



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

20.1.10

AUGUST 20, 2024

## EFFECTIVE DATE

(08-20-2024)

## PURPOSE

- (1) This transmits revised IRM 20.1.10, Penalty Handbook, Miscellaneous Penalties

## MATERIAL CHANGES

- (1) IRM 20.1.10.1, Program Scope and Objectives - added internal control.
- (2) IRM 20.1.10.1.2, Authority - added citations.
- (3) IRM 20.1.10.1.3, Roles and Responsibilities - changed title.
- (4) IRM 20.1.10.1.5, Program Controls - added subsection.
- (5) IRM 20.1.10.1.6, Terms and Acronyms - added acronyms.
- (6) IRM 20.1.10.6.3, IRC 6652(j) - Failure to File Certification With Respect to Certain Residential Rental Projects - added additional test criteria.
- (7) IRM 20.1.10.6.3.2, Assertion/Assessment - corrected citation.
- (8) IRM 20.1.10.7.3, Penalty Relief - added additional example.
- (9) IRM 20.1.10.8.1.3, Penalty Relief - revised appeal procedure.
- (10) IRM 20.1.10.8.2, IRC 6673(b) - Proceedings in Other Courts - edited awarding court.
- (11) IRM 20.1.10.8.2.1, Penalty Computation - edited awarding court.
- (12) IRM 20.1.10.8.2.3, Penalty Relief - revised appeal procedure.
- (13) IRM 20.1.10.12.1.2, Assertion/Assessment - added court case.
- (14) IRM 20.1.10.12.1.3, Penalty Relief - added relief criteria.
- (15) IRM 20.1.10.12.2, IRC 6702(b) - Civil Penalty for Specified Frivolous Submissions - clarified frivolous submission.
- (16) IRM 20.1.10.12.2.1, Penalty Computation - added citation.
- (17) IRM 20.1.10.12.2.3, Penalty Relief - added where to dispute penalty.
- (18) IRM 20.1.10.13, IRC 6705 - Failure by Broker to Provide Notice to Payors - clarified citation.
- (19) IRM 20.1.10.14, IRC 6706 - Original Issue Discount Information Requirements - expanded definition of qualified stated interest.
- (20) IRM 20.1.10.14.2, IRC 6706(b) - Failure to Furnish Information to Secretary - added authority.
- (21) IRM 20.1.10.16, IRC 6720B - Fraudulent Identification of Exempt Use Property - added citations.
- (22) IRM 20.1.10.19, IRC 7519- Required Payments for Entities Electing Not to Have Required Taxable Year - revised number of payments.

## **EFFECT ON OTHER DOCUMENTS**

This material supersedes IRM 20.1.10, dated November 9, 2023.

## **AUDIENCE**

All operating divisions and functions that work with penalties.

Nicole Young Scott  
Director, Business Support Office  
Small Business/Self-Employed

20.1.10

Miscellaneous Penalties

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20.1.10.1  
(08-20-2024)  
**Program Scope and Objectives**

- (1) **Purpose:** The purpose of this IRM section is to cover policy as set by the Office of Servicewide Penalties (OSP) as it relates to the miscellaneous civil penalty provisions of the Internal Revenue Code (IRC) that are not included in the other sections of Part 20, Chapter 1.
- (2) **Audience:** All operating division employees and processing functions who address penalties not included in the other sections of Part 20, Chapter 1.
- (3) **Policy Owner:** The Business Support Office (BSO) is under Operations Support (OS). SB/SE is responsible for overseeing civil penalties, including penalties not included in the other sections of Part 20, Chapter 1.
- (4) **Program Owner:** The Office of Servicewide Penalties (OSP) is responsible for penalties not included in the other sections of Part 20, Chapter 1.
- (5) **Primary Stakeholders:** All operating divisions.
- (6) **Contact Information:** To recommend changes or make any other suggestions to this IRM, email OSP at \*Servicewide Penalties Team. Also see IRM 1.11.6.5, Providing Feedback About an IRM Section - Outside of Clearance.

20.1.10.1.1  
(10-12-2022)  
**Background**

- (1) Miscellaneous penalties not included in the other sections of Part 20, Chapter 1, are important tools for IRS enforcement. The IRS has a responsibility to collect the proper amount of tax revenue in the most efficient manner. In addition, penalties provide the IRS with an important tool to achieve that goal because they enhance voluntary compliance by taxpayers. See IRM 1.2.1.12.1, Policy Statement 20–1 (Formerly P-1-18), Penalties are used to enhance voluntary compliance.

20.1.10.1.2  
(08-20-2024)  
**Authority**

- (1) IRC 856 – Definition of real estate investment trust.
- (2) IRC 1400Z-2 – Special rules for capital gains invested in opportunity zones.
- (3) IRC 5000 – Requirement to maintain minimum essential coverage.
- (4) IRC 6652 – Failure to file certain information returns, registration statements, etc.
- (5) IRC 6657 – Bad checks.
- (6) IRC 6673 – Sanctions and costs awarded by courts.
- (7) IRC 6674 – Fraudulent statement or failure to furnish statement to employee.
- (8) IRC 6682 – False information with respect to withholding.
- (9) IRC 6697 – Assessable penalties with respect to liability for tax of regulated investment companies.
- (10) IRC 6702 – Frivolous tax submissions.
- (11) IRC 6705 – Failure by broker to provide notice to payers.
- (12) IRC 6706 – Original issue discount information requirements.
- (13) IRC 6709 – Penalties with respect to mortgage credit certificates.
- (14) IRC 6720B – Fraudulent identification of exempt use property.

- (15) IRC 6720C – Penalty for failure to notify health plan of cessation of eligibility for continuation coverage premium assistance.
- (16) IRC 7268 – Possession with intent to sell in fraud of law or to evade tax.
- (17) IRC 7519 – Required payments for entities electing not to have required taxable year.
- (18) IRC 9707 – Failure to pay premium.

20.1.10.1.3  
(08-20-2024)

**Roles and  
Responsibilities**

- (1) The Director, Business Support, is the director responsible for the servicewide civil penalty program.
- (2) Overall responsibility for civil penalty programs is assigned to OSP. OSP is a matrix organization residing in the Business Support (Small Business/Self Employed) Function. OSP is charged with coordinating policy and procedures concerning the administration of civil penalty programs, ensuring consistency with the penalty policy statement, reviewing and analyzing penalty information, researching penalty effectiveness on compliance trends, and determining appropriate action necessary to promote voluntary compliance.
- (3) Each IRS organization is responsible for establishing an internal process for managing their procedures based upon these Servicewide policies and may develop additional guidance or reference materials for their specific functional administrative needs. However, such reference material must receive approval from OSP prior to distribution and must remain consistent with the policies and general procedural requirements set forth in this IRM, Policy Statement 20-1 (e.g., Penalty Policy Statement) in IRM 1.2.1.12.1, Policy Statement 20-1 (Formerly P-1-18), Penalties are used to enhance voluntary compliance, and any other guidance relating to civil penalties.
- (4) All employees should keep the following objectives in mind when handling each penalty case:
  - a. Similar cases and similarly-situated taxpayers should be treated alike.
  - b. Each taxpayer should have the opportunity to have their interests heard and considered.
  - c. Strive to make a right decision in the first instance. A wrong decision, even though eventually corrected, has a negative impact on voluntary compliance.
  - d. Provide adequate opportunity for incorrect decisions to be corrected.
  - e. Treat each case in an impartial and honest way (i.e., approach the job, not from the government's or the taxpayer's perspective, but in the interest of fair and impartial enforcement of the tax laws).
  - f. The IRS adopted the Taxpayer Bill of Rights (TBOR) in June 2014. Employees are responsible for being familiar with and acting in accord with taxpayer rights, and in particular, a taxpayer's right to a fair and just tax system. This right, the right to a fair and just tax system: taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service (TAS) if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels. For more information about TBOR, see IRC 7803(a)(3), and visit the TBOR website at *TBOR*.
  - g. Endeavor to promptly process and resolve each taxpayer's case.

- h. Resolve each penalty case in a manner which promotes voluntary compliance.

20.1.10.1.4  
(04-26-2018)  
**Program Management  
and Review**

- (1) Every function in the IRS has a role in proper penalty administration. It is essential that each function conducts its operations with an emphasis on promoting voluntary compliance. Appropriate reviews should be conducted to ensure consistency with the penalty policy statement (Policy Statement 20-1) and philosophy.
- (2) To promote the goal of consistency and fairness, OSP will review semi-annually a sample of penalty assessments, provided by SB/SE Research. See IRM 20.3.1, Civil Penalty Accuracy Review Process. The report of findings is shared with the Director, Business Support, the CFO, and other leadership as needed. The completed report is uploaded to an enterprise shared folder. Reports may be prepared when a significant issue develops, such as a correction to programming that affects many taxpayers.

20.1.10.1.5  
(08-20-2024)  
**Program Controls**

- (1) Internal Management Document Certification: this IRM is annually recertified as required by Servicewide Policy, Directives, and Electronic Resources and regularly updated when new legislation or policy is published.

20.1.10.1.6  
(08-20-2024)  
**Terms and Acronyms**

- (1) The table below is a list of terms and acronyms used in this IRM.

Acronym	Definition
ADP	Automated Data Processing
ARP	American Rescue Plan
ARRA	American Recovery and Reinvestment Act
BBA	Bipartisan Budget Act of 2015
BLK	Blocking Series
BMF	Business Master File
CAP	Capital
CCC	Computer Condition Code
CCP	Centralized Case Processing
CD	Certificates of Deposit
CDO	Collateralized Debt Obligation
CDP	Collection Due Process
CFR	Code of Federal Regulations
COBRA	Consolidated Omnibus Budget Reconciliation Act
COVID	Coronavirus Disease
CP	Computer Paragraph

Acronym	Definition
DDIA	Direct Debit Installment Agreement
DISC	Domestic International Sales Corporation
DOJ	Department of Justice
DTC	Depository Trust Company
DLN	Document Locator Number
EFT	Electronic Funds Transfer
EFTPS	Electronic Federal Tax Payment System
EPI	Electronic Payment Indicator
ETC	Etcetera
FICA	Federal Insurance Contributions Act
FMV	Fair Market Value
FRP	Frivolous Return Program
FTA	First Time Abatement
HAIA	The Homebuyer Assistance and Improvement Act
HC	Hold Code
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
IPU	SERP IRM Procedural Update
IRB	Internal Revenue Bulletin
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
IU	Imputed Underpayment
LB&I	Large Business and International
MCC	Mortgage Credit Certificate
MeF	Modernized Electronic Filing
MFT	Master File Tax
OAR	Operations Assistance Request
OID	Original Issue Discount
OSP	Office of Servicewide Penalties

Acronym	Definition
PCC	Paper Check Conversion
POC	Point of Contact
PRC	Penalty Reason Code
PRN	Penalty Reference Number
QOF	Qualified Opportunity Fund
QOZP	Qualified Opportunity Zone Property
QSEHRA	Qualified Small Employer Health Reimbursement Arrangement
RC	Reason Code
REIT	Real Estate Investment Trust
REMIC	Real Estate Mortgage Investment Conduit
RIC	Regulated Investment Company
RRTA	Railroad Retirement Tax Act
RS	Remittance Strategy
SEC	Securities and Exchange Commission
TAS	Taxpayer Advocate Service
TBOR	Taxpayer Bill of Rights
TC	Transaction Code
TEFRA	Tax Equity and Fiscal Responsibility Act of 1982
TFA	Treasury Financial Agency
TIN	Taxpayer Identification Number
TTB	Alcohol and Tobacco Tax and Trade Bureau
US	United States
USC	United States Code

20.1.10.1.7  
(10-12-2022)

#### Related Resources

- (1) Additional forms and resources include:
- Form 8278 – Assessment and Abatement of Miscellaneous Civil Penalties.
  - The Internal Revenue Code (IRC) provides taxpayers specific rights. The Taxpayer Bill of Rights groups these rights into ten fundamental rights. See IRC 7803(a)(3). IRS employees are responsible for being familiar

with and following these rights. For additional information about your taxpayer rights, please see Pub 1, Your Rights as a Taxpayer or visit *TBOR*.

- c. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service (TAS) if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through normal channels. Refer taxpayers to TAS when the contact meets TAS criteria (see IRM 13.1.7, Taxpayer Advocate Service (TAS) Case Criteria), or when Form 911, Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order), is attached and steps cannot be taken to resolve the taxpayer's issue the same day. "Same day" includes cases that can be resolved in 24 hours, as well as cases where steps can be taken within 24 hours to begin resolving the issue. See IRM 13.1.7.6, Same Day Resolution by Operations. When making a TAS referral, use Form 911 and forward to TAS in accordance with your local procedures.
- d. TAS uses Form 12412, Taxpayer Advocate Service Operations Assistance Request, to initiate the Operations Assistance Request (OAR) process of referring a case to the TS Division, to affect the resolution of the taxpayer's problem. For more detailed information, please refer to IRM 13.1.19, Advocating With Operations Assistance Requests (OARs).

20.1.10.2  
(10-12-2022)

#### Supervisory Approval for Penalty Assessment

- (1) IRC 6751(b)(1) states, in general, that no penalty under the IRC shall be assessed unless the **initial** determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher-level official as the Secretary may designate. At this time, the Secretary has not designated any higher-level official to approve initial determinations.

**Note:** See IRM 20.1.1.2.3.1, Timing of Supervisory Approval, for information related to the timing of supervisory approval.

- (2) The following penalties are excluded from this supervisory approval:
  - a. Penalties assessed under IRC 6651 (Failure to File/Failure to Pay), IRC 6654 (Failure to Pay Estimated Income Tax), IRC 6655 (Failure by a Corporation to Pay Estimated Income Tax), and IRC 6662 (Imposition of Accuracy-Related Penalty on Underpayments) (but only with respect to an addition to tax by reason of subsection (b)(9) thereof) are excluded from this requirement.

**Note:** Supervisory approval is required for fraudulent failure to file under IRC 6651(f). See IRM 20.1.2.3.7.5.1, FFTF Penalty Assessment - Procedural Requirements.

- b. Any other penalty automatically calculated through electronic means is also excluded from this requirement. For additional information on supervisory approval for penalty assessments, see IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments.
- (3) Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, requires that both the originator and supervisor sign and date each page of the form on which penalties are proposed. If each page of the Form 8278 on which penalties are proposed is not signed by both the supervisor and the

originator, the form and associated case file should be returned to the sender using Form 3210, Document Transmittal, procedures. Expedited handling is required for imminent statute cases.

20.1.10.2.1  
(11-09-2023)  
**Common Features**

- (1) In general, each penalty discussed in this IRM is unique and will stand alone unless otherwise indicated. Exceptions and additional information are noted in the discussions of the specific penalties; however, some general procedures apply.
- (2) **Statute of Limitations.** In general, the additions to tax, additional amounts, and assessable penalties in IRC 856 through IRC 9707 are assessed, collected, and paid in the same manner as taxes. To the extent such an item pertains to a tax return, the assessment is subject to the period of limitation in IRC 6501, Limitations on Assessment and Collection (generally, three years from the later of the due date (unextended) or the filing of the return). To the extent such an item pertains to an information return, the assessment is not subject to the period of limitation in IRC 6501; however, discretion should be used when determining the periods on which information return penalties are assessed.

**Note:** The general rule of IRC 6501 applies, unless there is a more specific statute of limitations rule, or no statute of limitations applies to the penalty in question.

- (3) **Reasonable Cause.** Determination as to whether or not reasonable cause exists must be based on careful consideration of the facts and circumstances of each case prior to the assertion of a penalty. Examiners should consider any reason a taxpayer provides in conjunction with the guidelines, principles, and evaluating factors identified in the IRM 20.1.1, Introduction and Penalty Relief. See IRM 20.1.1.3.2, Reasonable Cause, as well as the applicable IRC(s) and treasury regulations relating to the specific penalty.

**Note:** Penalty relief may also be given through statutory exceptions, administrative waivers, and corrections of IRS errors. See IRM 20.1.1.3, Criteria for Relief From Penalties.

