



Internal Revenue Service

DEPARTMENT OF THE TREASURY

LB&I Process Unit

Unit Name	Tax Shelter Promoter Investigations Under IRC 6700	
Primary UIL Code	06700.00-00	Promoting Abusive Tax Shelters

Library Level	Title
Knowledge Base	Penalties
Shelf	Other Penalties
Book	Promoters and Material Advisors
Chapter	General Information and Overviews

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Process Overview

Tax Shelter Promoter Investigations Under IRC 6700

IRC 6700 permits assertion of penalties against any person who:

- Organizes or assists in the organization of a partnership or other entity, an investment plan or arrangement, or any other plan or arrangement; or
- Participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement; and
- Makes or furnishes or causes another person to make or furnish a false or fraudulent statement about any material matter or a gross valuation overstatement.

The goals of a promoter investigation and an income tax examination are significantly different. The goal of a promoter investigation is to identify and quickly terminate the abusive promotion or activity, assert promoter penalties where applicable, and identify participants in the abusive transaction. The goal of an income tax examination is to determine the correct income tax liability of the participant.

When conducting a promoter investigation, you will:

- Determine if a promoter has engaged in conduct that violates the applicable civil penalty statutes;
- Obtain participant lists;
- Determine if the promotion is reoccurring or likely to reoccur and if the promoter should be referred for an injunction; and
- Ensure compliance with the requirements of IRC 6111, *Disclosure of Reportable Transactions*, and IRC 6112, *Material Advisors of Reportable Transactions Must Keep Lists of Advisees*.

Promoter investigations result in one or more of the following outcomes:

- Injunction;
- Penalty Assessment;
- Discontinuance; or
- Criminal Referral.

This Practice Unit will guide you, the examiner, through the procedures for properly conducting promoter investigations.

Process Overview (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

Special Considerations

Only start a promoter investigation with documented approval from the LB&I Technical Tax Shelter Promoter Committee (TTSPC).

It isn't necessary to have a return filed to assess IRC 6700 penalties, only that there be an abusive promotion or activity. An activity is the "sale or organization" of a partnership, other entity, plan or arrangement. You don't need to prove the promoter's clients used the promotion, only that if the participant had used the promotion, there would have been tax harm to the government.

An IRC 6700 penalty can be imposed in addition to any other penalty, except it cannot be assessed on the same document on which an IRC 6701 penalty is applied. IRC 6701 is a penalty for aiding and abetting a tax liability understatement.

There is no assessment statute of limitations for IRC 6700 penalties. An IRC 6700 penalty can be assessed at any time for each specific act of organizing or selling interests in a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement. Once an assessment is made, the ten-year statute of limitations on collections applies.

There are no pre-assessment appeal rights for IRC 6700 penalties. IRC 6703(b) specifically states that deficiency procedures used for income tax and other types of tax do not apply. IRC 6700 penalties may be challenged in Appeals and by following the special claim for refund procedures.

IRC 6700 penalties are assessed and collected in the same manner as taxes.

Summary of Process Steps

Tax Shelter Promoter Investigations Under IRC 6700

Process Steps

These are the basic steps of a promoter investigation. Each promoter investigation is unique and varies in complexity. You should use all necessary internal and external tools to develop your investigation. The goal of a promoter investigation is to identify and quickly terminate the abusive promotion or activity and to identify the participants in the abusive transaction.

Step 1	Case Management and Planning
Step 2	Investigation Startup Phase
Step 3	Identification of Participants
Step 4	Fact Gathering

Summary of Process Steps (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

Process Steps

These are the basic steps of a promoter investigation. Each promoter investigation is unique and varies in complexity. You should use all necessary internal and external tools to develop your investigation. The goal of a promoter investigation is to identify and quickly terminate the abusive promotion or activity and to identify the participants in the abusive transaction.

Step 5	Penalty Phase and Report Writing
Step 6	Case Assembly and Closure

Step 1: Case Management and Planning

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Step 1

Establish case in ERCS and prepare audit plan.

Considerations	Resources
<p>Your manager will assign you the promoter investigation. You will receive a referral package from the Office of Tax Shelter Analysis (OTSA), which may include investor disclosure statements, OTSA database spreadsheets, attorney legal and tax opinions, promotional materials, IDRS research, internet research, and investor interviews. Review this material promptly.</p> <p>Input your IRC 6700 promoter investigation case onto the Examination Return Control System (ERCS) using MFT (Master File Tax) Code P6 and Activity Code 593. Input all appropriate tracking codes and project codes. Promoter investigation cases are not controlled on AIMS.</p> <p>The tax period used on Form 5348-D is the first year the investigation was approved. ERCS will automatically input Source Code 99 when a penalty control record is added. Alpha Code "XX" designates that IRC 6700 penalties may be assessed at any time because there is no statute of limitations for IRC 6700 penalty assessments.</p> <p>Request Area Counsel and Collection assistance as appropriate.</p>	<ul style="list-style-type: none"> ▪ IRM 4.32.2.6 ▪ IRM 4.32.2.6(2) ▪ IRM 25.6.23 ▪ IRM 4.32.2.6

