

Penalty Waiver for Failure to Pre-Pay Penalties

TAX SECTION



The most common penalties assessed by the IRS are the failure to file and failure to pay penalties under Section 6651. However, another common penalty is the failure to pre-pay penalty assessed pursuant to Section 6654 where a taxpayer who is required to make quarterly payments fails to make the payments. Section 6651 penalties can be abated by a showing of reasonable cause and not willful neglect. In contrast, Section 6654 has very specific rules about when a waiver can be granted.

Section 6654(e) provides narrow exceptions for the failure to pre-pay penalty. First, subsection (e)(1) provides an exception where the tax shown on the return is less than \$1,000. Second, subsection (e)(2) provides an exception for U.S. citizens and residents who did not have any tax liability in the prior year. Third, subsection (e)(3)(A) provides a waiver may be granted where there is a casualty, disaster, or some other unusual circumstances that would cause the imposition of the penalty to be against equity and good conscience. That standard is unclear.

The fourth exception, which is in subsection (e)(3)(B), is for reasonable cause and not willful neglect, but only if the taxpayer either (a) retired after having attained the age of 62 within the year for which the estimated payments were required to be made or the year prior to such year or (b) became disabled within the year for which the payments were required to be made or the year prior to such year. Qualifying for either (a) or (b) does not automatically waive the penalty, but it allows the taxpayer to argue reasonable cause exists for a waiver of the penalty.

NOVEMBER 10, 2021/