- (4) **Abatements.** Information on penalty abatements and penalty reason codes (PRC) is provided in IRM 20.1.1.3, Criteria for Relief From Penalties. The first-time abate policy does not apply to the penalties in this IRM. See IRM 20.1.1.3.3.2.1, First Time Abate (FTA). Oral testimony does not apply to the penalties in this IRM.
- (5) **Penalty Reason Codes.** A list of penalty reason codes is provided in IRM 20.1.1-2, Penalty Reason Code Chart.
- (6) **Penalty Transaction Codes.** A list of penalty transaction codes is provided in IRM 20.1.1-3, Penalty Transaction Codes.
- (7) **Penalty Reference Numbers.** A list of penalty reference numbers (PRN) is provided in IRM 20.1.1-4, Penalty Reference Numbers (500 Series), IRM 20.1.1-5, Penalty Reference Numbers (600 Series), and in IRM 20.1.1-6, Penalty Reference Numbers (700 Series).



20.1.10.2.2  
(04-26-2018)

**Who Asserts/Assesses**

- (1) Campus sites and/or field compliance (field) examination functions determine when a penalty should be imposed.
  - a. Campus sites consider penalties based on taxpayer correspondence, taxpayer contact, and systemically generated notices. Computer programming may systemically generate penalties from calculations based on taxpayer filed returns.
  - b. Field examination functions consider penalties during the examination.

20.1.10.2.3  
(11-09-2023)

**Assertion/Assessment**

- (1) Penalty reference numbers (PRN) are used to assess non-tax return related penalties (conduct or information returns).
  - a. Generally, the "500" series penalty reference numbers are assigned to penalties for computer-matching programs and are used to identify a failure to comply. They are usually asserted by the Campus and Field functions (via Form 8278).
  - b. Generally, the "600" series penalty reference numbers are assigned to penalties as the result of an examination or other compliance activity. They are usually asserted by field examination.
  - c. See IRM 20.1.1-4, Penalty Reference Numbers (500 Series), IRM 20.1.1-5, Penalty Reference Numbers (600 Series), and IRM 20.1.1-6, Penalty Reference Numbers (700 Series), or Document 6209, IRS Processing Codes and Information, or Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, for a complete list of the current penalty reference numbers.

20.1.10.2.4  
(04-26-2018)

**Penalty Relief**

- (1) The First-Time Abate (FTA) policy does **not** apply to the penalties in this IRM. See IRM 20.1.1.3.3.2.1, First Time Abate (FTA).
- (2) Oral testimony does **not** apply to the penalties in this IRM. See IRM 20.1.1.3.1, Unsigned or Oral Requests for Penalty Relief.

20.1.10.3  
(10-12-2022)

**IRC 856(g)(5) - Definition of Real Estate Investment Trust - Relief From Termination of Election - Entities to Which Paragraph Applies**

- (1) IRC 856 defines a REIT and its requirements. IRC 856(g) discusses the impact of the termination of an election made by a corporation, trust, or association to be treated as a REIT. In general, IRC 856(g)(5) is a relief provision that may (if its requirements are met) provide relief to a corporation, trust, or association that, but for this relief provision, potentially would be subject to loss of its tax status as a REIT due to one or more failures to comply with one or more of the provisions of subchapter M, part II, of the Code (other than IRC 856(c)(2), (3), or (4)). IRC 856(g)(5)(B) provides that the failure(s) to qualify must be due to reasonable cause and not due to willful neglect.
- (2) IRC 856(g)(5)(C) provides that the corporation, trust, or association must pay (as prescribed by the Secretary in regulations and in the same manner as tax) a penalty of \$50,000 for each failure to satisfy a provision of IRC 856 through IRC 859 (other than a failure under IRC 856(c)(2), (3), or (4)) due to reasonable cause and not willful neglect.
- (3) Relief pursuant to IRC 856(g)(5) may occur:
  - a. By the taxpayer reporting the \$50,000 payment(s) on the appropriate line on Schedule J of Form 1120-REIT,
  - b. During examination, or



c. By the taxpayer voluntarily requesting relief; e.g., through a closing agreement.

- (4) Relief is subject to the reasonable cause requirement described above. A taxpayer may contact Large Business and International (LB&I), Financial Institutions and Products, for more information.
- (5) Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts, is filed by a corporation, trust, or association. For more information about Form 1120-REIT, see IRM 21.7.13.7.5.2.13, Form 1120-REIT (Real Estate Investment Trust), IRM 21.7.4.4.4.11.12, Form 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies, and Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts.

20.1.10.3.1  
(04-26-2018)  
**Penalty Computation**

- (1) The penalty is \$50,000 for each failure to meet the provisions (other than a failure under IRC 856(c)(2), (3), or (4)) to keep the tax status as a REIT.
- (2) In general, IRC 856(g)(5) is a relief provision that may (if its requirements are met) provide relief to a corporation, trust, or association that, but for this relief provision, potentially would be subject to loss of its tax status as a REIT due to one or more failures to comply with one or more of the provisions of Chapter 1, subchapter M, part II, of the Code (other than IRC 856(c)(2), (3), or (4)).

20.1.10.3.2  
(04-26-2018)  
**Assertion/Assessment**

- (1) These “penalty” payments are paid by a REIT in the same manner as a tax.
- (2) The \$50,000 payment(s) listed on Form 1120-REIT is (are) processed in the same manner as other taxes reported on Form 1120-REIT.
- (3) The \$50,000 payment(s) under IRC 856(g)(5) is (are) **not** processed as a penalty, and is (are) not reported on Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties.
- (4) If relief pursuant to IRC 856(g)(5) occurs during an examination, the examiner may contact LB&I, Financial Institutions and Products, for more information on processing the payment and assessing the corresponding liability.

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20.1.10.3.3  
(04-26-2018)  
**Penalty Relief**

- (1) Since the \$50,000 payment(s) under IRC 856(g)(5) is (are) voluntary payments to maintain REIT status, there is no penalty relief for the payment(s).

20.1.10.4  
(11-18-2019)  
**IRC 1400Z-2(f) - Failure  
of Qualified Opportunity  
Fund to Maintain  
Investment Standard**

- (1) IRC 1400Z-2(f)(1) provides for a penalty for failure of the Qualified Opportunity Fund (QOF) to maintain the investment standard required by IRC 1400Z-2(d)(1).
- (2) IRC 1400Z-2(d)(1) investment standard requires that the QOF must hold at least 90 percent of its assets in qualified opportunity zone property (QOZP). The 90 percent standard is determined by the average of the percentage of QOZP held in the QOF as measured on: a) the last day of the first 6-month period of the tax year of the QOF, and b) the last day of the tax year of the QOF.

20.1.10.4.1  
(11-09-2023)  
**Penalty Computation**

- (1) If the QOF fails the investment standard, then for each month the investment standard requirement is not met, the amount of the penalty is equal to the product of the excess of the amount equal to 90 percent of the funds aggregate assets over the aggregate amount of the QOZP held by the fund, multiplied by the underpayment rate established under IRC 6621(a)(2) for such month. Refer to Form 8996, Qualified Opportunity Fund, Parts III and IV, where the investment standard can be calculated and if not met, the penalty can be calculated.
- (2) There is no maximum amount of the penalty.
- (3) For partnerships subject to the centralized partnership audit regime under the Bipartisan Budget Act of 2015 (BBA), and applicable to partnership taxable years ending on or after November 20, 2020, Treas. Reg. sections 301.6241-7(g) and 301.6241-7(h), allows the IRS to determine, notify, and impose a penalty under IRC 1400Z-2(f) outside of the centralized partnership audit regime (without regard subchapter C of chapter 63).
  - a. If the penalty under IRC 1400Z-2(f) is imposed outside of a BBA examination (where special enforcement Treas. Reg. section 301.6241-7(g) is invoked), the examiner must follow the notification requirements in Treas. Reg. section 301.6241-7(h).
  - b. In rare cases, when the penalty under IRC 1400Z-2(f) is imposed within a BBA examination, the penalty is considered an adjustment to a partnership-related item under Chapter 1 and should be made as a positive adjustment placed in the credit grouping for purposes of the imputed underpayment computation. See Treas. Reg. 301.6225-1(h)(15), Example 15. The examiner should make a referral for a BBA Point of Contact (POC).

20.1.10.4.2  
(11-09-2023)  
**Assertion/Assessment**

- (1) The penalty can be:
  - a. self-identified and self-assessed by the taxpayer, or
  - b. assessed by the IRS, generally during an examination.
- (2) If the QOF is classified as a corporation for federal income tax purposes, then the corporation is liable for the penalty.
- (3) If the QOF files Form 1120S, U.S. Income Tax Return for an S Corporation, the penalty is paid at the S-Corporation level. The penalty amount impacts each shareholder's basis by the amount determined in accordance with the S-Corporation statute and regulations.

- (4) If the QOF is operated by a partnership, then the penalty is paid at the partnership level. The penalty amount effects each partner's basis by the amount allocated in accordance with IRC 1400Z-2(f)(2).
  - a. If the penalty is imposed in a BBA examination, the penalty must be paid by the partnership and cannot be subject to a push-out election under IRC 6226.
- (5) Assessed using PRN 693 to generate TC 240 (positive amount) or TC 241 (negative amount).
- (6) Valid for MFT 13 only.
- (7) Valid starting with the tax year 2018 and all subsequent tax years.
- (8) Not subject to deficiency procedures.

20.1.10.4.2.1  
(11-18-2019)

**Self-Assessment by the  
QOF on Form 8996**

- (1) Form 8996 is used by the QOF to do the following:
  - a. Report the level of investment in QOZPs and businesses during each month of the taxable year.
  - b. Determine if the QOF met the required investment standard during both semi-annual investment periods.
  - c. Calculate any penalty due if the investment standard was not met during either semi-annual investment period.
- (2) The penalty is assessed systemically on MFT 13 separately from return processing.
- (3) If a penalty payment is received:
  - a. Transfer the payment from MFT 02 or MFT 06 to MFT 13.
  - b. Use computer condition code (CCC) "3" to prevent the refund of any penalty payment.
  - c. Set the return processable date on MFT 02 or MFT 06 as applicable since CCC "3" identifies the return as unprocessable.

20.1.10.4.2.2  
(12-11-2020)

**Assessment by Exam on  
Form 8278**

- (1) Input the penalty on IDRS using information provided on Form 8278.
- (2) CP 215 (Notice and Demand) is generated and issued to the taxpayer.
- (3) Form 8278 not only generates the codes on IDRS, but also initiates CP 215 to be generated and issued to the taxpayer.

20.1.10.4.3  
(12-11-2020)

**Penalty Relief**

- (1) Penalty relief may be granted for failing to meet the investment standard requirement if the QOF proves it was due to reasonable cause. See IRC 1400Z-2(f)(3), and IRM 20.1.1.3, Criteria for Relief From Penalties.
- (2) Special COVID-19 Penalty Relief. Notice 2021-10, Extension of Relief for Qualified Opportunity Funds and Investors Affected by Ongoing Coronavirus Disease 2019 Pandemic, provides special penalty relief for QOFs affected by the COVID-19 pandemic.
  - a. **90-Percent Investment Standard for QOFs Disregarded.** Normally, a QOF is required to hold 90 percent of its assets in QZOP, determined by the average of the percentage of QZOP held by that QOF measured: (i)

on the last day of the first 6-month period of the taxable year of the QOF, and (ii) on the last day of the taxable year of the QOF. However, Notice 2021-10 provides that a failure to meet the 90-percent investment standard is considered reasonable cause and is disregarded when the QOF's (i) last day of the first 6-month period of the taxable year, or (ii) last day of the taxable year falls within the period beginning on April 1, 2020, and ending on June 30, 2021.

- b. The relief is automatic; QOFs do not have to call the IRS or send letters or other documents to the IRS to receive this relief. However, a QOF must accurately complete all lines on Form 8996 filed with respect to each affected taxable year except that the QOF should place a "0" in Part IV, Line 8 (Penalty). The accurately completed Form 8996 must be filed with QOF's timely filed Federal income tax return (including extensions) for the affected taxable year(s).

20.1.10.5  
(11-18-2019)

**IRC Section 5000A  
Individual Shared  
Responsibility Provision**

- (1) IRC 5000A was added to the Internal Revenue Code by the Patient Protection and Affordable Care Act in 2010, P.L. 111-148.
- (2) Under the Tax Cuts and Jobs Act, P.L. 115-97, the penalty (i.e., individual shared responsibility payment) calculation for failure to maintain a minimum level of health insurance has been changed for the months beginning after December 31, 2018.
- (3) See IRM 20.1.11.2, IRC 5000A Individual Shared Responsibility Provision, for more information.

20.1.10.6  
(11-18-2019)

**IRC 6652 - Failure to File  
Certain Information  
Returns, Registration  
Statements, Etc.**

- (1) IRC 6652 provides for a penalty for the failure to timely file certain information returns, registration statements, reports, certifications, etc.

20.1.10.6.1  
(11-09-2023)

**IRC 6652(a) - Returns  
With Respect to Certain  
Payments Aggregating  
Less Than \$10**

- (1) IRC 6652(a) provides for a penalty for failure to file a statement of payment to another person for each statement where the payments total less than \$10 as required under:
  - a. IRC 6042(a)(2), Returns regarding payments of dividends and corporate earnings and profits, relating to payments of dividends during any calendar year aggregating less than \$10 by a corporation to its shareholders, or
  - b. IRC 6044(a)(2), Returns regarding payments of patronage dividends or other payments described in IRC 6044(b), (Amounts Subject to Reporting) aggregating less than \$10 during any calendar year by a co-operative to its patrons.
- (2) Treas. Reg 1.6042-2 limits the filing requirement for payments less than \$10 to shareholders subject to backup withholding requirements under IRC 3406.
- (3) Treas. Reg 1.6044-2 limits the filing requirement for payments less than \$10 to patrons subject to backup withholding requirements under IRC 3406.
- (4) The return should show the aggregate amount of payment(s), and the name and address of the person paid.

- (5) For purposes of this penalty, the term “dividend” means any distribution of property made by a corporation (other than a personal holding company) to its shareholders out of its earnings and profits of the taxable year and any payment made by a stockbroker to any person as a substitute for a dividend. The term “dividend” does not include any distribution or payment:

- a. By certain insurance companies, or
- b. By a foreign corporation, or
- c. To a foreign corporation, a nonresident alien, or a partnership not engaged in a trade or business in the United States and composed in whole or in part of nonresident aliens.

**Note:** Dividends are paid out of earnings and profits of the taxable year (without deducting any distributions made in that year), without consideration to earnings and profits at the time of distribution.

- (6) The penalty applies to the following payments by a cooperative to its patrons described in IRC 6044(b) :

- a. Patronage dividends paid in money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation),
- b. Certain nonpatronage distributions by exempt farmer’s cooperatives described in section 521,
- c. Redemptions of nonqualified written notices of allocations,
- d. Qualified per-unit retain certificates, and
- e. Redemption of nonqualified per-unit retain certificates.

- (7) The penalty does not apply to any payment:

- a. By a foreign corporation,
- b. To a foreign corporation, a nonresident alien, or a partnership not engaged in a trade or business in the United States and composed in whole or in part of nonresident aliens, or
- c. Certain consumer cooperatives described in IRC 6042(c).

20.1.10.6.1.1  
(11-18-2019)

**Penalty Computation**

- (1) The penalty is \$1 for each statement not filed, with a total maximum penalty of \$1,000 during any calendar year.

20.1.10.6.1.2  
(10-12-2022)

**Assertion/Assessment**

- (1) The penalty is:
- a. Input on IDRS using information provided on Form 8278,
  - b. Assessed using PRN 590, and
  - c. Not subject to deficiency procedures.

20.1.10.6.1.3  
(11-18-2019)

**Penalty Relief**

- (1) Penalty relief may be granted for failing to timely file a statement of payment to another person if the taxpayer (corporation or cooperative) proves the failure was due to reasonable cause and not willful neglect.

