



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.11.5

SEPTEMBER 29, 2025

## EFFECTIVE DATE

(09-29-2025)

## PURPOSE

- (1) This transmits revised IRM 8.11.5, *International Penalties*.

## MATERIAL CHANGES

- (1) Updated references and made editorial changes throughout this IRM for clarity and readability. Reviewed and revised text to incorporate plain language and correct grammatical errors, as well as to update website addresses, legal references, and IRM citations.
- (2) Rearranged paragraphs, sections and subsections for consistency, clarity and readability. IRM sections and subsections were renumbered throughout based on the changes made.
- (3) Retitled sections to add related form numbers. See IRM 8.11.5.5, IRM 8.11.5.7, IRM 8.11.5.8 and IRM 8.11.5.9.
- (4) IRM 8.11.5.2, *International Penalties Overview*: Retitled to reflect updated content. Updated content and clarified paragraphs to remove general introductory information. Deleted duplicative content and moved paragraphs to the new subsections created in IRM 8.11.5.2. Paragraphs were renumbered based on changes made.
  - a. Paragraph (2) - Added to include deficiency procedures under Subchapter B and Chapter 63 do not apply to penalties in this section.
  - b. Paragraph (3) - Updated list of international penalties subject to deficiency procedures.
  - c. Paragraph (4) - Added to include overview of information returns.
  - d. Paragraph (5) - Updated list of commonly appealed international penalties.
  - e. Paragraph (6) - Deleted note as supervisory approval of penalties is addressed in IRM 8.11.5.2.1 .
  - f. Paragraph (8) - Added new paragraph to include overview of the related statute for assessment meaning and applicable IRCs.
  - g. Paragraph (10) - Updated to include overview of forms and IRM references for Powers of Attorney or Authorizations to Disclose Tax Information.
  - h. Paragraph (11) - Added to include overview of First Time Abatement and exception references.
  - i. Paragraph (12) - Added payment processing instructions.
  - j. Paragraph (13) - Added overview of appeal rights.
- (5) IRM 8.11.5.2, *International Penalties Overview*: Added the following subsections and related information:

| IRM Subsection | Title  |
|----------------|--|
| IRM 8.11.5.2.1 | <i>Supervisory Approval of Penalties Before Appeals' Consideration</i> |
| IRM 8.11.5.2.2 | <i>Civil Penalties and Penalty Appeals (PENAP) Program</i>             |
| IRM 8.11.5.2.3 | <i>Identifying a PENAP Case</i>  |

| IRM Subsection | Title   |
|----------------|---|
| IRM 8.11.5.2.4 | <i>Assessed Penalty Settlement Authority</i>  |
| IRM 8.11.5.2.5 | <i>Form 13381, Technical Guidance Referral</i>  |
| IRM 8.11.5.2.6 | <i>Collection Due Process (CDP) / Equivalent Hearing (EH) Cases Liability Raised Referral</i> |
| IRM 8.11.5.2.7 | <i>Establishing PENAP Cases</i>   |
| IRM 8.11.5.2.8 | <i>Assignment of PENAP Cases</i>  |

- (6) IRM 8.11.5.2.3 , *Identifying a PENAP Case*: Added to include explanation for identifying the types of cases subject to this guidance, including a list of the most common penalties disputed in Appeals, a list of delinquency penalty transactions codes and lists of withholding statute code sections subject to penalties.
- (7) IRM 8.11.5.2.6 , *Collection Due Process (CDP) / Equivalent Hearing (EH) Cases Liability Raised Referral*: Added to include information regarding Collection Due Process and Equivalent Hearing cases that are referred to Appeals Area 11.
- (8) IRM 8.11.5.3 , *New Receipt Procedures for ATEs*: Added to consolidate, update and clarify new receipt procedures for Appeals Technical Employees.
- (9) IRM 8.11.5.4 , *PENAP Consideration*: Added section and subsection to include information regarding consideration given to PENAP cases and payments/credits applied. See also IRM 8.11.5.4.1, *Payments/Credits Applied to the Civil Penalty Module*.
- (10) IRM 8.11.5.5, *IRC 6038 Information Reporting with Respect to Foreign Corporations and Partnerships (Form 5471 and Form 8865)*: Added paragraph (4) to clarify systemically assessed penalties may be assessed for a late-filed Form 5471 when attached to applicable late-filed forms and moved reference from paragraph (2) to new paragraph (5).
- (11) IRM 8.11.5.5.1, *IRC 6038 Reporting and Filing Requirements*: Updated to include the definition reference of a foreign branch and qualified business unit. Updated the list of who must file Form 8858 in paragraph (1)(c).
- (12) IRM 8.11.5.5.2, *IRC 6038 Penalty Relief*: Updated IRC, IRM and regulation references in paragraph (1), added required forms to paragraph (2) and added penalty reference numbers in paragraph (3).
- (13) Added paragraphs to IRM sections 8.11.5.6 through 8.11.5.13 to add an overview of penalty specific filing requirements, penalty computations, limitations, and systemic assessment information, as applicable.
- (14) Added paragraphs in first subsections of IRMs 8.11.5.6 through 8.11.5.13 to address IRC specific penalty reporting and filing requirements and retitled subsections to add the specific IRC referenced.
- (15) Added paragraphs in second subsections of IRMs 8.11.5.6 through 8.11.5.13 to address the applicability of IRC specific penalty relief, reasonable cause and first time abatement. Included regulation and IRC references.
- (16) Removed sections pertaining to IRC 6039G - Information on Individuals Losing United States Citizenship. See IRM 20.1.9.11, *IRC 6039G—Expatriation Reporting Requirements*, for information.

- (17) Removed sections pertaining to IRC 6689 - Penalty for Failure to File Notice of Foreign Tax Redetermination. See IRM 20.1.9.19, *IRC 6689—Failure to File Notice of Foreign Tax Redetermination*, for information.
- (18) Removed sections pertaining to IRC 6039E - Failure to Provide Information Concerning Resident Status (Passports and Immigration). See IRM 20.1.9.21, *IRC 6039E—Failure to Provide Information Concerning Resident Status (Passports and Immigration)*, for information.
- (19) Removed sections pertaining to International Penalty - Accelerated Appeals Consideration as the information is no longer applicable.
- (20) IRM 8.11.5.14 , *Closing Procedures for Appeals Technical Employees*: Consolidated and updated closing procedures for Appeals Technical Employees.

#### **EFFECT ON OTHER DOCUMENTS**

This IRM supersedes IRM 8.11.5 dated December 23, 2024.

#### **AUDIENCE**

IRS Independent Office of Appeals

Steven M. Martin  
Director, Operations Support



8.11.5

International Penalties

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8.11.5.1  
(12-23-2024)  
**Program Scope and Objectives**

- (1) Purpose: This IRM section provides the IRS Independent Office of Appeals (Appeals) with procedures for controlling and working civil penalty cases related to international information returns.
- (2) Audience: The primary users of this IRM section are Appeals Technical Employees (ATEs) and Appeals Team Managers (ATMs).
- (3) Policy Owner: Policy, Planning, Quality and Analysis (PPQ&A) is under the Director, Operations Support (OS).
- (4) Program Owner: Appeals Policy is the program office responsible for providing technical and procedural guidance to the Appeals organization, and is under the Director, PPQ&A.
- (5) Contact Information: Appeals employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM.

8.11.5.1.1  
(12-23-2024)  
**Background**

- (1) This IRM adheres to Penalty Policy Statement P-20-1, which addresses fair and equitable implementation and application of penalty provisions to most efficiently encourage voluntary compliance, and requires all IRS functions to develop procedures that promote:
  - a. Consistency in the application of penalties compared to similar cases;
  - b. Fair and impartial analysis of the facts in each case; and
  - c. The proper application of the law to the facts of the case.
- (2) As stated in IRC 7803(e)(3), the Appeals mission is to resolve Federal tax controversies without litigation on a basis that is fair and impartial to both the Government and the taxpayer, promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws, and enhances public confidence in the integrity and efficiency of the IRS. Appeals accomplishes its mission by considering protested and Tax Court cases and negotiating settlements in a manner which ensures Appeals employees act in accord with the Taxpayer Bill of Rights (TBOR) in every interaction with taxpayers.

8.11.5.1.2  
(12-23-2024)  
**Authority**

- (1) IRC Subtitle F, Chapters 61 and 68, contain most of the international civil penalty provisions.
- (2) IRM 1.2.1.12.1, *Policy Statement 20-1 (formerly P-1-18)*, *Penalties are used to enhance voluntary compliance*, sets forth the IRS's position regarding penalties.
- (3) IRM 20.1.9, *International Penalties*, provides Servicewide instructions for working international penalty cases.

8.11.5.1.3  
(12-23-2024)  
**Responsibilities**

- (1) The Director, OS, is the executive responsible for Appeals' policy and procedural guidance.
- (2) The Director, PPQ&A, is responsible for program oversight.
- (3) The policy analyst shown on the Product Catalog page as the "Content POC (Point of Contact)" is the assigned author of this IRM.

8.11.5.1.4  
(12-23-2024)

#### Program Reports

- (1) PPQ&A provides trends and data analyses and detailed summary reports for Appeals.

8.11.5.1.5  
(12-23-2024)

#### Common Terms and Acronyms

- (1) See IRM Exhibit 8.1.1-1, *Common Terms Used in Appeals*, for common terms and definitions used in IRM Part 8.
- (2) The table below is a list of additional terms and acronyms used in this IRM.

| Acronym | Definition  |
|---------|---|
| BMF     | Business Master File  |
| CDP     | Collection Due Process  |
| CR-NR   | An automatic entry in Appeals Centralized Database System (ACDS), which the ATE validates, that stands for "Case Received-New Receipt". |
| EH      | Equivalent Hearing  |
| IDRS    | Integrated Data Retrieval System  |
| IMF     | Individual Master File  |
| MFT     | Master File Tax   |
| PENAP   | Penalty appeal  |
| PRN     | Penalty Reference Number  |
| R&C     | Review and Concurrence  |
| TC      | Transaction Code  |
| WUNO    | Work Unit Number  |

8.11.5.1.6  
(12-23-2024)

#### Related Resources

- (1) This IRM is the primary source of guidance on this program.
- (2) IRM 8.11.4, *Penalty Appeals (PENAP)*.
- (3) IRM 20.1.9, *International Penalties*, and its related sections.
- (4) The TBOR lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), *Execution of Duties in Accord with Taxpayer Rights*. For additional information about the TBOR, see *Taxpayer Bill of Rights*.
- (5) In accordance with IRM 25.30.2.3, *Statement of Commitment*, Appeals will work cooperatively with the Taxpayer Advocate Service (TAS) to enhance the taxpayer experience. For more information, see IRM 25.30.2, *Service Level Agreement between the IRS Independent Office of Appeals and the Taxpayer Advocate Service*.



