



COMMISSIONER
SMALL BUSINESS / SELF-EMPLOYED DIVISION

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

February 18, 2021

Control Number: SBSE-04-0221-0006
Expiration Date: February 18, 2023
Affected IRM: 4.10.10

MEMORANDUM FOR DIRECTOR, FIELD EXAMINATION; DIRECTOR, CAMPUS EXAMINATION; DIRECTOR, REFUNDABLE CREDITS EXAM OPERATIONS

FROM: Lori L. Caskey Lori L. Caskey Digitally signed by Lori L. Caskey
Acting Director, Examination – Field and Campus Policy Date: 2021.02.18 13:13:04 -05'00'

SUBJECT: Interim Guidance Revising, Adding and Removing Standard Penalty and Addition to Tax Explanations

This memorandum issues guidance on standard explanations until IRM 4.10.10 is published. Please ensure this information is distributed to all affected employees within your organization.

Purpose: This guidance revises 16 standard penalty and addition to tax explanations and adds eight new standard penalty and addition to tax explanations as shown in Attachment 1. In addition, six standard penalty and addition to tax explanations are removed as shown in Attachment 1.

Background: These standard explanations will be incorporated into the Report Generation Software (RGS). Prior to the RGS update, examiners can insert these explanations using the [custom paragraph](#) feature in RGS.

Procedural Change: See Attachment 1 for impacted standard explanations.

Effect on Other Documents and Effective Date: This guidance will be incorporated into IRM 4.10.10, Standard Paragraphs and Explanation of Adjustments, within two years of issuance. The standard explanations can be used immediately.

Contact: Cathy Demetra, Program Manager, Examination – Field and Campus Policy, Field Exam General Processes.

Distribution: [irs.gov](https://www.irs.gov)

Penalty/Addition to Tax Standard Explanation Revisions:

8101 – Delinquent with no reasonable cause/Failure to File-5% month [Remove as duplicate of 8115]

8102 – Failure to Pay – Since you did not pay the tax shown as due on your return when it was due and you have not shown that such failure was due to reasonable cause, an addition to tax of 0.5 percent of the total tax that you failed to pay is added for each month or part of a month that the tax is unpaid. The penalty rate is increased to 1 percent beginning 10 days after we give you notice that we intend to levy your assets, or immediately after we give notice and demand for immediate payment. If you are an individual, and you filed your return on time, we will reduce the penalty rate to 0.25 percent for any month during which you have an approved installment agreement for payment of this liability. However, the addition to tax will not exceed 25 percent in total. If the addition to tax amount is not computed to the date of this notice, it will be computed at a later date. See IRC 6651(a)(2) and the attached computation.

8103 – Negligence Penalty or Disregard of Rules or Regulations – Since all or part of the underpayment of tax for the taxable year(s) is attributable to negligence or disregard of rules or regulations, a penalty is added to the tax as provided by IRC 6662(a). You have not shown that such underpayment was due to reasonable cause and that you acted in good faith. The penalty is 20 percent of the portion of the underpayment of tax attributable to negligence or disregard of rules or regulations. In addition, interest shall be imposed on the penalty if not paid within 21 calendar days (10 business days if the amount for which notice and demand is made equals or exceeds \$100,000) from the date of notice and demand for the penalty's payment to the date of payment. See IRC 6662(a), (b)(1), (c) and the attached computation.

8109 – Assert fraud and delete delinquency – [Removed to conform with IRM 20.1.2.3.7.5.1.2]

8110 – Failure to File - 4.5% month/previously assessed penalty considered [Remove as duplicate of 8115]

8111 – Failure to File 5% month [Remove as duplicate of 8115]

8112 – Removal of Failure to File addition to tax – Since you have shown that you had reasonable cause for filing your return after the time prescribed by law, we have removed the failure to file addition to tax which was previously assessed under IRC 6651(a)(1).

8115 – Failure to File - 5% month/prev. penalty consider/minimum or tax due –

Since you did not file your return within the time prescribed by law and you have not shown that such failure was due to reasonable cause, an addition to tax of 5 percent of the amount required to be shown as tax that you failed to pay by the due date is added for each month or part of a month that your return was late. However, the addition to tax will not exceed 25 percent of the amount required to be shown as tax that is not paid on time, and is reduced by the amount of any failure to pay addition to tax imposed by IRC 6651(a)(2) for any month to which both additions to tax apply. If your return was filed more than 60 days after the due date, we are required to charge a minimum penalty of at least the lesser of tax required to be shown on your return that was not paid when it was due, or the amount set by law in effect for the calendar year in which the return was due. Interest is figured on this addition to tax from the due date of the return, including any extensions. See IRC 6651(a)(1) and 6601(e)(2) and the attached computation.