Step 1: Case Management and Planning (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

[Step 1](#)

Considerations	Resources
<p>If you need a specialist, request one as early in the investigation as possible through the Specialist Referral System (SRS).</p> <p>Use the investigation/audit plan for promoter penalty cases on your promoter investigation. You and your manager are responsible for completing the audit plan with estimated completion dates at each stage, including an estimated closing date (ECD). You and your manager will prepare monthly summaries to monitor the investigation progress.</p> <p>Use activity records and logs to monitor progress for Information Document Requests (IDRs), summonses, third-party contacts, interviews, and all other matters pertaining to your promoter investigation.</p>	<ul style="list-style-type: none">▪ Audit Tool - Promoter Investigations Action Plan▪ IRM Exhibit 4.32.2-3

Step 2: Investigation Startup Phase

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Step 2

Start promoter investigation.

Considerations	Resources
<p>Confirm whether Criminal Investigation (CI) is involved in your case. If CI is involved, you may be able to conduct a parallel investigation. You must coordinate with CI. Schedule an initial six-way conference within 10 days of being assigned to the case. Hold subsequent six-way conferences quarterly until civil proceedings are complete. The six participants are you, the Examiner, Group or Team Manager, Area Counsel, Special Agent, Supervisory Special Agent and Criminal Tax Counsel (CT Counsel).</p> <p>Send Letter 1844, <i>Initial Contact – Authorized AT (Abusive Trust) Investigations</i>, and initial IDR to the promoter within 30 days of being assigned to the case. Counsel must approve your initial IDR. The IDR must be specific and request relevant information related to the promotion.</p> <p>If you secure Form 2848, <i>Power of Attorney and Declaration of Representative</i>:</p> <ul style="list-style-type: none"> ▪ The type of tax must state “Civil Penalties,” ▪ The tax form number must be marked “Not Applicable (N/A),” and ▪ The year(s) or period(s) block should state the current year and any prior year in which the promotion occurred. 	<ul style="list-style-type: none"> ▪ IRM 4.32.2.7 ▪ IRM 4.32.2.4.5.2.1 ▪ Letter 1844 ▪ IRM 4.32.2.8.2.4

Step 2: Investigation Startup Phase (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

[Step 2](#)

Considerations	Resources
<p>Schedule the initial appointment within 45 days of being assigned to the case.</p> <p>Issue Letter 3164-P, <i>Third Party Notification for IRC 6700/6701 Investigations</i>, when you intend to contact third parties. There is a 45-day waiting period after the third-party notification is issued.</p> <p>Establish the promoter case on Issue Management System (IMS).</p> <ul style="list-style-type: none">▪ Input the “Cycle Type” as “SPA” - Shelter Promotion Audit in IMS.▪ Establish the issue in IMS and input UIL code 06700.00-00, <i>Promoting Abusive Tax Shelters</i>. There are several UIL codes under IRC 6700 that may be applicable to your case including UIL code 06700.04-00, <i>Calculation of Penalty</i>. Review the code descriptions to select the appropriate code for your issue.	<ul style="list-style-type: none">▪ IRM 4.32.2.8.1▪ IRM 25.27.1▪ Letter 3164-P

Step 3: Identification of Participants

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Step 3

Identify participants.

Considerations	Resources
<p>Identifying and contacting participants are critical steps in your promoter investigation. Participants can provide key information concerning how the promotion operates, the identities of the principals and entities involved, and the cash flow. Participant information will indicate the extent of the potential tax loss associated with the promotion.</p> <ul style="list-style-type: none"> ▪ Secure a list of participants from the promoter if possible. Develop and expand the list by summoning promoter bank records and third-party payees, IDRS, and the promoter's web site. ▪ Plan interviews carefully. Consider arranging for a court reporter or an audio recording so that the interview can be documented in full. Special rules apply to audio recordings. At the very least, secure an affidavit from the witness (participant or other party). ▪ Participant examinations are frequently conducted simultaneously with a promoter investigation. Do not delay or suspend the promoter investigation pending the outcome of any participant exam. 	<ul style="list-style-type: none"> ▪ IRM 4.32.2.8.3.5 ▪ IRM 4.32.2.14.1 ▪ IRM 4.32.2.8.3.5 (6) ▪ IRM 4.32.2.8.4 ▪ IRM 4.31.2.8.3.1

Step 3: Identification of Participants (cont'd)

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[Step 3](#)