8.11.5.2  
(09-29-2025)  
**International Penalties  
Overview**

- (1) Penalties included in this section are assessed before cases are forwarded to Appeals.

**Note:** Foreign Bank and Financial Accounts (FBAR) penalties are not considered international penalties. See IRM 8.11.6 , **FBAR Penalties**, for additional information.

- (2) Deficiency procedures under Subchapter B of Chapter 63 (relating to deficiency procedures for income, estate, gifts, and certain excise taxes) do not apply to penalties discussed in this section.

- (3) Some international penalties are subject to deficiency procedures, which are not covered by this section. See IRM Exhibit 20.1.9-4, **International Penalties Subject to or Not Subject to Deficiency Proceeding**. For example, the following international adjustments and penalties are subject to deficiency procedures:

- IRC 6038(c) – *Penalty of Reducing Foreign Tax Credit Plus Continuation Penalty*
- IRC 6038A(e) – *Noncompliance Penalty for Failure to Authorize an Agent or Failure to Produce Records*
- IRC 6038C(d) – *Noncompliance Penalty for Foreign Related Party Failing to Authorize the Reporting Corporation to Act as its Limited Agent*
- IRC 6039F(c)(1)(A) – *Taxability of Gift from Foreign Persons as determined by the Secretary*
- IRC 6686 – *Information Returns for DISCs or Former FSCs*
- IRC 6688 – *Reporting for Residents of U.S. Possessions*

- (4) Information Returns. These documents may be required to be attached to the related income tax return. In other cases, certain information returns must be filed with the IRS campus site identified in the instructions for such form.

- (5) Commonly appealed international penalties include:

- IRC 6038(b) – *U.S. person with interest in a foreign corporation (FC), foreign partnership (FP), and FC or FP with foreign disregarded entity. Form 5471, **Information Return of U.S. Persons With Respect to Certain Foreign Corporations**, Form 8865, **Return of U.S. Persons With Respect to Certain Foreign Partnerships**. See IRM 8.11.5.5 for guidance.*
- IRC 6038A(d) – *Information reporting with respect to 25% foreign owned U.S. corporations. Form 5472, **Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business**. See IRM 8.11.5.6 for guidance.*
- IRC 6038C(c) – *Information reporting with respect to foreign corporations engaged in U.S. business. Form 5472, **Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business**. See IRM 8.11.5.8 for guidance.*
- IRC 6038D(d) – *Information with respect to foreign financial assets. Form 8938, **Statement of Specified Foreign Financial Assets**. See IRM 8.11.5.9 for guidance.*
- IRC 6677(a) – *U.S. person who creates a foreign trust, transfers property to a foreign trust or receives a distribution from a foreign trust. Form 3520, **Annual Return to Report Transactions With Foreign***

**Trusts and Receipt of Certain Foreign Gifts.** See IRM 8.11.5.11 for guidance.

- IRC 6677(b) – *U.S. owner of a foreign trust.* Form 3520-A, **Annual Return of Foreign Trust With a U.S. Owner.** See IRM 8.11.5.12 for guidance.
- IRC 6039F(c)(1)(B) – *U.S. person who receives a foreign gift or foreign bequest.* Form 3520, *Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.* See IRM 8.11.5.10 for guidance.
- IRC 6679(a) – *U.S. person who acquires, disposes or changes interests in foreign corporations and partnerships.* Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations.* Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships.* See IRM 8.11.5.13 for guidance.

- (6) **Premature Referrals.** An international penalty must be assessed before routing the case to Appeals. If the penalty is not assessed, the ATE will close the case and return it to the originating function as a premature referral.
- (7) **Related Case Files.** A case may include multiple case files: penalty case files and related income tax case files. Each penalty and income tax case file may be assigned a separate work unit number (WUNO) and may be routed separately to Appeals. All related case files should be consolidated under one Appeals Officer (AO), International Specialist.
- (8) **Related Statute for Assessment.** IRC 6501(c)(8) includes that “the time for assessment of any tax imposed by this title with respect to any tax return, event, or period to which such information relates shall not expire before the date which is 3 years after the date on which the Secretary is furnished the information required to be reported” for items related to the information required by IRC 6038, IRC 6038A, IRC 6038B, IRC 6038D, IRC 6046, IRC 6046A, and IRC 6048, among other information. ATEs should be aware that filing or failing to file information returns may affect the statute for assessment on the related income tax return.
- (9) **Collection Activity.** While the case is in Appeals for liability dispute resolution, it’s the taxpayer’s responsibility to communicate with the Collection function regarding the Appeals case status.

**Note:** The AO may be asked to assist a taxpayer in identifying who to contact in Collection Appeals if the taxpayer receives collection notices, and a Collection AO has been assigned to the taxpayer’s case.

- (10) **Specific Powers of Attorney or Authorizations to Disclose Tax Information.** Documents such as Form 2848, *Power of Attorney and Declaration of Representative*, or Form 8821, *Tax Information Authorization*, are required prior to disclosing penalty issues with a person other than the person subject to the assessment or required to file the returns. See IRM 8.6.1.4.5, *Copies of Written Communications*, for guidance on sending copies of notices and communications to the representative(s).
- (11) **The First Time Abatement (FTA) administrative waiver** is generally not applicable to international penalties addressed in IRM 8.11.5. However, see the exceptions noted in IRM 8.11.5.5.2 and IRM 8.11.5.6.2 for systemically assessed penalties on Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*, and Form 5472, *Information Return*

*of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business, respectively.*

- (12) Payment. To process payments, follow IRM 8.7.17, *Appeals Remittance Procedures*, including:
  - a. Complete Form 3244, *Payment Posting Voucher*, including:
    1. Transaction Code (TC) 640 if the payment is received prior to assessment;
    2. TC 670 if the payment is received after assessment; and
    3. The appropriate Designated Payment Code (see IRM 21.3.4.7.5.3, *Designated Payment Code (DPC)*). DPCs and their definitions are located in IRM Exhibit 21.1.7-5, *Designated Payment Code (DPC)*, or Document 6209, *IRS Processing Codes and Information*.
  - b. The IRS is committed to a 24-hour deposit standard that applies to all remittances collected. This requires that a payment must be submitted for processing within one business day of receipt.
- (13) Appeal Rights. Appeals currently provides a prepayment, post assessment appeal process for assessed international penalties.

8.11.5.2.1  
(09-29-2025)  
**Supervisory Approval of Penalties Before Appeals' Consideration**

- (1) IRC 6751(b)(1) requires written supervisory approval of initial penalty determinations. Written approval may be required prior to issuing a notice letter. See IRM 20.1.1.2.3, *Approval Prerequisite to Penalty Assessments*, including exceptions to the supervisory-approval requirement, and IRM 20.1.1.2.3.1, *Timing of Supervisory Approval*.

8.11.5.2.2  
(09-29-2025)  
**Civil Penalties and Penalty Appeals (PENAP) Program**

- (1) Post assessed civil penalty cases are controlled on the Appeals Centralized Database System (ACDS) as "PENAP" type cases. Penalty appeal (PENAP) procedures generally apply to penalties that have already been assessed.
- (2) Penalty TCs indicate penalty assessment or abatement actions. Generally, when the penalty is assessed on a tax module, each penalty is assigned a TC. See IRM Exhibit 20.1.1-3, *Penalty Transaction Codes*, for a description of the penalty TCs and their related IRC sections.
- (3) Generally, Penalty Reference Numbers (PRNs) are used to identify penalties that are not based on information from a return. These are based on a failure to perform an act required by the IRC.

**Caution:** If the ATE is working a PENAP case with multiple PRNs, the ATE must address each PRN separately, including considering the separate reporting requirements and basis for penalty relief, as appropriate.

8.11.5.2.3  
(09-29-2025)  
**Identifying a PENAP Case**

- (1) Generally, international information return penalties are assessed on MFT 13 (BMF) or 55 (IMF) and are identified by TC 240 and the appropriate PRN, but certain penalties can also be assessed on MFT 30. For example, the IRC 6038D penalty for failure to timely file Form 8938, *Statement of Specified Foreign Financial Assets*, is assessed on MFT 30 when taxpayers file an income tax return with joint filing status.