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20.1.10.6.2  
(12-11-2020)

**IRC 6652(b) - Failure to Report Tips**

- (1) IRC 6652(b) provides for a penalty on employees for failure to report tips, unless the failure was due to reasonable cause and not willful neglect.
- (2) The penalty is assessed on employees who fail to timely and properly report to their employer, as required by IRC 6053(a) any tips which are either:
  - a. Wages for Federal Insurance Contributions Act (FICA) [social security tax, Medicare tax, and additional Medicare tax] purposes as defined in IRC 3121(a), or
  - b. Compensation for Railroad Retirement Tax Act (RRTA) tax purposes as defined in IRC 3231(e).
  - c. Wages for FICA purposes and compensation for RRTA purposes do not include non-cash tips and include cash tips only if the amount of such cash tips received by an employee in any calendar month is \$20 or more.
- (3) Every employee who receives \$20 or more in cash tips in any calendar month must report tips to their employer in one or more written statements. If a taxpayer works for more than one employer during a month and receives less than \$20 in tips while working for each employer, no tips are required to be reported to any of the employers.
  - a. All cash tips, including those received directly from customers by cash or check, charged tips (e.g., credit or debit card charges) distributed by the employer, and tips received from other employees under a tip-sharing arrangement, should be reported. Thus, both directly and indirectly tipped employees must report tips to their employer.
  - b. The written report should be given to the employer by the 10th day of the month following the month of receipt (if the 10th day of the month falls on a Saturday, Sunday, or legal holiday, by the next business day).
  - c. Non-cash tips (i.e., tips received by an employee in any medium other than cash, such as passes, tickets, or other goods or commodities) from customers are not subject to FICA and RRTA taxes and income tax withholding and are not reported to the employer.
  - d. All cash tips and non-cash tips that a taxpayer receives are includable in gross income and subject to federal income tax.
- (4) For more information about tip income, see IRM 4.19.3.18, Penalties and Interest, and IRM 4.19.15.26, Correspondence Exam Tip Program.

20.1.10.6.2.1  
(10-12-2022)

**Penalty Computation**

- (1) The penalty is 50 percent of the tax imposed by IRC 3101, Rate of Tax (social security tax, Medicare tax, and Additional Medicare Tax) or IRC 3201, Rate of Tax (RRTA) due on the amount of unreported tips.
- (2) This penalty, though calculated based on an employment tax, is assessed and collected as a part of the taxpayer's income tax.

20.1.10.6.2.2  
(11-18-2019)

**Assertion/Assessment**

- (1) The FICA tip penalty is:
  - a. Input on IDRS,
  - b. MFT 30 (IMF),
  - c. Assessed with Transaction Code (TC) 310,
  - d. Abated with TC 311, and
  - e. Not subject to deficiency procedures. See *Judd v. Commissioner*, 74 T.C. 651 (1980).



- (2) Reference Code 891 or 892 with a money amount must be included with the TC 310 and TC 311.
- (3) If income tax and FICA tax were reported on the tax return, the statute for assessing additional FICA tax and the FICA tip penalty is the same as the statute for the income tax. If an employee did not file Form 4137, Social Security and Medicare Tax on Unreported Tip Income, with their tax return or otherwise include FICA tax on the return (e.g., Form 8919, Uncollected Social Security and Medicare Tax on Wages, or Form 8959, Additional Medicare Tax), the statute is open for the FICA tax on the unreported tip income. Therefore, FICA tax on unreported tips and the FICA tip penalty can be assessed even if the statute of limitations has expired for income taxes. See Rev. Rul. 79-39, 1979-1 C.B. 435.

20.1.10.6.2.3  
(11-18-2019)  
**Penalty Relief**

- (1) The explanation of why tips were not reported must be made in the form of a written statement setting forth all the facts alleged as reasonable cause. This statement can be attached to the employee's Form 1040. See Form 4137. If the statement is submitted in response to a notice regarding a proposed penalty assessment, the statement must contain a declaration that it is made under penalties of perjury.
- (2) The penalty is abated on IDRS using TC 311.

20.1.10.6.3  
(08-20-2024)  
**IRC 6652(j) - Failure to File Certification With Respect to Certain Residential Rental Projects**

- (1) IRC 6652(j) provides for a penalty for failure to timely file a certification as required by IRC 142(d)(7) and IRC 42(l)(3), respectively, for:
  - a. Form 8703, Annual Certification of a Residential Rental Project, and
  - b. Form 8610, Annual Low-Income Housing Credit Agencies Report (pursuant to IRC 42(l)(3)).
- (2) Form 8703 is required to be filed by March 31 after the close of the calendar year that the certification is made. Form 8703 must be filed annually during the qualified project period.
- (3) Form 8610 is required to be filed by February 28 after the close of the calendar year, and accompanying Forms 8609, Low-Income Housing Credit Allocation and Certification, (with only Part I completed) and Schedules A (Form 8610) must be attached.
- (4) For the purposes of this penalty, **certain residential rental projects** in IRC 6652(j) means a "qualified residential rental project" described in IRC 142(d) or a "qualified low-income housing project" described in IRC 42(g). One of the following tests must be irrevocably elected for the project, and the elected test must be met during the entire relevant time period:
  - a. **20-50 test.** Twenty percent (20%) or more of the residential units must be occupied by individuals whose income is 50% or less of the area median gross income. For IRC 42 only, the residential units must also be rent-restricted as described in IRC 42(g)(2).
  - b. **40-60 test.** Forty percent (40%) or more of the residential units must be occupied by individuals whose income is 60% or less of the area median gross income. For IRC 42 only, the residential units must also be rent-restricted as described in IRC 42(g)(2).
  - c. **25-60 test (New York City only).** Twenty-five percent (25%) or more of the residential units must be occupied by individuals whose income is

60% or less of the area median gross income. For IRC 42 only, the residential units must also be rent-restricted as described in IRC 42(g)(2).

- d. **Average income test (for IRC 42 only).** Forty percent (40%) or more (25% or more in the case of New York City) of the residential units in a project are both rent-restricted as described in IRC 42(g)(2) and occupied by tenants whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The taxpayer must designate the imputed income limitation for each unit and the imputed income limitation of any unit must be 20%, 30%, 40%, 50%, 60%, 70%, or 80% of area median gross income. The average of the imputed income limitations designated by the taxpayer for each unit must not exceed 60% of area median gross income.

**Note:** Any property shall **not** fail to be considered residential rental property just because part of the building is used for other than residential rental purposes.

- (5) For the purposes of this penalty as it applies to **qualified residential rental projects** described in IRC 142(d), the relevant time period is the “qualified project period” beginning on the first day that 10% of the residential units are occupied and ending on the latest of the:
  - a. Date that is 15 years after the date that 50% of the residential units are occupied,
  - b. First day that no tax-exempt private activity bond issued for the project is outstanding, or
  - c. Date that any assistance provided for the project under section 8 of the United States Housing Act of 1937 terminates.
- (6) For the purposes of this penalty as it applies to **qualified low-income buildings** described in IRC 42(c)(2), the relevant time period is the 15-year “compliance period” beginning with the first taxable year of the “credit period” described in IRC 42(f). The credit period begins with the taxable year in which the building is placed in service or, at the election of the taxpayer, the succeeding taxable year.

20.1.10.6.3.1  
(11-18-2019)  
**Penalty Computation**

- (1) The penalty is \$100 per calendar year for each failure to timely file a certification.

20.1.10.6.3.2  
(08-20-2024)  
**Assertion/Assessment**

- (1) The penalty is:
  - a. Input on IDRS using information provided on Form 8278,
  - b. Assessed using PRN 587, and
  - c. Not subject to deficiency procedures.

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20.1.10.6.3.3  
(11-18-2019)  
**Penalty Relief**

- (1) Penalty relief may be granted for failing to timely file Form 8703 or Form 8610 if the taxpayer proves the failure was due to reasonable cause and not willful neglect.



- 20.1.10.6.4  
(11-09-2023)  
**IRC 6652(k) - Failure to Make Reports Required Under Section 1202**
- (1) IRC 6652(k) imposes a penalty on a qualified small business for failure to timely make a report required under IRC 1202(d)(1)(C). However, no guidance has been issued describing what should be contained in such a report.
  - (2) The amount excluded from gross income depends on the date the stock was acquired and certain other factors.
  - (3) For purposes of this penalty, the term “qualified small business” means any domestic corporation (C corporation) if the:
    - a. Corporation’s (or any predecessor’s) aggregate gross assets **never** exceeded \$50,000,000 after August 9, 1993 (Revenue Reconciliation Act of 1993), but before the stock was issued;
    - b. Corporation’s aggregate gross assets immediately after the stock was issued (taking into account amounts received in the issuance) do not exceed \$50,000,000; and
    - c. Corporation agrees to submit the required reports to its shareholders and to the IRS.
- 20.1.10.6.4.1  
(11-18-2019)  
**Penalty Computation**
- (1) The penalty is \$50 for each failure to timely make a report.
  - (2) If the failure is due to negligence or intentional disregard, the penalty is \$100 per failure.
  - (3) If the report covers two or more years, the penalty shall be multiplied by the number of years.
  - (4) There is no maximum penalty limitation.
- 20.1.10.6.4.2  
(12-11-2020)  
**Assertion/Assessment**
- (1) The penalty is:
    - a. Input on IDRS using information provided on Form 8278,
    - b. Assessed using PRN 588, and
    - c. Not subject to deficiency procedures.
- 20.1.10.6.4.3  
(11-18-2019)  
**Penalty Relief**
- (1) Penalty relief may be granted for failing to timely make a report if the taxpayer proves it was due to reasonable cause and not willful neglect.
- 20.1.10.6.5  
(11-09-2023)  
**IRC 6652(l) - Failure to File Return With Respect to Certain Corporate Transactions**
- (1) IRC 6652(l) provides for a penalty for the failure to timely file an accurate Form 8806, Information Return for Acquisition of Control or Substantial Change in Capital Structure, under IRC 6043(c), Liquidating, Etc., Transactions - Changes in Control and Recapitalizations.
  - (2) A domestic corporation (the reporting corporation) must file Form 8806 to report an acquisition of control or a substantial change in the capital structure of the reporting corporation (that occurred after December 5, 2005) if the reporting corporation or any shareholder thereof is required to recognize gain (if any) under IRC 367(a), Foreign Corporations - Transfers of Property From the United States, and its regulation as a result of the transaction.

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- (3) If the reporting corporation transfers all or substantially all of its assets to an acquiring corporation in a transaction that constitutes a substantial change in the capital structure of the reporting corporation and the reporting corporation does not file Form 8806, then the acquiring corporation must file Form 8806. If neither corporation files Form 8806, both corporations are jointly and severally liable for any applicable penalties.
- (4) A corporation required to file Form 8806 also must file Form 1099-CAP for certain shareholders of record who receive cash or other property (including stock) in exchange for their stock in the reporting corporation due to the acquisition of control or the substantial change in capital structure.
- (5) An acquisition of control of a corporation (first corporation) occurs if, in a transaction or series of related transactions:
  - a. Before an acquisition of stock of the first corporation (directly or indirectly) by a second corporation, the second corporation does not have control of the first corporation;
  - b. After the acquisition, the second corporation has control of the first corporation;
  - c. The FMV of the stock acquired in the transaction and in any related transactions as of the date or dates that the stock was acquired is \$100 million or more;
  - d. The shareholders of the first corporation receive stock or other property pursuant to the acquisition; and
  - e. The first corporation or any of its shareholders is required to recognize gain under IRC 367(a) as a result of the transaction.

**Note:** For these purposes, control is defined as the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of shares of all classes of stock.

- (6) A substantial change in capital structure occurs if:
  - a. The amount of cash and the fair market value of any property (including stock) provided to its shareholders pursuant to change is \$100 million or more, and the corporation in a transaction or series of transactions: i) merges, consolidates, or otherwise combines with another corporation or transfers all or substantially all of its assets to one or more corporations; ii) transfers all or part of its assets to another corporation under bankruptcy proceedings and distributes stock or securities of that corporation; or iii) changes its identity, form, or place of organization; and
  - b. The corporation or any of its shareholders is required to recognize gain (if any) under IRC 367(a) as a result of the transaction.
- (7) Failure to file also includes the failure to satisfy the requirement to file on magnetic media as required by IRC 6011(e), Regulations Requiring Returns on Magnetic Media, Etc. and Treas. Reg. 301.6011-2, Required use of Magnetic Media.
- (8) Corporations are not required to file Form 8806:
  - a. For transactions that were properly reported under IRC 6043(a), Liquidating, Etc., Transactions - Corporate Liquidating, Etc., Transactions, or

- b. If the reporting corporation reasonably determines that all of its shareholders who receive cash, stock, or other property related to the acquisition of control or substantial change in capital structure are exempt recipients under Treas. Reg. 1.6043-4(b)(5).
- (9) Any broker, as defined in Treas. Reg. 1.6045-1(a)(1), that holds shares on behalf of a customer in a corporation that the broker knows or has reason to know based on readily available information has engaged in a transaction of acquisition of control or substantial change in capital structure must file Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*, unless the customer is an exempt recipient under Treas. Reg. 1.6045-3(b). “Readily available information” includes information from a clearing organization, such as the Depository Trust Company (DTC). See Treas. Reg. 1.6045-3. Information is also published on the IRS website at *IRS.gov*.
- (10) A domestic corporation that is required to file Form 8806, *Information Return for Acquisition of Control or Substantial Change in Capital Structure*, must file Form 1099-CAP, *Changes in Corporate Control and Capital Structure*, with respect to each shareholder of record, with the IRS and furnish a copy to each shareholder who receives cash, stock, or other property as a result of the acquisition of control or substantial change in capital structure and who is not an exempt recipient under Treas. Reg. 1.6043-4(b)(5). For example, if the corporation can reasonably determine that the receipt of such stock would not cause the shareholder to recognize gain (an exempt recipient), then the corporation is not required to report the fair market value of any stock provided to a shareholder. Corporations do not file Form 1099-CAP under any one of the following conditions:
- a. The transaction involves the acquisition of control within an affiliated group or involves stock valued at less than \$100 million,
  - b. The corporation makes the consent election on Form 8806. Under the election, the corporation is not required to file Form 1099-CAP, with respect to shares held by a clearing organization because it allows the IRS to publish information necessary for brokers to meet their reporting obligations,
- Note:** Corporations must provide information to the clearing organization by January 5th.
- c. The corporation properly reports the transaction under IRC 6043(a), or
  - d. Information returns are filed under IRC 6042 (Form 1099-DIV, *Dividends and Distributions*) or IRC 6045 (Form 1099-B), unless the corporation knows or has reason to know that such returns were not filed.
- (11) Form 1099-CAP is required to be filed by February 28th (March 31, if filed electronically), unless that day falls on a Saturday, Sunday, or federal holiday, then it is due the following business day. Form 1099-CAP with respect to each shareholder must be furnished to each such shareholder by January 31, unless that day falls on a Saturday, Sunday, or federal holiday, then it is due the following business day. Form 8806 must be filed on or before the 45th day following the acquisition of control or substantial change in capital structure of the corporation, or, if earlier, on or before January 5th of the year following the calendar year in which the acquisition of control or substantial change in capital structure occurs.
- (12) Form 1099-CAP will contain the following information (and other information specified in the instructions):

- a. The name, address, telephone number, and TIN of the reporting corporation;
- b. The name, address, and TIN of the shareholder;
- c. The number and class of shares in the reporting corporation exchanged by the shareholder; and
- d. The aggregate amount of cash and the fair market value of any stock or other property provided to the shareholder in exchange for its stock.

(13) **Exempt Recipients.** The corporation is not required to file Form 1099-CAP for the following shareholders (including brokers who are exempt):

- a. Any shareholder who receives stock in an exchange that is not subject to gain recognition under IRC 367(a), Transfers of Property From the United States, and the regulations thereunder.
- b. Any shareholder whose amount of cash plus the fair market value (FMV) of any stock and other property does not exceed \$1,000.
- c. Any shareholder described in Treas. Reg. 1.6043-4(b)(5)(iii)(A) through (M) if the corporation has actual knowledge that the shareholder is described therein or from whom the corporation has received a properly completed exemption certificate.

(14) The information returns required to be filed under this section are treated as one return.

(15) Failure to file also includes the failure to file on magnetic media (electronically) when required.