Considerations	Resources
<p>Secure any available information from IDRS about prior examinations of participants for the promoted transaction to use as evidence for the promoter investigations.</p> <p>Participants who fail to disclose information required under section 6011 regarding reportable transactions may be subject to IRC section 6707A penalties. Participant penalties are at the discretion of the examiner and must be approved by the examiner's group manager.</p>	<ul style="list-style-type: none">▪ IRM 4.32.2.8.3.6▪ IRM 4.32.2.8.3.6(6)

Step 3: Identification of Participants (cont'd)

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[Step 3](#)

Considerations	Resources
<p>You will prepare a participant job aid or “white paper” for examiners working the related participant examinations. Information provided in the participant job aid includes:</p> <ol style="list-style-type: none">1. Information identifying the promoter, including project and tracking codes;2. Key tax issues and a description of the scheme;3. Tax law analysis;4. Suggested audit techniques;5. Contact information for the promoter investigation team;6. Information the promoter team will need from the participant audit file;7. Suggested interview questions (optional);8. Penalty application addendum (optional). <p>The participant job aid is intended to provide a brief overview of the promotion and the relevant tax issues. A length of four or five pages is sufficient.</p>	<ul style="list-style-type: none">▪ IRM 4.32.2.8.3.6.2

Step 3: Identification of Participants (cont'd)

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[Step 3](#)

Considerations	Resources
<p>The terms “investor,” “advisee,” and “participant” are synonymous. Use a standard spreadsheet to send a list of the investors to both OTSA and the Pass Through Entities (PTE) program manager. The list should include the following information:</p> <ol style="list-style-type: none">1. Investor names and TINs;2. Related entity names and TINs;3. Year of investment along with projected tax benefit(s);4. Names of any sub-promoters or co-promoters; and5. Shelter type or listed notice number, if applicable.	<ul style="list-style-type: none">▪ IRM 4.32.2.14.3.1

Step 4: Fact Gathering

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Step 4

Develop and analyze facts of promoter investigation.

Considerations	Resources
<p>With Area Counsel's legal guidance, carefully plan the promoter's initial interview. Interviews should cover the following topics:</p> <ol style="list-style-type: none">1. Personal history;2. Business and professional history;3. Structure of the organization and role of various parties within the organization;4. Role in the promotion/transaction of all persons outside of the organization;5. Size of the promotion;6. Marketing and sale of the transaction at issue;7. Description of tax attributes of the promotion;8. Time period when the promotion/transaction was sold and/or marketed;9. Fees and other amounts paid by participants to all persons for participation in the transaction/promotion; and10. Sub-promoters, co-promoters and other related parties.	<ul style="list-style-type: none">▪ IRM 4.32.2.8.3▪ IRM 4.10.3.3▪ IRM 4.32.2.8.3(11)

Step 4: Fact Gathering (cont'd)

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[Step 4](#)

Considerations	Resources
<p>The promoter may stop cooperating at any point during the investigation. Therefore, make every effort to secure as much information as possible during the initial interview.</p> <p>Consider preparing a summons in advance of the interview to serve if the promoter fails to comply with the IDR.</p> <p>Court reporters are required for all formal promoter interviews conducted by LB&I. It is recommended that Counsel attend the interview and that the interview be conducted in a government facility.</p>	

Step 4: Fact Gathering (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

[Step 4](#)

Considerations	Resources
<p>Use Summons authority:</p> <ol style="list-style-type: none"> 1. Your summons must include the following language: <i>“In the matter of the liability of [promoter’s name] under 26 USC Section 6700.”</i> 2. The periods on the summons should be <i>“From January 1, [year] through date of compliance with this summons.”</i> The year to be inserted is the earliest year the promoter is suspected of having engaged in the abusive transaction. 3. The Area Counsel attorney assigned to the promoter investigation must review all summonses before they are issued. 4. You must maintain a summons log. 5. Issue separate summonses for each listed transaction. All other transactions should be combined on one additional summons. 6. Team Managers must sign the summons. 7. Be aware of third-party notice requirements. 8. Use summons enforcement if necessary. 9. Keep Area Counsel updated on the progress of the matter, in case summons enforcement is necessary 	<ul style="list-style-type: none"> ▪ IRM 4.32.2.8.5 ▪ IRM 25.5 ▪ IRM Exhibit 4.32.2-2

Step 4: Fact Gathering (cont'd)

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[Step 4](#)

Considerations	Resources
<p>Maintain all documents obtained during the investigation in the condition in which they were received. Record each document you received on Form 9984, <i>Examining Officers Activity Record</i>, or its equivalent, the date you received the documents, who provided the document, and how you received it.</p> <p>For investigations that are expected to generate a large number of documents, consider creating a separate document record using a spreadsheet or database. In addition to recording how and when you received each document, the document record would include other information such as the author(s) of the document, the number of pages in the document, a descriptive summary of the document, the version of document, the names of other persons who provided the same document, differences (if any) between the same document provided by different persons, and other relevant information gathered during the investigation regarding each document. A document record that summarizes evidence by document will assist you with creating the witness list and the exhibit list attached to the injunction and penalty reports.</p> <p>Contact a Fraud Technical Advisor if the investigation of the promoter reveals indicators of fraud such as back-dated documents, omitted sources of income, failing to file a tax return, fictitious or substantially overstated deductions, or false statements about a material fact.</p>	<ul style="list-style-type: none">▪ IRM 4.32.2.8.6 ▪ IRM 25.1.2.3

