



COMMISSIONER
LARGE BUSINESS AND
INTERNATIONAL DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

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4.46.4, 4.31.9, 20.1.1

MEMORANDUM FOR ALL LB&I EMPLOYEES

FROM: Holly O. Paz *Is/ Holly O. Paz*
Acting Commissioner
Large Business and International Division

SUBJECT: Interim Guidance for Approval of Penalties under Internal
Revenue Code (IRC) 6751(b)(1) for LB&I Examinations

Purpose: This memorandum provides updated guidance for examiners and managers on the approval of penalties under Internal Revenue Code (IRC) 6751(b)(1) for LB&I cases.

Background: IRC 6751(b)(1) states, in general, that no penalty under Title 26 shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination **or** such higher-level official as the Secretary may designate.¹ Until now, the Secretary has not designated a higher-level official to approve initial determinations for purposes of IRC 6751(b)(1).

The Commissioner of the Internal Revenue Service has the authority to make the designation pursuant to authority delegated from the Treasury Secretary by Treasury Order 150-10 and pursuant to IRC 6751(b)(1). The Commissioner, Large Business and International Division of the Internal Revenue Service, has the authority to make the designation pursuant to authority delegated through Servicewide Delegation Order 1-23, Authorization to Perform Functions of the Commissioner. See [IRM 1.2.2.2.20](#).

¹ IRC 6751(b)(1) does not apply to additions to tax under IRC 6651, Failure to file tax return or to pay tax; IRC 6654, Failure by an individual to pay estimated income tax; IRC 6655, Failure by corporation to pay estimated income tax, and penalties under IRC 6662(b)(9) and (b)(10); as well as to penalties that are automatically calculated through electronic means. Refer to [IRM 20.1.5.2.3\(6\)a](#).

As outlined in [IRM 4.46.1](#), LB&I Examination Process, General Information and Definitions, LB&I examinations could include multiple examiners, specialists, issue managers, and a case manager. Also, the examination could include a variety of penalties proposed by a variety of team members, including penalties on primary and alternative legal arguments.

Procedural Change: To the extent that a case manager is not already the immediate supervisor of an individual who made the initial determination of a penalty assessment, this guidance designates a **case manager** as a “**higher-level official**” authorized to personally approve the initial determination of the penalty assessment under IRC 6751(b). An LB&I case manager, described in IRM 4.46.1.1.3.1, Case Manager Roles and Responsibilities, is designated as a higher-level official who may approve the initial determination of penalties for purposes of satisfying IRC 6751(b). Note: this change merely provides the option for the case manager to approve the initial determination of penalties. See Examples 1 and 2 in Attachment 2 for instances where this option may be useful.

The following IRM sections are updated to reflect the revised penalty approval procedures:

- Attachment 1 – Revisions to IRM 4.46.1, LB&I Examination Process, General Information and Definitions and 4.46.3, Planning the Examination
- Attachment 2 – Revisions to IRM 4.46.4, LB&I Examination Process, Executing the Examination
- Attachment 3 – Revisions to IRM 4.31.9, Pass-Through Entity Handbook, Centralized Partnership Audit Regime (BBA) Field Examination Procedures, and IRM 20.1.1, Penalty Handbook, Introduction and Penalty Relief

The changes herein do not change the fact that timely approval in writing by the immediate supervisor of the individual who initially determines the penalty will satisfy the requirements under IRC 6751(b). Nor does it change the issue manager(s) and case manager’s roles and responsibilities or their collaboration and involvement in issue and case decisions as outlined in IRM 4.46. Concerns about whether to pursue assessment of a penalty are resolved through collaboration or, where necessary, elevation. See [IRM 4.46.1.3.3](#), Elevating Issue Concerns.

Effect on Other Documents: This guidance will be incorporated into the IRM sections listed in the attachments by a date not to exceed two years from the date of this memorandum.

Contact: LB&I Policy Office through the [LB&I Policy Gateway](#) and [Create a Request](#).

Attachments (3)

Distribution: www.irs.gov

Attachment 1 – Revisions to IRM 4.46.1, LB&I Examination Process, General Information and Definitions and IRM 4.46.3, Planning the Examination

4.46.1.1.3.1, Case Manager Roles and Responsibilities

Revise Paragraph (3) as follows:

- s. Monitor the overall case progress and support the issue manager with Information Document Request (IDR) enforcement and Form 5701/886-A procedures, including penalty consideration. If the case manager is also the immediate supervisor of the employee asserting the penalty, approve assertion of the penalty, in writing, prior to the issuing of any written communication of penalties to a taxpayer that offers the taxpayer an opportunity to sign an agreement or consent to assessment or proposal of penalty. If the case manager is not the immediate supervisor of the employee asserting the penalty, the case manager is designated as a “higher-level official” who may approve the initial determination of penalties for purposes of satisfying IRC 6751(b). Refer to IRM 4.46.4.12.2, Managerial Involvement, and IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments.

Note: The designation as a “higher-level official” merely provides the option for the case manager to approve the initial determination of penalties.

IRM 4.46.3.10.5, Role of the LCC/LPC Case Manager.