20.1.10.6.5.1  
(10-12-2022)

#### Penalty Computation

- (1) Penalties for failure to timely file Form 8806 and all Forms 1099-CAP required to be filed will be considered as one return for penalty computation.
- (2) The penalty is \$500 for each day the failure continues with respect to any one acquisition of control or substantial change in capital structure.
- (3) The maximum assessment is limited to \$100,000.
- (4) Additional penalties may apply under IRC 7203, IRC 7206, and IRC 7207. See IRM 9.1.3, Criminal Statutory Provisions and Common Law.

20.1.10.6.5.2  
(11-18-2019)

#### Assertion/Assessment

- (1) The penalty is:
  - a. Input on IDRS using information provided from Form 8278,
  - b. Assessed with PRN 649, and
  - c. Not subject to deficiency procedures.
- (2) The IRC 6652(l) penalty is systemically assessable.

20.1.10.6.5.3  
(11-18-2019)

#### Penalty Relief

- (1) Penalty relief may be granted for failure to timely make a report if the taxpayer proves it was due to reasonable cause.

20.1.10.6.6  
(11-18-2019)

**IRC 6652(n) - Failure to Make Reports Required Under Sections 3511, 6053(c)(8), and 7705**

- (1) IRC 6652(n) provides for a penalty for failure to timely make a report as required under IRC 3511, IRC 6053(c)(8), and IRC 7705.

20.1.10.6.6.1  
(11-18-2019)

**Penalty Computation**

- (1) The penalty is \$50 for each report the person failed to file.
- (2) If the failure is due to negligence or intentional disregard, then the penalty is \$100 per failure.
- (3) There is no maximum penalty limitation.

20.1.10.6.6.2  
(12-11-2020)

**Assertion/Assessment**

- (1) The penalty is:
  - a. Input on IDRS using information provided on Form 8278.
  - b. Assessed using PRN 562 to generate TC 240 (positive amount) or TC 241 (negative amount).
  - c. Valid for MFT 13 and MFT 55 only.
  - d. Valid starting with the tax year 2017 and all subsequent tax years.
  - e. Not subject to deficiency procedures.
- (2) There are final treasury regulations under IRC 3511 that address the penalty under IRC 6652(n).

20.1.10.6.7  
(11-18-2019)

**IRC 6652(o) - Failure to Provide Notices With Respect to Qualified Small Employer Health Reimbursement Arrangements**

- (1) IRC 6652(o) provides for a penalty for failure to timely provide a written notice as required under IRC 9831(d)(4).

20.1.10.6.7.1  
(11-18-2019)

**Notice 2017-67 Written Notice Requirement**

- (1) IRC 9831(d)(4) requires an eligible employer who provides a qualified small employer health reimbursement arrangement (QSEHRA) to its eligible employees to furnish a written notice to each eligible employee at least 90 days before the beginning of each year or, for an employee who is not eligible to participate at the beginning of the year (for example, a newly eligible employee), the date on which the employee is first eligible to participate in the QSEHRA.
- (2) An eligible employer that provides a QSEHRA during 2017 or 2018 must furnish the initial written notice to its eligible employees by the later of (a) February 19, 2018 or, (b) 90 days before the first day of the plan year of the QSEHRA. The penalties under IRC 6652(o) apply to any employer that does not furnish the initial written notice by that date.
- (3) An eligible employer may furnish the written notice electronically to its eligible employees if the employer follows the rules for the use of electronic media in 26 CFR 1.401(a)-21.

- 20.1.10.6.7.2  
(11-18-2019)  
**Penalty Computation**
- (1) The penalty is \$50 per employee per calendar year for each failure to timely provide a written notice.
  - (2) The maximum assessment is limited to \$2,500 per calendar year.
- 20.1.10.6.7.3  
(11-18-2019)  
**Assertion/Assessment**
- (1) The penalty is:
    - a. Input on IDRS using information provided on Form 8278.
    - b. Assessed using PRN 519 to generate TC 240 (positive amount) or TC 241 (negative amount).
    - c. Valid for MFT 13 only.
    - d. Valid starting with the tax year 2017 and all subsequent tax years.
    - e. Not subject to deficiency procedures.
  - (2) See 26 CFR 54.9831-1 for special rules relating to group health plans.
- 20.1.10.6.7.4  
(11-18-2019)  
**Penalty Relief**
- (1) Penalty relief may be granted for failing to timely provide a notice if the employer proves it was due to reasonable cause and not willful neglect.
- 20.1.10.6.8  
(11-18-2019)  
**IRC 6652(p) - Failure to Provide Notice Under Section 83(i)**
- (1) IRC 6652(p) provides for a penalty for failure to timely provide a notice as required under IRC 83(i)(6).
- 20.1.10.6.8.1  
(11-18-2019)  
**Penalty Computation**
- (1) The penalty is \$100 per employee per calendar year for each failure to timely provide a notice.
  - (2) The maximum assessment is limited to \$50,000 per calendar year.
- 20.1.10.6.8.2  
(11-18-2019)  
**Assertion/Assessment**
- (1) The penalty is:
    - a. Input on IDRS using information provided on Form 8278.
    - b. Assessed using PRN 694 to generate TC 240 (positive amount) or TC 241 (negative amount).
    - c. Valid for MFT 13.
    - d. Valid starting with the tax year 2018 and all subsequent tax years.
    - e. Not subject to deficiency procedures.
- 20.1.10.6.8.3  
(11-18-2019)  
**Penalty Relief**
- (1) Penalty relief may be granted for failing to timely provide a notice if the employer proves it was due to reasonable cause and not willful neglect.
- 20.1.10.7  
(11-18-2019)  
**IRC 6657 - Bad Checks (Dishonored Checks or Other Forms of Payment)**
- (1) IRC 6657 provides for a penalty when taxpayer's payments are dishonored and are returned from a financial institution unpaid.
  - (2) Before July 2, 2010, these payments were only considered for a penalty if they were in the form of a paper check or money order. The Homebuyer Assistance and Improvement Act of 2010 amended IRC 6657 to include any "instrument in payment, by any commercially acceptable means, of any amount." The penalty now includes all "instruments" (forms) of payment, including but not limited to the following:



- a. Paper checks
- b. Money orders
- c. Electronic Federal Tax Payment System (EFTPS) payments and deposits
- d. Electronic funds transfers (EFT) payments and deposits
- e. Direct debit installment agreement (DDIA) payments
- f. Electronic bill payments
- g. Federal payment levy program payments
- h. Same day wire payments
- i. Credit card payments
- j. Debit card payments

20.1.10.7.1  
(10-12-2022)  
**Penalty Computation**

(1) Effective July 2, 2010, H.R. 5623, The Homebuyer Assistance and Improvement Act of 2010, became Public Law No 111-198 (HAIA 2010). H.R. 5623 includes Sec. 3. Application of Bad Checks Penalty to Electronic Payments. Before HAIA 2010's enactment date, bad checks penalties were not assessed on any electronic (EFTPS) payments. It amended IRC 6657 to include any "instrument in payment, by any commercially acceptable means, of any amount." The penalty amount (rate) remains the same. The penalty rate for transactions with dates after July 1, 2010:

- a. Checks or other forms of payment for \$1,250 or more, the bad checks penalty is 2% of the amount of payment;
- b. Checks or other forms of payment for \$25 through \$1,249.99, the bad checks penalty is \$25; and
- c. Checks or other forms of payment for \$5 through \$24.99, the bad checks penalty is the amount of the payment.

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(2) Effective May 25, 2007, The Small Business and Work Opportunity Tax Act of 2007 Provision 8245, increased the bad checks minimum penalty. The penalty rate for transactions with dates after May 25, 2007 and before July 2, 2010:

- a. Checks or money orders for \$1,250 or more, the bad checks penalty was 2% of the amount of the check or money order;
- b. Checks or money orders for \$25 through \$1,249.99, the bad checks penalty was \$25; and
- c. Checks or money orders for \$5 through \$24.99, the bad checks penalty was the amount of the check or money order.

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(3) Penalty rate for transactions with dates after November 10, 1988 and before May 25, 2007:

- a. Checks or money orders for \$750 or more, the bad checks penalty was 2% of the amount of the check or money order;

- b. Checks or money orders for \$15 through \$749.99, the bad checks penalty was \$15; and
- c. Checks or money orders for \$2 through \$14.99, the bad checks penalty was the amount of the check or money order.

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(4) Penalty rate for transactions with dates prior to November 11, 1988:

- a. Checks or money orders for \$500 or more, the bad checks penalty was 1% of the check or money order;
- b. Checks or money orders for \$5 through \$499.99, the bad checks penalty was \$5; and
- c. Checks or money orders for \$2 through \$4.99, the bad checks penalty was the amount of the check or money order.

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20.1.10.7.2  
(11-18-2019)

**Assertion/Assessment**

- (1) Generally, this penalty is assessed by the Campus accounting branch, using one of the following penalty transaction codes (TC):
  - a. TC 280 - Manual computation and assessment of a bad checks penalty, or
  - b. TC 286 - Systemic (computer generated) assessment of a bad checks penalty initiated by the posting of a dishonored payment transaction code, such as any one of the following TC: 611, 621, 641, 651, 661, 671, 681, 691, or 721. **Do not use dishonored payment transaction codes on the debit side of a credit transfer or for partial reversals.**
- (2) When a check, payment, or deposit (referred to as "payment" hereafter) received by the Treasury is dishonored, the payment is reversed using the applicable dishonored payment transaction code. A dishonored payment can be identified on IDRS by the dishonored payment transaction code. The original credit transaction will also be marked with a reversal indicator (a **3** in the third position of the transaction code for IMF, or an **R** following the transaction code for BMF).
- (3) The following are two examples of dishonored payments as they would appear on IDRS for BMF and IMF:
  - a. A payment received with the filing of a BMF return is identified as a TC 610. If the payment received with the return was dishonored when presented to the bank, then the original payment would be identified on Master File and IDRS as a TC 610R, followed by the dishonored payment reversal, TC 611.
  - b. A subsequent payment received for a balance due on an IMF account is identified as a TC 670. If the payment was dishonored when presented to the bank, the original payment would be identified on Master File and IDRS as a TC 673, followed by the dishonored payment reversal, TC 671.
- (4) When a payment is reversed only in part, the original payment will be split, with the reversed portion recorded in the module immediately before the



reversing transaction, and the unreversed portion remaining where it originally posted, but reflecting only the unreversed amount. **Example:** An encoding error caused a \$100 payment to post to a taxpayer's account as a TC 610 for \$1,000 in error. The bank honored only the \$100 payment originally intended. An IRS employee improperly used TC 611 to reverse the dishonored portion of the payment. The posting of TC 611 caused the original TC 610 to split into a TC 610 for \$100 and a TC 613 (or TC 610R) for \$900. The TC 610 for \$100 is where the TC 610 for \$1,000 was, and the TC 613 (or TC 610R) for \$900 is posted immediately ahead of the TC 611 for \$900. TC 286 for \$25 is posted following the TC 611.

- (5) A dishonored payment transaction code should **not** be used for a partial reversal of a payment or on the debit side of a credit transfer. Abate any TC 286 penalty that generated because of the improper use of a dishonored payment transaction code. Use TC 281 with penalty reason code 045. Also see IRM 20.1.10.7.3, Penalty Relief.
- (6) The bad checks penalty associated with the dishonored payment will be identified on Master File and IDRS as a TC 280 (manually computed and assessed penalty) or TC 286 (systemically computed and generated penalty).
- (7) A notice will be sent to the taxpayer informing them of the dishonored payment and any applicable penalty and interest assessed. The bad checks penalty notice acts to educate the taxpayer and encourage future compliance.

20.1.10.7.3  
(08-20-2024)  
**Penalty Relief**

- (1) The taxpayer may request relief if the penalty was charged in error, or if it was reasonable to expect that the financial institution would honor the payment. Documentation that shows that it was reasonable to expect that the payment would be honored must be in writing. Oral testimony to that effect will not be accepted. The first time abate (FTA) administrative waiver **does not** apply. See IRM 20.1.1.3.3.2.1, First Time Abate (FTA).
  - a. A bad check penalty (TC 280 or TC 286), however, can be abated for certain cases where the taxpayer has not received an official penalty notice, or for the instance where the taxpayer may or may not have requested the abatement. A penalty may be abated without any written communication when it can be determined that the penalty should not have been assessed in the first place. See IRC 6404(a)(3) for additional information. If it can be determined without additional information from the taxpayer that the penalty should not have been assessed, then the penalty can be abated without any written documentation. Caution: the account must be thoroughly researched to make this determination. Representative examples may include: i) errors due to a misunderstanding of website instructions, ii) the taxpayer making a data entry error on an online form, iii) posting of duplicate transactions and only one was honored, or iv) an unsuccessful Direct Pay Payment.
  - b. A bank letter is required if the reason is a bank error.
- (2) If it is determined that the penalty should be abated:
  - a. Input TC 281 on IDRS for the net amount of the penalty assessed on that payment.

- b. Use the appropriate reason code, penalty reason code, hold code, priority code, posting delay code, and blocking series (BLK), as required. Refer to IRM 20.1.1-2, Penalty Reason Code Chart, or Document 6209, ADP and IDRS Information.
- c. Indicate the reason for the penalty abatement in the adjustment remarks area.
- d. Notify the taxpayer that the penalty has been eliminated. If a computer paragraph (CP) notice is not generated, use Letter 0608-C, Dishonored Check or Other Form of Payment Penalty Explained, or telephone contact.

**Note:** When the collection status code is updated to "06" (taxpayer is not required to file a return on this module), the module is in debit balance, and the net TC 28X amount equals the module balance, then the TC 280 or 286 net penalty amount is systemically reversed. For BMF, it is shown as TC 287.

(3) If it is determined that the penalty should be sustained (not reversed):

- a. Provide the taxpayer with a written explanation and include the taxpayer's appeal rights using Letter 0854-C Penalty Waiver or Abatement Disallowed/Appeals Procedure Explained, or an equivalent denial letter.
- b. Input on IDRS TC 290, BLK 98/99, RC 062, Hold Code (HC) 3.

**Note:** BLK 98/99. If the original return was electronically filed, do not use BLK 98 unless the controlling Document Locator Number (DLN) doc code is 47, 51 or 54. Instead, use BLK 99 and attach the appropriate printed transcript (IMFOLR, BMFOLR, TRDBV, RTVUE, or BRTVU), or graphic print for modernized e-file returns. See IRM 20.1.1.3.5.3, Taxpayer Not Entitled to Relief.

(4) If a determination cannot be made based on the information provided, issue Letter 0608-C, Dishonored Check or Other Form Payment Penalty Explained, to request the additional information needed to make a determination. For example, if the taxpayer provides substantiation for an account unrelated to the dishonored payment, then Letter 0608-C should be used to explain this to the taxpayer and request the corrected documentation to assist in making a reasonable cause determination. See IRM 20.1.10.7.4, Additional Penalty Relief/Reasonable Cause, for additional scenarios.

20.1.10.7.3.1  
(10-12-2022)  
**Penalty Relief Request  
With No TC 150**

- (1) When the taxpayer requests penalty relief and the taxpayer's return has not posted to Master File (there is no TC 150 on the tax period module), a bad check penalty abatement (TC 281, which generates with a "carrier" TC 290 .00) can still be input on IDRS (HC 3), and will post to Master File. When HC 3 is used, notify the taxpayer by sending Letter 0608-C or by telephone contact. See IRM 20.1.10.7.3, Penalty Relief.
- (2) If the penalty relief request is denied on an account where a return has not posted (no TC 150), the TC 290 .00, BLK 98, RC 062, HC 3, can still be input on IDRS, and will post to Master File.