8119 – Reduction of Addition to Tax for Failure to Pay sufficient Estimated Tax –

Based on the information available, we have reduced the addition to tax for failure to pay sufficient estimated tax which was previously assessed under IRC 6654.

8121 – Reduction of Failure to File Addition to Tax – We reduced the failure to file addition to tax that was previously assessed.

8122 – Fraudulent Failure to File – Since you did not file your return within the time prescribed by law and we determined that your failure to file timely was due to fraud, the law provides for an increase in the addition to tax for failure to file for each month or part of a month that your return was late from 5% to 15% of the amount required to be shown as tax on your return that you failed to pay by the due date. The maximum penalty is also increased from 25% to 75% of the amount required to be shown as tax that was not paid on time, and is reduced by the amount of any addition to tax imposed by IRC 6651(a)(2) for any month to which both additions to tax apply. Interest is figured on this addition to tax from the due date of the return, including extensions. See IRC 6601(e)(2), IRC 6651(f) and the attached computation.

8124 – Accuracy-Related Penalty due to substantial understatement of income tax

– Since all or part of the underpayment of tax for the taxable year(s) is attributable to a substantial understatement of income tax, a penalty is added to the tax as provided by IRC 6662(a). You have not shown that such understatement was due to reasonable cause and that you acted in good faith. The penalty is 20 percent of the portion of the underpayment of tax attributable to a substantial understatement of income tax. In addition, interest shall be imposed on the penalty if not paid within 21 calendar days (10 business days if the amount for which notice and demand is made equals or exceeds \$100,000) from the date of notice and demand for the penalty's payment to the date of payment. See IRC 6662(a), (b)(2), (d) and the attached computation.

8125 – Income Tax Valuation Misstatements - Gross Valuation Misstatement –

Since we determined that there are one or more gross valuation misstatements on your return, a penalty is added to the tax as provided by IRC 6662(h)(1). A gross valuation misstatement occurred because the value or adjusted basis of property reported on your return was 200 percent or more of the correct amount. You have not shown that such misstatement was due to reasonable cause and that you acted in good faith. The penalty is 40 percent of the underpayment attributable to one or more gross valuation misstatements. In addition, interest shall be imposed on the penalty if not paid within 21 calendar days (10 business days if the amount for which notice and demand is made equals or exceeds \$100,000) from the date of notice and demand for the penalty's payment to the date of payment. See IRC 6662 (h)(2)(A)(i) and the attached computation.

8126 – Accuracy-Related Penalty - Gross Estate or Gift Tax Valuation

Understatement – Since we determined that there is a gross estate or gift tax valuation understatement, a penalty is added to the tax as provided by IRC 6662(h)(1). A gross estate or gift tax valuation understatement occurred because the value of any property claimed on your estate or gift tax return was 40 percent or less of the amount determined to be the correct amount of such valuation. You have not shown that such valuation misstatement was due to reasonable cause and that you acted in good faith. The penalty is 40 percent of the underpayment attributable to the gross valuation misstatement. In addition, interest shall be imposed on the penalty if not paid within 21 calendar days (10 business days if the amount for which notice and demand is made equals or exceeds \$100,000) from the date of notice and demand for the penalty's payment to the date of payment. See IRC 6662(b)(5), (g), (h)(2)(C) and the attached computation.

8127 – Accuracy-Related Penalty - Gross Valuation Misstatement of Pension

Liabilities – Since we determined that there was a gross overstatement of pension liabilities, a penalty is added to the tax as provided by IRC 6662(h)(1). A gross valuation misstatement of pension liabilities occurred because the value of pension liabilities claimed on your return was 400 percent or more of the amount determined to be correct for purposes of computing the employer contribution deduction under IRC 404(a)(1) or (2). You have not shown that such overstatement was due to reasonable cause and that you acted in good faith. The penalty is 40 percent of the underpayment attributable to the substantial overstatement of pension liabilities. In addition, interest shall be imposed on the penalty if not paid within 21 calendar days (10 business days if the amount for which notice and demand is made equals or exceeds \$100,000) from the date of notice and demand for the penalty's payment to the date of payment. See IRC 6662(b)(4), (f), (h)(2)(B) and the attached computation.