Step 4: Fact Gathering (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

[Step 4](#)

Considerations	Resources
<p>Co-promoters, such as accounting firms, investment bankers, or law firms, may be involved in promoting the same transaction as the promoter under investigation. They may also be organizers, managers or sellers of a transaction; they generally receive fees for their role in the transaction. Co-promoters may also be subject to penalties under IRC 6700.</p> <ul style="list-style-type: none">▪ You should contact the LB&I PTE Program Manager to obtain information on related or affiliated promoters. If the co-promoter is not under investigation, contact OTSA to find out if any disclosure statements pertaining to the co-promoter have been filed.▪ If the co-promoter's activities warrant investigation, or should be included with the key promoter investigation, you should refer the co-promoter to OTSA. LB&I's TTSPC approval is required to initiate an investigation on a co-promoter.▪ Contacts with co-promoters are considered third-party contacts subject to the notice and record-keeping requirements of IRC 7602(c).	<ul style="list-style-type: none">▪ IRM 4.32.2.8.3.3▪ IRM 4.32.2.4▪ IRM 4.11.57

Step 4: Fact Gathering (cont'd)

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[Step 4](#)

Considerations	Resources
<ul style="list-style-type: none">▪ Follow the same guidelines for co-promoter interviews that you follow for promoter interviews.	<ul style="list-style-type: none">▪ IRM 4.32.2.8.3.3(12)

Step 4: Fact Gathering (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

[Step 4](#)

Considerations	Resources
<p>Review the promoter's income tax returns for potential tax issues.</p> <ul style="list-style-type: none">▪ Promoters often use their own promotion. The promoter's income tax examination could reveal how the promotion works.▪ You may conduct both the promoter's income tax examination and the promoter investigation; however, it is generally advisable to have different examiners conduct these examinations.▪ If there is noncompliance you should assert an income tax deficiency and appropriate penalties.▪ Balance the additional time and resources necessary to complete the income tax examination against the need to shut down the promotion as quickly as possible.	<ul style="list-style-type: none">▪ IRM 4.32.2.8.3.4

Step 4: Fact Gathering (cont'd)

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[Step 4](#)

Considerations	Resources
<p>As you develop and analyze the facts of your promoter investigation, you should:</p> <ol style="list-style-type: none">1. Secure copies of promotional materials, trust packages, reliance (opinion) letters, representation letters, transaction closing documents, and so on.2. Create a flowchart of each type of shelter transaction.3. Create a diagram of the flow of funds between all parties.4. Create a diagram of key players in each promotion or strategy.5. Obtain affidavits or interview taxpayers who have participated in the scheme.6. Monitor the progress of information gathering through various logs; IDRs, summonses, Q&As, and so on.7. Catalog and index documents upon receipt.8. Coordinate with Area Counsel.9. Analyze facts to determine whether penalties apply, and an injunction should be pursued.	<ul style="list-style-type: none">▪ IRM 4.32.2.8.6▪ IRM 4.32.2.8.1.2▪ IRM 4.32.2.8.3.5▪ IRM 4.32.2.8.1.1(2)

Step 4: Fact Gathering (cont'd)

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Considerations	Resources
<p>Courts applying IRC 6700 have identified four elements the government must prove:</p> <ul style="list-style-type: none">▪ Organization or participation in the sale of certain investment plans or arrangements;▪ Statements by the promoter regarding the allowability of deductions or tax credits, the excludability of income or securing of other tax benefits that are false;▪ Knowledge or reason to know that the statements are false; and▪ False statements which pertain to a material matter. <p>You must establish all four elements identified by the courts with respect to each transaction to be included in the penalty calculation.</p>	<ul style="list-style-type: none">• <i>United States v. Estate Preservation Servs.</i> - 202 F.3d 1093, 1098 (9th Cir. 2000)• <i>United States v. Campbell</i> - 897 F.2d 1317, 1320 (5th Cir. 1990)