- (2) The following table identifies the common penalties that are disputed in Appeals. For a complete listing, see the Exhibits found in IRM 20.1.1-4 through IRM 20.1.1-6, *Introduction and Penalty Relief*.

| Penalty Reference Numbers | IRC             | Penalty Description   |
|---------------------------|-----------------|---|
| 599                       | IRC 6038(b)(1)  | Failure to file Form 5471 in conjunction with failure to file corporate return (systemically assessed). See IRM 20.1.9.3, <i>IRC 6038—Information Reporting With Respect to Foreign Corporations and Partnerships</i> .                             |
| 603                       | IRC 6038C(c)    | Failure to file Form 5472 for a foreign corporation engaged in a U.S. business (initial penalty). See IRM 20.1.9.8, <i>IRC 6038C—Information With Respect to Foreign Corporations Engaged in U.S. Business</i> .                                    |
| 613                       | IRC 6679(a)(1)  | Failure to file foreign information returns (Form 5471, Schedule O, Form 8865, Schedule P). See IRM 20.1.9.15, <i>IRC 6679—Return of U.S. Persons With Respect to Certain Foreign Corporations and Partnerships</i> .                               |
| 619                       | IRC 6038(b)(2)  | Failure to file Form 5471 with respect to certain foreign corporations and partnerships (continuation penalty). See IRM 20.1.9.3, <i>IRC 6038—Information Reporting With Respect to Foreign Corporations and Partnerships</i> .                     |
| 623                       | IRC 6038(b)(1)  | Failure to file Form 5471/8865 with respect to certain foreign corporations and partnerships (initial penalty). See IRM 20.1.9.3, <i>IRC 6038—Information Reporting With Respect to Foreign Corporations and Partnerships</i> .                     |
| 625                       | IRC 6038A(d)(1) | Failure to file information on foreign owned corporations and foreign owned U.S. disregarded corporations (Form 5472). See IRM 20.1.9.5, <i>IRC 6038A(d)—Information Reporting for Certain Foreign-Owned Corporations</i> ; 26 CFR 1.6038A-1(c)(1). |

| Penalty Reference Numbers | IRC             | Penalty Description   |
|---------------------------|-----------------|---|
| 659                       | IRC 6677(a)     | Failure to report transactions with respect to certain foreign trusts (Form 3520, Part I and/or Part III). See IRM 20.1.9.13, <i>IRC 6677—Failure to File Information with Respect to Certain Foreign Trusts—Form 3520</i> .  |
| 660                       | IRC 6677(b)     | Failure to file information with respect to certain foreign trusts with a U.S. owner (Form 3520-A). See IRM 20.1.9.14, <i>IRC 6677(a) and (b)—Foreign Trusts With U.S. Owners—Form 3520-A</i> .   |
| 668                       | IRC 6039F(c)    | Failure to report receipt of foreign gifts (Form 3520 - Part IV). See IRM 20.1.9.10, <i>IRC 6039F(c)—Large Gifts From Foreign Persons</i> .   |
| 676                       | IRC 6038B(c)    | Failure to file information on transfers and distributions to foreign persons (Forms 926 and 8865, Schedules G, H, & O). See IRM 20.1.9.7, <i>IRC 6038B(c)—Failure to Provide Notice of Transfers to Foreign Persons</i> .  |
| 677                       | IRC 6677(b)     | Failure to file part II of Form 3520. See IRM 20.1.9.13, <i>IRC 6677—Failure to File Information with Respect to Certain Foreign Trusts—Form 3520</i> .   |
| 700                       | IRC 6038D(d)    | Information with respect to foreign financial assets (Form 8938, initial penalty). See IRM 20.1.9.22, <i>IRC 6038D—Information With Respect to Specified Foreign Financial Assets</i> .   |
| 701                       | IRC 6038A(d)(2) | Failure to file information on foreign owned corporations and foreign owned U.S. disregarded corporations (Form 5472, continuation penalty). See IRM 20.1.9.5, <i>IRC 6038A(d)—Information Reporting for Certain Foreign-Owned Corporations</i> ; 26 CFR 1.6038A-1(c)(1). |

| Penalty Reference Numbers | IRC             | Penalty Description  |
|---------------------------|-----------------|--|
| 702                       | IRC 6677(a)     | Failure to report transactions with certain foreign trusts (Form 3520, Part I and/or Part III, continuation penalty). See IRM 20.1.9.13, <i>IRC 6677—Failure to File Information with Respect to Certain Foreign Trusts—Form 3520</i> .              |
| 703                       | IRC 6677(b)     | Failure to file information with respect to certain foreign trusts with a U.S. owner (Form 3520-A, continuation penalty). See IRM 20.1.9.14, <i>IRC 6677(a) and (b)—Foreign Trusts With U.S. Owners—Form 3520-A</i> .                                |
| 704                       | IRC 6038(a)(2)  | Failure to file foreign information returns (Form 5471, Schedule O, Form 8865, Schedule P, continuation penalty). See IRM 20.1.9.15, <i>IRC 6679—Return of U.S. Persons With Respect to Certain Foreign Corporations and Partnerships</i> .          |
| 705                       | IRC 6038C(c)    | Failure of foreign corporation engaged in U.S. business to furnish information or maintain records (Form 5472, continuation penalty). See IRM 20.1.9.8, <i>IRC 6038C—Information With Respect to Foreign Corporations Engaged in U.S. Business</i> . |
| 706                       | IRC 6677(b)     | Failure to file (part II of Form 3520, continuation penalty). See IRM 20.1.9.13, <i>IRC 6677—Failure to File Information with Respect to Certain Foreign Trusts—Form 3520</i> .  |
| 710                       | IRC 6038D(d)(2) | Information with respect to foreign financial assets (Form 8938, continuation penalty). See IRM 20.1.9.22, <i>IRC 6038D—Information With Respect to Specified Foreign Financial Assets</i> .   |

| Penalty Reference Numbers | IRC             | Penalty Description  |
|---------------------------|-----------------|--|
| 711                       | IRC 6038A(d)(2) | Failure to file information on foreign owned corporations, systematically assessed (Form 5472). See IRM 20.1.9.5, <i>IRC 6038A(d)—Information Reporting for Certain Foreign-Owned Corporations</i> .                       |
| 712                       | IRC 6038(b)     | Failure to file Form 5471 in conjunction with failure to file partnership return, systematically assessed. See IRM 20.1.9.3, <i>IRC 6038—Information Reporting With Respect to Foreign Corporations and Partnerships</i> . |

(3) Delinquency penalties are identified with the following transactions codes.

| Transaction Code | Type of Penalty          | IRM Reference   |
|------------------|--------------------------|---|
| 160 or 166       | Failure to File          | IRM 20.1.2, <i>Failure To File/Failure To Pay Penalties</i> |
| 170 or 176       | Estimated Tax Penalty    | IRM 20.1.3, <i>Estimated Tax Penalties</i>                  |
| 180 or 186       | Deposit Penalty          | IRM 20.1.4, <i>Failure to Deposit Penalty</i>               |
| 240              | Return Related Penalties | IRM 20.1.5, <i>Return Related Penalties</i>                 |

(4) Reporting and filing requirements under the following withholding sections are subject to failure to deposit penalties as discussed in IRM 20.1.4, *Failure to Deposit Penalty*, when they are required to be reported using, and are applicable to, Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*. Other penalties may also apply.

| Statute  | Subject  |
|----------|--|
| IRC 1441 | Withholding of Tax on Nonresident Aliens   |
| IRC 1442 | Withholding of Tax on Foreign Corporations   |
| IRC 1445 | Withholding of Tax on Dispositions of U.S. Real Property Interests (limited only to certain distributions from publicly traded partnerships/trusts and real estate investment trusts that are reportable on Form 1042) |



| Statute     | Subject  |
|-------------|--|
| IRC 1446(a) | Withholding of Tax on Foreign Partners' Share of Effectively Connected Taxable Income (limited only to amounts distributed by a publicly traded partnership that are reportable on Form 1042)  |
| IRC 1446(f) | Special Rules for Withholding on Dispositions of Partnership Interests (limited only to a disposition of, or distribution from, a publicly traded partnership that is reportable on Form 1042) |
| IRC 1471    | Withholdable Payments to Foreign Financial Institutions  |
| IRC 1472    | Withholdable Payments to Other Foreign Entities  |

- (5) Reporting and filing requirements under the following withholding sections relating to non-publicly traded entities (i.e., amounts not otherwise reportable on Form 1042) are subject to the listed penalties, among others, for failure to transmit the withholding.

| Statute     | Subject   |
|-------------|---|
| IRC 1445    | Withholding of Tax on Dispositions of U.S. Real Property Interest, Form 8288, <i>U.S. Withholding Tax Return for Certain Dispositions by Foreign Persons</i> , failure to file and failure to pay penalties.  |
| IRC 1446(a) | Withholding of Tax on Foreign Partners' Share of Effectively Connected Taxable Income (limited to the foreign partner's distributive share of effectively connected taxable income, Form 8804, <i>Annual Return for Partnership Withholding Tax (Section 1446)</i> ). Failure by partnership to pay estimated income tax. |
| IRC 1446(f) | Special Rules for Withholding on Dispositions of Partnership Interests, Form 8288, <i>U.S. Withholding Tax Return for Certain Dispositions by Foreign Persons</i> , failure to file and failure to pay penalties.   |

8.11.5.2.4  
(09-29-2025)

**Assessed Penalty  
Settlement Authority**

- (1) ATEs will consider settlements on cases with assessed penalties for less than the full amount assessed. Delegation Order 8-8 (Rev. 1) delegates the authority to settle cases to ATMs and Appeals Team Case Leaders as to their respective cases. See IRM 1.2.2.9.8, *Delegation Order 8-8 (Rev. 1) (formerly DO-66, Rev. 15), Authority of Appeals in Protested and Tax Court Cases*.
- (2) The ATM will sign the Form 5402, *Appeals Transmittal and Case Memo*.



8.11.5.2.5  
(09-29-2025)  
**Form 13381, Technical  
Guidance Referral**

- (1) The ATE will check the *Appeals Issue Locator* for a list of international penalties designated as an Appeals Coordinated Issue (ACI) or an Appeals Coordinated Issue with review and concurrence (ACI RC). ACI and ACI RC are referred to as coordinated issues. Coordinated issues include Form 3520, *Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, and Form 3520-A, *Annual Return of Foreign Trust With a U.S. Owner*, penalties, among others.
- (2) During the preliminary review, the ATE submits a referral, through their ATM, to International Operations on Form 13381, *Appeals Technical Guidance Referral*, which is required by IRM 8.2.1.6, *Preliminary Review of a Case - ATE*.

