



INDEPENDENT OFFICE
OF APPEALS

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

September 19, 2022

Control No. AP-08-0922-0012
Expiration Date: 09/19/2024
Affected IRMs: IRM 8.11.1, 8.20.5, 8.20.7

MEMORANDUM FOR IRS INDEPENDENT OFFICE OF APPEALS (APPEALS)
EMPLOYEES

FROM: Steven M. Martin /s/ *Steven M. Martin*
Director, Case and Operations Support

SUBJECT: Appeals Procedures Regarding Administrative Waiver –
Penalty Relief for Certain Taxpayers Filing Returns for
Taxable Years 2019 and 2020

Purpose: This memorandum issues guidance on IRM 8.11.1, Return Related Penalties in Appeals. This memorandum provides guidance on Appeals procedures when considering certain failure to file (FTF) penalties and certain international information return (IIR) penalties with respect to tax returns for taxable years 2019 and 2020 that are filed on or before September 30, 2022.

Background/Source(s) of Authority: Due to the unique challenges resulting from the COVID-19 pandemic, the IRS is taking steps to provide additional relief to impacted taxpayers and to allow the IRS to focus its resources more effectively.

[Notice 2022-36](#), Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020, was issued on August 24, 2022. This notice provides relief from certain FTF penalties and certain IIR penalties regarding returns for taxable years 2019 and 2020 that are filed on or before September 30, 2022. It also provides relief from certain information return penalties regarding taxable year 2019 returns that were filed on or before August 1, 2020, and regarding taxable year 2020 returns that were filed on or before August 1, 2021. The penalty relief will be automatic for eligible returns and will not require taxpayers to request this relief.

The relief in Notice 2022-36 does not apply to any return or form with a penalty not specifically listed in section 3 of the notice, and penalty relief under the notice is expressly unavailable for:

- Any returns to which the penalty for fraudulent FTF under IRC 6651(f) or the civil fraud penalty under IRC 6663 apply,
- Any penalties in an accepted offer in compromise under IRC 7122,
- Any penalties settled in a closing agreement under IRC 7121, or
- Any penalties finally determined in a judicial proceeding.

[REDACTED]

[REDACTED]

Procedural Change: See the Attachment for detailed instructions.

Effect on Other Documents: This guidance will be incorporated into the affected IRMs within two years from the date of this memorandum.

Effective Date: This guidance is effective as of the date of this memorandum.

Contact: Appeals employees should follow existing procedures to elevate questions through their management chain and follow established procedures on [How to Contact an Analyst](#).

Attachment: Appeals Procedures Regarding Administrative Waiver – Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020

cc: www.irs.gov

IRM 8.11.1.2.7.3.1 (new)

Administrative Waiver – Penalty Relief Regarding Certain 2019 and 2020 Returns

(1) [Notice 2022-36](#), Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020, was issued on August 24, 2022. It grants administrative relief pursuant to IRC 7803(a) in response to the COVID-19 pandemic and the challenges experienced by both taxpayers and the IRS.

[REDACTED]

- | [REDACTED]
- | [REDACTED]
- | [REDACTED] #

(3) Impacted taxpayers do not have to specifically request relief under Notice 2022-36. Instead, a programming change will generally allow the Service to identify affected modules and automatically enter abatements on those modules. # [REDACTED]

[REDACTED] #

(4) If the automated administrative waiver process results in a previously protested penalty being abated after such case is assigned to an ATE, the ATE will verify the abatement on IDRS and explain such automatic abatement on Form 5402, Appeals Transmittal and Case Memo, and/or the Appeals Case Memo (ACM) with the following statement:

The [description of the penalty] penalty was automatically abated by the IRS pursuant to the relief granted by Notice 2022-36. Therefore, this issue is resolved.

The ATE will also contact the taxpayer in writing to advise that the relief they requested has been granted. The ATE will include the following language in the closing letter:

Your request to have the [description of the penalty] penalty abated from your account has been fully granted, and your account has been adjusted accordingly. If this adjustment results in an overpayment, a refund will be issued automatically by the relevant IRS Service Center per Notice 2022-36. The IRS Independent Office of Appeals has closed your case.

Note: If the case is received as a post-assessment penalty (PENAP) and involves a consideration of only the automatically abated penalty, the ATE will use closing code 15 (Fully Abated) and a Resolution Reason of “Application of law or service policy” on Form 5402. If other penalties are involved and the ATE sustains them, use closing code 16 (Partially Abated).

(5) If Appeals Account and Processing Support (APS) receives a case for closure in which the module shows an automatic abatement of the penalty that is inconsistent with the conclusion on the Form 5402 and other closing documents, APS will return the case to the ATM so the ATE can update the closing letter and recommendation on the Form 5402 and ACM.

Caution: APS will not return cases to ATMs under this paragraph (5) involving fraud penalties, cases with signed decision documents or entered decisions, cases with closing agreements, or any other cases excluded from the scope of Notice 2022-36.

(6) For cases in which a penalty covered by Notice 2022-36 has been merely proposed, and has not been assessed, such penalty will not be considered by the Service’s automatic abatement process. Instead, the ATE will need to make an independent determination as to whether the waiver applies to the taxpayer, or whether relief can be granted under any other authority, and explain such determination in sufficient detail in their ACM. For any of these cases for which the ATE determines Notice 2022-36 is applicable, the ATE should also ensure that any settlement computations use September 30, 2022, as the filing deadline for the impacted returns.

IRM 8.20.5.32.6
Penalty Appeal (PENAP) Case Carding

New # [Redacted]

IRM 8.20.7.50
Penalty Appeal (PENAP) Case Closing Procedures

New (8) If APS has cases in their inventory awaiting processing, APS should verify through IDRS that the penalty has been abated. If the account/transcript is inconsistent with the conclusion on the Form 5402 and other closing documents, APS will return the case to the ATM so that the ATE can update the closing letter and recommendation on the Form 5402 and ACM.

Caution: APS will not return cases to ATMs under this paragraph (8) involving fraud penalties, cases with signed decision documents or entered decisions, cases with closing agreements, or any other cases excluded from the scope of Notice 2022-36.