Step 5: Penalty Phase and Report Writing

Tax Shelter Promoter Investigations Under IRC 6700

Step 5

Considerations	Resources
<p>Prepare a penalty report if penalties are applicable. The penalty report is a narrative summary of the facts and conclusions of the investigation. It should clearly identify the persons or entities subject to penalties and the amounts being assessed against the person or entity.</p> <ul style="list-style-type: none">▪ Coordinate the penalty report with the LB&I PTE Promoter Manager.▪ The penalty report must include a sufficiently detailed penalty computation. The penalty computation must contain information and supporting documentation to support the basis for determining whether penalties are warranted. For each person who will be assessed a penalty, there must be a separate penalty for each year, each computation must reconcile with the assessment shown on Form 8278, <i>Assessment and Abatement of Miscellaneous Penalties</i>, and each penalty must have been approved in accordance with section 6751(b).	<ul style="list-style-type: none">▪ IRM 4.32.2.12.10.1 ▪ IRM 4.32.2.12.10.1.1

Step 5: Penalty Phase and Report Writing (cont'd)

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[Step 5](#)

Considerations	Resources
<p>Use Form 886-A to summarize the facts, the applicable law, the promoter's position, and your argument and conclusion. Your Form 886-A should specify:</p> <ol style="list-style-type: none">1. The name of the person being assessed the penalty;2. The taxpayer identification number of that person;3. The year or period of the assessment;4. The type of penalty to be assessed;5. The amount of the penalty;6. The penalty computation. <p>Prepare a detailed explanation and computation for each penalty asserted. Your detailed explanation should include a listing of clients and penalties per client or evidence of the gross income derived, or to be derived, from the promoted activity. Include your detailed explanation and computation for each penalty as an exhibit to the penalty report.</p>	<ul style="list-style-type: none">▪ IRM 4.32.2.12.10.2.2

Step 5: Penalty Phase and Report Writing (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

Step 5

Considerations	Resources
<p>After Area Counsel concurs with your penalty report, you will prepare a recommendation memorandum and forward it to the following officials for their review and approval:</p> <ol style="list-style-type: none"> 1. Territory Manager; 2. Director, Field Operations (DFO); 3. Deputy Director, Pass-Through Entities. <p>The memorandum should include:</p> <ol style="list-style-type: none"> 1. Case summary and facts; 2. Findings (including spreadsheets supporting the penalty calculation(s) and a discussion of relevant facts); 3. Recommendations and conclusions; 4. Promoter's position; 5. Appendix of attached exhibits; 6. Other supplemental data; 7. Approval of the agent's immediate supervisor for assertion of a penalty; 8. Approval of the Team Manager, Territory Manager and PTE DFO. 	<ul style="list-style-type: none"> ▪ IRM 4.32.2.8.7.2 ▪ IRM 4.32.2.12.10.3.1.2

Step 5: Penalty Phase and Report Writing (cont'd)³

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[Step 5](#)

Considerations	Resources
<p>If your fact gathering and analysis result in an injunction recommendation, prepare an Examiner Injunction Referral (EIR) and send to Counsel. Counsel will prepare an injunction suit letter authorizing the Department of Justice (DOJ) to file an injunction suit on behalf of the IRS or to secure a consent injunction. The EIR should include detailed information about the promoter, the mechanics of the promotion, whether the promotion is continuing, harm to the government, and the basis for an injunction recommendation.</p> <ul style="list-style-type: none">▪ If several individuals or entities were investigated, the EIR should discuss the involvement of each person or entity.▪ The EIR has five sections:<ol style="list-style-type: none">1. Investigation summary;2. Facts and findings;3. Exhibits;4. Investigative agent data;5. Witness list.	<ul style="list-style-type: none">▪ IRM 4.32.2.10.1 ▪ IRM 4.32.2.10.2 ▪ IRM 4.32.2.10.1.1▪ IRM 4.32.2.10.1.2▪ IRM 4.32.2.10.1.3▪ IRM 4.32.2.10.1.4▪ IRM 4.32.2.10.1.5

Step 5: Penalty Phase and Report Writing (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

Step 5

Penalties and report writing.

Considerations	Resources
<p>You must provide a penalty report and penalty computations to the promoter using Form 5701, <i>Notice of Proposed Adjustment</i>, before you assess any penalties. Managerial approval of penalties must be secured prior to providing the penalty report.</p> <p>The penalty report and computations:</p> <ul style="list-style-type: none"> ▪ Should be sufficiently detailed to support the assertion of the penalty. ▪ Should allow the promoter an opportunity to provide a detailed response or protest. ▪ Should not contain the taxpayer identification numbers of any persons or entities other than the person or entity to whom the explanation is sent. <p>When you send the report to the promoter, include a cover letter offering a closing conference. The closing conference is used to:</p> <ul style="list-style-type: none"> ▪ Summarize the IRS's understanding of the facts and evidence. ▪ Provide the promoter an opportunity to present additional facts or legal arguments. 	<ul style="list-style-type: none"> ▪ IRM 4.32.2.12.10.1.2 ▪ IRM 4.32.2.8.7.1 ▪ Form 5701

Step 5: Penalty Phase and Report Writing (cont'd)