**Note:** You enter ".00" for zero money amount with TC 290.

20.1.10.7.4  
(10-12-2022)

**Additional Penalty  
Relief/Reasonable Cause**

- (1) In addition to the reasons discussed in IRM 20.1.1.3, Criteria for Relief From Penalties, the following should be accepted as reasons for granting penalty relief for dishonored payments:
- a. The taxpayer furnished evidence that the taxpayer's bank account contained sufficient funds at the time the payment was submitted, but due to a bank error, the payment was dishonored. In this situation, the taxpayer should include a letter of explanation from the taxpayer's bank. For IMF cases, abate the penalty with a TC 281, RC 065, and Penalty Reason Code (PRC) 017. For BMF cases, abate the penalty with a TC 281 and PRC 017.
  - b. The taxpayer furnished evidence that the taxpayer's bank account contained **sufficient** funds at the time the payment was submitted, but due to an Electronic Federal Tax Payment System (EFTPS) or other Treasury Financial Agency (TFA) error, the payment was dishonored. In this situation, the taxpayer and/or the TFA should also provide a letter of explanation or incident report from the TFA. For IMF cases, abate the penalty with a TC 281, RC 065, and PRC 032. For BMF cases, abate the penalty with a TC 281 and PRC 032.

**Note:** The term "EFTPS" refers to Treasury's electronic funds transfer (EFT) system, which is an electronic remittance processing system for making federal tax deposits and payments. For more information on EFTPS, see *EFTPS.gov*. The term "Treasury Financial Agency" (TFA) refers to any banking institution that assists the Treasury Department with the receipt and processing of payments. EFTPS uses a government designated TFA (currently Bank of America) to process tax payment information, and a taxpayer must enroll with a TFA to initiate electronic payments online or by phone voice response system. For more information on TFA responsibilities, see IRM 3.17.277.2.1, Financial Agent Responsibilities.

- c. A payment was not honored because of the death of the taxpayer after the date the payment was originated and/or issued. Penalty relief may be granted. For IMF cases, abate the penalty with TC 281, RC 062, and PRC 024. For BMF cases, abate the penalty with TC 281, RC 062, and PRC 026.

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- (2) Generally, bad checks penalties are NOT assessed on checks or other forms of payment that have a “stop payment.”
  - a. If the taxpayer provides proof of a “stop payment” and TC 280 .00 was not input with TC 6X1 or 7X1 to stop the assessment of a bad checks penalty, a bad checks penalty may have been erroneously assessed. For IMF cases, abate the penalty with TC 281, RC 065, and PRC 045. For BMF cases, abate the penalty with TC 281 and PRC 045.
  - b. If the taxpayer provides proof of a “stop payment” and the bank incorrectly coded the checks, a bad checks penalty may have been assessed. For IMF cases, abate the penalty with TC 281, RC 065, and PRC 017. For BMF cases, abate the penalty with TC 281 and PRC 017.
  - c. If the taxpayer received erroneous IRS written advice to place a “stop payment,” a bad checks penalty may have been assessed. For IMF cases, abate the penalty with TC 281, RC 065 and PRC 044. For BMF cases, abate the penalty with TC 281 and PRC 044.
- (3) No penalty will be assessed on third party checks involving cash register seized property.
  - a. If the taxpayer provides written proof, and TC 280 .00 was not input with TC 6X1 or 7X1 to stop the assessment of a bad checks penalty, a bad checks penalty may have been erroneously assessed on the account.
  - b. For IMF cases, abate the penalty with TC 281, RC 062, and PRC 030.
  - c. For BMF cases, abate the penalty with TC 281, RC 062 and PRC 030.

20.1.10.7.5  
(11-18-2019)  
**Insufficient Funds on  
Checks Processed  
Through Remittance  
Strategy for Payment  
Check Conversion**

- (1) Paper checks that go through the remittance strategy for paper check conversion (RS-PCC) are converted to an electronic format, but they are still considered a paper check. They are liable for an IRC 6657, “Bad Checks”, penalty when returned unpaid by a financial institution.
- (2) Paper checks that go through the paper check conversion to an electronic format have an EFT trace number (with a “5” in the third position), but they **do not** have an “EFT indicator” (“EPI = E”). The absence of an EFT indicator ensures that computer programming will not treat the dishonored check as an electronic payment and consequently will systemically assess a bad checks penalty on any RS-PCC returned unpaid by the bank.
- (3) See IRM 3.17.278, Paper Check Conversion (PCC) and Remittance Strategy Paper Check Conversion (RS-PCC) Systems.

20.1.10.7.6  
(11-18-2019)  
**Insufficient Funds on  
Electronic Funds  
Transfers (EFT) and  
Payments Made by  
Other Than Paper Check  
or Money Order Before  
July 2, 2010**

- (1) Before July 2, 2010, bad checks penalties were not assessed on electronic funds transfer (EFT) payments.
- (2) IRC 6657, Bad Checks, only addressed the assessment of penalties for insuffi-

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(3) These other forms of payment made on the Electronic Federal Tax Payment System (EFTPS) included:

- a. Electronic funds transfers (EFT) payments and deposits,
- b. Direct debit installment agreement (DDIA) payments,
- c. Electronic bill payments,
- d. Federal payment levy program payments,
- e. Same day wire payments, credit card payments, and
- f. Debit card payments.

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20.1.10.8  
(10-12-2022)  
**IRC 6673 - Sanctions  
and Costs Awarded by  
Courts**

- (1) IRC 6673 provides for sanctions and costs awarded by courts. The Tax Court can award monetary sanctions, penalties, or costs to the United States for a delay by the taxpayer or excessive costs by attorneys.
- (2) For more information, see IRM 25.3.5.8, Assessment of Court Sanctions, Penalties, and Costs.

20.1.10.8.1  
(10-12-2022)  
**IRC 6673(a) - Tax Court  
Proceedings**

- (1) IRC 6673(a) provides for procedures for the Tax Court to award sanctions and costs to the IRS when the taxpayer:
  - a. Instituted or maintained proceedings primarily for delay,
  - b. Had a frivolous or groundless position, and/or
  - c. Unreasonably failed to pursue available administrative remedies.
- (2) IRC 6673(a) also allows the Tax Court to award sanctions and costs to the IRS whenever it appears to the Tax Court that any attorney or other person admitted to practice before the Tax Court has multiplied the proceedings in any case unreasonably and vexatiously. The Tax Court may require:
  - a. The attorney or other person to pay personally the excess costs, expenses, and attorneys' fees charged because of this conduct, or
  - b. If the attorney is appearing on behalf of the IRS Commissioner, that the United States pay the excess costs, expenses, and attorneys' fees in the same way as an award by a district court.

20.1.10.8.1.1  
(10-12-2022)  
**Penalty Computation**

- (1) The penalty is the amount of the Tax Court award.
- (2) The maximum penalty award is limited to \$25,000.
- (3) The penalty is not tied to the tax years before the Court.

20.1.10.8.1.2  
(10-12-2022)  
**Assertion/Assessment**

- (1) The IRS does not assert the IRC 6673(a) penalty. If the Counsel attorney determines that imposition of the penalty is appropriate, that attorney will file a motion under IRC 6673(a) with the Tax Court. Upon receiving a Tax-Court decision awarding sanctions and costs under IRC 6673(a), the penalty can be assessed by the following:
  - a. Examination Technical Services, who completes Form 8278, or
  - b. Independent Office of Appeals, who completes Form 5402. See IRM 8.20.7.20.15.2, CDP Assessment of Civil Penalties under IRC 6673 Closing Procedures.

**Note:** The IRC 6673(a) penalty should be assessed for the year of the Tax Court's opinion holding the taxpayer liable for the penalty. The year does not have to be closed to assess the penalty as the penalty is not tied to any tax year's return.

- (2) The penalty is:
  - a. Assessed and collected in the same manner as tax,
  - b. Input on IDRS using the information provided from Form 8278, and
  - c. Assessed using PRN 643.

20.1.10.8.1.3  
(08-20-2024)  
**Penalty Relief**

- (1) The taxpayer must take a judicial appeal to the appropriate court.

20.1.10.8.2  
(08-20-2024)  
**IRC 6673(b) -  
Proceedings in Other  
Courts**

- (1) IRC 6673(b) establishes procedures under IRC 7433, Civil Damages for Certain Unauthorized Collection Actions, for the district court to award monetary sanctions, penalties, or costs to the United States when the taxpayer files a frivolous or baseless civil suit for damages against the United States. The taxpayer must groundlessly contend that an officer or employee of the IRS recklessly, intentionally, or by reason of negligence, disregarded provisions and regulations concerning the collection of federal tax, and bring a civil action for damages against the United States in a district court of the United States.
- (2) This award is issued from a district court, and could include the:
  - a. court of appeals (appeals from the district court or the Tax Court), or
  - b. United States Supreme Court.

**Note:** The IRC 6673(b) penalty should be assessed for the year of the Tax Court's opinion holding the taxpayer liable for the penalty. The year does not have to be closed to assess the penalty as the penalty is not tied to any tax year's return.

- (3) A certified copy of an order awarding any monetary sanctions, penalties, or court costs by a court of appeals may be registered in a district court and be enforceable as other district court judgments.
- (4) For more information, see IRM 25.3, Civil Damages for Certain Unauthorized Collection Actions.

20.1.10.8.2.1  
(08-20-2024)  
**Penalty Computation**

- (1) The penalty is the amount of the Tax Court award.
- (2) The maximum penalty award is limited to \$10,000.

20.1.10.8.2.2  
(10-12-2022)  
**Assertion/Assessment**

- (1) The IRS does not assert the penalty award. It is pled before the courts and the Department of Justice (DOJ) refers the case to the IRS. Examination Technical Services completes Form 8278 for the assessment.
- (2) The penalty is:
  - a. Assessed and collected in the same manner as tax.
  - b. Assessed on IDRS using the information provided on Form 8278, and
  - c. Assessed using PRN 644.

20.1.10.8.2.3  
(08-20-2024)  
**Penalty Relief**

- (1) The taxpayer must take a judicial appeal to the appropriate court.

20.1.10.9  
(10-12-2022)  
**IRC 6674 - Fraudulent  
Statement or Failure to  
Furnish Statement to  
Employee**

- (1) In addition to the criminal penalty provided by IRC 7204, any person required to furnish a statement to an employee under IRC 6051 or IRC 6053(b) who willfully furnishes a false or fraudulent statement or willfully fails to furnish a statement in the manner, at the time, and showing the information required under those sections or under regulations prescribed thereunder, is subject to the IRC 6674 penalty.



- 20.1.10.9.1  
(10-12-2022)  
**Penalty Computation**
- (1) The penalty is \$50 for each failure. The penalty can be assessed and collected in the same manner as the tax on employers imposed by IRC 3111.
- 20.1.10.9.2  
(10-12-2022)  
**Assertion/Assessment**
- (1) The penalty is:
- Input on IDRS using the information provided on Form 8278, and
  - Assessed using PRN 575.
- (2) When firm indications of willful failure to furnish or willful furnishing of false or fraudulent statements are discovered, the investigating office will suspend the inquiry and refer the matter to the Criminal Investigation function. See IRM 25.1, Fraud Handbook.
- 20.1.10.9.3  
(10-12-2022)  
**Penalty Relief**
- (1) Penalty relief is not given for reasonable cause. If the taxpayer wants to contest the penalty assessment, the taxpayer must fully pay the entire penalty and then file a claim for refund with the IRS.
- 20.1.10.10  
(10-12-2022)  
**IRC 6682 - False Information With Respect to Withholding**
- (1) In addition to any criminal penalty provided by law, IRC 6682 provides for a civil penalty for any individual who makes a statement under IRC 3402, Income Tax Collected at Source, or IRC 3406, Backup Withholding, that results in a decrease in the amounts deducted and withheld under 26 USC Chapter 24, Collection of Income Tax at Source on Wages, if it had no reasonable basis at the time the statement was made.
- 20.1.10.10.1  
(10-12-2022)  
**Penalty Computation**
- (1) The penalty is \$500 for each false statement.
- 20.1.10.10.2  
(10-12-2022)  
**Assertion/Assessment**
- (1) The penalty is:
- Input on IDRS using information provided on Form 8278,
  - Assessed using PRN 616, and
  - Not subject to deficiency procedures.
- (2) The penalty may be waived (in whole or in part) if the individual's taxes for that year are equal to or less than the sum of the:
- Allowable credits against those taxes, and
  - Estimated tax payments of those taxes.
- 20.1.10.10.3  
(10-12-2022)  
**Penalty Relief**
- (1) Penalty relief may be granted if there was reasonable basis for the statement at the time the statement was made.
- 20.1.10.11  
(10-12-2022)  
**IRC 6697 - Assessable Penalties With Respect to Liability for Tax of Regulated Investment Companies**
- (1) IRC 6697 and IRC 860(j) were repealed by the Regulated Investment Company Modernization Act of 2010, Pub. L. 111-325 (2010) effective for taxable years beginning after December 22, 2010. For prior taxable years, IRC 6697 and IRC 860(j) provide a penalty on a regulated investment company (RIC) that uses the deficiency dividend procedures under IRC 860, Deduction for Deficiency Dividends.

- (2) The amount of penalty was based on the amount of the deficiency dividends deduction the RIC claimed on Form 976, Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust, allowed by IRC 860(a).
- (3) For purposes of this penalty, the term “deficiency dividends” means a distribution of property made by the RIC on or after the date of the determination and before filing claim under IRC 860(g), which would have been included in the deduction for dividends paid for the taxable year for which the RIC has a determination if distributed during such year. No distribution shall be considered as deficiency dividends unless:
  - a. distributed within 90 days after the determination, and
  - b. a claim is filed pursuant to IRC 860(g).
- (4) **Claim required.** No deficiency dividend deduction shall be allowed under subsection (a) unless (under regulations) a claim is filed within 120 days after the determination date.

20.1.10.11.1  
(10-12-2022)  
**Penalty Computation**

- (1) For purposes of computing interest, the allowance of a deficiency dividend deduction creates a deemed increase in tax under IRC 860(c)(1).
- (2) Interest is due on the deemed increase in tax for the taxable year from the original filing date of Form 1120-RIC, U.S. Income Tax Return For Regulated Investment Companies, to the date Form 976, Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust, is filed.

**Example:** If the Form 976 is filed on January 2 and the payment is not received until November 1 of the same year, interest is only due through January 2.

- (3) For taxable years before its repeal, the IRC 6697 penalty is equal to the amount of interest calculated in (2) above, but may not exceed 50% of the deficiency dividend deduction for the taxable year.

20.1.10.11.2  
(10-12-2022)  
**Assertion/Assessment**

- (1) If the RIC claiming a deficiency dividends deduction is under examination (and the taxable year predates the repeal of IRC 6697), the exam team will generally assess the penalty using Form 8278 and filing the paperwork with Centralized Case Processing (CCP). The exam team may work with LB&I Financial Institutions and Products.
- (2) If the RIC claiming a deficiency dividends deduction is not under examination (and the taxable year predates the repeal of IRC 6697), (generally) the LB&I Financial Institutions and Products, will assert the penalty.

**Caution:** Do **not** work the issue. Contact LB&I Financial Institutions and Products.

- (3) A RIC may make a self-determination under IRC 860(e)(4) by filing Form 8927, Determination Under Section 860(e)(4) by a Qualified Investment Entity, to initiate the deficiency dividends procedures and then file Form 976.
- (4) The penalty is:
  - a. Input on IDRS using the information provided on Form 8278,

- b. Assessed using PRN 582, and
- c. Not subject to deficiency procedures.

20.1.10.11.3  
(10-12-2022)  
**Penalty Relief**

- (1) Since the deficiency dividend procedure is voluntary, there is no penalty relief for reasonable cause.

20.1.10.12  
(10-12-2022)  
**IRC 6702 - Frivolous Tax Submissions**

- (1) IRC 6702 provides for penalties for frivolous tax submissions.
- (2) Unlike many other penalties, this penalty is not based upon a tax liability; therefore, an underpayment or understatement of tax is not necessary for the penalty to be assessed.

20.1.10.12.1  
(10-12-2022)  
**IRC 6702(a) - Civil Penalty for Frivolous Tax Returns**

- (1) IRC 6702(a) provides for a penalty against persons who file what purports to be a return that does not contain information on which the correctness of the self-assessment may be judged, or contains information that on its face indicates the self-assessment is incorrect, and if either of the following apply:
  - a. The return is based on a frivolous position. IRC 6702(c) directs the Secretary to prescribe a list of positions which have been identified as being frivolous. See Notice 2010-33.
  - b. The return reflects a desire to delay or impede the administration of federal tax laws.
- (2) For returns filed after March 15, 2007, the penalty is not limited to income tax returns. It may be asserted on any tax return required to be filed by the Internal Revenue Code, such as employment, excise, estate and gift, etc. The penalty is applicable to any initial return or amended tax return filed after March 15, 2007.
- (3) The term "persons" applies to entities as well as individuals.

