

Penalty & Interest: What You Don't Know Can Hurt You

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An ADP Webcast



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Housekeeping

- This is one of a number of complimentary webinars that ADP offers to tax and finance professionals each year.
- Today's webinar will last for 60 minutes, ending at 1pm eastern time.
- The last 10 minutes of today's program have been reserved for Q&A.
- You can download a PDF copy of today's slides right now, in case you'd like to take notes.
- CPE certificates will be emailed to those who qualify within 30 days of today's broadcast.
- We will launch a brief survey at the conclusion of today's webinar.



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- Log in from same e-mail address that you used to register
- Stay for the full hour
- Answer all polling questions
- Answer the required survey questions



Today's Panel



John Myett



Lisa Boswell

Agenda

- **Employer Responsibilities**
- **Purpose of Penalties**
- **Types of Penalties**
- **A Note About Interest**
- **Common Penalty Scenarios & Prevention Tips**
- **All About Abatements**

Employer Responsibilities



Employer Responsibilities

Pay Taxes

- Taxes are paid as payrolls are processed
- Due dates are threshold driven
- EFT mandates



Employer Responsibilities

File Returns

- Timely
- Accurate
- Complete



Employer Responsibilities

Information Reporting (W-2/1099)

- File timely
- Submit in the required format
- Make sure you're in balance
- File ALL returns

Employer Responsibilities

Documentation & Record Keeping

- Bank Statements/EFT records
- Records of problems or delays
- Medical records, police reports, insurance reports, etc.



Employer Responsibilities

Best Practices

- Consider foreseeable events
- Develop contingency plans
- Train back up personnel

Polling Question

■ True or False?

Employers can delegate their responsibility for depositing and paying their payroll taxes in an accurate and timely manner.

A. True

B. False

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Purpose of Penalties

- **Penalties exist to encourage voluntary compliance by supporting the standards of behavior expected by the Internal Revenue Code and state regulations.**
 - Define standards of compliant behavior
 - Provide consequences for non-compliance
 - Provide monetary sanctions when standards are not met

Types of Penalties: **Late Tax Deposits**

- **Tax deposits penalized, based on liability date**
- **IRS deposit designation**
- **Tiered penalty assessments**
- **Flat rate penalty assessments**

Types of Penalties: Late Tax Returns

- Quarterly tax returns
- Information returns
- Annual tax returns

A Note About Interest

- **Agencies charge interest on late payments of tax (and penalties) as a means of recovering lost revenue on the unpaid balance.**
- Use of funds
- Governed by statute
- Not subject to abatement

Common Penalty Scenarios & Prevention Tips

Common Penalty Scenarios

Bonus or Unscheduled Payroll

- Bonus pay over and above regular pay
- Special, prompt payroll processing
- Check date vs. period ending date
- Constructive Receipt rule
- Bonus taxation

TIP: Know what you're paying, and WHEN. Be aware of deposit requirements.



Common Penalty Scenarios

Stock Option Processing

- Process the liability as soon as you have all the information
- Be aware of settlement date vs. exercise date

TIP: Avoid P&I. Process promptly. \$100K liabilities deposited next day.



Polling Question

- When reporting non-qualified stock options IRS will generally allow the liability to be reported on the settlement date in lieu of the exercise date. The settlement date may be no more than _____ following the date of exercise.
 - A. 1 Day
 - B. 2 Days
 - C. 3 Days
 - D. 5 Days
 - E. There is no limit

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Common Penalty Scenarios

Business Mergers/Acquisitions

- Reporting wages
- Issuing W-2s
- IRS ruling

TIP: Consult a professional

Common Penalty Scenarios

Business Mergers/Acquisitions

- Finalizing an ID
- Why do it?

TIP: The agencies won't know unless you tell them.

Common Penalty Scenarios

Quarter End Adjustments

- Completed before return filed
- Completed after return filed

TIP: Remember the W-2c's

Common Penalty Scenarios

IRS/SSA Out of Balance

- Reporting less to IRS than to SSA could result in penalties
- Reporting less to SSA than to IRS could result in penalties

TIP: Balance all returns filed to IRS to returns filed to SSA upon receipt of first notice.



Polling Question

■ True or False?

As long as you know you filed returns to both IRS and SSA in balance, you don't need to take any action when you receive a notice from either agency regarding an out of balance.

A. True

B. False

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Common Penalty Scenarios

IRS/SSA Out of Balances

- W-2s/1099s are not filed
- Tiered penalties assessed on late W-2s/1099s
- Intentional Disregard penalty may be assessed

TIP: If W-2s or 1099s were not filed, file them as soon as you receive the first notice in order to minimize penalties



Common Penalty Scenarios

EFT Requirements

- IRS requires EFTPS deposits for nearly all employers
- Many states have EFT mandates
- Cut off times
- Bank notification for debits

TIP: Be sure to register, monitor payments on-line, and create back up procedures



