



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

March 5, 2021

Control Number: SBSE-05-0321-0004
Expiration Date: 03/05/2023
Affected IRMs: 5.7.3; 5.7.4; 5.7.6

MEMORANDUM FOR DIRECTOR, FIELD COLLECTION

FROM: Kareem Williams Digitally signed by Kareem Williams
Date: 2021.03.05 11:23:52 -05'00'
Acting Director, Collection Policy

SUBJECT: New Guidance for Form 2751, Proposed Assessment of the Trust Fund Recovery Penalty

This memorandum provides interim guidance to Collection employees who secure a signed Form 2751, Proposed Assessment of the Trust Fund Recovery Penalty, during a Trust Fund Recovery Penalty (TFRP) investigation. Please distribute this information to all affected employees within your organization.

Purpose: The purpose of this memorandum is to issue new guidance pertaining to Form 2751 in response to technical advice provided by IRS Chief Counsel.

Background: Currently, existing TFRP guidance permits revenue officers (ROs) to send TFRP case files for assessment without waiting the full 60-day appeal period (75 days if the letter is addressed to a potentially responsible party outside of the United States) when a responsible party has signed a Form 2751. However, the Form 2751 does not extinguish a responsible party's appeal rights. Therefore, responsible parties are permitted to change their mind and file a timely appeal after signing a Form 2751.

Source of Authority: The guidance in this memorandum is consistent with the language and requirements written in 26 U.S. Code § 6672(b), Failure to Collect and Pay over Tax, or Attempt to Evade or Defeat Tax. IRC § 6672(b) requires that notification of the proposal to assess the TFRP shall precede any notice and demand of any penalty by at least 60 days. Please note that this guidance does not apply to the procedures pertaining to jeopardy assessments.

Procedural Change: In accordance with IRC § 6672, ROs must wait the full 60-day appeal period (75 days if the letter is addressed to a responsible party outside the United States), plus five additional days for receipt and processing of timely mailed

protests, after proper delivery of Letter 1153, Proposed Trust Fund Recovery Penalty Notification, before sending the TFRP case file to CPM for assessment.

The Form 2751 does not extinguish a taxpayer's appeal rights. As a result, ROs must not treat a signed Form 2751 as a conclusive waiver until the 60 or 75-day restriction period (plus five additional days) expires since a responsible party may change his or her mind after signing the waiver. A new revision of Form 2751 that removes the language, "I waive the 60-day restriction on notice and demand set forth in Internal Revenue Code Section 6672(b)", will be forthcoming. Since responsible parties have the right to change their mind after signing Form 2751, ROs should secure sufficient documentation in the TFRP case file to support each recommendation, for each specific period of the liability. Please refer to the attachment below for revisions to specific IRM sections.

Effect on Other Documents: This guidance will be incorporated into IRMs 5.7.3, 5.7.4, and 5.7.6 within two years of the date of this memorandum.

Effective Date: This guidance is effective March 5, 2021.

Contact: If you have any questions regarding the guidance in this memorandum, you may contact Andra Kullman, Employment Tax Program Manager, or a member of your staff may contact Kerri Hansen, Program Analyst.

Attachment: IG Control #SBSE-05-0321-0004

Distribution:

Director, Civil Enforcement Advice and Support Operations
Director, Collection Operations – Quality and Technical Support
Director, Specialty Collection – Offer in Compromise
Director, Specialty Collection – Insolvency
Director, Campus Collection
Director, Appeals, Collection
Taxpayer Advocate Service
Assistant Division Counsel, SB/SE
IRS.gov (<https://www.irs.gov/>)

Attachment: IG Control #SBSE-05-0321-0004

The following changes are hereby effective March 5, 2021, for the IRM sections named below:

IRM 5.7.3.6.2**(03-05-2021)****Impact of Letter 1153(DO) on Assessment Statute**

(1) For IRC 6672 assessments made after the enactment of the Taxpayer Bill of Rights 2 on July 30, 1996, the following actions are required:

- a. A 60-day preliminary notice, Letter 1153, must either be mailed to the potentially responsible party's last known address or, after July 22, 1998, delivered in-person to the potentially responsible party.

Note: See IRM 5.7.4.7, Notification of Proposed Assessment, for instructions on proper delivery and documentation regarding the delivery of Letter 1153.

- b. The IRS must wait 60 days after issuance of Letter 1153 before issuing notice and demand for payment (Form 3552, Prompt Assessment Billing Assembly).

Note: See IRM 5.7.4.7, Notification of Proposed Assessment, for exceptions to the 60-day requirement for jeopardy situations.

IRM 5.7.4.2.4**(03-05-2021)****Form 4180**

(10) If the potentially responsible party agrees to the assessment during an interview:

- a. Advise the individual of his or her appeal rights and document the history accordingly.
- b. Secure his or her signature on Form 2751, Proposed Assessment of Trust Fund Recovery Penalty.