**Note 1:** Update Feature Code "AI" (ACI) once a referral is submitted.

**Note 2:** See IRM 8.7.3.5.2, *Review and Concurrence - ATE's Responsibility*, for procedures.

8.11.5.2.6  
(09-29-2025)  
**Collection Due Process  
(CDP) / Equivalent  
Hearing (EH) Cases  
Liability Raised Referral**

- (1) When a Collection AO identifies a civil penalty for which a referral to Area 11 must be submitted, the Collection AO creates a new WUNO to refer the liability issue to Area 11.
- (2) An Area 11 ATM or designated official assigns the new WUNO.
- (3) The Area 11 ATE acts as a consultant when making a determination on the liability.
- (4) Once the WUNO is assigned (CR-NR), the Area 11 ATE works the case similar to other penalty cases with the goal of closing the case within 120 days.
- (5) The ATE reviews the ACDS Case Summary Card for entity and return level information, including:
  - a. ACDS Type = OTHPEN
  - b. Feature Codes:
    - DP for a CDP/EH referral case,
    - IC for international case, and
    - PL if a paperless workstream.
  - c. AIMS indicator = E (exempt). Penalty cases are not controlled on AIMS (Audit Information Management System)
  - d. Statute Date field (STATDATE) = Blank
  - e. Statute Code = ASED
  - f. PropdPen = Enter the total dollar amount of the penalty in dispute for each tax period
- (6) If the penalty is an ACI (check *Appeals Issue Locator*), the Area 11 ATE prepares and submits Form 13381. Update the WUNO by adding Feature Code "AI" (ACI) once a referral is submitted.
- (7) The administrative file should contain documentation associated with the disputed issue, for example, copies of notices issued to the taxpayer, compli-

ance documents, and the taxpayer's written statement with supporting documents that describes the reason(s) the liability should be changed.

(8) Closing the liability referral. The ATE must:

- a. Input MS (Miscellaneous), not AC/FR, when submitting the case to the ATM for closing approval.
- b. Submit the following closing documents to the ATM for approval when finished with the determination:
  - Form 30-40, *Transfer Form*.
  - Form 5402, *Appeals Transmittal and Case Memo*, signed by ATE and ATM. Agreed/unagreed closing code used for the liability issue are used on Form 5402 by the ATE.
  - Form 3210, *Document Transmittal*.
  - Appeals Case Memorandum (ACM), as an attachment to the Case Activity Record (CAR) so the decision can be incorporated into the CDP/EH decision and attachment. IRM 8.6.2, *Appeals Case Memo Procedures*, provides additional information on the preparation of ACMs. If the ACM contains hazards details or other privileged information, Collection Appeals employees should be instructed not to share this information outside the IRS.
- c. Upload the approved closing documents to ACDS following Appeals' naming convention. See IRM 8.6.2.3.5(2), *5402 and ACM Case Closing Procedures*.

**Note:** There is no closing letter issued by Area 11 ATEs for CDP/EH referral liability closings.

(9) The Area 11 ATM submits a STARS (Shared Team of Administrative & Redaction Support) request to transfer the referred WUNO back to the originator.

8.11.5.2.7  
(09-29-2025)  
**Establishing PENAP Cases**

(1) Account and Processing Support (APS) procedures for establishing penalty cases are located in IRM 8.20.5.32.1, *Civil Penalty (MFT 13 & 55) Case Carding*, and in IRM 8.20.5.32.6, *Penalty Appeal (PENAP) Case Carding*.

8.11.5.2.8  
(09-29-2025)  
**Assignment of PENAP Cases**

(1) The ATM or designated official will assign the case to an ATE on ACDS.

8.11.5.3  
(09-29-2025)  
**New Receipt Procedures for ATEs**

(1) Upon receipt of a newly assigned or transferred case (i.e., date of CR-NR), the ATE will follow procedures outlined in IRM 8.2.1.4, *Receipt of New Assignment by an Appeals Technical Employee (ATE)*. These procedures include, but are not limited to, the following:

| Step | Action   |
|------|--|
| 1.   | <p>Complete the statute verification. Verify the penalty was assessed on the appropriate filer, generally on MFT 55 (IMF) or MFT 13 (BMF), TC 240 and the appropriate PRN. See IRM 8.11.5.2.3 , <i>Identifying a PENAP Case</i>, for the PRN.</p> <ul style="list-style-type: none"> <li>• If the penalty was not assessed, return the case to the originating function as a premature referral. See IRM 8.6.1.7.7, <i>Jurisdiction Released</i>, for procedures on returning a case to the originating function.</li> <li>• If the penalty was assessed, proceed to Step 2.</li> </ul> <p><b>Note:</b> The statute of limitations pursuant to IRC 6501(a) for assessing these penalties on a delinquent international information return is three years from the return filing date. Refer to IRM 8.21.3, <i>Appeals Technical Employees Statute Responsibility</i>. The statute verification timeframe shall not be extended beyond 45 days.</p>   |
| 2.   | Verify compliance with IRC 6751(b) penalty approval requirements, if applicable.   |
| 3.   | <p>Entity Level Information:</p> <ul style="list-style-type: none"> <li>• Taxpayer (TP) name, address, Power of Attorney (POA)/ Representative information (including phones/fax), taxpayer identification number (TIN)/employer identification number (EIN).</li> <li>• MFT = generally 13 (BMF EIN) or 55 (IMF SSN). Each penalty identified by TC 240 and corresponding PRN in IDRS is controlled on a separate MFT in ACDS.</li> <li>• Feature Code = IC (international case), and any others which apply, for instance AI (ACI) or PL (paperless workstream).</li> <li>• TYPE = "PENAP".</li> <li>• Location (LOC) Field 10 code(s). See paragraph (3) in IRM 8.11.5.3 below.</li> </ul> <p>Return Level Information:</p> <ul style="list-style-type: none"> <li>• AIMS indicator = E (exempt). Civil Penalty cases are NOT controlled on AIMS</li> <li>• STATDATE = Blank</li> <li>• Statute CODE = ASED</li> <li>• Tax Period - ACDS years agreed to protested tax periods</li> <li>• PropdPen - Enter the dollar amount (round to the nearest whole dollar amount) of each penalty identified in IDRS for each TC 240 in dispute with corresponding PRN.</li> </ul> <p>If a subsequent correction is needed to ACDS, take the following actions:</p> <ul style="list-style-type: none"> <li>• Change the data fields by using the "Validations" tab on the bottom tool bar of the CAR.</li> <li>• All other changes not available in the Validations tab must be submitted to APS using established procedures.</li> </ul> |
| 4.   | Determine whether the filer should be provided access to the case file prior to the conference. This includes verifying whether the taxpayer is a "specified" taxpayer as defined in IRC 7803(e)(7)(C).  |

| Step | Action  |
|------|---|
| 5.   | <p>Determine whether the case is ready for Appeals' consideration.</p> <p>Verify the case file is complete and all file data is present per IRM 20.1.1.3.5.1(4), <i>Subsequent Requests for Penalty Relief</i>. Each disputed penalty must have been previously denied penalty relief and the determination should be in the file. Consider:</p> <ol style="list-style-type: none"> <li>For campus source cases, the determination is Letter 854C, <i>Penalty Waiver or Abatement Disallowed/Appeals Procedure Explained</i>, Letter 105C, <i>Claim Disallowed</i>, or Letter 106C, <i>Claim Partially Disallowed</i>, in some cases. IDRS ENMOD command code usually shows indication of issuance of a Letter 854C if one is not included in the administrative case file.</li> <li>The administrative file should include a valid protest written in response to Compliance's determination.</li> </ol>   |
| 6.   | <p>The ATE identifies all ACIs. The ATE submits a referral, through their ATM, on Form 13381, <i>Appeals Technical Guidance Referral</i>.</p>   |
| 7.   | <p>Search in ACDS under "National Office View" for any potential duplicate, related, or parallel CDP cases.</p> <ol style="list-style-type: none"> <li>Duplicate cases have the same issue/tax year currently being worked by another ATE or previously worked by another ATE that is now closed. If the search returns a duplicate case, contact your ATM for guidance.</li> <li>Related cases involve the same taxpayer. If the search returns a related case assigned to another non-collection ATE, contact your ATM for guidance.</li> <li>Parallel CDP cases are assigned to a Collection AO with the same penalty liability as the Area 11 case. If the search returns a parallel CDP, contact the Collection AO assigned to the CDP work unit to determine whether the Area 11 PENAP case should be transferred to the Collection Appeals area once the Area 11 ATE has an approved recommendation for the liability. If so, follow the closing instructions contained in IRM 8.11.5.2.6, <i>Collection Due Process (CDP) / Equivalent Hearing (EH) Cases Liability Raised Referral</i>.</li> </ol> |
| 8.   | <p>Initial taxpayer contact:</p> <ol style="list-style-type: none"> <li>Follow IRM 8.2.1.4, <i>Receipt of New Assignment by an Appeals Technical Employee (ATE)</i>.</li> <li>Attempt to settle the case based on factual hazards when the case submitted by the originating function is not fully developed and the taxpayer has provided no new information or evidence. <ul style="list-style-type: none"> <li>If the case is fully conceded based upon the information in the file, contact the taxpayer via telephone to explain the basis of the recommendation and next steps.</li> <li>Document the initial contact in the ACDS case activity record with action/sub-action code TC-SCM.</li> <li>The ATE will complete the appropriate closing actions within a reasonable time. For closing procedures, see IRM 8.2.1.4.2, <i>No Initial Contact Letter Required for Certain Cases</i>, and IRM 8.11.5.14.</li> </ul> </li> </ol>   |

- (2) The statute verification shall not be extended beyond 45 calendar days. If other initial case actions must be extended, ATM approval is required. See IRM 8.2.1.4.1, *Exception to 45-Day Timeframe for Initial Case Actions*.
- (3) In ACDS, the LOC10 Field will be used to identify the international information return (IIR) in a case. In many instances, this information will be input prior to case assignment.
  - a. During the 45-day initial review, the ATE must verify the LOC10 information is correct. This information will report the number designation of the IIR.
    - The number of the IIR form(s) are input in LOC10. For example, an IRC 6677(b) penalty with PRN 660 is associated with Form 3520-A. The code for the IIR is "3520A" without a hyphen to separate the letter.
    - If a WUNO contains multiple IIR penalties, they should be input in order (smallest to largest form number) with a forward slash between codes, for example "926/5471".
  - b. The LOC10 field can be updated in ACDS by selecting the case and navigating to the Update screen from the CAR screen.

8.11.5.4  
(09-29-2025)  
**PENAP Consideration**

- (1) Review the case, prepare for the conference, and contact the taxpayer for further clarification, if needed, to provide prompt resolution.
- (2) Appeals will not concede penalty issues to obtain a concession on other issues in the case. Penalties should be settled only on the criteria for penalty relief specified in IRM 20.1.1.3, *Criteria for Relief From Penalties*. The settlement must be based on a careful consideration of the facts and the law, the taxpayer's circumstances, and, in some instances, compliance history. Appeals may recommend abatement of the penalty based on hazards of litigation.