Revise paragraph 1 as follows:

- j. Approval of the assertion of penalties in writing prior to issuing any written communication of penalties to a taxpayer that offers the taxpayer an opportunity to sign an agreement or consent to assessment or proposal of the penalty. For LB&I examinations, the case manager is designated as a higher-level official who may approve the initial determination of penalties for purposes of satisfying IRC 6751(b). Refer to IRM 4.46.4.12.2, Managerial Involvement and IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments.

Attachment 2 – Revision to IRM 4.46.4, LB&I Examination Process, Executing the Examination

IRM 4.46.4.12.2, Managerial Involvement

Revise paragraph 2 as follows:

(2) The immediate supervisor of the employee asserting the penalty or the case manager (see paragraph (3) below) must approve:

- Any penalty asserted prior to issuing any written communication of penalties to a taxpayer that offers the taxpayer an opportunity to sign an agreement or consent to assessment or proposal of the penalty
- Any case where there is a substantial understatement of tax and no penalty proposed
- Non-assertion of IRC 6676 penalty when a substantial portion of the claim for refund or credit is disallowed (see IRM 20.1.5.18.5(14), Case Procedures WITHOUT Deficiency Procedures)

Exception: Exceptions to the supervisory approval of penalties are noted in IRM 20.1.5.2.3, Supervisory Approval of Penalties - IRC 6751 Procedural Requirements and IRC 6751(b)(2)

Insert new paragraph 3

(3) The case manager is designated as a higher-level official to approve an initial determination of a penalty assessment even where initial determination was made by someone not in the same operating division, group, or management chain of the person who made the initial determination so long as the penalty arises from an examination to which the case manager is assigned. Also, a person serving in an acting capacity may exercise the authority of the position in which the person is acting to approve initial penalty determinations. See IRM 1.11.4.5, Purpose and Contents of Delegation Orders. The initial determination of the penalty must be personally approved in writing; any writing, including in electronic form, made by the writer to signify the writer's assent. No signature or particular words are required so long as the circumstances of the writing reflect that it was intended as approval. For example, the case manager's approval **may be in the form of a signature on Form 5701, the Examination Report, Revenue Agent Report (RAR) or a 30-day letter.**

Insert new paragraph 4

(4) The following are some examples that illustrate the designation of a higher-level official.

Example 1: The immediate supervisor (the issue manager) of the individual who made the initial penalty determination is not available to approve the

penalty. The case manager may approve the initial determination of the penalty as a higher-level official.

Example 2: In the course of an audit of Taxpayer T by a team of revenue agents, Revenue Agent A concludes that T should be subject to an accuracy-related penalty for negligence under IRC 6662(b)(1) and IRC 6662(c). Supervisor B is the issue manager and is assigned the duty to approve the Notice of Proposed Adjustment for any penalty A would propose. A reports to B, but B is not responsible for the overall management of the audit of T. C is the case manager of the team auditing T and is responsible for the overall management of the audit of T. C may assign tasks to A and other team members, and has responsibility for approving any examination report presented to T. The requirements of IRC 6751(b)(1) are met in either of the following instances:

- Only B approves the penalty in writing before the mailing to T of a 30-day letter that includes the penalty. B qualifies as the immediate supervisor of A with respect to A's penalty proposal.
- Only C approves the penalty in writing before the mailing to T of a 30-day letter that includes the penalty. Because C is the case manager of the team auditing T, and A is a team member, C qualifies as a higher-level official designated to approve the penalty proposed by A.

Renumber previous paragraph (3) as paragraph (5) and revise as follows:

- (5) The LB&I Issue Management System (IMS) provides lead sheets based on the standard audit index number (SAIN) entry for the penalty issue. The penalty lead sheet (currently SAIN 011) may be used to approve penalties in LB&I. IMS forms may be approved with a digital or physical signature.

Attachment 3 – Revisions to IRM 4.31.9, Pass-Through Entity Handbook, Centralized Partnership Audit Regime (BBA) Field Examination Procedures, and IRM 20.1.1, Penalty Handbook, Introduction and Penalty Relief

IRM 4.31.9.9.3.3, Form 886-A: Interest and Penalties

Revise Paragraph 4 as follows:

- b. Managers (immediate supervisors; for LB&I examinations, the immediate supervisor or a designated higher-level official) must review and approve in writing whether any penalties should be imposed as part of the examination. See IRC 6751(b); IRM 20.1.1.2.3.

Revision to IRM 20.1.1, Penalty Handbook, Introduction and Penalty Relief

IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments

Revise Paragraph 2 as follows:

- (2) IRC 6751(b)(1), Approval of Assessment, states that in general, no penalty under the Internal Revenue Code shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher-level official as the Secretary may designate. For LB&I examinations, the case manager is designated as a higher-level official to approve an initial determination of penalties for purposes of satisfying IRC 6751(b)(1). Refer to IRM 4.46.4.12.2, Managerial Involvement.

Note: Policy regarding the timing of supervisory approval can be found in IRM 20.1.1.2.3.1, Timing of Supervisory Approval