8133 – Fraudulent failure to file changed to failure to file – You have shown that your failure to file your return within the time prescribed by law was not fraudulent. We have changed the previously assessed fraudulent failure to file addition to tax under IRC 6651(f) to a failure to file addition to tax under IRC 6651(a)(1).

8134 – Removed Fraudulent Failure to File – You have shown that your failure to file your return within the time prescribed by law was not fraudulent and that you had reasonable cause for filing your return after the time prescribed by law. We have removed the fraudulent failure to file addition to tax which was previously assessed under IRC 6651(f).

8135 – Accuracy-related penalty [Removed, replaced with 8139, 8142 through 8150]

8137 – Reduction of Fraudulent Failure to File addition to tax – Based upon the information available, we have reduced the fraudulent failure to file addition to tax which was previously assessed under IRC 6651(f).

8139 – Accuracy-Related Penalty – Reportable Transaction Understatement – Disclosed – Since we determined all or part of the understatement of tax on your return(s) is due to a reportable transaction, a penalty is added to the tax as provided by IRC 6662A(a). You have not shown that such understatement was due to reasonable cause and that you acted in good faith. The penalty is equal to 20 percent of the reportable transaction understatement. In addition, interest shall be imposed on the penalty if not paid within 21 calendar days (10 business days if the amount for which notice and demand is made equals or exceeds \$100,000) from the date of notice and demand for the penalty's payment to the date of payment. See IRC 6662A(a) and the attached computation.

8140 – Failure to Pay/Failure to File [Remove as duplicate of 8115]

8141 – Erroneous Claim for Refund or Credit Penalty – Since the erroneous claim for refund or credit was for an excessive amount and you have not shown that such failure was due to reasonable cause, a penalty is added equal to 20 percent of the excessive amount as provided by IRC 6676. The excessive amount is the amount by which the claim for refund or credit exceeds the amount allowable. See the attached computation.

New Standard Explanations:

8142 – Accuracy-related penalty – Substantial Valuation Misstatement – Since all or part of the underpayment of tax for the taxable year(s) is attributable to a substantial valuation misstatement, a penalty is added to the tax as provided by IRC 6662(a). You have not shown that such misstatement was due to reasonable cause and that you acted in good faith. The penalty is 20 percent of the portion of the underpayment of tax attributable to the substantial valuation misstatement. In addition, interest shall be imposed on the penalty if not paid within 21 calendar days (10 business days if the amount for which notice and demand is made equals or exceeds \$100,000) from the date of notice and demand for the penalty's payment to the date of payment. See IRC 6662(b)(3), (e), and the attached computation.

8143 – Accuracy-related penalty – Reportable Transaction Understatement –

Undisclosed – Since all or part of the understatement of tax is due to a reportable transaction understatement where the transaction was not properly disclosed, a penalty is added to the tax as provided by IRC 6662A(c). The penalty is 30 percent of the portion of any reportable transaction understatement in relation to which the disclosure requirement in IRC 6664(d)(3)(A) was not met. In addition, interest shall be imposed on the penalty if not paid within 21 calendar days (10 business days if the amount for which notice and demand is made equals or exceeds \$100,000) from the date of notice and demand for the penalty's payment to the date of payment. See IRC 6662A(c) and the attached computation.

8144 – Accuracy-related Penalty Transaction Lacking Economic Substance –

Since we determined that all or part of the underpayment of tax on your return(s) is attributable to a transaction lacking economic substance as defined under IRC 6662(b)(6), a penalty is added to the tax on the disallowed tax benefits failing to meet the requirements of IRC 7701(o), or any similar rule of law. The penalty is 20 percent of the underpayment attributable to the transaction lacking economic substance. In addition, interest shall be imposed on the penalty if not paid within 21 calendar days (10 business days if the amount for which notice and demand is made equals or exceeds \$100,000) from the date of notice and demand for the penalty's payment to the date of payment. See IRC 6662(b)(6), IRC 7701(o), and the attached computation.