**Note:** Not all penalties that Appeals considers have reasonable cause provisions, see IRM Exhibit 20.1.9-5, *Reasonable Cause Relief*.

- (3) Penalty relief should be considered in the following order:
  - a. Correction of service error, see IRM 8.11.1.2.7.4, *Correction of Service Error*;
  - b. Statutory exceptions, see IRM 8.11.1.2.7.2, *Statutory Exceptions and Administrative Waivers*;
  - c. Administrative waivers IRM 8.11.1.2.7.3, *Administrative Waivers*;
  - d. Reasonable cause, see IRM 8.11.1.2.7.1, *Reasonable Cause*; and
  - e. Hazards of litigation, see IRM 8.11.1.2.7.5, *Hazards of Litigation*.
- (4) Reasonable cause relief is determined by considering the case specific facts and circumstances in conjunction with the guidelines, principles, and evaluating factors identified in IRM 20.1.1.3.2, *Reasonable Cause*, as well as the applicable IRC sections, Treasury regulations, and judicial guidance.

8.11.5.4.1  
(09-29-2025)  
**Payments/Credits  
Applied to the Civil  
Penalty Module**

- (1) An abatement is the reduction or elimination of an assessment. The authority for the IRS to make abatements come from IRC 6404. A penalty abatement request is not an informal claim for refund.
- (2) An “informal claim” must have a written component apprising the IRS a refund is sought and describe the legal and factual basis for the refund so the IRS may investigate the claim. See IRM 25.6.1.10.3.2.3, *Informal Claims*.
- (3) Consider the refund statute during the initial review of the case. IRC 6511 imposes the following limits for making a refund or credit of an overpayment:
  - a. Time period for filing a claim; and
  - b. Limitation on the refund or credit amount based on the “look back” period. Payments that fall outside the look back period are barred from refund or credit of an overpayment.

**Note:** See IRM 8.7.7, *Claim and Overassessment Cases*.

- (4) If an agreement is reached on an overassessment, secure an agreement form using the procedures for agreement in a pre-90 day case (i.e., Form 870, *Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment*, or Form 870-AD, *Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment*) provided the form is executed and filed within the period of limitations for filing a claim for credit or refund. If Form 870 or Form 870-AD is not appropriate, consider the case type to identify the appropriate form for securing an agreement. See IRM 8.7.7.11, *Securing an Agreement Form for an Overassessment (No Refund Claim Filed)*.
- (5) An abatement should not be made of any paid portion of an assessment for which a refund cannot be made. See IRM 25.6.1.10.1.1(6), *Abatement Authority*. The ATE is responsible for communicating with the taxpayer to let them know a portion of the paid penalty is not subject to abatement.
- (6) Penalties should not be abated on a full paid account if the overpayment created is barred from refunding because the refund statute of limitations has passed, and no condition exists that will extend the refund period. This is true even if the taxpayer’s claim for penalty abatement is based on reasonable cause. See IRM 25.6.1.10.1.1(7), *Abatement Authority*. On a full paid module, do not consider the merits of the claim and issue Letter 916C, *Claim Incomplete for Processing; No Consideration*, to close the case as a no consideration case.

8.11.5.5  
(09-29-2025)  
**IRC 6038 Information  
Reporting With Respect  
to Foreign Corporations  
and Partnerships (Form  
5471 and Form 8865)**

- (1) IRC 6038 requires U.S. persons to file certain information returns depending on their interests in, control over, transfers to or distributions from foreign corporations and partnerships. The filing requirements apply to entities described in 26 CFR 301.7701-3, both those treated as associations (i.e., taxable as corporations) as well as those treated as partnerships. Form 5471, **Information Return of U.S. Persons With Respect to Certain Foreign Corporations**, and Form 8865, **Return of U.S. Persons With Respect to Certain Foreign Partnerships**, are used.
- (2) IRC 6038(b) imposes a penalty for failure to furnish information with respect to certain foreign corporations and partnerships.
- (3) Per IRC 6038(b):



- a. Initial penalty is \$10,000 per form per year for a failure to file a Form 5471, Form 8865, or for a form that is filed but does not show the information required to be reported.
  - b. Continuation penalty is assessed if the failure continues for more than 90 days after notification by the IRS, \$10,000 for each 30-day period (or fraction thereof) the failure continues.
  - c. Maximum additional penalty is \$50,000.
  - d. Total penalty can be \$60,000 per form.
- (4) Penalties may be systemically assessed during initial processing of a late-filed Form 5471 attached to a certain late-filed:
- a. Form 1120, *U.S. Corporation Income Tax Return*, (BMF accounts only). See IRM 21.8.2.20.1, *Form 5471 Penalties*.
  - b. Form 1065, *U.S. Return of Partnership Income* (BMF accounts only). See IRM 21.8.2.20.2, *Form 5471 Penalties Systemically Assessed from Late-Filed Form 1120 Series or Form 1065*.
- Note:** IMF accounts do not have automated assessments. See IRM 21.8.1.26.1(4), *Form 5471 Penalties*.
- (5) See IRM 20.1.9.3, *IRC 6038 – Information Reporting With Respect to Foreign Corporations and Partnerships*, for additional information.

8.11.5.5.1  
(09-29-2025)  
**IRC 6038 Reporting and  
Filing Requirements**

- (1) Required information that is reported includes for a U.S. person with interest in:
- a. Foreign Corporation (FC) - Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*, is used by certain U.S. citizens and residents who are officers, directors, or shareholders in certain foreign corporations to satisfy the reporting requirements of IRC 6038 and IRC 6046, and the related regulations. Generally, all U.S. persons are described in categories of filers and, depending on the category of filer, must complete the schedules, statements, and/or other information requested. Form 5471 provides instructions and charts for the filing requirements for categories of filers.
- Note:** The Form 5471 must be attached to the person's timely filed (including extensions) income tax return. See IRC 6038(a)(2) and 26 CFR 1.6038-2(i) for additional information.
- b. Foreign Partnership (FP) - Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*, is used to report the information required under IRC 6038 (reporting with respect to controlled foreign partnerships), IRC 6038B (reporting of transfers to foreign partnerships), or IRC 6046A (reporting of acquisitions, dispositions, and changes in foreign partnership interests). A U.S. person qualifying under one or more of the categories of filers must complete and file this form. Form 8865 provides instructions and charts.
  - c. FC or FP as Disregarded Entity (DE), Form 8858, *Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs)*, is required for each Foreign DE (FDE). An FDE is a wholly owned foreign eligible entity that either defaults into disregarded entity status under 26 CFR 301.7701-3(b) or becomes one by election under 26 CFR 301.7701-3(c). A foreign branch is defined in 26 CFR 1.367(a)-6T(g). For purposes of filing a Form 8858, an FB also

includes a qualified business unit (QBU) (as defined in 26 CFR 1.989(a)-1(b)(2)(ii) that is foreign).

A U.S. person must file a Form 8858 with respect to an FDE or FB if the U.S. person:

- Directly owns the FDE or operates an FB (Category 1 Form 8858 filer).
  - Indirectly through one or more tiers of FDEs is either a tax owner of an FDE or operates an FB (Category 2 Form 8858 filer).
  - Is a Category 4 or 5 filer of Form 5471 with respect to a controlled foreign corporation (CFC) that is the tax owner of an FDE or operates an FB (Category 3 Form 8858 filer).
  - Is a Category 1 or 2 filer of Form 8865 with respect to a controlled foreign partnership (CFP) that is the tax owner of an FDE or operates an FB (Category 4 Form 8858 filer).
  - Is a partner in a partnership that owns an FDE or operates an FB and applies section 987 using a method that requires the partner, rather than the partnership, to recognize section 987 gain or loss.
  - Is a U.S. corporation (other than a Regulated Investment Company (RIC), Real Estate Investment Trust (REIT), or an S corporation) that is a partner in a partnership and the partnership checked box 11 (Dual Consolidated Loss) on Part I of Schedule K-3 (Form 1065) (Category 6 Form 8858 filer).
- d. The due date is the date of the filer's U.S. income tax or information return, including extensions. It is filed as an attachment to:
- a. Form 1120, *U.S. Corporation Income Tax Return*, if first tier.
  - b. Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*, if owned by a CFC.
  - c. Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*, if owned by a CFP.
  - d. Form 1040, *U.S. Individual Income Tax Return*, if owned by an individual.
  - e. Form 1065, *U.S. Return of Partnership Income*, if owned by a partnership.
  - f. Form 1120-S, *U.S. Income Tax Return for an S Corporation*, if owned by an S corporation.
  - g. Form 990, *Return of Organization Exempt From Income Tax*, if owned by an exempt organization.

- (2) See IRM 20.1.9.3.1, *Reporting and Filing Requirements*, for detailed procedures on reporting and filing requirements.

8.11.5.5.2  
(09-29-2025)

#### IRC 6038 Penalty Relief

- (1) Reasonable cause relief is available for IRC 6038 penalties. IRC 6038 does not define reasonable cause. For reasonable cause considerations, see IRM 20.1.1.3.2, **Reasonable Cause**, and 26 CFR 301.6651-1(c).
- (2) Taxpayers are required to file complete and accurate information using:
- a. Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*. 26 CFR 1.6038-2(k)(3)(ii) provides a reasonable cause exception if the U.S. filer has substantially complied with its IRC 6038 reporting requirements.



- b. Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*. 26 CFR 1.6038-3(k)(4) provides the rules for the reasonable cause exception for CFP filers.

- (3) The FTA penalty relief provisions generally do not apply to event-based filing requirements. However, see the exception in IRM 20.1.9.3.5(3) , *Reasonable Cause*, for the *potential* applicability of FTA relief to certain Form 5471 systemically assessed penalties with PRN 599 or 712.