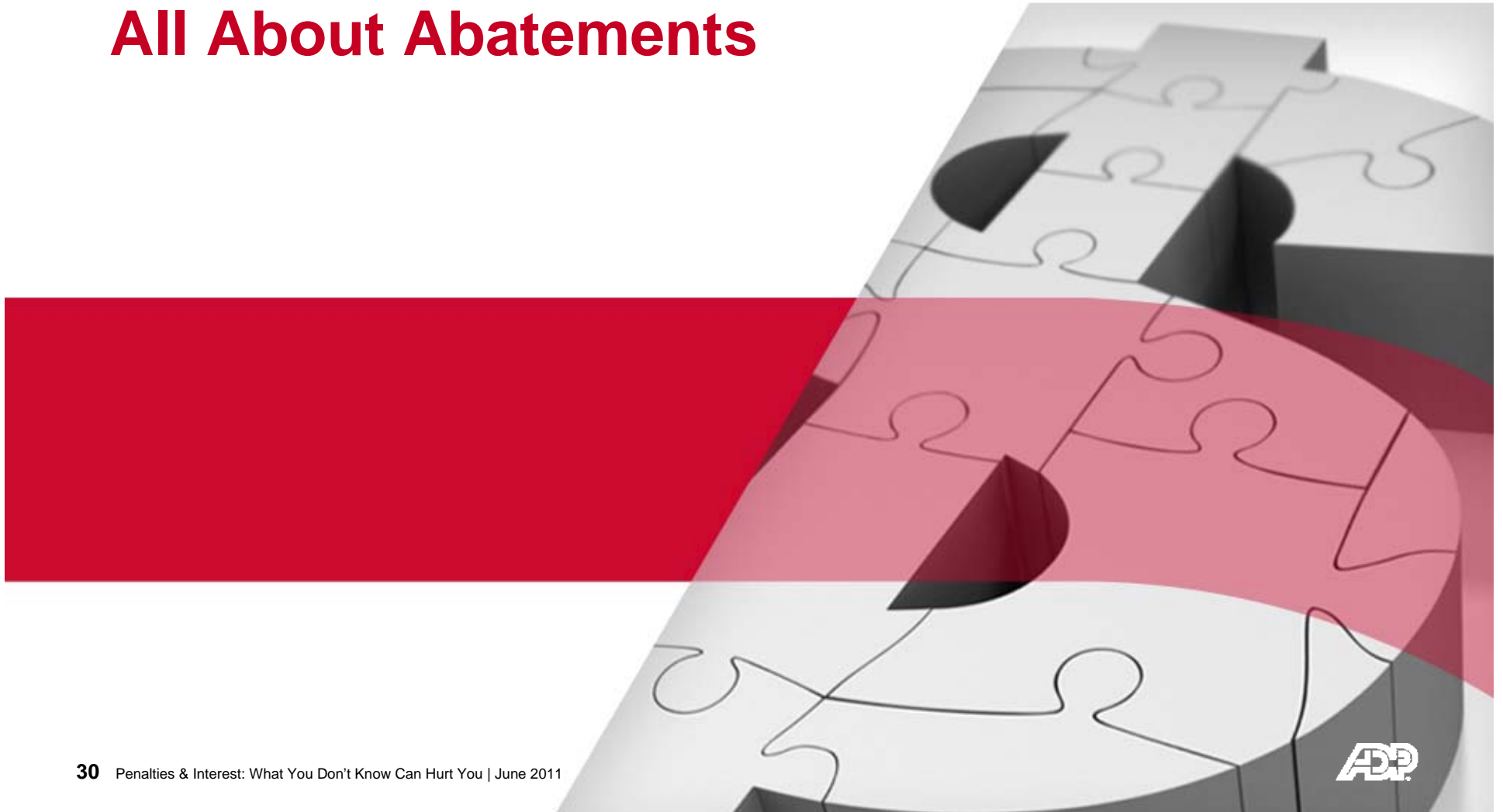
Polling Question

- I use a third party processor to make all of my payroll tax deposits to IRS. Why would I need to register to use EFTPS?
 - A. To submit non-payroll tax payments or deposits.**
 - B. To support contingency planning.**
 - C. To monitor IRS deposit activity, and ensure that the third party processor, is depositing as required.**
 - D. All of the above.**

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All About Abatements



Abatement Process

- Penalty abatement can be requested
- Interest cannot be abated

**I have a
penalty –
what can I do?**



Abatement Process

Reasonable Cause

- Any reason that establishes that a taxpayer exercised ordinary business care and prudence, but was unable to comply with the tax law



Abatement Process

Reasonable Cause Examples

- Death or serious illness of the taxpayer
- Unavoidable absence of the taxpayer
- Destruction of the taxpayer's place of business or records
- Civil disturbances impairing ability to make deposits



Abatement Process

Ordinary Business Care

- Taking the degree of care that a reasonably prudent person would exercise.
- Making provisions for business obligations to be met when unforeseeable events occur.



Abatement Process

- Document the events as soon as you are aware
- Note special circumstances, dates
- Preventative measures

**I know I
filed or
deposited
late – what
should I
do?**



Abatement Process

Ordinary Business Care Factors

- Taxpayer's reason
- Compliance history
- Length of time to correct the non-compliance
- Circumstances beyond taxpayer's control



Abatement Process

- Penalties can't be abated until they are assessed
- Research agency rules, deadlines, etc. for abatement
- Prepare a concise, respectful letter explaining the circumstances

***TIP:** Meet the agency's criteria*



Abatement Process

- Submit the request
- Follow up with the agency
- Provide any additional information

***TIP:** Respond to follow up requests promptly to preserve your rights*



Abatement Process

- Research agency rules for appeal rights
- Complete and file any special POAs
- Prepare appeal letter and send it
- Follow up with the agency
- Or just pay the penalty and let it go

**My request
was denied –
now what?**



Polling Question

- How do you currently manage payroll tax compliance?
 - A. We have dedicated staff members.**
 - B. We use an in-house software system.**
 - C. We use a service provider.**
 - D. We use a CPA / Tax Attorney.**

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Q&A



Some Final Thoughts

- **Keep accurate detailed records**
- **Know the agency requirements**
- **Plan for the unexpected**
- **Balance Information Returns to Tax Filings**
- **Respond to agency notices promptly**
- **Learn from your mistakes**

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