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From:
Sent: Monday, October 06, 2008 4:42:19 PM
To:
Cc:
Subject: RE: Penalty Question

I agree with all that's stated as far as it goes. In addition, if the taxpayer is actually agreeing to adjustments to be made in accordance with a document treated as a qualified amended return under procedures under RP 94-69, there could not be accuracy-related penalties based on the amount of those adjustments.

I hope that I said that clearly enough.

From:
Sent: Monday, October 06, 2008 3:27 PM
To:
Cc:
Subject: RE: Penalty Question

I already spoke with about this. Simply disclosing transactions under Rev. Proc. 94-69 does not get a taxpayer out of negligence or substantial understatement penalties automatically. What Rev. Proc. 94-69 does is simply treat a particular type of written statement, given at the beginning of the audit, as if it were a qualified amended return. So if the entire issue of whether either penalty applied was based on adequate disclosure, a statement under Rev. Proc. 94-69 could be treated the same as if a Form 8275 was attached to the tax return.

However, even with adequate disclosure, a penalty can be imposed "in the case of a position that does not have a reasonable basis or where the taxpayer fails to keep adequate books and records or to substantiate items properly." Treas. Reg. 1.6662-3(c)(1). Also, the "adequate disclosure" exception to the substantial understatement penalty does not apply to tax shelter items. Treas. Reg. 1.6662-4(g)(1)(iii).

, please let us know if I have written anything above you disagree with.

Thanks,