8145 – Accuracy-related Penalty – Underpayment Attributable to Undisclosed

Foreign Financial Asset Understatement – Since we determined that all or part of the underpayment on your return(s) is attributable to an undisclosed foreign financial asset understatement, a penalty under IRC 6662(j) is added to the tax. An undisclosed foreign financial asset is any asset with respect to which information is required to be provided under IRC 6038, 6038B, 6038D, 6046A, or 6048, but which was not reported on the return or on a statement as required under the provisions of those sections. You have not shown that such understatement was due to reasonable cause and that you acted in good faith. The penalty is 40 percent of the underpayment attributable to any transaction involving an undisclosed foreign financial asset. In addition, interest shall be imposed on the penalty if not paid within 21 calendar days (10 business days if the amount for which notice and demand is made equals or exceeds \$100,000) from the date of notice and demand for the penalty's payment to the date of payment. See IRC 6662(b)(7), (j) and the attached computation.

8146 – Income Tax Valuation Misstatements – Gross valuation misstatement – 400 percent or more (or 25 percent or less) of corrected amount under section 482

– Since we determined that there was a gross valuation misstatement(s) on your return, a penalty is added to the tax as provided by IRC 6662(h)(1). A gross valuation misstatement occurred because the price for some property or service (or for the use of property) reported on your return was 400 percent or more (or 25 percent or less) of the amount determined under IRC 482 to be the correct price. You have not shown that such valuation misstatement was due to reasonable cause and that you acted in good faith. The penalty is 40 percent of the underpayment attributable to one or more gross valuation misstatements. In addition, interest shall be imposed on the penalty if not paid within 21 calendar days (10 business days if the amount for which notice and demand is made equals or exceeds \$100,000) from the date of notice and demand for the penalty's payment to the date of payment. See IRC 6662(b)(3), (e)(1)(B)(i), (h)(2)(A)(ii) and the attached computation.

8147 – Income Tax Valuation Misstatements - Gross valuation misstatement – net section 482 transfer price adjustment

– Since we determined that there was a gross valuation misstatement due to a net IRC 482 transfer price adjustment that exceeds the lesser of \$20,000,000 or 20 percent of the taxpayer's gross receipts, a penalty is added to the tax as provided by IRC 6662(h)(1). You have not shown that an exception to the penalty applies as provided in IRC 6662(e)(3)(D). The penalty is 40 percent of the underpayment attributable to one or more gross valuation misstatements. In addition, interest shall be imposed on the penalty if not paid within 21 calendar days (10 business days if the amount for which notice and demand is made equals or exceeds \$100,000) from the date of notice and demand for the penalty's payment to the date of payment. See IRC 6662(b)(3), (e)(1)(B)(ii), (h)(2)(A)(iii) and the attached computation.

8148 – Accuracy-related Penalty - Nondisclosed Noneconomic Substance Transactions

– Since we determined that your return had a nondisclosed noneconomic substance transaction, a penalty under IRC 6662(i) applies. A nondisclosed noneconomic substance transaction is any portion of a transaction described in section 6662(b)(6) where the relevant facts affecting the tax treatment are not adequately disclosed in the return or in a statement attached to the return. The penalty is 40 percent of the underpayment attributable to the nondisclosed transaction. In addition, interest shall be imposed on the penalty if not paid within 21 calendar days (10 business days if the amount for which notice and demand is made equals or exceeds \$100,000) from the date of notice and demand for the penalty's payment to the date of payment. See IRC 6662(b)(6), (i) and the attached computation.

8149 – Accuracy-related Penalty due to Undisclosed Foreign Financial Asset Understatement IRC 6662(j) based on 6662(b)(7) – Since we determined that a portion of the underpayment is attributable to an undisclosed foreign financial asset understatement under IRC 6662(b)(7), a penalty is added to the tax as provided by IRC 6662(j). An undisclosed foreign financial asset is any asset with respect to which information is required to be provided under IRC 6038, 6038B, 6038D, 6046A, or 6048, but which was not reported on the return or on a statement as required under the provisions of those sections. You have not shown that such understatement was due to reasonable cause and that you acted in good. The penalty is 40 percent of the underpayment attributable to an undisclosed foreign financial asset understatement. In addition, interest shall be imposed on the penalty if not paid within 21 calendar days (10 business days if the amount for which notice and demand is made equals or exceeds \$100,000) from the date of notice and demand for the penalty's payment to the date of payment. See IRC 6662(b)(7), (j) and the attached computation.