

Tax Roundtable January 2017

From Carlos

My client hired me to do his 2014 taxes. He had two schedule C business.

However, he got a letter for from FTB - Notice of balance due for \$7979.05 (Tax, Penalties, Interest) for 2014, 2013 Tax years for his Corporation.

The letter stated it is a proposed assessment.

He told me that last time he operated his corporation was 2012 and he filed a "Final Return" with FTB for 2012. I did ask did he ever official dissolve corporation with the State and he said he didn't realize he was required to do anything else.

I had him called FTB and they told him he corporation has been suspended. However, he needed to file corporate tax returns for the corporation for years 13, 14, 15.

However, he has been operating as sole-proprietorship for all those years and has already filed 13/14 years on schedule C.

My question is how did they come up with proposed tax for those years?

I don't know, specifically. But the letter – and possibly earlier letters – will give you a breakdown of the assessments.

If you don't have the specifics, you can pull the transcripts and see. You can call the [FTB Hotline \(916\) 845-7057](tel:9168457057) to have them do it for you if you haven't set up a MyFTB account - https://www.ftb.ca.gov/online/myacct/tax_preparers.asp

Some fees include – the annual \$800 fee x 2 = \$1600

The fee for ignoring prior requests to file can be \$2,000 X 2 = \$4,000
plus penalties and interest for each year.

Sec of State = \$250 x 3 = \$750

You said, but didn't ask about this:

He told me that last time he operated his corporation was 2012 and he filed a "Final Return" with FTB for 2012. I did ask did he ever official dissolve corporation with the State and he said he didn't realize he was required to do anything else.

Filing a Final Return with the FTB is MEANINGLESS!!!!

If he didn't also dissolve the corporation with the Secretary of State, he's still on the hook for the annual fees and annual tax returns.

How would you handle this case? Any assistance or direction how to resolve this with the state?

If I had no experience with this, I would sign up for this webinar at Spidell – (use discount code TaxMama to get 10% off)

Dissolving and Walking Away from California Entities

http://www.caltax.com/shop/index.php?route=product/product&path=60_76&product_id=650

To understand Ralite – read page 4 of this newsletter from Spidell

<https://www.caltax.com/spidellweb/public/editorial/TL/2012/eTXL1112.pdf>

Also, look into this two part series

<http://caltaxminute.com/walking-away-from-a-corporation-the-ralite-case-part-1>

<http://caltaxminute.com/walking-away-from-a-corporation-the-ralite-case-part-2>

If I had experience – I would

- 1) Send them a letter explaining that the corporation was closed in 2012 (see copy of page 1 of Final Return attached)
- 2) Then I would probably file the open years with -0-s to close the years – and because they insist.
- 3) Then I would write a letter saying that since the taxpayer didn't take anything from the corporation to which he wasn't entitled (if that's true), that RALITE applies. That the FTB is limited to attaching only corporate bank accounts or corporate assets – not any of the shareholders' assets – and that the corporation has no assets. So there is nothing to collect.
 - a. Then have the taxpayer wait it out for about 4-5 years while the FTB keeps sending notices.
 - b. And try to call the client down each time he gets one.
- 4) Worst case, I would file an OIC for the corporation, which has no assets, to close the entire situation down.

Of course if all else fails, you can always talk to the FTB Taxpayer Advocate

https://www.ftb.ca.gov/Archive/professionals/taxnews/2015/November/Ask_the_Advocate.shtml

From Terry

Use the Final Review session questions – just print them out

<http://irsexams.com/board/index.php?/topic/526-1-sept-17-2016-final-review-session-1/>

<http://irsexams.com/board/index.php?/topic/528-2-october-1-2016-final-review-session-2/>

<http://irsexams.com/board/index.php?/topic/530-3-october-8-2016-final-review-session-3/>

<http://irsexams.com/board/index.php?/topic/529-4-october-22-2016-final-review-session-4/>

From Tom

I need to assemble an abatement request for late filing for tax years 2012, 2013 and 2015 due to a hardship.

My question is will the IRS accept one request that includes all three years or would I have to make a separate request for each year?

