the late election gives the taxpayer an advantage that was not available on the due date of the return.
- Example: Taxpayer reports capital gains in Years 1 through 3. In Year 4, taxpayer incurs high short-term capital loss and seeks to make a late 475(f) election to use losses above the \$3,000 limitation.





# 9100 Relief – Prejudice

- The interests of the Government are prejudiced if granting the election would result in a lower tax liability than if the taxpayer had filed a timely election.
- This presumption does not apply when there are unusual or compelling circumstances..





# 9100 Relief – Procedures

- Must meet format for a private letter ruling request.
- Must contain complete statement of facts relating to the transaction.
- Must state whether the taxpayer is under examination.
- Must include detailed affidavit from taxpayer and others with knowledge.
- Must be submitted with appropriate user fee.





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# IRA Rollovers

- No limit on yearly Trustee to Trustee Transfers
- Only one qualified rollover per year (not a calendar year) no matter the number of IRAs
- Qualified Rollover:
  - distribution from an IRA or a retirement plan is paid directly to Taxpayer
  - deposit all or a portion of it in an IRA or a retirement plan within 60 days





# IRA Rollovers

- Failure to deposit the IRA distribution into another plan within 60 days causes the distribution to become includable in gross income and possibly subject to the 10% early withdrawal penalty (e.g., if less than required age)
- Depositing the funds into an IRA after 60-days may trigger the excess contribution penalty





# Fixing the Late Rollover

- **Waiver of 60-day requirement.**--The Secretary may waive the 60-day requirement under subparagraphs (A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement  
I.R.C. §408(d)(3)(I)





# Fixing the Late Rollover

- If financial institution's fault → automatic waiver if the following conditions are met (Rev. Proc. 2003-16):
  - financial institution receives funds prior to the expiration of the 60-day rollover period
  - the taxpayer follows all procedures required by the financial institution for depositing the funds into an eligible retirement plan within the 60-day period
  - solely due to an error on the part of the financial institution, the funds are not deposited into an eligible retirement plan within the 60-day rollover period.
  - Automatic approval is granted only: (1) if the funds are deposited into an eligible retirement plan within 1 year from the beginning of the 60-day rollover period; and (2) if the financial institution had deposited the funds as instructed





# Fixing the Late Rollover

- Private Letter Ruling: Rev. Proc. 2015-1; Rev. Proc. 2015-8
  - IRS Fee of \$500, \$1500, or \$3,000 depending on rollover amount





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# Fixing the Late Rollover

- Qualification for waiver:

“The Service will issue a ruling waiving the 60-day rollover requirement in cases where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster or other events beyond the reasonable control of the taxpayer. In determining whether to grant a waiver, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution, other than as described in Section 3.03 below; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.” Rev. Proc. 2003-16.

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# Questions?