8.11.5.6  
(09-29-2025)  
**IRC 6038A Information Reporting with Respect to Certain Foreign-Owned Corporations (Form 5472)**

- (1) IRC 6038A directs reporting corporations to provide required information under IRC 6038A, for reportable transactions that occur during the tax year with a foreign or domestic related party. Form 5472, **Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business**, is used.
- (2) IRC 6038A(d) imposes a penalty for certain foreign owned domestic corporations failing to report required information or failing to maintain records.
- (3) Per IRC 6038A(d):
  - a. Initial penalty is \$25,000 (\$10,000 for tax years beginning before January 1, 2018) per form per year for a failure to file Form 5472, for a form that is filed but does not show the information required to be reported, or failure to maintain records of transactions with related parties.
  - b. Continuation penalty is assessed if the failure continues for more than 90 days after notification by the IRS, \$25,000 (\$10,000 for tax years beginning before January 1, 2018) for each 30-day period (or fraction thereof) the failure continues.
  - c. Total continuation penalty is not subject to a maximum limit, it may continue to accrue until the failure is cured by proper reporting.
  - d. These penalties are assessed on MFT 13.
- (4) Penalties may be systemically assessed during initial processing of a late filed Form 5472 attached to a late filed Form 1120 series returns:
  - a. BMF - IRM 21.8.2.21.2, *Form 5472 Penalties Systemically Assessed from Late-Filed Form 1120 Series*.
- (5) See IRM 20.1.9.5, *IRC 6038A(d) – Information Reporting for Certain Foreign-Owned Corporations*, for additional information.

8.11.5.6.1  
(09-29-2025)  
**IRC 6038A Reporting and Filing Requirements**

- (1) IRC 6038A(a) and 26 CFR 1.6038A-2 generally require a reporting corporation to furnish detailed information regarding each person who is a related party and had any transaction with the reporting corporation during the taxable year. A reporting corporation is a domestic corporation that is 25% or greater foreign owned. In addition, a foreign owned U.S. disregarded entity is treated as a reporting corporation.
- (2) The due date is the date of the filer's U.S. income tax or information return, including extensions. It is filed as an attachment to the reporting corporation's income tax return.

- (3) A foreign owned U.S. disregarded entity attaches its Form 5472 to a pro forma Form 1120 and files following the Form 5472 instructions. The foreign owned U.S. DE has the same tax year used by its owner for U.S. tax filing requirements or, if none, the calendar year.
- (4) See IRM 20.1.9.5.1, **Reporting and Filing Requirements**, for detailed procedures on reporting and filing requirements.

8.11.5.6.2  
(09-29-2025)  
**IRC 6038A Penalty Relief**

- (1) Reasonable cause relief applies to this penalty. To show reasonable cause exists, the reporting corporation must make an affirmative showing of all the facts alleged as reasonable cause for the failure in a written statement containing a declaration that it was made under the penalties of perjury. See IRC 6038A(d)(3) and 26 CFR 1.6038A-4(b) , as well as IRM 20.1.1.3.2 , **Reasonable Cause**, and regulations (e.g., 26 CFR 301.6651-1(c)) .
- (2) Reasonable cause will be applied liberally when a small corporation had no knowledge of the IRC 6038A requirements, has limited presence in (and contact with) the U.S., promptly and fully complies with all requests to file Form 5472, and promptly and fully complies with all requests to furnish books and records relevant to the reportable transaction. A “small corporation” is defined as a corporation whose gross receipts for a taxable year are \$20,000,000 or less. See 26 CFR 1.6038A-4(b)(2)(ii) for additional information.
- (3) The FTA penalty relief provisions generally do not apply to event-based filing requirements. However, see the exception in IRM 20.1.9.3.5(3) , *Reasonable Cause*, for the *potential* applicability of FTA relief to certain to certain Form 5472 systemically assessed penalties with PRN 711.

8.11.5.7  
(09-29-2025)  
**IRC 6038B Notice of Certain Transfers to Foreign Persons (Form 926 and Form 8865)**

- (1) IRC 6038B directs U.S. persons to provide required information under IRC 6038B for reportable transfers of property or distributions that occur during the tax year with a foreign or domestic related party.
- (2) IRC 6038B(c) imposes a penalty for failing to report required information.
- (3) Per IRC 6038B(d):
  - a. Failure to comply with IRC 6038B can result in a penalty that equals 10% of the fair market value of the property at the time of the transfer.
  - b. The penalty is subject to a \$100,000 limit unless the failure is due to intentional disregard.
- (4) See IRM 20.1.9.7, *IRC 6038B(c) – Failure to Provide Notice of Transfers to Foreign Persons*, for additional information.

8.11.5.7.1  
(12-18-2015)  
**IRC 6038B Reporting and Filing Requirements**

- (1) The following information returns are applicable to this section:
  - a. Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation*. This form is used to report certain transfers of tangible or intangible property to a foreign corporation required by IRC 6038B.
  - b. Form 8865, **Return of U.S. Persons With Respect to Certain Foreign Partnerships**, Schedules G, H and O. These schedules are used to report the information required under IRC 6038B and the related regulations.

- (2) See IRM 20.1.9.7.1, *Reporting and Filing Requirements*, for information on reporting and filing requirements.

8.11.5.7.2  
(09-29-2025)  
**IRC 6038B Penalty Relief**

- (1) Reasonable cause: IRC 6038B(c)(2) provides that no penalty shall apply to any failure if the U.S. person shows such failure is due to reasonable cause and not due to willful neglect. To show reasonable cause exists, an amended return must be filed promptly after becoming aware of the failure. The amended filing must include the information that should have been included with the original return and include a written statement explaining the reasons for the failure to timely comply. See IRC 6038A(d)(3) and regulations thereunder, as well as IRM 20.1.1.3.2, *Reasonable Cause*, and regulations (e.g., 26 CFR 301.6651-1(c)).

8.11.5.8  
(09-29-2025)  
**IRC 6038C Information with Respect to Foreign Corporations Engaged in U.S. Business (Form 5472)**

- (1) IRC 6038C directs reporting corporations to provide required information under IRC 6038A and IRC 6038C. Form 5472, **Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business**, is used.
- (2) IRC 6038C(c) imposes a penalty that is in the same manner of IRC 6038A for failing to report required information or failing to maintain records.
- (3) Per IRC 6038A(d):
- Initial penalty is \$25,000 (\$10,000 for tax years beginning before January 1, 2018) per form per year for a failure to file a Form 5472, for a form that is filed but does not show the information required to be reported, or failure to maintain records of transactions with related parties.
  - Continuation penalty is assessed if the failure continues for more than 90 days after notification by the IRS, \$25,000 (\$10,000 for tax years beginning before January 1, 2018) for each 30-day period (or fraction thereof) the failure continues.
  - Total continuation penalty is not subject to a maximum limit, it may continue to accrue until the failure is cured by proper reporting.
  - These penalties are assessed on MFT 13.
- (4) Penalties may be systemically assessed during initial processing of a late filed Form 5472 attached to a late filed Form 1120 series returns:
- BMF - IRM 21.8.2.21.2, *Form 5472 Penalties Systemically Assessed from Late-Filed Form 1120 Series*.
- (5) See IRM 20.1.9.8, **IRC 6038C—Information With Respect to Foreign Corporations Engaged in U.S. Business**, for additional information.

8.11.5.8.1  
(09-29-2025)  
**IRC 6038C Reporting and Filing Requirements**

- (1) IRC 6038C(a) and regulations generally require a reporting corporation to furnish information regarding each person who is a related party and had any transaction with the reporting corporation during the taxable year. A reporting corporation is a foreign corporation that is engaged in a trade or business within the U.S. at any time during a taxable year.

- (2) The due date is the date of the filer's U.S. income tax or information return, including extensions. It is filed as an attachment to the reporting corporation's income tax return.
- (3) IRM 20.1.9.8.1, *Reporting and Filing Requirements*, for detailed procedures on reporting and filing requirements.

8.11.5.8.2  
(09-29-2025)

**IRC 6038C Penalty Relief**

- (1) Reasonable cause relief is available for this penalty. Per IRC 6038C(c) , to show reasonable cause exists, the reporting corporation must make an affirmative showing of all the facts alleged as reasonable cause for the failure in a written statement containing a declaration that it was made under the penalties of perjury. See IRC 6038A(d)(3) and 26 CFR 1.6038A-4(b) , as well as IRM 20.1.1.3.2 , **Reasonable Cause**, and regulations (e.g., 26 CFR 301.6651-1(c) ).
- (2) Reasonable cause will be applied liberally when a small corporation had no knowledge of the IRC 6038C requirements, has limited presence in (and contact with) the U.S., promptly and fully complies with all requests to file Form 5472, and promptly and fully complies with all requests to furnish books and records relevant to the reportable transaction. A "small corporation" is defined as a corporation whose gross receipts for a taxable year are \$20,000,000 or less. See 26 CFR 1.6038A-4(b)(2)(ii) for additional information.
- (3) The FTA penalty relief provisions generally do not apply to event-based filing requirements. However, see the exception in IRM 20.1.9.5.5(3), *Reasonable Cause*, for the *potential* applicability of FTA relief to certain Form 5472 systemically assessed penalties with PRN 711.

8.11.5.9  
(09-29-2025)

**IRC 6038D Information with Respect to Foreign Financial Assets (Form 8938)**

- (1) IRC 6038D requires reporting for a specified person who has an interest in a specified foreign financial asset with an aggregate value greater than the applicable reporting thresholds. Form 8938, *Statement of Specified Foreign Financial Assets*, is used.
- (2) The requirement to file Form 8938 does not replace or otherwise affect a filer's obligation to file an FBAR. Individuals must file each form for which they meet the relevant reporting threshold. See IRM Exhibit 5.21.6-1, *Comparison of Form 8938 and FBAR Requirements*, for a comparison of these two foreign asset reporting requirements.
- (3) IRC 6038D(d) imposes a penalty for failing to report required information.
- (4) Per IRC 6038D(d):
  - a. Initial penalty is \$10,000 per form per year for a failure to file a Form 8938 or for a form that is filed but does not show the information required to be reported.
  - b. Continuation penalty is assessed if the failure continues for more than 90 days after notification by the IRS, \$10,000 for each 30-day period (or fraction thereof) the failure continues.
  - c. Maximum additional penalty is \$50,000.
  - d. Maximum total penalty is \$60,000 per form.
- (5) Penalties may be assessed on MFT 13, 30 or 55. Married specified persons who file a joint annual income tax return and fail to file a required Form 8938

filing requirement are subject to penalties as if the married specified persons are a single specified person. The liability of married specified individuals who file a joint annual return with respect to any penalties under this section is joint and several and is assessed on MFT 30. See 26 CFR 1.6038D-8(b) for further information.