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Step 5

Considerations	Resources
<p>Promoters are not entitled to any additional meetings with the IRS. You may however schedule additional meetings if you believe they will be productive and will not significantly delay the investigation.</p> <p>IRC 6751(b) requires written managerial approval for the assessment of most penalties, including IRC 6700 penalties.</p> <p>You should seek managerial approval after you have:</p> <ul style="list-style-type: none">▪ Fully developed the facts;▪ Completed your work papers; and▪ Clearly established your basis for penalizing the promoter. <p>Managerial approval must be obtained prior to communicating to the promoter that you have completed your work and determined that a penalty is applicable.</p>	

Step 6: Case Assembly and Closure

Tax Shelter Promoter Investigations Under IRC 6700

Step 6

Assemble case file and close case.

Considerations	Resources
<p>Complete the Issue Attributes screens for “Tax Shelter” and “Adjustment Amt/Source” in IMS before you close the case.</p> <p>Your penalty case file should include the following:</p> <ol style="list-style-type: none"> 1. IRC 6700 Investigative Workpaper or Form 4318, <i>Examination Workpapers Index</i>; 2. Form 886-A, <i>Explanation of Items</i>; 3. Form 8278, <i>Assessment and Abatement of Miscellaneous Civil Penalties</i>; 4. Form 3198, <i>Special Handling Notice for Examination Case Processing</i>; 5. Form 4665, <i>Report Transmittal</i>; 6. Form 3244-A, <i>Payment Posting Voucher</i> (if applicable); 7. Penalty Assertion Lead Sheet (immediate supervisor approval required). 	<ul style="list-style-type: none"> ▪ IRM 4.32.2.12.10.2 ▪ IRC 6751(b)

Step 6: Case Assembly and Closure (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

[Step 6](#)

Considerations	Resources
<p><u>Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties</u></p> <p>Use Form 8278 for assessing and abating miscellaneous civil penalties. Separate Forms 8278 are required for each type of penalty and each period. For IRC 6700 penalties, the tax period is a calendar year period (12/31/XXXX) for all taxpayers, including fiscal year taxpayers, because the IRC 6700 penalty is imposed for actions during the calendar year.</p> <p>Do not enter a statute date on Form 8278 unless there is a corresponding statute of limitations for the penalty. There is no assessment statute of limitations for IRC 6700 penalties. An IRC 6700 penalty can be assessed at any time for each specific act of organizing or selling interests in a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement.</p> <p>Eliminate all pages of Form 8278 where penalty data has NOT been entered. If a penalty is assessed against an individual, use MFT 55; if it is assessed against a business entity, use MFT 13.</p>	<ul style="list-style-type: none">▪ IRM 4.32.2.12.10.2.3▪ Form 8278

Step 6: Case Assembly and Closure (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

[Step 6](#)

Considerations	Resources
<p><u>Promoter's Post Assessment Rights</u></p> <p>After assessment of the IRC 6700 penalty, promoters receive a CP 15, <i>Notice of Demand</i>, letter advising the promoter of the special claim procedures pursuant to IRC 6703(c).</p> <p>IRC 6703(c)(1) allows the promoter to pay at least 15% of the penalty within 30 days and file a claim for refund of the amount paid using Form 6118, <i>Claim for Refund of Tax Return Preparer and Promoter Penalties</i>.</p> <p>IRC 6703(c)(2) allows a promoter to begin a proceeding in the United States District Court by filing suit within 30 days after the day that a claim for refund is disallowed, or within 30 days after the expiration of 6 months after the day that a claim for refund was filed, whichever is earlier. Collection action is suspended pending the final resolution of any court proceeding.</p>	<ul style="list-style-type: none">▪ IRM 4.32.2.12.9

Step 6: Case Assembly and Closure (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

[Step 6](#)

Considerations	Resources
<p><u>Form 3198, Special Handling Notice for Examination Case Processing</u></p> <p>Attach Form 3198 to the outside cover of the penalty case file. Notate “Civil Penalty Assessment IRC 6700” on Form 3198.</p> <p>If the promoter does not pay the aggregate balance due or make satisfactory arrangements to pay, attach a <i>Special Handling Alert for ATTI Case with Collection Issue</i> form on top of Form 3198. This will ensure that the case is properly routed to Collection after it has been processed and the liability has been assessed. The name and address of the Collection AT Coordinator for the area where the promoter resides should be listed on the Special Handling Sheet before closing the case.</p>	<ul style="list-style-type: none">▪ IRM 4.32.2.12.10.2.4 ▪ IRM 4.32.2.12.10.2.4

Step 6: Case Assembly and Closure (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

[Step 6](#)