Well, the **first time** penalty abatement (FTA) will only work on one year – and, in this case, it will have to be the first year.

The other years, you will have to make request the abatement using a different section of the IRM. I have provided you with resources for both the FTA and all other abatement potentials.

Find Penalty Relief info here:

The Internal Revenue Manual (IRM):

Penalty & Interest <https://www.irs.gov/irm/part20/>

Chapter 1. Penalty Handbook - Section 1. Introduction and Penalty Relief

https://www.irs.gov/irm/part20/irm_20-001-001r.html

AICPA - IRS First-Time Penalty Abatement

<https://www.aicpa.org/interestareas/tax/resources/irsprocedureadministration/pages/irspenaltyabatement.aspx>

IRS REASONABLE CAUSE CATEGORIES AND CRITERIA FOR FAILURE TO FILE AND FAILURE TO PAY PENALTIES

http://cdn.na.sage.com/sagemail/beyond415/Beyond415_IRS-Reasonable-Cause-Categories.pdf

Lastly, do you have a template or sample abatement request format that I can follow? Thank you!

YUP! See the next 2 pages

SAMPLE - FIRST TIME PENALTY ABATEMENT LETTER

Date

INTERNAL REVENUE SERVICE

ADDRESS

RE: HIM AND HER

SSN: #####

Form: 1040

Year: 2013

Caller ID: XXXXXXX

Dear IRS:

Taxpayers received your notice (CP14) dated 11/10/14 regarding unpaid taxes of \$2,028.13 for 2013. The unpaid taxes are due to the failure to pay penalties and interest.

We apologize for the failure to pay penalties and respectfully request that you waive any late payment penalties under **Sec 6654(e) 2 and Sec 6654(e)(3)(b)** based on their recent disability. The taxpayer's reasonable causes are as follow:

- 1) XXXX (Taxpayer) has been ill for some time. He was already impaired by high blood pressure and arthritis, and gout. Mr. XXXX got significantly worse, while his wife was unable to care for him. His wife has been and is his main caregiver. She has been handling all finances and tax return filings and payments.
- 2) YYYY (YYYY) became seriously injured on 6/21/13 due to an accident. She was hospitalized in 3 different hospitals until July 25th. Doctors told her that she might never walk or drive again. Ms. YYYY endured surgeries and medical procedures during the key part of 2013. She was placed in a convalescent home through December 2013, and given therapy to rebuild her body in order to walk again.

Mr. XXXX was barely able to function. But, with the help of a close friend, Ms. YYYY managed to oversee the sale of Mr. XXXX's collection of special assets on in July and December. This is the source of the large tax liability for 2013. The collection, having been held for decades, has a very low basis. The sale was taxed at collectible's rate (28%) rather than the lower capital gains rates (0% - 20%).

This was the first time in decades that this couple had substantial taxable income. For the past couple of decades, their combined tax liability was generally under \$2,000. Under normal circumstances, they would have made timely estimated tax payments. But with Mr. XXXX being incapacitated, and Ms. YYYY stuck in a convalescent facility, she was unable to deal with the tax issues – or very much else. Essentially, they put the sales proceeds into their financial accounts and dealt with the funds in 2014.

They have paid the entire tax liability in full. They have not had any unpaid liabilities for the past three years. So please abate the penalties due to hardship under Sec 6654(e) 2 and Sec 6654(e)(3)(b) – and due to the first-time penalty abatement rules under IRM 20.1.1.3.6.1.

Please call us with any questions regarding this matter as the third party designee, as noted on the tax return, to discuss this return. Medical documentation can be provided, if needed.

Thank you.

Best wishes,

Eva Rosenberg, EA

Wiwik

I had clients, they filed MFJ, but they have individual HSA each, so they have more pretax money for medical expenses. Instead of 7650 (for family and owner ≥ 55), they have 4300 each. I can't find it anywhere if they are allowed to do that, but they have been doing that for several years. They have no dependents, kids grown up. Is that actually legal?

<https://www.law.cornell.edu/uscode/text/26/223>

<http://www.hsabank.com/hsabank/education/irs-guidelines-and-eligible-expenses>