20.1.10.12.1.1  
(10-12-2022)  
**Penalty Computation**

- (1) For frivolous returns or submissions filed after March 15, 2007, the date Notice 2007-30, 2007-14 IRB 883, was issued, the penalty is \$5,000 per frivolous return.
- (2) Frivolous positions are described in Notice 2010-33 (or its successor notice) as required by IRC 6702(c). Taxpayers may be subject to a \$5,000 civil penalty for frivolous positions that are the same or similar to the positions listed in Notice 2010-33 (or its successor notice).
- (3) Refer to IRM 25.25.10, Frivolous Return Program, for positions determined to be frivolous. IRM 25.25.10-1, Frivolous Arguments, provides a list of arguments and includes the argument numbers associated with the frivolous penalty assessment.

20.1.10.12.1.2  
(08-20-2024)  
**Assertion/Assessment**

- (1) The penalty is:
  - a. Input on IDRS using information provided on Form 8278,
  - b. Assessed using PRN 666 (after January 24, 2005), and
  - c. Not subject to deficiency procedures.
- (2) For frivolous income tax returns filed by individuals prior to March 15, 2007, the penalty was:

- a. \$500 per frivolous document;
  - b. Applied only to income taxes, and was not applicable to corporations, partnerships, estates or other entities; and
  - c. Not applicable to hearing requests, installment agreements, offers-in-compromise, or applications for taxpayer assistance orders, Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order).
- (3) Because the penalty is based on each frivolous submission of a return, a taxpayer may be assessed a separate penalty for each frivolous tax return submitted (even if it is a duplicate return) and may have more than one penalty assessment on a tax period of that return. Duplicates are not susceptible to a penalty per **Kestin v. Commissioner**, 153 T.C. 14 (2019).
  - (4) Joint filing status frivolous filings will result in separate penalty assessments on the primary and secondary taxpayers, with a \$5,000 penalty per frivolous document assessed against each spouse.

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- (6) **Statute of Limitations** The penalty for filing a frivolous valid return should be assessed within three (3) years after the date the return was filed.

20.1.10.12.1.3  
(08-20-2024)  
**Penalty Relief**

- (1) Taxpayers seeking judicial review of an IRC 6702(a) penalty must first fully pay the entire penalty and then file a claim for refund with the IRS within two years of the date of payment. If the IRS does not issue a determination allowing or disallowing the claim within six (6) months, the taxpayer may file suit in the district court or U.S. Court of Federal Claims. If the IRS issues a disallowance letter, the taxpayer has two (2) years from the date the disallowance letter was sent to the taxpayer to file suit contesting this penalty in the district court or U.S. Court of Federal Claims.
- (2) Taxpayers seeking an administrative appeal of an IRC 6702(a) penalty may do so provided the taxpayer's request is non-frivolous. However, Rev. Proc. 2012-43, section 5.03 explains that taxpayers who request a reduction of an IRC 6702(a) penalty do not have administrative appeal rights if their request is denied. In addition, Rev. Proc. 2012-43 states that taxpayers who wish to challenge the merits of an IRC 6702(a) penalty should either pay the penalty and file a claim for refund or discuss penalty relief in a collections due process proceeding. See IRM 8.11.8.2, Frivolous Tax Submissions.
- (3) Although not statutorily required before the assessment of the IRC 6702(a) penalty, IRS practice allows a taxpayer 30 days to withdraw a frivolous return. See IRM 25.25.10.1.2, Authority, for more information.

	(4) An IRC 6702(a) penalty can be disputed in the Tax Court when there is jurisdiction - Collection due process and deficiency cases.	
20.1.10.12.2 (08-20-2024) <b>IRC 6702(b) - Civil Penalty for Specified Fivolous Submissions</b>	<div><div>(1) IRC 6702(b) provides for a penalty against anyone who submits a frivolous position on one of the following specific submissions:<div><div>a. Hearing request under IRC 6320, Notice and Opportunity for Hearing Upon Filing of Notice of Lien,</div><div>b. Hearing request under IRC 6330, Notice and Opportunity for Hearing Before Levy, i.e., a Collection due process (CDP) hearing request (see IRM 5.19.8.4.8, Withdrawal of a Request for CDP or Equivalent Hearing Request),</div><div>c. Installment agreement request,</div><div>d. Offer-in-compromise request, or</div><div>e. Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order) .</div></div></div><div>(2) A taxpayer will be subject to the penalty under IRC 6702(b) for making any of these specified submissions, if the submission:<div><div>a. Has been identified by the IRS as frivolous under IRC 6702(c), or</div><div>b. Reflects a desire to delay or impede the administration of federal tax laws.</div></div></div></div>	
20.1.10.12.2.1 (08-20-2024) <b>Penalty Computation</b>	<div><div>(1) For frivolous submissions filed after March 15, 2007, the date Notice 2007-30 was issued, the penalty is \$5,000 per frivolous submission. The IRS issued Notice 2007-30, then issued updated Notice 2008-14, then issued updated Notice 2010-33, which identifies positions that the IRS has determined are frivolous. Taxpayers may be subject to a \$5,000 civil penalty for frivolous positions that are the same or similar to the positions listed in Notice 2010-33 or any later published list of frivolous positions under IRC 6702(c).</div><div>(2) For frivolous submissions filed by individuals prior to March 15, 2007, the IRC 6702(b) civil penalty did not apply to hearing requests, installment agreements, offers-in-compromise, or applications for taxpayer assistance orders (Form 911).</div><div>(3) Because the penalty is based on each specified frivolous submission, a taxpayer may be assessed a separate IRC 6702(b) penalty for each specified frivolous submission.</div><div>(4) Joint filing status frivolous filings will result in separate penalty assessments on the primary and secondary taxpayers, with a \$5,000 penalty per frivolous submission assessed against each spouse.</div></div>	<div># # # # #</div> <div># # #</div>

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#20.1.10.12.2.2  
(10-12-2022)  
**Assertion/Assessment**

- (1) The penalty is:
  - a. Input on IDRS using information provided on Form 8278,
  - b. Assessed using PRN 543, and
  - c. Not subject to deficiency procedures.
- (2) Generally, the Campus identifies frivolous submissions and the Ogden Campus Compliance site Frivolous Return Program (FRP) Unit determines and assesses frivolous submissions penalties.
- (3) If the field receives a submission that warrants a frivolous submission penalty, the employee should indicate this on Form 3198, Special Handling Notice for Examination Case Processing, which should be attached to the original submission.
- (4) Any frivolous submission should be forwarded to the FcarnitaRP Unit. See IRM 25.25.10, Frivolous Return Program, for more information.
- (5) Because the penalty is based on each frivolous submission, a taxpayer may be assessed a separate penalty for each frivolous submission (even if it is a duplicate ). Assess only one penalty per submission in the year the frivolous submission was received.
- (6) **Statute of Limitations** A frivolous submission penalty should be assessed within three years after the date the submission was filed.

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#20.1.10.12.2.3  
(08-20-2024)  
**Penalty Relief**

- (1) Taxpayers seeking judicial review of an IRC 6702(b) penalty must first fully pay the entire penalty and then file a claim for refund with the IRS within two years of the date of payment. If the IRS does not issue a determination allowing or disallowing the claim within six (6) months, the taxpayer may file suit in the district court or U.S. Court of Federal Claims. If the IRS issues a disallowance letter, the taxpayer has two (2) years from the date the disallowance letter was sent to the taxpayer to file suit contesting this penalty in the district court or U.S. Court of Federal Claims.
- (2) If the IRS issues a notice stating a specified frivolous submission under IRC 6702(b) was made, and the person responds within 30 days after the notice by withdrawing the frivolous submission, then the IRC 6702(b) penalty will not apply. By statute, the opportunity to withdraw applies only to the IRC 6702(b) penalty and not to persons filing a frivolous tax return under IRC 6702(a). However, to provide for consistency, FRP permits persons filing frivolous tax



returns an opportunity to withdraw a frivolous tax return. See IRM 25.25.10, Frivolous Return Program, for more information.

- (3) An IRC 6702(b) penalty can be disputed in the Tax Court when there is jurisdiction - Collection due process and deficiency cases.

20.1.10.12.3  
(10-12-2022)  
**IRC 6702(d) - Reduction  
of Frivolous Submission  
IRC 6702 Penalties**

- (1) IRC 6702(d) authorizes the reduction of the frivolous tax submission penalties assessed under IRC 6702 if it is determined that a reduction would promote compliance with and administration of the federal tax laws. Rev. Proc. 2012-43 (effective November 5, 2012) allows a reduction of all unpaid IRC 6702 penalties to \$500 if a taxpayer meets specific eligibility requirements.
- (2) Rev. Proc. 2012-43 describes the limited circumstances in which a taxpayer may be eligible for a one-time reduction of unpaid IRC 6702 penalties.
- (3) A taxpayer requesting a reduction who has not fully paid a \$5,000 penalty assessed by the IRS under IRC 6702 may qualify for a reduction of the penalty pursuant to IRC 6702(d).
- (4) FRP administers the reduction of frivolous submissions under IRC 6702(d). See IRM 25.25.10.10, Reduction of the Frivolous Return Penalty IRC 6702(d).

20.1.10.12.3.1  
(10-12-2022)  
**Form 14402 - IRC  
6702(d) - Frivolous Tax  
Submissions Penalty  
Reduction**

- (1) A request for reduction must comply with the requirements explained in Rev. Proc. 2012-43. A taxpayer whose request does not comply with these requirements will not be eligible for a reduction of an IRC 6702 penalty.
- (2) Form of request. A written request for reduction must be submitted on Form 14402, Internal Revenue Code (IRC) Section 6702(d) Frivolous Tax Submissions Penalty Reduction, or as prescribed by the form's instructions. The form is signed and submitted under penalties of perjury. A single Form 14402 may be filed to request reduction of more than one IRC 6702 penalty.
- (3) Payment with Submission: A payment of \$500 is required to be submitted to request any outstanding IRC 6702 liabilities be reduced to \$500.
- (4) This payment must be paid in one of two ways:
  - a. Except as provided in section 4.01(2)(b) of Rev. Proc. 2012-43, a payment of at least \$250 must be submitted with the request for reduction even if that taxpayer has, prior to filing a request for reduction, paid either voluntarily or by an overpayment offset, a portion of the IRC 6702 penalties that are the subject of the request. This payment will be applied to the taxpayer's assessed IRC 6702 penalty liabilities without regard to whether the reduction request is granted or not. If the taxpayer submits \$250 or more, but less than \$500, the taxpayer will remain liable for the balance of the \$500, subject to interest.
  - b. If the taxpayer is already compliant with a full payment installment agreement, the taxpayer may request the reduction without submitting additional payments if the taxpayer will pay the \$500 through the installment agreement. If the taxpayer has already paid more than \$500 of the penalties as part of a full payment installment agreement, the taxpayer will not be required to pay additional section IRC 6702 penalties if the taxpayer otherwise qualifies for the reduction.



20.1.10.12.3.2  
(10-12-2022)  
**Eligibility for Penalty Reduction**

- (1) A taxpayer must meet the following criteria to obtain IRC 6702(d) penalty reduction.
  - a. All tax returns must have been filed and all taxes due must have been paid (or arrangements must have been made to pay) other than the IRC 6702 penalty(ies) for which reduction is requested. Unless these filing and payment requirements have been met, reduction of an IRC 6702 penalty will be denied.
  - b. All valid tax returns for any type of tax and for all taxable periods for six years before the date of the request must be filed. This requirement means a taxpayer requesting a reduction must file all individual returns and all returns for any entity in which the taxpayer has a controlling interest. This includes: i) any returns of a partnership or limited liability company for which the taxpayer is a general partner or managing member, ii) any returns of a subchapter C or subchapter S corporation in which the taxpayer holds a greater than 50 percent interest, and iii) any returns of a trust for which the taxpayer serves as trustee.

**Note:** A document other than a return that permits assessment of federal income tax will not satisfy the requirements of this section.
  - c. Payment compliance: All assessed tax liabilities must be full paid, including interest, penalties (other than the IRC 6702 penalty(ies) that are the subject of the request), and additions to tax for all types of tax and for all taxable periods for which the period for collection under IRC 6502 remains open. Alternatively, the taxpayer is considered in payment compliance if the taxpayer is in compliance with a full payment installment agreement for all assessed federal tax liabilities for which the IRC 6502 collection period remains open.

**Note:** The granting of relief under the provisions of IRC 6015 or IRC 66(c) will be considered payment of an assessed tax liability to the extent of the granted relief.
  - d. Deposit requirements compliance: An employer must, at the time of filing the request, have made all required deposits of federal employment taxes under subtitle C of the Code for the current quarter and the prior two quarters.

20.1.10.12.3.3  
(10-12-2022)  
**Penalty Calculation**

- (1) Generally, if all eligibility criteria of section 4 of Rev. Proc. 2012-43 are satisfied, all penalties assessed under IRC 6702 will be reduced to \$500.
  - a. If a payment of \$500 is received with the request for reduction, any remaining unpaid amount of those penalty liabilities, including interest will be abated.
  - b. If a payment of least \$250, but less than \$500 is submitted with the request for reduction, that payment will apply against any assessed IRC 6702 penalty(ies) outstanding.
  - c. All outstanding penalties except the difference between the payment submitted with the Form 14402 and the required \$500 shall be abated. For example, if \$250 is tendered then \$250 is the remaining unpaid balance.
- (2) If the taxpayer granted the reduction fails to pay the remaining balance of the \$500 reduced penalty (plus interest as described above), the IRS may use any available remedy to collect the balance.

- (3) Any portion of the IRC 6702 penalty(ies) paid prior to the received date of the request for reduction will not be refunded.
- (4) If a full pay installment agreement is in existence, the IRC 6702 penalty(ies) will be reduced only upon completion of all payments required to satisfy all outstanding tax liabilities other than the IRC 6702 penalties that are the subject of the request for reduction. A default on an installment agreement will result in the IRC 6702 penalty(ies) not being reduced.
- (5) If any of the eligibility criteria of section 4 of Rev. Proc. 2012-43 are not satisfied, the request for reduction will be denied.

20.1.10.12.3.4  
(10-12-2022)

**Assertion/Assessment**

- (1) Applying payments: Any taxpayer requesting a reduction who makes payments of \$250 or more but less than \$500 who is granted the penalty reduction will remain liable for the remaining balance of the reduced penalties until the balance is satisfied. The remaining liability will not preclude the requested reduction of the assessed and unpaid IRC 6702 penalties.
  - a. If payment is \$250 or more but less than \$500, interest will continue to accrue on the remaining balance of the reduced penalties from the date of the earliest unpaid IRC 6702 penalty falling under these procedures.
  - b. Any failure to pay the remaining balance will result in liability for the remaining balance of the reduced penalties (plus interest).
  - c. If a full payment of \$500 is received and the reduction is granted any interest that has accrued on the outstanding IRC 6702 liabilities will be abated.
  - d. If an approved full payment installment agreement is in existence and taxpayer is in compliance under IRC 6159, the \$500 payment may become a part of the installment agreement. The period for collection under IRC 6502 must be open.
  - e. If payments of more than \$500 towards the IRC 6702 have been received and applied under an installment agreement at the time of the request, additional payments are not required in order for the taxpayer to become eligible for the reduction. Any interest accrued on the outstanding IRC 6702 penalty(ies) will be abated.
  - f. Because IRC 6702 (d) allows an adjustment (assessment/abatement) to a frivolous tax submission penalty which is input with a TC 29X (and not a TC 30X), payments received with the Form 14402 are to be posted with a TC 670 and a secondary TC 570 (to hold the payment and ensure that the money doesn't refund if the account is "settled.")