- (6) See IRM 20.1.9.22, *IRC 6038D— Information With Respect to Specified Foreign Financial Assets*, for additional information.

8.11.5.9.1  
(09-29-2025)  
**IRC 6038D Reporting  
and Filing Requirements**

- (1) IRC 6038D and the regulations thereunder prescribe when a Form 8938 filing is required:
- a. They are a specified person (either a specified individual or a specified domestic entity),
  - b. They have an interest in a specified foreign financial asset required to be reported, and
  - c. The aggregate value of their specified foreign financial assets is more than the applicable reporting thresholds.
- (2) The due date is the date of the filer's U.S. income tax or information return, including extensions. If no U.S. income tax or information return is required to be filed, Form 8938 is not required, even if the value of the specified foreign financial assets is more than the appropriate reporting threshold.
- (3) See IRM 20.1.9.22.1, *Reporting and Filing Requirements*, for detailed procedures on reporting and filing requirements.

8.11.5.9.2  
(09-29-2025)  
**IRC 6038D Penalty Relief**

- (1) Reasonable cause relief is available for this penalty. IRC 6038D(g) provides that no penalty shall apply if the individual shows that the failure is due to reasonable cause and not due to willful neglect. See IRC 6038D(g) and 26 CFR 1.6038D-8, as well as IRM 20.1.1.3.2, *Reasonable Cause*, and regulations (e.g., 26 CFR 301.6651-1(c)).
- (2) An individual will not have reasonable cause merely because a foreign jurisdiction would impose a civil or criminal penalty on any person for disclosing the required information, per IRC 6038D(g).

8.11.5.10  
(09-29-2025)  
**IRC 6039F Notice of  
Large Gifts Received  
from Foreign Persons  
(Form 3520)**

- (1) IRC 6039F establishes reporting requirements for U.S. persons who receive large gifts from foreign persons. Form 3520, **Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts**, is used. That form has four different parts that relate to different filing requirements for filing a Form 3520. The obligation to file a Form 3520 to report the receipt of a large gift (or bequest) from a foreign person by a U.S. person is reportable on Part IV of the form.
- (2) IRC 6039F(c) imposes a penalty for failing to report required information.
- (3) Per IRC 6039F(c):
- a. The penalty for failure to report a large gift (or bequest) from a foreign person on a timely, complete, and accurate Form 3520 is 5% of the reportable amount for each month for which the failure continues after the Form 3520 due date.

b. The total penalty should not exceed 25% of the reportable amount.

- (4) See IRM 20.1.9.10, *IRC 6039F(c) – Large Gifts From Foreign Persons*, and Notice 97-34, for additional information.

8.11.5.10.1  
(09-29-2025)  
**IRC 6039F Reporting  
and Filing Requirements**

- (1) IRC 6039F requires a U.S. person who receives gifts or bequests during the taxable year from a foreign individual, foreign estate, foreign corporation, or foreign partnership, that in the aggregate exceed the current threshold amounts, to disclose information about the amounts received. The reporting threshold:
- a. Amounts received from a foreign corporation or a foreign partnership is \$10,000 per IRC 6039F(a). However, the amount is modified by cost-of-living adjustments; for example, in 2019 the amount is \$16,388 per Rev. Proc. 2018-57. The instructions for Form 3520 for any year will have the applicable dollar threshold for the filing requirement for that year. Once that threshold is reached, reporting is also required to separately identify each gift.
  - b. Amounts received from non-resident alien individuals and foreign estates is statutorily \$10,000; however, the threshold was raised to amounts that exceed \$100,000 under Notice 97-34. Once that threshold is reached, reporting is also required to separately identify each gift in excess of \$5,000.
- (2) Form 3520 is filed once a year for all reportable amounts received within the year with respect to each U.S. person. It is generally due on the due date of the filer's income tax return, including extension, and is filed with the Ogden Service Center separately from the U.S. person's income tax return.
- (3) See IRM 20.1.9.10.1, *Reporting and Filing Requirements*, for detailed procedures on reporting and filing requirements.

8.11.5.10.2  
(12-18-2015)  
**IRC 6039F Penalty Relief**

- (1) Reasonable cause relief is available for this penalty. IRC 6039F(c)(2) provides that no penalty shall apply if shown the failure is due to reasonable cause and not due to willful neglect. See IRC 6039F(c)(2), as well as IRM 20.1.1.3.2, *Reasonable Cause*, and regulations (e.g., 26 CFR 301.6651-1(c)).

8.11.5.11  
(09-29-2025)  
**IRC 6677(a) Failure to  
File Information with  
Respect to Certain  
Foreign Trusts (Form  
3520)**

- (1) IRC 6048 establishes reporting requirements for U.S. persons who have certain transactions or are treated as owners of a foreign trust. Form 3520, **Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts**, is used. That form has four different parts that relate to different filing requirements for filing a Form 3520. The obligation to file a Form 3520 to report transfers to, or receive distributions from, a foreign trust by a U.S. person is reportable on Part I and III, respectively, of the form. See IRC 6048(a) and IRC 6048(c). The obligation to file a Form 3520 by a U.S. persons who is treated as owning any portion of a foreign trust is reportable on Part II of the form. See IRC 6048(b).
- (2) IRC 6677 imposes a penalty for failing to report required information.
- (3) Per IRC 6677:



- a. Form 3520, Part I: 35% of the gross reportable amount of any property transferred to a foreign trust for failure by a U.S. transferor to report the creation of, or transfer to, a foreign trust. See IRC 6677(a).
  - b. Form 3520, Part II: 5% of the gross reportable amount of the portion of the trust's assets treated as owned by a U.S. person. This penalty is related to a failure by the U.S. person to ensure that the foreign trust files a Form 3520-A, *Annual Return of Foreign Trust With a U.S. Owner* (a separate penalty is imposed under IRC 6677(b) and is discussed further in IRM 20.1.9.14, *IRC 6677(a) and (b)—Foreign Trusts With U.S. Owners—Form 3520-A*).
  - c. Form 3520, Part III: 35% of the gross reportable amount of the distributions received from a foreign trust for failure by a U.S. person to report receipt of the distribution. See IRC 6677(a).
  - d. Continuation penalty is assessed if the failure continues for more than 90 days after notification by the IRS, \$10,000 for each 30-day period (or fraction thereof) the failure continues.
  - e. Maximum total penalty (both initial penalty and continuation penalty combined) for each failure per year is the gross reportable amount. The penalty for each part of Form 3520 required to be filed is considered separately.
- (4) Penalties may be assessed during initial processing of a late-filed Form 3520. For details refer to IRM 21.8.2.19.1, *Penalties Assessed Under § 6677 and § 6039F - Form 3520 & Form 3520-A*.
  - (5) See IRM 20.1.9.13, *IRC 6677 - Failure to File Information with Respect to Certain Foreign Trusts—Form 3520*, and Notice 97-34 for additional information.

8.11.5.11.1  
(09-29-2025)

**IRC 6677(a) Reporting  
and Filing Requirements**

- (1) IRC 6048 requires reporting for a U.S. person who has certain transactions or is treated as an owner of a foreign trust.
- (2) Form 3520 is filed once a year for all reportable amounts received within the year with respect to each U.S. person. It is generally due on the due date of the filer's income tax return, including extension, and is filed with the Ogden Service Center separately from the U.S. person's income tax return.
  - a. Form 3520 information is reported on the BMF under MFT 68. Penalties are assessed on a civil penalty module (e.g., MFT 55).
  - b. A separate Form 3520 is filed for each foreign trust.
- (3) See IRM 20.1.9.13.1, *Reporting and Filing Requirements*, for detailed procedures on reporting and filing requirements.

8.11.5.11.2  
(09-29-2025)

**IRC 6677(a) Penalty  
Relief**

- (1) Reasonable cause relief is available for this penalty. IRC 6677(d) provides that no penalty shall apply if shown that the failure is due to reasonable cause and not due to willful neglect. See IRC 6677(d), as well as IRM 20.1.1.3.2, *Reasonable Cause*, and regulations (e.g., 26 CFR 301.6651-1(c)).
- (2) Reasonable cause does not include when a foreign jurisdiction would impose a civil or criminal penalty on any filer for disclosing the required information per IRC 6677(d).

8.11.5.12  
(09-29-2025)  
**IRC 6677(b) Failure to  
File Information Return  
with Respect to U.S.  
Owners of a Foreign  
Trust (Form 3520-A)**

- (1) IRC 6048 establishes reporting responsibility for a U.S. person treated as the owner of a foreign trust. Form 3520-A, **Annual Return of Foreign Trust With a U.S. Owner**, is used.
- (2) A foreign trust with a U.S. owner files Form 3520-A annually to provide information about the trust, its U.S. beneficiaries, and any U.S. person who is treated as an owner of any portion of the foreign trust. If a foreign trust fails to timely file Form 3520-A, penalties are imposed on the U.S. person who is treated as the owner of the foreign trust.
- (3) IRC 6677 imposes a penalty for failing to report required information.
- (4) Per IRC 6677:
  - a. An initial penalty is 5% of the gross reportable amount of the portion of the trust's assets treated as owned by a U.S. person.
  - b. Continuation penalty is assessed if the failure continues for more than 90 days after notification by the IRS, \$10,000 for each 30-day period (or fraction thereof) the failure continues.
  - c. Maximum total penalty (both initial penalty and continuation penalty combined) for each failure per year is the gross reportable amount.
- (5) Penalties may be assessed during initial processing of a late-filed Form 3520-A. For details, refer to IRM 21.8.2.19.1, *Penalties Assessed Under § 6677 and § 6039F - Form 3520 & Form 3520-A*.
- (6) See IRM 20.1.9.14, *IRC 6677(a) and (b)—Foreign Trusts With U.S. Owners—Form 3520-A*, for additional information.

