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Internal Revenue Manual 20.1.1.3.2.2.5

20.1.1.3.2.2.5 (11-21-2017)

Erroneous Advice or Reliance

1. Each request for penalty relief should be reviewed thoroughly to determine the exact basis of the taxpayer's request.
 - a. Is the taxpayer claiming he or she did not comply due to specific advice he or she received from someone, whether orally or in writing, or
 - b. Is the taxpayer claiming he or she relied on someone else to comply on his or her behalf?
2. Certain sections of the IRC and Treasury Regulations provide relief from certain penalties based on erroneous advice. See IRM 20.1.1.3.3.4, Advice, to first determine if a statutory exception or administrative waiver applies.
3. If the taxpayer states he or she relied on written or oral advice from the IRS but does not qualify for relief in accordance with the criteria in IRM 20.1.1.3.3.4.1, Written Advice From the IRS, or IRM 20.1.1.3.3.4.2, Oral Advice From the IRS, refer to IRM 20.1.1.3.2.2, Ordinary Business Care and Prudence, to determine if the taxpayer exercised ordinary business care and prudence in relying on the IRS's advice.
4. The taxpayer may try to establish reasonable cause by claiming he or she relied on another party to comply on his or her behalf. Generally, this is not a basis for reasonable cause, particularly for filing or paying obligations, since the taxpayer is responsible for meeting his or her tax obligations and that responsibility cannot be delegated. However, other factors to consider include:
 - a. Was the taxpayer unable to comply because he or she did not have access to his or her own records? See IRM 20.1.1.3.2.2.3, Unable to Obtain Records.
 - b. Was the failure to comply due to a change in the tax law the taxpayer could not reasonably be expected to know? See IRM 20.1.1.3.2.2.6, Ignorance of the Law.
5. Consider all facts and circumstances presented by the taxpayer to determine if, despite the exercise of ordinary business care and prudence, the taxpayer nevertheless was unable to comply.