

## If I Agree To Pay The Tax In Full, Will The IRS Simply Forgive The Interest And Penalties

By George W. Connelly

This is a question I hear from a lot of clients who owe the IRS money, because either they were not able to pay everything on their tax return when it was filed, or they endured an IRS audit and adjustments were unfavorable to them. The fact of the matter is that, outside the confines of an Offer in Compromise based on doubt as to collectability, which is governed by I.R.C. § 7122 and an analysis of the taxpayer's **ability** to pay the liability in full, the IRS has a lot less discretion in this area than most people think.

Let's look at interest first. Pursuant to I.R.C. § 6601, interest generally runs from the time a tax return is due until the time the tax is paid. One exception is an

"assessable" penalty, for which case the interest runs from the date the penalty is

assessed. Internal Revenue Code § 6404(g) permits the IRS to waive interest, but two circumstances must be present. First, this only relates to interest on income tax, so that if we're talking about estate tax, excise tax, or employment tax, there is no legal authority for the IRS to "waive" interest. Second, there must be a showing that the interest ran as a result of some error or delay on the part of the Internal Revenue Service in the performance of a "ministerial" act. As you can imagine, the IRS rarely admits that such a mistake has occurred, and there are disappointingly few cases in which taxpayers have successfully gone to Court and had this position overturned as an abuse of discretion.



With respect to penalties, it all depends. I.R.C. § 6404(f) permits the I.R.S. to abate any penalty when it provided erroneous **written** advice, in response to a **written** request for advice, and the taxpayer reasonably relied on it. Telephone or in person advice does not qualify, and is almost impossible to prove anyway.

In most other situations, we are talking about the failure to pay estimated taxes, deposit employment taxes, file the return on time, or pay a tax after it has been assessed. The failure to pay estimated taxes rules do not have a "reasonable cause" safety valve: a taxpayer either meets certain safe harbors, based on the amount of tax on the return in question or the prior year's return, or must pay the penalty. All of the others have a "reasonable cause" defense. Without belaboring the point, the IRS will not waive a penalty, and the courts will not overturn the IRS action, if the taxpayer failed to act as a reasonable prudent person trying to meet her obligations under the circumstance. Relying upon a third party to perform an act like filing a return on time, securing an extension to file that return on time, or making a tax deposit, whether an employee or a professional, is not in and of itself a legal defense. Responsibility to perform these acts is "on the taxpayer," and cannot be delegated.

This article could be three times as long without covering all possible situations where penalties are asserted. The point to take away, however, is that the Internal Revenue Service does not create the penalties: Congress has created all of them, as well as generally defined what is "reasonable cause" with respect to each of them. From time to time, Congress asks the IRS to report on the imposition of penalties--how many and how

well they are being sustained--with the expectation that they will be imposed in appropriate cases and not routinely waived. Very often, by not waiving the penalty, the IRS is simply following the rule that Congress has asked it to follow, so that a taxpayer who feels she is unfairly penalized should consider some sort of correspondence or communication with her elected representatives, rather than simply cursing the IRS for being unreasonable. ♦

~ George Connelly, a Silver Fox Advisor

