



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

25.1.7

JUNE 10, 2021

## EFFECTIVE DATE

(06-10-2021)

## PURPOSE

- (1) This transmits revised 25.1.7, Fraud Handbook, Failure to File.

## MATERIAL CHANGES

- (1) IRM 25.1.7.1- Added new subsection, Program Scope and Objectives, to provide internal controls information. Subsections added under Program Scope and Objectives include Background; Authority; Roles; Program Management and Review; Program Controls; Acronyms; Terms; and Related Resources. Also rearranged existing IRM content to place information involving internal controls under this subsection. The addition of this subsection renumbered existing subsections.
- (2) IRM 25.1.7.1(5) - Revised to reference IRM 20.1.2.3.7.5.
- (3) IRM 25.1.7.2(1) - Reformatted the bullet points into a table.
- (4) IRM 25.1.7.2(1) - Clarified large number of cash transactions and information obtained from FinCEN.
- (5) IRM 25.1.7.2(2) - Information on how to contact the fraud enforcement advisor (FEA) has been added, however, campus employees do not use the Specialist Referral System (SRS).
- (6) IRM 25.1.7.2(3) - How to submit a request has been added and the link to the SRS has been added.
- (7) IRM 25.1.7.2(4) a - Added details on tax returns submitted to Exam revenue agents and tax returns submitted to Collection revenue officers. If returns are submitted to a Collection revenue officer, then process as detailed in IRM 5.1.11.6, Secured Returns.
- (8) IRM 25.1.7.4(1) f - Clarified establishing cash on hand for beginning and year end.
- (9) IRM 25.1.7.6(2) - Note: Removed incorrect link to PSP office.
- (10) IRM 25.1.7.7(3) - Added clarification regarding possession of clear and convincing evidence for IRC 6663.
- (11) IRM 25.1.7.7.1(2) - Revised to reference IRM 20.1.2.3.7.5.1.
- (12) IRM 25.1.7.7.1(3) - NOTE - Revised to reference IRM 20.1.2.2.7.5.1(3).
- (13) Editorial changes were made throughout the IRM; website links and program names were updated. All references to Fraud Technical Advisor (FTA) were replaced with Fraud Enforcement Advisor (FEA).

## EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 25.1.7 dated November 23, 2015.

**AUDIENCE**

Criminal Investigation (CI), Large Business & International (LB&I), Small Business/Self-Employed (SB/SE), Tax Exempt/Government Entities (TE/GE), and Wage & Investment (W&I)

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25.1.7

Failure to File

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25.1.7.1  
(06-10-2021)  
**Program Scope and Objectives**

- (1) **Mission.** The mission of the Office of Fraud Enforcement (OFE) is to promote compliance by strengthening the IRS' response to fraud, and by mitigating emerging threats. This includes:
  - Improving fraud detection and development to address areas of high fraud/risk noncompliance.
  - Cultivating internal and external partnerships to identify new treatment streams to enhance enforcement.
  - Pursuing civil fraud penalties and recommending criminal cases that will lead to prosecutions, where appropriate.
- (2) OFE builds strong internal and external partnerships and serves as the primary civil liaison to IRS-Criminal Investigation. By supporting cases throughout the life cycle and through full consideration of available treatments, OFE facilitates optimal disposition of cases with civil or criminal fraud potential.
- (3) **Purpose.** This IRM section provides direction and guidance for IRS employees servicewide when working potential fraud cases.
- (4) **Audience.** This handbook is a comprehensive guide for IRS employees servicewide working fraudulent failure to file cases; and other related fraud issues.
- (5) **Policy Owner.** Director, OFE, Small Business/Self Employed (SB/SE).
- (6) **Program Owner.** OFE, Policy, SB/SE.
- (7) **Primary Stakeholders.** Employees in IRS compliance.

25.1.7.1.1  
(06-10-2021)  
**Background**

- (1) This section discusses procedures that apply servicewide concerning fraud in failure to file cases.

25.1.7.1.2  
(06-10-2021)  
**Authority**

- (1) Willful failure to file a tax return is a misdemeanor pursuant to IRC 7203. In cases where an overt act of evasion occurred, willful failure to file may be elevated to a felony under IRC 7201.
- (2) If failure to file a return is fraudulent, a civil penalty known as the "fraudulent failure to file (FFTF) penalty" may apply under IRC 6651(f). This penalty may apply to all returns due after 12/31/1989 (without regard to extensions).