Considerations	Resources
<p><u>Form 4665, Report Transmittal</u></p> <p>Use Form 4665 to summarize information regarding the penalty investigation. You should include a Form 4665 in all promoter investigation closures. The information on Form 4665 should supplement, not duplicate or replace, information in the case file and may include a summary of: background on the issue(s), explanation of the disposition of the issue(s), a summary of the basis for the penalty, identification of related cases, a summary of unagreed issue(s), and other relevant information not included in Form 886-A.</p>	<ul style="list-style-type: none">▪ IRM 4.32.2.12.10.2.5

Step 6: Case Assembly and Closure (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

[Step 6](#)

Considerations	Resources
<p><u>Form 3244-A, Payment Posting Voucher</u></p> <p>Use Form 3244-A when a promoter makes an advanced payment of the penalty. Enter the payment as TC 640 and MFT 55 for individual assessments or MFT 13 if assessed against a business entity. The tax year is the year for which the penalty will be assessed.</p> <p>Send Part 1 of Form 3244-A with the check separately via overnight traceable method to the remittance teller at the aligned Submission Processing Center for your area. Attach Part 2 of Form 3244-A to the front of Form 8278.</p>	<ul style="list-style-type: none">▪ IRM 4.32.2.12.10.2.6 ▪ IRM 4.4.24

Step 6: Case Assembly and Closure (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

[Step 6](#)

Considerations	Resources
<p><u>Other Requirements</u></p> <p>In LB&I, a promoter investigation must have the approval of the Deputy Director, PTE, in order to close. The disposal code should reflect whether the case has been closed agreed or unagreed.</p> <p>If CI is involved, and has requested suspension of the penalty investigation, update the case to Status Code 16 on ERCS. You must prepare the penalty report and a detailed penalty computation based on all available information.</p>	<ul style="list-style-type: none">▪ IRM 4.32.2.12.10.3.1.3

Step 6: Case Assembly and Closure (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

[Step 6](#)

Considerations	Resources
<p><u>Discontinued Investigations</u></p> <p>A discontinued investigation is an investigation other than a survey that is closed without an injunction or penalty assessment, regardless of whether the promoter was notified of the investigation. Only SB/SE has the option to survey an investigation. Letter 1866, <i>Discontinuance Letter</i>, is required unless there has been no contact with the promoter or CI request that the discontinuance letter not be sent. Use Form 4665 to explain the reason(s) why the investigation is not being pursued.</p> <p>For all discontinued investigations, you must close the case through Centralized Case Processing (CCP) and complete Form 8278. Column {c} is left blank and column {d} of the form for the applicable penalty will reflect the amount of zero (the 3-digit reference code is a mandatory field). The discontinuance will be posted to the penalty module as -0- with an associated Document Locator Number (DLN) assigned. The assignment of a DLN is needed to close the case. The DLN will allow the administrative investigation file to be subsequently retrieved, if necessary.</p> <p>After the LB&I Deputy Director, PTE grants approval, ensure that ERCS is updated to Status Code 90 and Disposal Code 12.</p>	<ul style="list-style-type: none"> ▪ IRM 4.32.2.12.10.3.2.2 ▪ Letter 1866

Step 6: Case Assembly and Closure (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

[Step 6](#)

Considerations	Resources
<p><u>Referrals to Office of Professional Responsibility (OPR)</u></p> <p>OPR has oversight responsibility of tax practitioners authorized to practice before the IRS. You should make a referral to OPR as soon as it appears that a practitioner may be in violation of Circular 230, <i>Regulations Governing Practice before the Internal Revenue Service</i>. Use Form 8484, <i>Report of Suspected Practitioner Misconduct</i>, to make a referral to OPR.</p> <p>Referrals to OPR are mandatory when penalties are asserted under IRC 6700.</p> <p>The American Jobs Creation Act of 2004 (AJCA) added IRC 7408(c)(2) to allow injunctive relief to be sought for violations under Circular 230. If the statutory requirements under IRC 7408, IRC 7407, or IRC 7402 are met, an injunction referral should be made to the DOJ. A referral to OPR should not be used in lieu of an injunction referral to the DOJ but rather in addition to the DOJ referral.</p>	<ul style="list-style-type: none"> ▪ IRM 4.32.2.13.2.2 ▪ Circular 230 ▪ Form 8484 ▪ IRC 7408

Examples of the Process

Tax Shelter Promoter Investigations Under IRC 6700

How to Compute IRC 6700 Penalties

For activities involving a false or fraudulent tax statement that occurred after October 22, 2004, the IRC 6700 penalty is equal to 50 percent of the gross income derived (or to be derived) by the promoter from the following activities:

- a. Organizing or assisting in the organization of a partnership or other entity, any investment plan or arrangement or any other plan or arrangement;
- b. Participating (directly or indirectly) in the sale of an interest in any entity, plan or arrangement in a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement.

When the penalty is based upon gross income from an activity (involving a false or fraudulent statement), you must compute the gross income based on the best available information.