Reminder: A Form 4180 interview must still be completed, even if the responsible party or parties sign Form 2751.

- c. Advise the responsible party interest will accrue on the TFRP from the date of assessment to the date of payment on the underlying trust fund liability and on any unpaid interest. (See IRM 5.7.7.2, Pre-Assessment Payment, for information on processing payments received prior to the assessment of the TFRP).

Note: Provide Letter 1153 to the potentially responsible party (IRM 5.7.4.7, Notification of Proposed Assessment) as soon as possible when Form 2751 is executed during an interview. Explain to the responsible party that he or she is waiving the 60-day restriction on notice and demand set forth in IRC 6672(b);

however, do not treat the signed Form 2751 as a conclusive waiver until the 60 or 75-day restriction period (plus five additional days) expires, as a responsible party may change his or her mind after signing the waiver. A signature on the Form 2751 does not extinguish a responsible party's appeal rights. See IRM 5.7.6.1.2, *Agreed Cases*, for actions on agreed cases.

IRM 5.7.4.2.7

(03-05-2021)

Evidence That May Support Recommendations

- (5) This subsection will be deleted. Since a responsible party has the right to change his or her mind after signing Form 2751, ROs should secure sufficient documentation in the TFRP case file to support each recommendation, for each specific period of the liability.
- (6) There should be sufficient documentation in the TFRP case file to support each recommendation, for each specific period of the liability. See IRM 5.7.4.2.7(1) for the core documentation requirements. The example below shows an appropriate assertion recommendation based upon the core documentation items:

Example: A revenue officer (RO) completes an initial analysis and identifies the potentially responsible parties through the information in the Articles of Incorporation. The RO makes a field call to the business, speaks to the one officer present and secures Form 4180 and Form 433-A, Collection Information Statement. The RO requests bank documents from the taxpayer and establishes a deadline for the information. The RO schedules and completes a Form 4180 interview with the officer who was not present during the initial field call. When the officers fail to submit the requested documents, the RO prepares Form 6639 requesting bank signature cards and a sampling of the front copy of checks for the periods of the liability. Following the expiration of the bank summons quash period, the RO reviews the bank records and determines there are no additional signature authorities on the account. Based upon review of the cancelled checks, the RO determines payments were made by both officers to other creditors in preference to the accruing taxes. The RO determines both officers possessed the duty, status, and authority to ensure the trust fund taxes were paid. As a result, the RO documents the ICS case history with the evidence secured throughout the course of the TFRP investigation that led to the determination to support recommendation of the TFRP against both officers. The RO has secured the core documentation items and has sufficient documentation to support recommendation of the TFRP against both parties.

IRM 5.7.4.7

(03-05-2021)

Notification of Proposed Assessment

- (2) Letter 1153 and Form 2751 should be prepared on the ATFR system. Deliver Letter 1153 and Form 2751 to the potentially responsible party or parties within 20 calendar days of the Form 4183 approval. The ATFR system does not input a date

on the Letter 1153; therefore, it is important the RO either date stamp or hand write the date of service on the Letter 1153, as well as document the ATFR and ICS histories regarding service of the Letter 1153. It is important to also date the copy of Letter 1153 maintained in the TFRP case file. Include Publication 1 when delivering Letter 1153 and Form 2751 to the potentially responsible party or parties (see (3) below for the recommended method of delivery). A copy of page 4 of Form 4183, showing the penalty computation, may also be included with the documents delivered to the potentially responsible party or parties so that they are aware of how payments were applied to the account. ATFR will systemically upload TC 130, Entire Account Frozen from Refunding, to freeze any potential refunds when a Letter 1153 delivery date is entered on ATFR.

Reminder: If a responsible party or corporate entity pays the entire withheld tax liability in full after approval of Form 4183 and issuance of Letter 1153, once the payment clears and posts to accounts, review the TC 130 to determine if TC 131, Reversal of TC 130 Refund Freeze, is appropriate. The TC 130 may remain appropriate on an individual account, as there may be additional pending TFRP assessments from a different business, or related sole proprietor liabilities.

Letter 1153	Form 2751
<ul style="list-style-type: none"> • Notifies the potentially responsible party of the proposed assessment • Contains a description of the available appeal rights • Affords the potentially responsible party the opportunity to agree to or to appeal the assessment • Will be modified if the potentially responsible party has filed a bankruptcy proceeding and the automatic stay is still in effect, to delete any references to: <ul style="list-style-type: none"> ○ The Service "collecting" the TFRP ○ Any actions the potentially responsible party should take to delay collection activity by the Service ○ Any collections the Service may take in jeopardy 	<ul style="list-style-type: none"> • Provides a report of the business liability • Provides a breakdown of the proposed TFRP assessment for each quarter for which the TFRP assessment is proposed • Allows the potentially responsible party to agree to the proposed assessment • May be signed by the potentially responsible party at any time during the TFRP investigation or after the Service has issued Letter 1153 <p>Note: Do not treat a signed Form 2751 as a conclusive waiver until the 60 or 75-day restriction period (plus five additional days) expires, as a responsible party may change his or her mind after signing the waiver. A responsible party's signature on the Form 2751 does not extinguish his or her appeal rights.</p>