**Note:** Payments should be processed in the unit received. Forward Forms 14402 (with a copy of the payment attached) to the Frivolous Filer Unit, Ogden Campus: Frivolous Return Program, Mail Stop 43901973, Rulon White Boulevard, Ogden, UT 84201.
- (2) Time limits: Form 14402 must be filed before the United States files suit either for collection of the penalty or to reduce any assessment of the penalty to judgment. Any request for reduction of an IRC 6702 penalty that does not meet these time limits will be denied.
  - a. If a request seeks reduction of multiple penalties but the request falls within the time limits with respect to only some of the penalties, the request will be treated as timely only for those penalties.

- b. Any taxpayer who has made voluntary payments for a portion of any IRC 6702 penalty liabilities prior to the reduction will be eligible for reduction of the remaining amount of those liabilities, but must still pay the additional \$500 before the penalties will be reduced.
  - c. Similarly, any taxpayers who had overpayments offset against any IRC 6702 penalty liabilities will be eligible for a reduction of the remaining amount of those liabilities, if any, but must still pay the additional \$500 before the penalties will be reduced.
- (3) Determinations granting or denying IRC 6702(d) reductions will be provided in writing.
  - (4) Denials of a request for any reason are not subject to an administrative appeal.

**Reminder:** The IRC 6702(d) penalty reduction can be granted only once.

20.1.10.12.3.5  
(10-12-2022)

**Disqualifying Events**

- (1) The special circumstances outlined below may make a person ineligible for IRC 6702(d) penalty relief.
- (2) Offer-in-compromise: Prior to considering the IRC 6702(d) penalty reduction any offer-in-compromise under IRC 7122 that includes any IRC 6702 penalty must comply with one of the following:
  - a. Must have been withdrawn in writing before consideration of the IRC 6702(d) reduction,
  - b. Must have been returned to the taxpayer without acceptance, or
  - c. Must have been rejected and an administrative appeal was not pursued.
- (3) Partial payment installment agreements: A taxpayer requesting a reduction who has entered into a partial payment installment agreement under IRC 6159 is ineligible for a reduction of any IRC 6702 penalty included in the partial payment installment agreement because the taxpayer will be paying less than the full amount of federal tax liabilities.
- (4) Closing agreement: Any taxpayer requesting a reduction who has entered into a closing agreement under IRC 7121 is ineligible for a reduction of any IRC 6702 penalty included in the closing agreement.
- (5) New frivolous filing: A taxpayer requesting a reduction who makes any filing of a frivolous return or frivolous submission after filing a request for reduction but before the granting of the reduction is ineligible for reduction of an IRC 6702 penalty whether or not the taxpayer requesting the reduction withdraws the frivolous return or submission.
- (6) Bankruptcy: A person is ineligible for any reduction of IRC 6702 penalty(ies) under Rev. Proc. 2012-43 if the penalty is dischargeable under an open bankruptcy case. Relief under IRC 6702(d) cannot be granted while a bankruptcy case is open, regardless of whether the discharge of the penalty is included.

20.1.10.13  
(08-20-2024)

**IRC 6705 - Failure by  
Broker to Provide Notice  
to Payors**

- (1) IRC 6705 provides for a penalty under IRC 3406(d)(2)(B) for the willful failure by a broker to provide notice under IRC 3406(d)(2)(B) to payors that a payee is subject to backup withholding.
- (2) Under IRC 3406(d)(2)(B), Backup withholding, Broker Notifies Payor, a broker who acquires a readily tradable instrument for a payee (customer) must notify the payor of such instrument within 15 days of the acquisition that the payee is subject to backup withholding if any of the following conditions exist:
  - a. The payee fails to furnish the TIN to the broker, or
  - b. The IRS notifies the broker that the TIN is incorrect, or
  - c. The payee has not provided the broker with a certification that the payee is not subject to backup withholding, or
  - d. The IRS notified the broker before the acquisition that the payee is subject to backup withholding.
- (3) A broker who is required to notify the payor when transferring instructions of a readily tradable instrument may notify the payor by means of magnetic (electronic) media, machine readable document, or any other medium, provided that the notice includes the following information:
  - a. The payee's name, address, and taxpayer identification number (if provided to the broker);
  - b. A statement that the payee is subject to withholding IRC 3406(a)(1) (A), (B), (C), or (D) (whichever applies);
  - c. A statement that the broker was notified by the IRS that the payee is subject to withholding IRC 3406(a)(1) (B) or (C) (when applicable).
- (4) The broker must give the information to the payor with the transfer instructions for the acquisition (including account registration instructions transmitted by a broker in the case of acquisitions of shares in a mutual fund). A notice including the information in IRM 20.1.10.13(3), IRC 6705 Failure by Broker to Provide Notice to Payors, above fulfills the broker's requirement to give notice to the payor. Once the broker transmits the transfer instructions containing the required information, the broker has no further responsibility to obtain a missing taxpayer identification number or missing certification or to provide additional notices to the payee or payor for the acquisition of the instrument. Upon receiving the notice from a broker, the payor must impose withholding on the account.
- (5) For purposes of this penalty, the term "broker" generally includes:
  - a. A dealer,
  - b. Barter exchange, and
  - c. Any other person who regularly acts as a middleman for property or services (for pay).

**Note:** A person who manages a farm on behalf of another person is not a broker.

20.1.10.13.1  
(10-12-2022)

**Penalty Computation**

- (1) The penalty is \$500 per failure by the broker to provide the notice to the payor.

20.1.10.13.2  
(10-12-2022)

## Assertion/Assessment

- (1) The penalty is:
  - a. Input on IDRS using the information provided on Form 8278,
  - b. Assessed using PRN 632, and
  - c. Not subject to deficiency procedures.

20.1.10.13.3  
(10-12-2022)

## Penalty Relief

- (1) Penalty relief is not granted for reasonable cause. If a taxpayer wants to contest the penalty assessment, the taxpayer must fully pay the entire penalty and then file a claim for refund with the IRS.

20.1.10.14  
(08-20-2024)

## IRC 6706 - Original Issue Discount Information Requirements

- (1) IRC 6706 provides for penalties for original issue discount (OID) information requirements.
- (2) For the purposes of this penalty, "original issue discount" means the excess of the stated redemption price at maturity over the issue price. "Stated redemption price at maturity" means the sum of all payments provided by the debt instrument other than qualified stated interest payments. Generally, "qualified stated interest" is stated interest unconditionally payable in cash or in property (other than the debt instruments of the issuer) at least annually at a single fixed rate. "Issue price," in the case of publicly offered instruments not issued for property, means the first price at which a substantial amount of such instruments was sold to the public (excluding bond houses and brokers). In the case of debt instruments not publicly offered and not issued for property, **issue price** generally means the price paid by the first buyer of such debt instrument.

20.1.10.14.1  
(11-09-2023)

## IRC 6706(a) - Failure to Show Information on Debt Instrument

- (1) IRC 6706(a) provides for a penalty for the failure to show the information required under IRC 1275(c)(1), Other Definitions and Special Rules, Information Requirements, Information Required to be Set Forth on Instrument, on a debt instrument having original issue discount (OID).
- (2) Under Treas. Reg. 1.1275-3(b), in the case of any debt instrument having OID and that is issued in physical form and that is not publicly offered, the following information must be shown on the debt instrument:
  - a. The debt instrument has OID,
  - b. The issue price of the debt instrument,
  - c. The amount of the OID,
  - d. The issue date,
  - e. The yield to maturity, and
  - f. In the case of a contingent payment debt instrument subject to the non-contingent bond method under Treas. Reg. 1.1275-4(b), the comparable yield and projected payment schedule.
- (3) However, instead of the information listed in (b) through (f) above, the issuer can provide the name or title and either the address or phone number of a representative of the issuer who will make this information available to a holder upon request.
- (4) Under Treas. Reg. 1.1275-3(b)(4) and (d), this legending requirement does not apply to:
  - a. tax exempt obligations (interest on them is not taxable),
  - b. United States Savings bonds,

- c. short-term obligations (those that mature in one year or less from their issue date),
- d. debt instruments issued by natural persons,
- e. loans between natural persons,
- f. any regular interest in a REMIC or qualified mortgage held by a REMIC,
- g. any other debt instrument if payments under such debt instrument may be accelerated by reason of prepayments of other obligations securing such debt instrument,
- h. any pool of debt instruments the yield on which may be affected by reason of prepayments,
- i. stripped bonds and stripped coupons, or
- j. an issue of debt instruments not offered for sale or resale in the United States in connection with the original issuance.

- (5) An issuer may satisfy these requirements by legending the debt instrument when it is first issued in physical form. Legending is not required, however, before the first holder of the debt instrument disposes of the instrument.

20.1.10.14.1.1  
(10-12-2022)

**Penalty Computation**

- (1) The penalty is \$50 for each instrument with such a failure.

20.1.10.14.1.2  
(10-12-2022)

**Assertion/Assessment**

- (1) The penalty is:
- a. Input in IDRS using information provided from Form 8278,
  - b. Assessed using civil PRN 678, and
  - c. Not subject to deficiency procedures.

20.1.10.14.1.3  
(10-12-2022)

**Penalty Relief**

- (1) Penalty relief may be granted when the failure to show the information required is due to reasonable cause and not willful neglect.

20.1.10.14.2  
(08-20-2024)

**IRC 6706(b) - Failure to  
Furnish Information to  
Secretary**

- (1) IRC 6706(b) provides for a penalty for failing to timely furnish Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments, required under IRC 1275(c)(2), Information Required to be Submitted to Secretary.
- (2) An issuer of a publicly offered debt instrument (obligation) having original issue discount (OID), such as a bond, debenture, or note, must submit Form 8281. Form 8281 must be filed:
- a. Within 30 days after the issue date of an OID instrument or, in the case of an OID instrument that is part of an issue the offering of which is registered with the Securities and Exchange Commission (SEC) after the issue date of the instrument, within 30 days after the date the offering is registered with the SEC (see Treas. Reg. 1.1275-3(c)(4)), and
  - b. Using a separate Form 8281 for each issue.
- (3) Publicly offered debt instruments also may include:
- a. Serial obligations,
  - b. Debt instruments issued in exchange for other debt instruments or for stock,
  - c. A debt instrument sold together with options or warrants (an investment unit),



- d. Sinking fund instruments, and
- e. Convertible instruments.

**Note:** An obligation registered with the Securities and Exchange Commission (SEC) is a publicly offered debt instrument. An obligation exempt from SEC registration may be publicly offered.

**Note:** See Treas. Reg. 1.1275-1(h) for the definition of a publicly offered debt instrument.

- (4) Exceptions. The form is not required to be filed for the following:
- a. Regular interests of a real estate mortgage investment conduit (REMIC), collateralized debt obligations (CDOs), or other debt instruments subject to IRC 1272(a)(6). REMICs and issuers of CDOs must file Form 8811, Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations,
  - b. Instruments on which OID is de minimis,
  - c. Tax-exempt obligations (interest on them is not taxable),
  - d. Short-term obligations (those that mature in one year or less from their issue date),
  - e. Certificates of deposit (CDs) issued by banks or other financial institutions,
  - f. CDs that are sold by brokers or other middlemen,
  - g. A public offering of stripped bonds or stripped coupons, including instruments issued under the Department of the Treasury's STRIPS program and instruments that constitute ownership interests in U.S. Treasury securities,
  - h. The issue is not offered for sale or resale in the United States in connection with its original issuance,
  - i. Debt instruments issued by natural persons, or
  - j. United States Savings bonds. See IRC 1272(a)(2), Treas. Reg. 1.1275-3(c)(3) and (d), and the instructions to Form 8281 .

20.1.10.14.2.1  
(10-12-2022)

**Penalty Computation**

- (1) The penalty is 1% of the aggregate issue price of the issue.
- (2) The maximum penalty is limited to \$50,000 for each issue.

20.1.10.14.2.2  
(10-12-2022)

**Assertion/Assessment**

- (1) The penalty is:
  - a. Input on IDRS using information provided on Form 8278,
  - b. Assessed using PRN 678, and
  - c. Not subject to deficiency procedures.

20.1.10.14.2.3  
(10-12-2022)

**Penalty Relief**

- (1) Penalty relief may be granted when the failure to timely furnish Form 8281 is due to reasonable cause and not willful neglect.



- 20.1.10.15  
(10-12-2022)  
**IRC 6709 - Penalties  
With Respect to  
Mortgage Credit  
Certificates**
- (1) IRC 6709 imposes penalties with respect to mortgage credit certificates.
  - (2) For purposes of these penalties, the term “mortgage credit certificate” means any certificate which is:
    - a. Issued under a qualified mortgage credit certificate program by the State or political subdivision having the authority to issue qualified mortgage bonds to provide financing on the principal residence of the taxpayer,
    - b. Issued to the taxpayer in connection with the acquisition, qualified rehabilitation, or qualified home improvement of the taxpayer’s principal residence,
    - c. Specifies - (i) the certificate credit rate, and (ii) the certified indebtedness amount, and
    - d. In the form prescribed by the Secretary.
  - (3) The term “qualified mortgage credit certificate program” means any program that is established by a state or political subdivision for any calendar year that it is authorized to issue qualified mortgage bonds under which the issuing authority elects not to issue private activity bonds. For the complete definition of a **qualified mortgage credit certificate program**, see IRC 25(c)(2)(A).
- 20.1.10.15.1  
(10-12-2022)  
**IRC 6709(a) - Negligence**
- (1) IRC 6709(a) provides for a penalty for making a material and negligent misstatement in any verified written statement made under penalties of perjury with respect to the issuance of a mortgage credit certificate.
- 20.1.10.15.1.1  
(10-12-2022)  
**Penalty Computation**
- (1) The penalty is \$1,000 for each mortgage credit certificate where a verified written misstatement was made, if the misstatement is material and is due to the negligence of the person making the statement.
- 20.1.10.15.1.2  
(10-12-2022)  
**Assertion/Assessment**
- (1) The penalty is:
    - a. Input on IDRS from information provided on Form 8278,
    - b. Assessed using PRN 578, and
    - c. Not subject to deficiency procedures.
- 20.1.10.15.1.3  
(10-12-2022)  
**Penalty Relief**
- (1) There is no penalty relief for reasonable cause. If the taxpayer wants to contest the penalty assessment, the taxpayer must fully pay the entire penalty and then file a claim for refund with the IRS.
- 20.1.10.15.2  
(10-12-2022)  
**IRC 6709(b) - Fraud**
- (1) IRC 6709(b) provides for a penalty if a misstatement described in subsection (a)(1) is due to fraud on the part of the person making the misstatement.
- 20.1.10.15.2.1  
(11-09-2023)  
**Penalty Computation**
- (1) The penalty is \$10,000 for each mortgage credit certificate where a misstatement is made due to fraud, in addition to any criminal penalty.
- 20.1.10.15.2.2  
(10-12-2022)  
**Assertion/Assessment**
- (1) The penalty is:
    - a. Input on IDRS from information provided on Form 8278,
    - b. Assessed using PRN 579, and
    - c. Not subject to deficiency procedures.

20.1.10.15.2.3  
(10-12-2022)  
**Penalty Relief**

- (1) There is no penalty relief for reasonable cause. If a taxpayer wants to contest the penalty assessment, the taxpayer must fully pay the entire penalty and then file a claim for refund with the IRS.

20.1.10.15.3  
(10-12-2022)  
**IRC 6709(c) - Reports**

- (1) IRC 6709(c) provides for a penalty for failure timely to file a report with respect to any mortgage credit certificates required by IRC 25(g), Reporting Requirements.
- (2) Any person (lender) who makes a loan that is a “certified indebtedness amount” on any mortgage credit certificate (MCC) must maintain books and records of such activity and file Form 8329, Lender’s Information Return for Mortgage Credit Certificates (MCCs). The lender must provide IRS with information regarding the issuance of MCCs under IRC 25, Interest on Certain Home Mortgages, containing:
  - a. The name, address, and social security account number of the individual to which the certificate was issued,
  - b. The certificate’s issuer, date of issue, certified indebtedness amount, and certificate credit rate, and
  - c. Other information required by regulations.

**Note:** Each person who issues a mortgage credit certificate shall file a timely and accurate report showing information required by regulations and signed by an authorized representative of the lender.

