



TaxNewsFlash

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IRS clarifies FAQs may offer reasonable cause for penalty protection, but are not precedential

The IRS today issued a release that reports “frequently asked questions” (FAQs) on newly enacted tax legislation or other topics are not precedential but may offer penalty protection for taxpayers that relied on them.

According to the IRS release—[IR-2021-202](#) (October 15, 2021)—the FAQ process is being updated “to address concerns regarding transparency and the potential impact on taxpayers when these FAQs are updated or revised.” The IRS also reported that this release is intended to address concerns regarding the potential application of penalties to taxpayers that rely on FAQs by providing clarity to these taxpayers as to their ability to rely on FAQs for penalty protection.

Process for FAQs

The IRS reported that FAQs on newly enacted tax legislation (as well as any later updates or revisions to the FAQs) will now be announced in a news release and posted on the IRS website in a separate fact sheet.

- These “fact sheet FAQs” will be dated to allow taxpayers to confirm the date on which any changes to the FAQs were made.
- Prior versions of fact sheet FAQs will be maintained on the IRS website so that if a fact sheet FAQ is later changed, taxpayers can locate the prior version.
- In addition to significant FAQs on new legislation, the IRS may apply this updated FAQ process in other contexts—such as when FAQs address emerging issues.

Reasonable cause for penalty purposes

Today's IRS release also addresses concerns about the potential application of penalties to taxpayers who rely on an FAQ. The IRS clarified in a [separate posting](#) — *General Overview of Taxpayer Reliance on Guidance Published in the Internal Revenue Bulletin and FAQs*—that if a taxpayer relies on any FAQ (including FAQs released before October 15, 2021) in good faith and that reliance is reasonable, the taxpayer will have a "reasonable cause" defense against any negligence penalty or other accuracy-related penalty if it turns out the FAQ is not a correct statement of the law as applied to the taxpayer's particular facts.

The IRS explained that:

- It views FAQs as a valuable alternative to guidance published in the Internal Revenue Bulletin (IRB) because the FAQs allow the IRS "to more quickly communicate information to the public on topics of frequent inquiry and general applicability."
- FAQs typically provide responses to general inquiries rather than applying the law to taxpayer-specific facts and may not reflect various special rules or exceptions that could apply in any particular case.
- FAQs that have not been published in the Internal Revenue Bulletin (IRB) are not to be relied on, used or cited as precedents by IRS personnel in the disposition of cases. Similarly, if an FAQ turns out to be an inaccurate statement of the law as applied to a particular taxpayer's case, the law will control the taxpayer's tax liability. Only guidance that is published in the IRB has precedential value.

Today's release notes that notwithstanding the non-precedential nature of FAQs, a taxpayer's reasonable reliance on an FAQ (even one that is subsequently updated or modified) is relevant and will be considered in determining whether certain penalties apply. Taxpayers that show that they relied in good faith on an FAQ and that their reliance was reasonable based on all the facts and circumstances will have a valid reasonable cause defense and will not be subject to a negligence penalty or other accuracy-related penalty to the extent that reliance results in an underpayment of tax. In addition, FAQs that are published in a fact sheet that is linked to an IRS news release are considered authority for purposes of the exception to accuracy-related penalties that applies when there is substantial authority for the treatment of an item on a return.

Statement to be added to FAQs

Lastly, the IRS noted that the following statement will be added to fact sheet FAQs:

These FAQs are being issued to provide general information to taxpayers and tax professionals as expeditiously as possible. Accordingly, these FAQs may not address any particular taxpayer's specific facts and circumstances, and they may be updated or modified upon further review. Because these FAQs have not been published in the Internal Revenue Bulletin, they will not be relied on or used by the IRS to resolve a case. Similarly, if an FAQ turns out to be an inaccurate statement of the law as applied to a particular taxpayer's case, the law will control the taxpayer's tax liability. Nonetheless, a taxpayer who reasonably and in good faith relies on these FAQs will not be subject to a penalty that provides a reasonable cause standard for relief, including a negligence penalty or other accuracy-related penalty, to the extent that reliance results in an underpayment of tax. Any later updates or modifications to these FAQs will be dated to enable taxpayers to confirm the date on which any changes to the FAQs were made. Additionally, prior versions of these FAQs will be maintained on IRS.gov to ensure that taxpayers, who may have relied on a prior version, can locate that version if they later need to do so.

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