

Filing Timely

How to Avoid the Failure to File Assessment

To avoid the failure to file penalty, ensure that you file your federal individual income tax return by April 15th. If you lack the funds for complete payment or need more time, file **Form 4868** to receive an automatic extension until **October 15th** of that year. If you still need more time, file for an additional extension or call the IRS directly to discuss options for extensions and payment plans.

The IRS may be contacted directly by calling their toll-free Tax Help Line at 1-800-829-1040



About the Washington & Lee Tax Clinic

The Washington & Lee Tax Clinic is a Low-Income Taxpayer Clinic. The Clinic represents taxpayers, primarily in the state of Virginia, who have controversies with the IRS or Virginia Department of Taxation and meet the LITC low-income threshold standards. The Clinic is operated by a Director and 3rd-Year Students at the Law School, and has been serving taxpayers since 2008.



Washington & Lee Tax Clinic

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A Guide to the IRS's "Failure to File" Penalty



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Tips for Success – From the IRS

Frequently Asked Questions

The IRS has published several tips for awareness and understanding of the Failure to File penalty, including the following:

- If you file more than 60 days after the due date or extended due date, your minimum penalty is the **smaller** of \$205 or 100% of the unpaid tax
- If you request an extension of time to file by the tax deadline and you paid at least 90 percent of your actual tax liability by the original due date, you will not face a failure-to-pay penalty if the remaining balance is paid by the extended due date.
- You will not have to pay a failure-to-file or failure-to-pay penalty if you can show that you failed to file or pay on time because of reasonable cause and not because of willful neglect.

The full list can be found by following this URL: <https://www.irs.gov/uac/failure-to-file-or-pay-penalties-eight-facts>.

How Does the Failure to File Penalty Work?

Authorized by Internal Revenue Code section 6651(a)(1), the penalty for late filing is assessed automatically when a taxpayer fails to file their tax return by its original or validly-extended due date. Non-filing and late filing are subject to the same penalty, which is calculated at 5% of the **amount of tax owed** on the return per month, up to a maximum of 25%.

A critical misconception that taxpayers have is that they believe if they do not have the funds to pay, they should not bother filing. This is **false**; the penalty for late filing is separate and more financially significant in the short term

than the penalty for failure to pay tax debts owed. It is virtually always in one's favor to file their taxes in a timely manner. There are many services and operations to aid the taxpayer in payment issues down the road.

Late filing penalties are assessed automatically by the IRS and distributed through computer-generated notice procedures. Often, this means that it is not until the IRS issues a notice and demand for payment that the taxpayer realizes they are late subject to a penalty. By this time, it is usually too late to avoid the Failure to File penalty.

Q: Should I still file a Form 1040 Tax Return if I cannot pay the balance I owe to the IRS?

A: Yes. Even if you cannot pay the full amount, filing or requesting an extension to file will avoid automatic assessment of the Failure to File penalty, which is based only on the period of noncompliance and the amount you owe in total.

Q: I need more time to prepare and file my return – how do I get it?

A: A taxpayer may seek an extension in the event that he or she cannot file their return timely or pay their liability when due. For individual taxpayers, you may request an automatic extension until **October 15th** of the current year by filing **Form 4868** on or before the original due date.

Q: I have been assessed a Failure to File penalty – What do I do now?

A: File as soon as possible. The penalty is equal to 5% of the net tax amount owed per month of non-compliance, up to a maximum of 25%; the faster you file properly, the smaller your penalty will be.