MEMORANDUM FOR ALL LB&I, SB/SE AND TE/GE EMPLOYEES

FROM: Julie A. Foerster
Director, Examination Headquarters
Small Business/Self-Employed Division

SUBJECT: Interim Guidance on IRC 6707A Penalty Approval

March 31, 2022

This memorandum issues guidance eliminating the requirement for penalty approval beyond the immediate supervisor. Please ensure this information is distributed to all affected employees.

Background/Source(s) of Authority: Treas. Reg. 301.6707A-1, published on September 7, 2011, as amended on March 26, 2019, advises that the Service may assess a penalty under IRC 6707A with respect to each failure to timely and adequately disclose a reportable transaction as required by IRC 6011 and the associated regulations. This penalty provision applies to any person who fails to disclose a reportable transaction under IRC 6011.

Procedural Change: The updated procedures are found on Attachment – Interim Guidance SBSE-04-0322-0009.

Effect on Other Documents: This guidance will be incorporated into IRM 4.32.4, IRC 6707A Penalty for Failure to Include Reportable Transaction Information With Return, by a date not to exceed two years from the date of this memorandum.

Contact: If you have any questions regarding this memorandum, you may contact Alice Ronk, Attorney-Advisor to the Director, Examination Headquarters.

Attachment

Distribution: IRS.gov (http://www.IRS.gov)
Attachment – Interim Guidance SBSE-04-0322-0009

The following changes are hereby effective as of the date of this memorandum for IRM 4.32.4.

4.32.4.3.2.3
Penalty Case File—Documents Required for all Listed and Non-Listed Reportable Transactions

(14) Deleted

(15) Current (15) moved to (14) with no changes

4.32.4.4
IRC 6707A Penalty Approval Process

(1) The penalty must be approved in writing by the immediate supervisor of the individual making the initial penalty determination as outlined in IRM 20.1.10.2, Supervisory Approval for Penalty Assessment, and IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments.

(2) Deleted

(3) Deleted

4.32.4.5
Issuing the 30-Day Letter (Modified)—Letter 4143

(1) No changes

(2) After the immediate supervisor approves assertion of the IRC 6707A penalty on Form 8278, the examiner prepares and sends to the taxpayer, Letter-4143, 30-Day Letter for Section 6707A Penalty, and encloses:

a. Form 4549-A, Income Tax Discrepancy Adjustments (examiners must manually prepare, listing type of tax as Form 8278 with IRC 6707A penalty and amount listed on page 2)

b. Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment

c. Form 886-A, Explanation of Items, or equivalent

d. Computation workpaper

e. Pub 1, Your Rights as a Taxpayer

f. Pub 5, Your Appeal Rights and How to Prepare a Protest if You Don't Agree

g. Pub 594, The IRS Collection Process

(3) Deleted

(4) Current (4) moved to (3) with no changes

(5) Current (5) moved to (4) with no changes
(6) Current (6) moved to (5) with no changes

Exhibit 4.32.4-4
Case Overview and Penalty Approval Record

Exhibit deleted