- (3) Form 8329 is due by January 31 following the close of the calendar year in which the lender made certified indebtedness loans. A separate Form 8329 must be filed for each issue of MCCs for which the lender made mortgage loans during the calendar year.
- (4) Each issuer (states and political subdivisions) of MCCs are to provide IRS with information required by IRC 25 and Treas. Reg. 1.25-8T(b).
- (5) Form 8330, Issuer’s Quarterly Information Return for Mortgage Credit Certificates (MCCs), must be filed on a quarterly basis beginning with the quarter of the calendar year in which the election was made.
  - a. More than one Form 8330 may be filed for a particular quarter for an issuer if the issuer had more than one MCC program in operation during a calendar quarter.
  - b. Certificates under an MCC program may be issued for indebtedness up to the close of the 2nd calendar year following the calendar year for which the issuing authority made the election to issue MCCs in lieu of qualified mortgage bonds. There may be as many as 12 consecutive quarterly reports filed for a particular MCC program.
  - c. Form 8330 must be signed by an authorized representative of the issuer.

20.1.10.15.3.1  
(11-09-2023)  
**Penalty Computation**

- (1) The penalty is \$200 for each MCC not reported on a timely filed form.
- (2) The maximum penalty for an issuer is \$2,000 per required report.

- 20.1.10.15.3.2  
(10-12-2022)  
**Assertion/Assessment**
- (1) The penalty is:
- Input on IDRS using information provided on Form 8278,
  - Assessed using PRN 580, and
  - Not subject to deficiency procedures.
- 20.1.10.15.3.3  
(10-12-2022)  
**Penalty Relief**
- (1) Penalty relief may be granted if the taxpayer proves the failure to file a report with respect to any mortgage credit certificate was due to reasonable cause and not willful neglect.
- 20.1.10.16  
(08-20-2024)  
**IRC 6720B - Fraudulent Identification of Exempt Use Property**
- (1) In addition to any criminal penalty provided by law, IRC 6720B provides for a penalty against any person who identifies “applicable property” as defined in IRC 170(e)(7)(C) as having a use which is related to a purpose or function constituting the basis for the donee’s exemption under IRC 501 and who knows that the property is not intended for that use.
- (2) For purposes of IRC 170(e)(7)(C), the term “applicable property” means charitable deduction property as defined in IRC 6050L(a)(2)(A) that is tangible personal property and for which a deduction in excess of the donor’s basis is allowed.
- (3) “Charitable deduction property” is defined in IRC 6050L(a)(2)(A) as any property (other than publicly traded securities) contributed in a contribution for which a deduction was claimed under IRC 170 if the claimed property value (plus the claimed value of all similar items of property donated by the donor to one (1) or more donees) exceeds \$5,000.
- 20.1.10.16.1  
(10-12-2022)  
**Penalty Computation**
- (1) The penalty is \$10,000 for each identification made after August 17, 2006.
- 20.1.10.16.2  
(10-12-2022)  
**Assertion/Assessment**
- (1) The penalty is:
- Input on IDRS using information provided on Form 8278,
  - Assessed using PRN 551, and
  - Not subject to deficiency procedures.
- 20.1.10.16.3  
(10-12-2022)  
**Penalty Relief**
- (1) Penalty relief is not given for reasonable cause. If the taxpayer wants to contest the penalty assessment, the taxpayer must fully pay the entire penalty and then file a claim for refund with the IRS.
- 20.1.10.17  
(10-12-2022)  
**IRC 6720C - Penalty for Failure to Notify Health Plan of Cessation of Eligibility for COBRA Premium Assistance**
- (1) IRC 6720C was reenacted effective March 11, 2021. See IRM 20.1.10.17(2) - (4), IRC 6720C - Penalty for Failure to Notify Health Plan of Cessation of Eligibility for COBRA Premium Assistance.
- Note:** IRC 6720C was repealed by the Consolidated Appropriations Act, 2018, Pub. L. 115-141 (2018), effective March 23, 2018. For information regarding IRC 6720C for prior taxable years, see IRM 20.1.10.17(7) - (11), IRC 6720C - Penalty for Failure to Notify Health Plan of Cessation of Eligibility for COBRA Premium Assistance.
- (2) The American Rescue Plan (ARP), enacted on March 11, 2021, provided a temporary full reduction in the premium that individuals would have to pay

- (3) Individuals receiving ARP COBRA premium assistance are required to notify their group health plan in writing when they become eligible for benefits under:
  - a. Medicare, or
  - b. Any other group health plan.
- (4) They are not required to notify their group health plan if the coverage:
  - a. Consists only of excepted benefits (as defined in IRC 9832(c)),
  - b. Is under a flexible spending arrangement, or
  - c. Is under a qualified small employer health reimbursement arrangement.

[illegible]

- (6) The American Recovery and Reinvestment Act of 2009 (ARRA), enacted on February 17, 2009, contained an employer-provided subsidy of 65% of the total amount of insurance coverage for employees who are involuntarily terminated between September 1, 2008 and December 31, 2009. Previously enacted IRC 6720C provides for a penalty against individuals for failure to notify their health plan when they no longer qualify for Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 premium assistance.
- (7) The Department of Defense Appropriations Act, 2010, Sec. 1010, enacted on December 19, 2010, extended the eligibility period to provide a two-month extension (through February 28, 2010) of the eligibility period for COBRA assistance, and increased the maximum duration of COBRA assistance from nine months to 15 months.
- (8) The Continuing Extension Act of 2010, enacted April 15, 2010, reinstated the COBRA subsidy, which had expired on March 31. As a result, workers who are involuntarily terminated from employment between September 1, 2008 and

May 31, 2010, may be eligible for a 65% subsidy of their COBRA premiums for a period of up to 15 months. In some cases, workers who had their hours reduced and later lose their jobs may also be eligible for the subsidy. The COBRA subsidy was also available to people who become eligible for COBRA coverage as a result of a reduction in hours occurring between September 1, 2008, and May 31, 2010, followed by an involuntary termination between March 2, 2010 and May 31, 2010.

**Note:** An involuntary termination of employment that occurs on or after March 2, 2010 but by May 31, 2010 and follows a qualifying event that was a reduction of hours that occurred at any time from September 1, 2008 through May 31, 2010 is also a qualifying event for purposes of ARRA.

**Exception:** This subsidy phases out for individuals whose modified adjusted gross income exceeds \$125,000, or \$250,000 for those filing joint returns. Taxpayers with modified adjusted gross income exceeding \$145,000, or \$290,000 for those filing joint returns, do not qualify for the subsidy.

- (9) Individuals receiving COBRA premium assistance are required to notify their group health plan in writing when they become eligible for benefits under:
- a. Medicare, or

b. Any other group health plan.
- (10) They are not required to notify their group health plan if the coverage:
- a. Consists only of dental, vision, counseling, or referral services (or a combination of such services),

b. Is under a flexible spending arrangement, or

c. Is for treatment furnished in an on-site, employer maintained medical facility that consists primarily of first-aid services, prevention and wellness care, or similar care (or a combination of such care).

20.1.10.17.1  
(10-12-2022)  
Penalty Computation

- (1) The penalty is \$250 for each failure to notify the employer, plan, or issuer of eligibility for Medicare or any other group health plan as required for individuals receiving ARP COBRA premium assistance.
- (2) If the failure to provide notice is fraudulent, the penalty will be the greater of \$250 or 110 percent of the COBRA premium assistance improperly received.
- (3) The penalty will not apply if the individual's failure to provide notice was due to reasonable cause and not to willful neglect.

20.1.10.17.2  
(10-12-2022)  
Assertion/Assessment

- (1) The penalty is:
- a. Input on IDRS using information provided on Form 8278,

b. Assessed using PRN 563, and

c. Not subject to deficiency procedures.

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20.1.10.17.3  
(10-12-2022)  
**Penalty Relief**

- (1) No penalty shall be imposed under subsection (a) with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.

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- (3) The examiner's supervisor must approve all penalty determinations (assertions and non-assertions).

20.1.10.18  
(10-12-2022)  
**IRC 7268 - Possession  
With Intent to Sell in  
Fraud of Law or to  
Evade Tax**

- (1) IRC 7268 provides for a penalty for the custody or possession of taxable goods, wares, merchandise, articles, or objects for the purpose of selling in fraud of Internal Revenue laws or to avoid paying taxes.

20.1.10.18.1  
(10-12-2022)  
**Penalty Computation**

- (1) The penalty is \$500 or not less than double the amount of taxes illegally evaded.

20.1.10.18.2  
(10-12-2022)  
**Assertion/Assessment**

- (1) The penalty is administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB).

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20.1.10.19  
(08-20-2024)  
**IRC 7519 - Required  
Payments for Entities  
Electing Not to Have  
Required Taxable Year**

- (1) IRC 7519 requires partnerships and S corporations that have elected under IRC 444, Election of Taxable Year Other Than Required Taxable Year, to make a "required payment."
- (2) The term "required payment" means an amount equal to the excess of:
  - a. The applicable percentage of the adjusted highest section 1 rate, multiplied by
  - b. The net base year income of the business, over
  - c. The net required payment balance.
- (3) The term "adjusted highest section 1 rate" means the highest rate of tax under section 1 at the end of the base year plus 1 percentage point.
- (4) These payments are due on or before May 15. The required payment is considered a deposit and is not deductible by the partnership or S corporation (or their partners or shareholders), but is a payment that is adjusted each year with the filing of Form 8752, Required Payment or Refund Under Section 7519.
- (5) If the required payment is not more than \$500 and the partnership or S corporation has not had to make a required payment for a prior year, the partnership or S corporation is not required to make a payment for the applicable election year.
- (6) If the partnership or S corporation willfully fails to comply with the requirements, IRC 444 will no longer apply to the partnership or S corporation.
- (7) For more information, see IRM 21.7.4.4.7, Form 8752, Required Payment or Refund Under Section 7519.

20.1.10.19.1  
(10-12-2022)  
**Penalty Computation**

- (1) A penalty of 10% of the underpayment is required if the required payment is not made on or before May 15.
- (2) For purposes of this penalty, the term "underpayment" means the remainder of the amount of the required payment after it is subtracted from the payment (if any) made on or before the due date.
- (3) If the penalty is for negligence and/or fraud penalties, then the payment will be treated as a tax. See IRC 7519(f)(4)(B).

20.1.10.19.2  
(10-12-2022)  
**Assertion/Assessment**

- (1) The penalty is systemically assessed as TC 246 (or systemically abated as TC 247) with PRN 684.
- (2) The 10% penalty may be manually assessed if it is not systemically generated when the return posts.
  - a. Input TC 290 for .00 and PRN 684 with the correct penalty amount on IDRS, Master File Tax (MFT) 15.
  - b. The penalty assessment will post to the Master File Tax (MFT) 15 account as a TC 240 with PRN 684.
- (3) The 10% penalty may be manually abated by inputting TC 290 for .00 ( MFT 15) and PRN 684 with the amount to be reversed.

**Note:** For penalty reversal, use a minus sign after the money amount. The penalty abatement will post to the MFT 15 account as a TC 241 with PRN 684.



20.1.10.19.3  
(10-12-2022)  
**Penalty Relief**

- (1) Penalty relief may be granted if the partnership or S corporation proves that its failure to timely make the required payment was due to reasonable cause and not willful neglect.
- (2) The First-Time Abate policy does not apply to this penalty.
- (3) Oral testimony does not apply to this penalty.

20.1.10.20  
(11-09-2023)  
**IRC 9707 - Failure to Pay Premium**

- (1) IRC 9707 imposes a penalty on the failure of any person to make a contribution required under section 402 of the Surface Mining Control and Reclamation Act of 1977 to a benefit or pension plan. Section 402, Taxability of Beneficiary of Employees' Trust - Special Rules for Simplified Employee Pensions - Limitations on Employer Contributions, requires monthly contributions for the hours worked of any individual be treated as if it were a premium required to be paid under section IRC 9704, Liability of Assigned Operators, with respect to any eligible beneficiary.
- (2) For purposes of this penalty, the term "noncompliance period" means the period beginning on the due date for such premium or installment and ending on the date of payment of the premium or installment.
- (3) The penalty shall be treated in the same manner as the tax imposed by section 4980B.

20.1.10.20.1  
(10-12-2022)  
**Penalty Computation**

- (1) The penalty is \$100 per day beginning on the due date of the premiums or installments and ending on the date of payment for each failure.
- (2) There is no maximum limitation. The penalty continues to accrue until the premium or installment is fully paid.

20.1.10.20.2  
(10-12-2022)  
**Assertion/Assessment**

- (1) The officers of the benefit or pension plans are responsible for notifying the Internal Revenue Service of any delinquency.
- (2) The Department of the Interior-Office of Surface Mining will contact LB&I Corporate Issues/Credits, Credits/Penalties with any penalty referrals.
- (3) The penalty is asserted using PRN 593.

20.1.10.20.3  
(11-09-2023)  
**Penalty Relief**

- (1) No penalty shall be imposed on any failure during any period for which it is established that none of the persons responsible for such failure knew, or exercising reasonable diligence would have known, that such failure existed. See IRC 9707(d)(1).
- (2) Under IRC 9707(d)(2), penalty relief will be given if the taxpayer:
  - a. Proves the failure was due to reasonable cause and not to willful neglect, and
  - b. Corrects the failure during the 30-day period beginning on the first date that the taxpayer knew, or if exercising reasonable diligence would have known, that the failure existed.
- (3) Penalty relief may be given if the taxpayer proves the failure is due to reasonable cause and not to willful neglect, all or part of the penalty may be waived for failures to the extent that the payment of such penalty would be excessive relative to the failure involved. See IRC 9707(d)(3).

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**Exhibit 20.1.10-1 (11-18-2019)**  
**Penalty Reference Numbers (PRNs)**

IRC Section	Title	PRN
IRC 1400Z-2(f)	Failure of Qualified Opportunity Fund to Maintain Investment Standard	693
IRC 6652(a)	Failure to File Returns for Payments of Dividends Aggregating Less than \$10	590
IRC 6652(j)	Failure to File Certification with Respect to Certain Residential Rental Projects	587
IRC 6652(k)	Failure to Make Reports Required Under IRC Section 1202(d)(1)	588
IRC 6652(l)	Failure to File Return with Respect to Certain Corporate Transactions – Form 8806	649
IRC 6652(n)	Failure to Make Reports Required Under Sections 3511, 6053(c)(8), and 7705	562
IRC 6652(o)	Failure to Provide Notices with Respect to Qualified Small Employer Health Reimbursement Arrangements	519
IRC 6652(p)	Failure to Provide Notice Under Section 83(i)	694
IRC 6673(a)	Sanctions and Costs Awarded by Courts – Tax Court Proceedings	643
IRC 6673(b)	Sanctions and Cost Awarded by Court – Proceeding in Other Courts	644
IRC 6674	Fraudulent Statement or Failure to Furnish Statement to Employee	575
IRC 6682	Filing False Information with Respect to Withholding	616
IRC 6697(a)/(b)	Penalty with Respect to Tax Liability of Regulated Investment Company	582
IRC 6702(a)	Civil Penalty for Frivolous Tax Returns	666

**Exhibit 20.1.10-1 (Cont. 1) (11-18-2019)**  
**Penalty Reference Numbers (PRNs)**

IRC Section	Title	PRN
IRC 6702(b)(1)	Civil Penalty for Specified Frivolous Submissions	543
IRC 6705	Failure by Broker to Provide Notice to a Payer that Taxpayer is Subject to Back-up Withholding	632
IRC 6706(a)/(b)	Failure to Show Information on Debt Instrument	678
IRC 6709(a)	Misstatement of Mortgage Credit Certificate Due to Negligence	578
IRC 6709(b)	Misstatement of Mortgage Credit Certificate Due to Fraud	579
IRC 6709(c)	Failure to File Mortgage Credit Certificate Reports	580
IRC 6720B	Fraudulent Identification of Exempt Use Property	551
IRC 6720C	Failure to Notify Health Plan of Cessation of COBRA Eligibility for Premium Assistance	563
IRC 7519(f)(4)	Required Payments for Entities Electing Not to Have Required Taxable Year	684
IRC 9707	Failure to Pay Premium for Eligible Beneficiaries	593

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