<p style="text-align: center;">circumstances</p> <p>Note: The modified version will print from the ATFR system if the potentially responsible party's bankruptcy information is input into the ATFR system.</p>	<ul style="list-style-type: none"> • May be signed by an authorized representative on behalf of a potentially responsible party if the Form 2848, Power of Attorney and Declaration of Representative, is executed by that potentially responsible party and completed properly. Item 3 of Form 2848 must say, "Trust Fund Recovery Penalty (TFRP)", under "Description of Matter", "Form 2751" under "Tax Form Number", and all periods proposed for TFRP assessment must be listed.
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- (3) For assessments made under the provisions of IRC 6672 after the enactment of the Taxpayer Bill of Rights 2 on July 30, 1996, the following actions are required:

Note: Document the method of delivery and any discussions with the potentially responsible party related to receipt of the Letter 1153 in the ICS history for the employer's case. These procedures are recommended to ensure the responsible party learns of the Service's proposed TFRP assessment and has an opportunity to question the RO about potential appeal opportunities. If the responsible party later forgets having received the Letter 1153, then the ICS history notes regarding the method of delivery may help show that the responsible party is not entitled to another opportunity to contest the correctness or amount of the TFRP in a Collection Due Process (CDP) hearing.

Required Action	Recommendations / Exceptions
<ul style="list-style-type: none"> • A 60-day preliminary notice of proposed TFRP assessment, Letter 1153, must be delivered in person to the potentially responsible party or mailed certified, return receipt requested, to the potentially responsible party's last known address before giving notice of assessment and demand for payment to the responsible party. • See IRM 5.7.3.6.2, Impact of Letter 1153 on Assessment Statute. 	<ul style="list-style-type: none"> • It is preferred that the Service deliver Letter 1153 in person, whenever practical. • For domestic mail delivery, if direct hand delivery is not possible, use U.S. Postal Service Certified Mail Receipt Form 3800 requesting a return receipt. Use registered mail for international delivery of Letter 1153. See IRM 5.7.4.7(4) below regarding certified mail procedures.

<ul style="list-style-type: none"> • The Service must wait 60 days (75 days if the letter is addressed to the potentially responsible party outside the United States), plus an additional five days for receipt and processing of timely mailed protests, after proper delivery of Letter 1153 before issuing notice and demand for payment (Form 3552, Prompt Assessment Billing Assembly). <p>Note: Do not treat a signed Form 2751 as a conclusive waiver until the 60 or 75-day restriction period (plus five additional days) expires, as a responsible party may change his or her mind after signing the waiver. A responsible party's signature on the Form 2751 does not extinguish his or her appeal rights.</p>	<ul style="list-style-type: none"> • The 60-day rule does not apply to a jeopardy assessment (Form 2644).
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IRM 5.7.6.1.1

(03-05-2021)

Taxpayer's Response to Letter 1153

(3) The ATFR application will not allow you to proceed until one of the following actions occurs:

- The 60-day (or 75-day) time period expires
- A protest letter is received
- A jeopardy assessment is being made

Reminder: Do not treat a signed Form 2751 as a conclusive waiver until the 60 or 75-day restriction period (plus five additional days) expires, as a responsible party may change his or her mind after signing the waiver. A responsible party's signature on the Form 2751 does not extinguish his or her appeal rights.

IRM 5.7.6.1.2

(03-05-2021)

Agreed Cases

(1) If the taxpayer agrees to the assessment by signing Form 2751, prepare Letter 1155, Notice of Agreed Trust Fund Recovery Penalty, and deliver the letter to the responsible party no later than 14 calendar days after receipt of the signed Form 2751. Prepare the letter using the ATFR application whenever possible. Document the case file with an explanation if Letter 1155 is delivered more than 14 days after

receipt of the signed Form 2751. Because the responsible party could change his or her mind after signing the Form 2751 (and therefore request Appeals review before the deadline listed in Letter 1153), do not treat a case as agreed until that deadline expires, plus five days. A responsible party's signature on the Form 2751 does not extinguish his or her appeal rights.

IRM 5.7.6.3**(03-05-2021)****Quick and Prompt Assessment Actions**

(4) Quick or prompt assessment for a TFRP may be made only after the taxpayer takes one of the following actions:

- Fails to respond to the Letter 1153(DO) within the appropriate time period
- Completes the appeal process

Note: Do not treat a signed Form 2751 as a conclusive waiver until the 60 or 75-day restriction period (plus five additional days) expires, as a responsible party may change his or her mind after signing the waiver. A responsible party's signature on the Form 2751 does not extinguish his or her appeal rights.