**Note:** The civil fraud penalty under IRC 6663 may apply to all returns required to be filed after 12/31/1989.

- (3) IRM 20.1.2.3.7.5, Fraudulent Failure to File - IRC 6651(f), provides specific procedures for assertion of the FFTF penalty.

25.1.7.1.3  
(06-10-2021)  
**Roles**

- (1) The Director, OFE, is the executive responsible for providing fraud policy and guidance for civil compliance employees and ensuring consistent application of policies and procedures in this IRM.
- (2) The fraud enforcement advisor (FEA) serves as a resource and liaison to compliance employees in all operating divisions. The FEA is available to assist in civil fraud investigations and offer advice on matters concerning tax fraud.
- (3) Employees who work potential fraudulent failure to file cases are responsible for following the procedures in this IRM. All examiners and their managers

working potential fraudulent failure to file cases should familiarize themselves with the information contained in this IRM.

25.1.7.1.4  
(06-10-2021)

**Program Management  
and Review**

- (1) The Office of Fraud Enforcement Policy staff prepares and issues the following reports to servicewide customers:
  - Three-year reports prepared using Fraud Information Tracking System (FITS) data
  - Status 17 reports using Audit Information Management System (AIMS) or AIMS Centralized Information System (ACIS) data
- (2) OFE Policy staff can create reports by area, territory or group. These reports help manage fraud inventory and provide review information for managerial use:
  - Cases on FITS but not on AIMS or ACIS
  - Cases on AIMS or ACIS but not on FITS
  - Cases in fraud development status
  - Cases in criminal fraud status
- (3) Ad-hoc reports are produced as requested by OFE customers.
- (4) Operational reviews of the FEA group managers are completed by the OFE program manager twice a year. These reviews measure program consistency, effectiveness in case actions, and compliance with fraud policy and procedures.
- (5) FEA managers utilize reports generated from FITS to monitor and track FEA inventory assignments.

25.1.7.1.5  
(06-10-2021)

**Program Controls**

- (1) FEA managers verify program and procedural compliance by conducting case consultations, case reviews, performance reviews, and security reviews with all FEAs.
- (2) FEAs are required to follow-up on all cases in fraud development status at least every 60 days as required by IRM 25.1.2.2(6)(e), Fraud Development Procedures.
- (3) FEAs are required to monitor accepted criminal referrals each quarter to ensure that CI and compliance are holding productive quarterly meetings as required under IRM 25.1.4.4.3, Required Communications.

25.1.7.1.6  
(06-10-2021)

**Acronyms**

- (1) The following table defines acronyms commonly used throughout this IRM section:

<b>Acronym</b>	<b>Definition</b>
ACS	Automated Collection System
ACIS	AIMS Centralized Information System
ACTC	Additional Child Tax Credit
AIMS	Audit Information Management System
AIS	Automated Insolvency System
AOIC	Automated Offer in Compromise
AOTC	American Opportunity Tax Credit
ASED	Assessment Statute Expiration Date
ATFR	Automated Trust Fund Recovery
AUSA	Assistant U.S. Attorney
BMF	Business Master File
BSA	Bank Secrecy Act
CCFC	Collection Campus Fraud Coordinator
CCP	Centralized Case Processing
CFC	Campus Fraud Coordinator
CFFC	Collection Functional Fraud Coordinator
CI	Criminal Investigation
COIC	Centralized Offer In Compromise
COP	Conditions of Probation
CSCO	Compliance Services Collection Operations
CTC	Child Tax Credit
CTR	Currency Transaction Report
DEL RET	Delinquent Return
ECS	Exam Case Selection
EFC	Examination Fraud Coordinator
EITC	Earned Income Tax Credit
EPR	Examination Planning and Review
ERCS	Examination Returns Control System
FBAR	Foreign Bank and Financial Accounts
FCQ	FinCEN Query
FEA	Fraud Enforcement Advisor
FFC	Functional Fraud Coordinator
FFTF	Fraudulent Failure to File penalty

