



SMALL BUSINESS/Self-EMPLOYED DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

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4.24.25

MEMORANDUM FOR: ALL EXCISE TAX EXAMINATION EMPLOYEES AND DIRECTOR,
CAMPUS EXAMINATION/AUR - CINCINNATI

FROM: Heather J. Yocum /s/ *Heather J. Yocum*
Acting Director, Specialty Examination Policy

SUBJECT: Interim Guidance for Excise Tax Examination on Timing of
Supervisory Approval of Penalties Subject to IRC 6751(b)

Purpose: This memorandum issues guidance clarifying the timing of written supervisory approval of penalties subject to IRC 6751(b), Approval of assessment. Please ensure this information is distributed to all Excise Tax Examination employees within your organization.

Background: On December 23, 2024, Treas. Reg. 301.6751(b)-1 was published, which sets three rules for timing of supervisory approval of penalties under IRC 6751(b)(1), and provides examples illustrating the set rules. These rules apply to penalties assessed on or after December 23, 2024.

For penalties assessed prior to December 23, 2024, written supervisory approval was required prior to issuing any written communication of penalties to a taxpayer that offered the taxpayer either an opportunity to sign an agreement, or consent to assessment or proposal of the penalty.

Procedural Change: Updated procedures are found on Attachment A – Revised Excise Tax Penalty Procedures.

Effect on Other Documents: This guidance will be incorporated into the impacted IRM sections by a date not to exceed two years from the date of this memorandum.

Effective Date: This guidance is effective immediately.

Contact: If you have any questions regarding this memorandum, please contact Allison Boyd, Excise Tax Policy Analyst.

Attachment: Attachment A – Revised Excise Tax Penalty Procedures

Distribution: IRS.gov

Attachment A – Revised Excise Tax Penalty Procedures

The following IRM sections are updated to reflect the revised penalty procedures effective immediately upon issuance.

4.24.8.17.1

IRC 6675 Excessive Claims Penalty Processing (paragraph (2) is revised as follows)

- (2) Written supervisory approval of the proposed penalty must be obtained on workpaper E500, Penalty Check Sheet and Approval. When approved, the examiner must complete and submit Form 5345-D, Examination Request-ERCS (Examination Returns Control System) Users, to the manager to establish penalty controls. Refer to IRM 4.24.9.2, Common Penalty Features, for the timing of written supervisory approval of penalties.

4.24.9.2

Common Penalty Features (paragraph (5) is revised as follows and paragraphs (6), (7), (8) and (9) are added)

- (5) Documentation - Excise examiners must use workpaper E500, Penalty Check Sheet and Approval, located in the Forms Library of the Notebook, to document the assertion or non-assertion of penalties.
- (6) Managerial Involvement - Group manager involvement is not required for failure to file or failure to pay penalties under IRC 6651 or for penalties automatically calculated through electronic means. See IRC 6751(b)(2). Managerial review and written approval is required on assertion of all other penalties and the non-assertion of IRC 6719 and/or IRC 6725 penalties. See IRM 20.1.1.2.3(3), Approval Prerequisite to Penalty Assessments, for a list of penalties that do not require supervisory approval.
Reminder: As an administrative matter, supervisory approval of the fraudulent failure to file penalty under IRC 6651(f) is required (see IRM 20.1.2.3.7.5.1(8), FFTF Penalty Assessment–Procedural Requirements).
- (7) For penalties assessed on or after December 23, 2024, Treas. Reg. 301.6751(b)-1 provides three rules for timing of supervisory approval of penalties under IRC 6751(b)(1) and provides examples illustrating the rules. Penalties relating to Excise Tax cases are generally not subject to pre-assessment review in Tax Court, therefore, they must be approved on or before the date the penalty is assessed. Refer to Treas. Reg. 301.6751(b)-1, IRM 4.10.6, Penalty Considerations, and IRM 20.1.1.2.3.1, Timing of Supervisory Approval, for additional guidance.
- (8) For penalties assessed prior to December 23, 2024, written supervisory approval was required prior to issuing any written communication of penalties to a taxpayer that offered the taxpayer either an opportunity to sign an agreement, or consent to assessment or proposal of the penalty.
- (9) Refer to IRM 4.10.6, Penalty Considerations, for additional guidance on penalties.

4.24.20.2

Overview of Examination Reports (paragraph (5) is revised as follows)

- (5) The examiner must discuss the progress of the examination and potential issues with the taxpayer and/or representative at frequent intervals throughout the examination process. Whenever possible, this should be done during face-to-face appointments. If penalties requiring supervisory approval are proposed and the examiner has not yet obtained approval, a written list of proposed adjustments (including penalties) can be shared to facilitate discussion during a face-to-face appointment. The Examining Officer's Activity Record in IMS must be contemporaneously documented to indicate the date and circumstances under which the written list was provided.

Note: Refer to IRM 4.24.9.2, Common Penalty Features, for the timing of written supervisory approval of penalties.

Note: IRC 6020(b) certification procedures must be followed for Substitute for Return (SFR) cases for which the failure to pay penalty is assessed. Refer to IRM 4.24.9.6, IRC 6020(b) Certification Procedures for Non-Filed Excise Tax Returns, for guidance.

4.24.25.5.14

E500 - Penalty Check Sheet and Approval Form (paragraph 7 is revised as follows)

- (7) Refer to IRM 4.24.9.2, Common Penalty Features, for the timing of written supervisory approval of penalties.