8.11.5.12.1  
(09-29-2025)  
**IRC 6677(b) Reporting  
and Filing Requirements**

- (1) A foreign trust with a U.S. owner must file Form 3520-A in order for the U.S. owner to satisfy its annual information reporting requirements under IRC 6048(b). Each U.S. person treated as an owner of any portion of a foreign trust under IRC 671 through IRC 679 is responsible for ensuring that the foreign trust files Form 3520-A and furnishes the required annual statements to its U.S. owners and U.S. beneficiaries.
  - a. Form 3520-A is filed annually for the foreign trust with the Ogden Service Center separately from the U.S. person's income tax return.
  - b. The U.S. owner may be able to avoid penalties by attaching a substitute Form 3520-A to a timely filed Form 3520.
  - c. Form 3520-A information is reported on the BMF under MFT 42. Penalties are assessed on a civil penalty module (e.g., MFT 55).
- (2) See IRM 20.1.9.14.1, *Reporting and Filing Requirements*, for detailed procedures on reporting and filing requirements.

8.11.5.12.2  
(09-29-2025)  
**IRC 6677(b) Penalty  
Relief**

- (1) Reasonable cause relief is available for this penalty. IRC 6677(d) provides that no penalty shall apply if shown that the failure is due to reasonable cause and not due to willful neglect. See IRC 6677(d), as well as IRM 20.1.1.3.2, *Reasonable Cause*, and regulations (e.g., 26 CFR 301.6651-1(c)).
- (2) Reasonable cause does not include when a foreign jurisdiction would impose a civil or criminal penalty on any filer for disclosing the required information, per IRC 6677(d).



8.11.5.13

(09-29-2025)

**IRC 6679 Failure to File Returns of U.S. Persons with Respect to Certain Foreign Corporations and Partnerships (Form 5471 and Form 8865)**

- (1) IRC 6046 and IRC 6046A require U.S. persons to file certain information returns depending on their interests in acquiring, disposing or changes in interests of foreign corporations and partnerships. Schedule O of Form 5471, **Information Return of U.S. Persons With Respect to Certain Foreign Corporations** and Schedule P of Form 8865, **Return of U.S. Persons With Respect to Certain Foreign Partnerships** are used.
- (2) IRC 6679 imposes a penalty for failure to furnish information with respect to certain foreign corporations and partnerships.
- (3) Per IRC 6679(a):
  - a. Initial penalty is \$10,000 per form per year for a failure to file as required by IRC 6046 or IRC 6046A or for a form that is filed but does not show the information required to be reported.
  - b. Continuation penalty is assessed if the failure continues for more than 90 days after notification by the IRS, \$10,000 for each 30-day period (or fraction thereof) the failure continues.
  - c. Maximum additional penalty is \$50,000.
  - d. Maximum total penalty is \$60,000 per form.
- (4) IRC 6679 penalties are not systemically assessed during initial processing of a late-filed Form 5471 or Form 8865, unlike for IRC 6038 penalties.
- (5) See IRM 20.1.9.15, *IRC 6679 – Return of U.S. Persons With Respect to Certain Foreign Corporations and Partnerships*, for additional information.

8.11.5.13.1

(09-29-2025)

**IRC 6679 Reporting and Filing Requirements**

- (1) Required information that is reported includes for a U.S. person with an interest in:
  - a. FC - IRC 6046 requires Schedule O, **Organization or Reorganization of Foreign Corporation and Acquisitions and Dispositions of its Stock**, of Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*, to be attached to an income tax return and filed by the due date of the taxpayer's income tax return, including extensions.
  - b. FP - IRC 6046A requires Schedule P, **Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership**, of Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*, to be attached to an income tax return and filed by the due date of the taxpayer's income tax return, including extensions.
- (2) See IRM 20.1.9.15.1, *Reporting and Filing Requirement*, for detailed procedures on reporting and filing requirements.

8.11.5.13.2

(12-18-2015)

**IRC 6679 Penalty Relief**

- (1) Reasonable cause relief is available per IRC 6679(a)(1). IRC 6679 does not define reasonable cause. For reasonable cause considerations, see IRM 20.1.1.3.2, *Reasonable Cause*, and regulations (e.g., 26 CFR 301.6651-1(c) ).
- (2) 26 CFR 301.6679-1(a)(3) states, in part, that if the taxpayer exercises ordinary business care and prudence and is nevertheless unable to furnish any item of information required under IRC 6046, IRC 6046A and the regulations thereunder, such failure shall be considered due to reasonable cause.

8.11.5.14  
(09-29-2025)

**Closing Procedures for  
Appeals Technical  
Employees**

- (1) This section discusses the process used by the ATE to close civil penalty cases established as PENAP cases in ACDS.
- (2) Use Appeals Generator of Letters and Forms (APGolf 2.0) to generate all standard forms and letters. In rare situations, resolution of the case will involve a specific matter closing agreement. See IRM 8.13.1, *Processing Closing Agreements in Appeals*.
- (3) Prepare the ACM. The ACM should outline the facts and circumstances supporting sustention or abatement of the penalty. This could include, but is not limited to:
  - Taxpayer's filing history
  - Citing case law
  - Hazards of litigation

IRM 8.6.2, *Appeals Case Memo Procedures*, provides additional information on the preparation of ACMs.
- (4) If closing a case electronically, update the ACDS Feature Code PL (Paperless) and EC (Electronic Closing). Electronic case closure allows for a flexible closure process of PENAP cases without requiring the physical case file to be shipped to APS. See IRM 8.20.7, *Closing Procedures*. A PL case is closed to APS electronically.
- (5) Prepare the ACDS customized Form 5402, *Appeals Transmittal and Case Memo*:
  - a. Select to route the case to the APS unit.
  - b. Complete Related Taxpayer(s) section, if applicable.
  - c. Input a separate line for each penalty for each year. Each line should contain the following:
    1. Affected Tax Period.
    2. Blocking Series - 96 (ACDS generates letter code "X") for fully sustained. Blocking Series 96X indicates Appeals has made a final determination on the respective account.
    3. Enter the Closing Codes for PENAP cases:
      - a. **Sustained** (penalties are not removed) – closing code 14
      - b. **Abated** (penalties are fully removed) – closing code 15
      - c. **Partially Abated** (only part of the penalties are removed) – closing code 16
    4. Choose an IDRS Reason Code:
      - a. 40 - Complete Removal of Penalty
      - b. 41 - Appeals Sustained Penalty
      - c. 42 - Appeals Partial Abatement of Penalty
    5. Input the appropriate TC and transaction amount according to the closing code.
      - a. If the penalty is fully sustained, input TC 290 and zero dollars (\$0.00).

**Example:** IDRS shows TC 240 PRN 668. PRN 668 identifies the penalty assessed under IRC 6039F. The assessed amount is \$10,000 and Appeals sustains the penalty.

| Period(s) | ARDI Code | Blocking Series | Tran. Code | Tran. Amount | IRC. Sec. Ref. No. | Amount Appealed | Amount Sustained | Amount Abated | IDRS Reason Code |
|-----------|-----------|-----------------|------------|--------------|--------------------|-----------------|------------------|---------------|------------------|
| 201912    | 2         | 96X             | 290        | 0.00         | 6039F/668          | 10,000.00       | 10,000.00        | 0.00          | 041              |

- b. If the penalty is partially abated, input TC 240 and negative amount for the abated amount. A TC 240 with negative amount generates a TC 241 in IDRS.

**Example:** IDRS shows TC 240 PRN 668. The assessed amount is \$10,000 and Appeals recommended \$2,000 reduction in the assessed penalty.

| Period(s) | ARDI Code | Blocking Series | Tran. Code | Tran. Amount | IRC. Sec. Ref. No. | Amount Appealed | Amount Sustained | Amount Abated | IDRS Reason Code |
|-----------|-----------|-----------------|------------|--------------|--------------------|-----------------|------------------|---------------|------------------|
| 201912    |           |                 | 240        | (2,000.00)   | 6039F/668          | 10,000.00       | 8,000.00         | (2,000.00)    | 042              |

**Note:** Accounts Receivable Delinquent Inventory (ARDI) codes may be required to generate certain customized Forms 5402. Once Form 5402 is updated, the ATE will no longer be required to enter ARDI codes on Form 5402.

- c. If the penalty is fully abated, input TC 290 with zero dollars (\$0.00) in the Amount Sustained column and negative amount for the amount abated.

**Example:** IDRS shows TC 240 PRN 668. The assessed amount is \$10,000 and Appeals recommended \$10,000 abatement of the assessed penalty.

| Period(s) | ARDI Code | Blocking Series | Tran. Code | Tran. Amount | IRC. Sec. Ref. No. | Amount Appealed | Amount Sustained | Amount Abated | IDRS Reason Code |
|-----------|-----------|-----------------|------------|--------------|--------------------|-----------------|------------------|---------------|------------------|
| 201912    | 7         |                 | 290        | (10,000.00)  | 6039F/668          | 10,000.00       | 0.00             | (10,000.00)   | 040              |

6. In the Remarks and/or ACM section:

- If ACI-RC, include a comment that R&C was obtained, the concurrence date and assigned coordinator's name.
  - Include special instructions related to processing the closure.
7. Check the box for the electronic signature to populate "/s/":

- (6) Prepare the appropriate closing letter in ACDS:

- Letter 1277, *Penalty Appeal Decision*, if the taxpayer's penalty abatement request is not fully granted. Use the narrative section to provide the reason for denying the abatement request in full or in part; or
- Letter 1278, *Penalty Appeal Abatement*, if the taxpayer's penalty abatement request is fully granted.

**Reminder:** If a taxpayer's authorized representative has requested copies of notices sent by the IRS to the taxpayer, remember to also prepare Letter 937, *Transmittal for Power of Attorney*.

- (7) Prepare the closing letter with the ATM's signature block. The ATE dates the closing letter after the ATM signs it if the ATE mails the closing letter(s) to the taxpayer and POA. A copy of the dated signed closing letter is uploaded to ACDS and included in the file if a physical file exists.
- (8) If APS is mailing the closing letter, ATM's signed closing letter is left undated as an attachment in ACDS.
- (9) Attach the closing documents (signed 5402, closing letter, agreement form, if applicable) to ACDS and include the closing letter, as well as any Appeals generated or received correspondence, in the administrative file.