<b>Acronym</b>	<b>Definition</b>
FinCEN	Financial Crimes Enforcement Network
FIRM	Fraudulent Intent Referral Memorandum
GM	Group Manager
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRP	Information Return Processing
IRS	Internal Revenue Service
LB&I	Large Business & International
ODC	Other Dependent Credit
OFE	Office of Fraud Enforcement
OIC	Offer in Compromise
PII	Personally Identifiable Information
PSP	Planning and Special Programs
RA	Revenue Agent
RAR	Revenue Agent's Report
RICS	Return Integrity and Compliance Services
RO	Revenue Officer
SA	Special Agent
SAC	Special Agent in Charge
SAR	Special Agent's Report or Suspicious Activity Report
SB/SE	Small Business/Self Employed
SOL	Statute of Limitation
SRS	Specialist Referral System
SSA	Supervisory Special Agent
TBOR	Taxpayer Bill of Rights
TE/GE	Tax Exempt/Government Entities
TM	Territory Manager
TP	Taxpayer
TS	Technical Services



Acronym	Definition
W&I	Wage & Investment

25.1.7.1.7  
(06-10-2021)  
**Terms**

- (1) Compliance employees must be familiar with the following legal terms to understand the requirements of proof. The following table defines terms commonly used throughout this IRM section:

Term	Definition
Burden of Proof	Includes both the burden of producing evidence and persuading a court (judge or jury) by clear and convincing evidence that the facts support the contention of civil fraud. In tax fraud cases, the burden of proof is on the government.
Circumstantial Evidence	Evidence that relies on an inference to connect it to a conclusion of fact.
Clear and Convincing Evidence	Evidence showing that the assertion made is highly probable or reasonably certain. This is a greater burden of proof than preponderance of the evidence but less than beyond a reasonable doubt.
Direct Evidence	Evidence in the form of documents or testimony from a witness who actually saw, heard, or touched the subject of questioning. Direct evidence, which is believed, proves existence of fact in issue without inference or presumption.
Evidence	Data presented to a judge or jury to prove the facts in issue. Evidence includes the testimony of witnesses, records, documents, or objects. Evidence is distinguished from proof, in that proof is the result or effect of evidence.
Fraud	Deception by misrepresentation of material facts, or silence when good faith requires expression, which results in material damage to one who relies on it and has the right to rely on it. Simply stated, it is obtaining something of value from someone else through deceit.
Inference	A logical conclusion from given facts.
Preponderance of Evidence	Evidence that will incline an impartial mind to one side rather than the other so as to remove the cause from the realm of speculation. It does not relate merely to the quantity of evidence. Simply stated, evidence which is more convincing than the evidence offered in opposition.

Term	Definition
Presumption (of law)	A rule of law that a judge or jury will draw a particular inference from a particular fact, or from particular evidence, unless and until the truth of such inference is disproved.
Reasonable Doubt	The evidence must be so convincing that a reasonable person would not question the defendant's guilt.
Willful Intent to Defraud	An intentional wrongdoing with the specific purpose of evading a tax believed by the taxpayer to be owing.

25.1.7.1.8  
(06-10-2021)

#### Related Resources

- (1) The Fraud Development Knowledge Base is located at: <https://portal.ds.irsnet.gov/sites/vl019/pages/default.aspx>
- (2) Procedural guidance on potential fraud development cases can be found throughout IRM 25.1.
- (3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see: <https://www.irs.gov/taxpayer-bill-of-rights>

25.1.7.2  
(06-10-2021)

#### Pre-screening Non-filers

- (1) On the initial screening of a non-filer case, the compliance employee must determine if the facts indicate potential fraud. Indicators of fraud for consideration, in addition to those previously identified in IRM 25.1.2.3, Indicators of Fraud, are as follows:

Potential Indicators of Fraud
History of non-filing or late filing, and an apparent ability to pay <b>Note:</b> This indicator of fraud alone is insufficient support for assertion of the FFTF penalty and should be cited in combination with other fraud indicators such as
Repeated contacts by the IRS
Knowledge of the filing requirements (i.e., advanced education, business (especially tax) experience, record of previous filing etc.)
Experience of the taxpayer in tax matters such as a law professor, CPA or tax attorney
Failure to reveal or attempts to conceal income or assets
Understating income
Failing to cooperate with IRS agents or employees

