

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2011-004

November 1, 2010

Written Management Approval
Required to Assess the Section
6702 Penalty for Frivolous Tax

Subject: Submissions

Cancel Date: Upon incorporation
into the CCDM

Purpose

This Notice alerts Chief Counsel attorneys that the section 6702 penalty for frivolous tax submissions is subject to the preassessment written management approval provision of section 6751(b)(1).

Background

Section 6702(a) imposes a \$5,000 penalty against any person who "files what purports to be a return" but which "does not contain information on which the substantial correctness of the self-assessment may be judged" or "contains information that on its face indicates that the self-assessment is substantially incorrect" based on a frivolous position or a desire to delay or impede the administration of federal tax laws. Section 6702(b) imposes a \$5,000 penalty against any person who submits a "specified frivolous submission" as defined in section 6702(b)(2).

Section 6751(b)(1) provides that no penalty "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." As an exception to this general rule, section 6751(b)(2) provides that managers need not approve any addition to tax under sections 6651, 6654, or 6655, or any other penalty automatically calculated through electronic means.

Section 6702 penalties cannot be automatically calculated through electronic means. A Service employee must make an independent determination that the taxpayer took a frivolous position or desired to delay tax administration on a document that purported to be a return before the Service may assess the section 6702(a) penalty. See IRM 4.10.12.1.3; IRM 20.1.10.10.2.2. Similarly, a Service employee must make an independent determination that the taxpayer submitted a specified frivolous submission before the Service may assess the section 6702(b) penalty. See IRM 5.1.9.3.16; IRM 5.20.10; IRM 8.22.2.2.10.3. In this respect, section 6702 penalties are unlike penalties under sections 6651, 6654, and 6655, which are assessed automatically in the

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