Example

A promoter's scheme used limited liability companies (LLCs) and trusts to divert income. The examiner can prove that the promoter created 40 LLCs, 25 of which were used by known participants in the scheme. The examiner also can prove that 4 of the 25 participants paid \$1,000 to the promoter. Gross income to be derived from the scheme is \$40,000 (40 LLCs multiplied by \$1,000 minimum per package), so the penalty is \$20,000 (50% of the gross income).

The penalty applies regardless of whether a participant relies on the plan or arrangement and regardless of whether the participant underreports their income tax. *United States v. Estate Preservation Servs.*, 202 F.3d 1093 (9th Cir. 2000); *Gardner v. Commissioner*, 145 T.C. 161 (2015).

Examples of the Process (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700

How to Compute IRC 6700 Penalties

For all activities that involve gross valuation overstatements, as defined in IRC 6700(b)(1), the penalty is \$1,000, or if the promoter establishes that it is lesser, 100 percent of the gross income derived (or to be derived) by such promoter for each activity. A gross valuation overstatement occurs when the assigned value to an asset or service is at least twice the correct value and results in a tax reduction. The valuation must directly affect the amount of the tax deduction or credit allowable to the participant under the internal revenue laws.

Example

Promoter X prepared false statements that grossly overstated the value of assets. Promoter knew these statements were false. A total of 30 statements were made to 30 different taxpayers. These false statements were used to reduce the tax due by the taxpayers. The total penalty is \$30,000 (30 multiplied by \$1,000).

A penalty attributable to a gross valuation misstatement can be waived on a showing that there was a reasonable basis for the valuation, and it was made in good faith.

Other Considerations / Impact to Audit

Tax Shelter Promoter Investigations Under IRC 6700

Considerations	Resources
<p>If a promoter appeals the assessment of an IRC 6700 penalty and files a claim, the claim will be sent directly to you from the Service Center. Establish the case using the project and tracking codes assigned to the original case. Job aids were created to assist you.</p> <p>If you disallow all or part of the promoter's claim, the closing letter you will send informs them that they may request a hearing with Appeals. There is no basis in the Code that allows this. It is an administratively granted right only.</p>	<ul style="list-style-type: none">▪ IRM 4.32.2.12.9.1.1▪ Audit Tool - Promoter Penalty Claims – Disallowed Job Aid▪ Audit Tool - Promoter Penalty Claims – Allowed Job Aid

Index of Referenced Resources

Tax Shelter Promoter Investigations Under IRC 6700
IRC 6111
IRC 6112
IRC 6700
IRC 6751(b)
IRC 7408
IRM 4.4.24
IRM 4.10.3
IRM 4.11.57
IRM 4.32.2
IRM 20.1.1
IRM 20.1.6.13
IRM 25.1.2
IRM 25.5
IRM 25.6.23
<i>Gardner v. Commissioner</i> - 145 T.C. 161 (2015)
<i>United States v. Campbell</i> - 897 F.2d 1317, 1320 (5 th Cir. 1990)
<i>United States v. Estate Preservation Servs.</i> - 202 F.3d 1093, 1098 (9 th Cir. 2000)

Index of Referenced Resources (cont'd)

Tax Shelter Promoter Investigations Under IRC 6700
Letter 1844
Letter 1866
Letter 3167-P
Circular 230
Form 5701
Form 8278
Form 8484
Audit Tool - Promoter Investigations Action Plan
Audit Tool - Promoter Penalty Claims – Allowed Job Aid
Audit Tool - Promoter Penalty Claims – Disallowed Job Aid

Training and Additional Resources

Tax Shelter Promoter Investigations Under IRC 6700	
Type of Resource	Description(s)
Issue Toolkits	▪ 6700 Workbook
Other Training Materials	▪ IRM 4.32

Glossary of Terms and Acronyms

Term/Acronym	Definition
AIMS	Audit Information Management System
AJCA	The American Jobs Creation Act of 2004
AT	Abusive Transactions
ATTI	Abusive Transactions and Technical Issues
CCP	Centralized Case Processing
CI	Criminal Investigation
DLN	Document Locator Number
DOJ	Department of Justice
DFO	Director of Field Operations
ECD	Estimated Closure Date
EIR	Examiner Injunction Referral
ERCS	Examination Return Control System
IDR	Information Document Request
IDRS	Integrated Data Retrieval System
IMS	Issue Management System
LLC	Limited Liability Company
MFT	Master File Tax

Glossary of Terms and Acronyms (cont'd)

Term/Acronym	Definition
OPR	Office of Professional Responsibility
OTSA	Office of Tax Shelter Analysis
PTE	Pass Through Entities
SRS	Specialist Referral System
TTSPC	Technical Tax Shelter Promoter Committee (LB&I)

Index of Related Practice Units

Associated UIL(s)	Related Practice Unit
	None at this time.