Potential Indicators of Fraud
Providing incomplete or misleading information to the taxpayer's tax return preparer
Failing to maintain adequate records
Filing false documents, including filing false income or other tax returns with the IRS or with third parties
Offering implausible or inconsistent explanations
Age, health, and occupation of the taxpayer
Substantial tax liability after withholding credits and estimated tax payments
Large number of cash transactions (i.e., purchases by cash and large cash deposits evidenced by documented cash transaction information obtained from the Financial Crimes Enforcement Network (FinCEN) Query system research), payment of personal and business expenses in cash when cash payment is unusual and/or the cashing (as opposed to the deposit) of business receipt <b>Note:</b> Consider whether business is a cash-intensive business and if cash must be used for paying expenses: for example, in the marijuana industry, where banks have been reluctant to provide bank accounts for these businesses.
Indications of significant income per Information Return Processing (IRP) documents (i.e., substantial interest and dividends earned, investments in IRA accounts, stock and bond transactions, high mortgage interest paid) <b>Note:</b> Consideration should be given to any allowable expenses the taxpayer may have to offset self-employment income
Refusal or inability to explain the failure to file
Prior history of criminal tax prosecutions for Title 26 violations

- (2) If indications of fraud exist, the compliance employee will discuss the case with the group manager. If the group manager concurs that the possibility of fraud exists, the fraud enforcement advisor (FEA) will be contacted. Initial contact with the FEA should be completed by submitting a request through the Specialist Referral System (SRS). Campus employees do not use the SRS and should refer to IRM 25.1.14, Fraud Handbook, Campus Examination Fraud Procedures, for campus procedures. Whenever feasible, a face-to-face meeting will be held between the compliance employee, group manager and FEA to discuss the need for fraud development.
- (3) To request a consultation with the FEA, the compliance employee will submit a request through the SRS by going to: <https://srs.web.irs.gov/default.aspx>
- (4) If the possibility of fraud exists:

- a. **DO NOT SOLICIT** tax returns. If returns are submitted to an Exam revenue agent, they should be accepted but not processed, and clearly documented in the case history. See IRM 4.4.9.7.3, Delinquent Return Secured by Examination After SFR TC 150 Posted - Accepted as Filed Procedures, IRM 4.4.9.7.4, Delinquent Return Secured by Examination After TC 150 SFR Posted, With Audit Potential - Process Partial Assessment Procedures, and IRM 25.1.7.6, Secured Delinquent Return (DEL RET), for proper handling. If returns are submitted to a Collection revenue officer, process as detailed in IRM 5.1.11.6, Secured Returns.
- b. **DO NOT VOLUNTEER ADVICE** to the taxpayer concerning any potential course of action to follow.
- c. **DO NOT DISCUSS** tax liabilities, penalties, fraud, or criminal referral possibilities with the taxpayer.

25.1.7.3  
(06-10-2021)

**Audit Information  
Management System  
(AIMS) - Examination  
Function only**

- (1) In non-filer cases where a criminal referral is probable and where it is determined that a substitute for return (SFR) should not be posted to the Master File, use push code 037, *potential criminal investigation referral/non-filer*. For most examiners, the Audit Information Management System (AIMS) will remain a skeletal base until a transaction code (TC) 150 posts. Otherwise, use push code 036, *non-filer*, and an SFR will be generated. The request for push code input is made using Form 5345-D, Examination Request-ERCS (Examination Returns Control System) Users, or Form 5345-B, Examination Request Non-ERCS Users. The request is routed by the compliance employee to his/her group manager for review and approval. Upon group manager approval, the form is routed to the group secretary or other designated person for input.
- (2) The AIMS project code should be changed to 0149, *non-filer referral for fraud*, if a criminal referral is probable.

25.1.7.4  
(06-10-2021)

**Development of Fraud**

- (1) If there are indicators of fraud that warrant fraud development, see IRM 25.1.2.2, Fraud Development Procedures, for specific guidance to compliance employees on the procedures required in such cases. The following actions assist the employee in establishing affirmative acts (firm indications) of fraud:
  - a. Interview the taxpayer to determine the reason or the intent of the taxpayer's noncompliance.
  - b. Ask sufficient questions to determine the extent of the delinquency, including the periods and tax due.
  - c. Document verbatim, if possible, the questions asked and the taxpayer's response or lack of response.
  - d. Identify any personal reasons that could affect the taxpayer's ability to comply. If the information is not provided by the taxpayer, attempt to secure the information from third party sources.
  - e. Attempt to get a definitive statement from the taxpayer regarding additional expenses not listed in the books and records. These expenses could include, but are not limited to, expenses paid in cash or "under-the-table" payments to employees.
  - f. Attempt to establish beginning and year-end cash on hand for each year under investigation.
- (2) Verify income from all available sources. Methods of income verification include, but are not limited to:

