



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

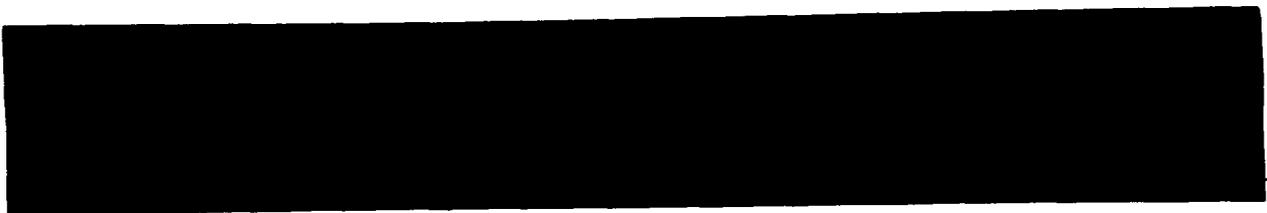
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JUN 6 2001

MEMORANDUM FOR DOUG ROGERS, HQ PROGRAM MANAGER, PENALTIES
AND INTEREST S:C:CP:RC:P

FROM: ASSISTANT CHIEF COUNSEL (ADMINISTRATIVE
PROVISIONS AND JUDICIAL PRACTICE) CC:PA:APJP

SUBJECT: Section 6651(f)
WTA-N-116531-01



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Under certain circumstances, all or a portion of the fraud penalty is required to be assessed immediately rather than included in a notice of deficiency. The fraud penalty involved is the fraudulent failure to file penalty under § 6651(f). For any fraudulent failure to file, the § 6651(f) penalty is 15 percent of the first month of failure and an additional 15 percent for each month or part of a month thereafter, up to a maximum of 75 percent.

The fraudulent failure to file penalty is assessed in the same manner as the § 6651(a) failure to file penalty. Therefore, to the extent the penalty is attributable to a deficiency, it must be included in a notice of deficiency. To the extent the penalty is attributable to an amount shown on a delinquent return, it must be assessed and cannot be included in a notice of deficiency. I.R.C. § 6665(b)(1).

The failure to assess immediately a fraudulent failure to file penalty that is not part of a deficiency can result in a barred statute. This is because a fraudulent failure to file has no bearing on the statute of limitations when a delinquent nonfraudulent return is filed. The normal three-year statute of limitations begins to run upon the filing of the nonfraudulent delinquent return. I.R.C. § 6501; Bennett v. Commissioner, 30 T.C. 114 (1958). Further, the statute of limitations on an assessable delinquency penalty is not suspended by the issuance of a notice of deficiency, because § 6503(a)(1) only suspends the statute with respect to a deficiency, and only during the time the IRS is prohibited from making an assessment.

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Deliberative process privilege