- a. Reviewing FinCEN Query data;
  - b. Securing IRP data if not already available or reviewing Information Data Retrieval System (IDRS) via command codes: INOLE, IROLE, SUPOL, IRPTR, IRPOL;
  - c. Securing copies of Forms W-2 from employers and Forms 1099 from customers;
  - d. Securing copies of checks issued to the taxpayer from Form 1099 issuer(s);
  - e. Examining the taxpayer's books and records of income and expenses;
  - f. Reviewing the last return filed. This assists in identifying income sources as well as deductions and exemptions used in tax computations; and
  - g. Securing current financial information including a check of public records for assets, and a physical observation of the taxpayer's residence, place of business and/or other identified properties. When checking public records, in addition to identifying the assets, information may be available as to when the assets were acquired and the amount paid for such assets. This information will determine whether the taxpayer had the ability to pay the taxes owed when due.
- (3) Access to a full credit report is governed by the Fair Credit Reporting Act. See IRM 25.5.4.5.6, Statutory limitations on Acquiring Credit Reports From a Consumer Reporting Agency-Summons Required, for guidance.
- a. If subsequent to receipt of a full credit report for a Balance (BAL) DUE investigation, fraud is discovered on a delinquent return (DEL RET) or a previously filed return, or unreported income is discovered, a summons must be issued under IRC 7609 for another credit report.
  - b. However, the IRS may not obtain a full credit report of a sole proprietor, partner or fiduciary without a summons where there is no lien against the individual taxpayer.
  - c. Finally, if a full credit report is used as a basis for a referral to Criminal Investigation (CI), a summons must be issued in accordance with IRC 7609, because of the third party record keeper notice requirement.

25.1.7.5  
(06-10-2021)  
**Criminal Referral**

- (1) Contact the FEA for the criminal criteria when considering submission of a criminal fraud referral of a non-filer.
- (2) When the group manager and the FEA concur that firm indications of fraud exist and criminal criteria are met, the compliance employee will prepare Form 2797, Referral Report of Potential Criminal Fraud Cases. Form 2797 should be prepared as described in IRM 25.1.3.2, Preparation of Form 2797 - Referral Report of Potential Criminal Fraud Cases.

25.1.7.6  
(06-10-2021)  
**Secured Delinquent Return (DEL RET)**

- (1) Compliance employees should consider referring the secured DEL RET to CI for consideration if it has been determined that the DEL RET has a substantial understatement of income and/or a substantial overstatement of deductions that are fraudulent, and criminal criteria is met. The group manager and the FEA should become involved as discussed in IRM 25.1.7.5.
- (2) If failure to file and the DEL RET are fraudulent, assertion of both the FFTF penalty (based on the FFTF net amount due) and the civil fraud penalty (based on the DEL RET deficiency) should be considered. Again, the group manager and the FEA should become involved as discussed in IRM 25.1.7.5. See IRM 20.1.2.3.7.5(5) Fraudulent Failure to File—IRC 6651(f), which cautions the

FFTF penalty and the civil fraud penalty can be determined with respect to the same return, if failure to file is due to fraud and the taxpayer files a return with a deficiency attributable to fraud. However, the court is not likely to sustain the determination of both penalties unless compelling facts support the IRS's position. Area Counsel should be consulted before determining both penalties on the same return.

**Note:** Collection function employees only should consider a referral to Examination Planning and Special Programs office (PSP), for FFTF penalty and civil fraud penalty consideration, if the DEL RET(s) is fraudulent and criminal criteria are not met. The referral information (including identifying taxpayer information) should be placed on a memorandum and forwarded to the Area PSP for assignment consideration, after consulting with your local FEA.

25.1.7.7  
(06-10-2021)  
**Civil Closure**

- (1) If the criminal criteria are not met, the compliance employee will complete the examination or SFR action whether or not the taxpayer files a DEL RET.
- (2) Compliance employees should contact the FEA, if necessary, for assistance in developing the FFTF penalty. Further direction on assertion of the penalty is contained in IRM 20.1, Penalties Handbook.
- (3) The addition to tax under IRC 6651(f) (fraudulent failure to file) should be proposed when evidence clearly indicates the taxpayer fraudulently failed to file a return, or filed the return late. The civil fraud penalty under IRC 6663 applies only if the IRS possesses clear and convincing evidence that the taxpayer reported an underpayment on his or her return attributable to fraud. Penalties should not be used as a bargaining tool.
- (4) In non-filer cases, a criminal conviction for willful failure to file a Federal return under IRC 7203 collaterally estops a taxpayer from denying liability under IRC 6651(a), the delinquency addition to tax, in a civil case. The addition to tax for FFTF, however, is not automatic. Although a conviction under IRC 7203 does not collaterally estop a taxpayer from challenging the FFTF addition, the conviction further supports indications of fraud.
- (5) If the non-filer is convicted under IRC 7201, the taxpayer is collaterally estopped from denying fraudulent intent in relation to the civil fraud penalty or the FFTF penalty. The taxpayer may, however, contest the amount of the underpayment supporting the civil fraud penalty determined by the IRS or the amount of the tax required to be shown on the return in connection with the determined FFTF penalty. Collateral estoppel for a conviction under IRC 7201 only applies to the year(s) of the conviction and the civil fraud penalty or FFTF penalty, not the tax liability.
- (6) The mere fact of failing to file a return does not constitute sufficient evidence to sustain fraud. Overt acts of evasion must be identified to impose the FFTF penalty. In addition to the previously listed firm indications of fraud, the following examples can apply to failure to file cases:
  - a. Attempts by the taxpayer to conceal or transfer assets to evade collection of tax subsequently assessed;
  - b. Taxpayer furnishes a false W-4 to his employer; and/or
  - c. Taxpayer's use of dummy business entities, bank accounts opened under assumed names and use of false taxpayer identification numbers in an attempt to conceal the source of income or identity of the owner.

**Caution:** For example, some marijuana businesses have created dummy business entities in an attempt to get a bank account, thereby hiding the true nature of their business.

- (7) Area Counsel must provide written approval for non-assertion of the FFTF penalty under IRC 6651(f) if a taxpayer has been successfully prosecuted by the Department of Justice under any criminal statute for failing to file. If successful prosecution has not been obtained, non-assertion of the FFTF penalty will be at the discretion of the compliance group manager. Compliance group managers are encouraged to consult with their local FEA for assistance.

25.1.7.7.1  
(06-10-2021)  
**Assessment Procedure  
for the Fraudulent  
Failure to File (FFTF)  
Penalty**

- (1) Once it is determined that the DEL RET is fraudulent and either criminal criteria is not met or a criminal investigation is concluded, the FFTF penalty, based on the tax reported on the DEL RET should then be assessed.

**Note:** When the taxpayer files a DEL RET, the limitation period for assessment begins. The FFTF penalty, based on the tax reported on the DEL RET, **must** be assessed within 3 years of receipt of the DEL RET. The FFTF penalty does not keep the statute period for assessment open beyond the 3 year period in this scenario.

- (2) Written pre-assessment approval by the immediate supervisor is required. See IRM 20.1.2.3.7.5.1, FFTF Penalty Assessment - Procedural Requirements.
- (3) The portion of the FFTF penalty, based on the tax reported on the DEL RET, is **not** subject to deficiency procedures and should not be included in a Notice of Deficiency. However, if the delinquent filing results in a deficiency, only that portion of the FFTF penalty attributable to the deficiency should be included in the Notice of Deficiency.

**Note:** To ensure case facts support fraud and because the assessment of a FFTF penalty attributable to the amount originally shown on a return is not reviewable by the tax court, all 30-day letters proposing a FFTF penalty on the tax reported on the DEL RET must be reviewed and approved by Area Counsel prior to issuance. See IRM 4.10.8.12.1(11), 30-Day Letters, and IRM 20.1.2.3.7.5.1, FFTF Penalty Assessment-Procedural Requirements.

Letter 2777, Pre-Assessment appeals letter for the fraudulent failure to file penalty, may be used in lieu of the regular 30-day letter when appropriate.

