

IRM PROCEDURAL UPDATE

DATE: 05/11/2026

NUMBER: sbse-04-0526-0510

SUBJECT: Revised IRM 4.23.9 to Incorporate Legislative Changes From OBBBA

AFFECTED IRM(s)/SUBSECTION(s): 4.23.9

CHANGE(s):

IRM 4.23.9.1(5) - Updated paragraph (5) due to changes in SB/SE organizational symbols to reflect the new Chief Tax Compliance Officer Organization.

(5) Primary Stakeholders:

- Employment Tax - Workload Selection and Delivery (CTCO:S:E:HQ:ECS:S:ETEGCS:EWSD)
- Specialty Examination - Employment Tax (CTCO:S:E:SE:ET)
- Specialty Examination Policy, Employment Tax Policy (CTCO:S:E:HQ:SEP:EMTP)
- Other areas that are affected by these policies and procedures include Appeals, Counsel, SB/SE Examination, LB&I, and TE/GE.

IRM 4.23.9.1.1(1) - Revised paragraph (1) to clarify that taxpayer are to be treated fairly and consistently and penalty decisions are based on the facts and circumstances of each case.

(1)) It is important that taxpayers be treated fairly and consistently and penalty decisions be based on careful considerations of the facts and circumstances of each case.

IRM 4.23.9.1.2(3) - Paragraph was added that states the Office of Servicewide Penalties (OSP) is the primary source of authority for administration of penalties. All subsequent paragraphs have been renumbered.

(3) Penalty provisions can be found in IRM 20.1, Penalty Handbook. Office of Servicewide Penalties (OSP) has the overall responsibility of coordinating and approving updates to IRM 20.1. Their role is to ensure fairness and consistency in civil penalty administration. See IRM 20.1.1.1, Program Scope and Objectives, for additional information.

IRM 4.23.9.1.2(5) - Updated paragraph due to the reorganization that resulted in one Deputy Commissioner.

(5) A website, Search Servicewide Delegation Orders, located at IMD Search Servicewide Delegation Orders provides a searchable list of Servicewide Delegation Orders issued by the Commissioner of the Internal Revenue, or their behalf by the deputy commissioner. Delegation Orders pertaining to each IRS business process can be found in IRM 1.2.2, Servicewide Policies and Authorities, Servicewide Delegations of Authority.

IRM 4.23.9.1.3 - Updated title to "Roles and Responsibilities" to comply with IRM 1.11.2.2.4, Address Management and Internal Controls. Paragraph (1) has been added, specifying that OSP is responsible for administering penalties. Consequently, all subsequent paragraphs have been renumbered.

Roles and Responsibilities

(1) Director, Business Support is responsible for the servicewide civil penalty program.

(2) Director, Specialty Examination Policy is responsible for the procedures and updates addressed in this IRM.

(3) Director, Specialty Examination is the executive responsible for examination operational compliance.

(4) Chief, Employment Tax Examination, is responsible for ensuring examiners follow the guidance included in this IRM.

IRM 4.23.9.1.4 - Updated title to "Program Management and Review" to comply with IRM 1.11.2.2.4, Address Management and Internal Controls.

Program Management and Review

(1) Program Goals: The processes and procedures provided in this IRM are consistent with the objectives or goals for Employment Tax - Examination that are addressed in IRM 1.1.16.5.3.3, Employment Tax Examination, found in IRM 1.1.16.5.5.2.2, Employment Tax Policy.

(2) Program Effectiveness: Program goals are measured with Employment Tax National Quality (NQ) and Embedded Quality (EQ) Performance Reports that monitor whether quality attributes are applied uniformly and consistently.

(3) Annual Review: Program Manager - Employment Tax Policy is responsible for reviewing the information in this IRM annually to ensure accuracy and promote consistent tax administration.

IRM 4.23.9.1.4.1 - Created a new subsection with the title "Program Reports" and contents of IRM 4.23.9.1.5.

Program Reports

(1) Program Reports: Information regarding the reporting of program objectives are included on, but not limited to, the following reports submitted to the Director, Examination - Specialty:

- Headquarters Examination Monthly Briefing,
- Program Manager Monthly Briefing,
- Examination Operational Review, and
- Business Performance Reviews.

(2) The Quarterly Business Performance Review (BPR) provides updates on the status of Whistleblower claims in Operating Division SME status.

IRM 4.23.9.1.5 - Moved the title and contents of prior IRM 4.23.9.1.5 to IRM 4.23.9.1.4.1. The subsection was given a new title "Program Controls". A new subsection has been added to describe the program controls that ensure the Employment Tax (ET) program operates accurately, efficiently, and consistently. This addition aligns with IRM 1.11.2.2.4, Address Management and Internal Controls, to maintain consistency and provide comprehensive guidance.

Program Controls

(1) To ensure the program is working consistently and correctly, SB/SE Employment Tax program (ET Program) put in place program controls to oversee it. Program controls are like checks and balances that help the ET program:

- **Prevent Errors:** Stop errors from happening in the first place.
- **Detect Problems:** Find problems quickly if they do happen.
- **Fix Issues:** Fix any issues that come up.

(2) The ET program has implemented the following controls to ensure effective management:

1. **Issue Management System (IMS):** Mandatory use during employment tax examinations by ET examiners.

2. **Standardized Lead Sheets:** Employment Tax Lead Sheets (ETLS) for standard employment tax cases and Large Case Lead Sheets (LCLS) for large case employment tax examinations.
3. **Specialty Employment Tax Application (SETA):** A web-based tool used by ET examiners to generate most of the necessary documents for examination reports and case closure.

(3) All information management systems have safeguard measures in place that address key components of Information Technology (IT) security requirements to restrict access to sensitive data.

(4) The ET program operates under the framework of internal controls designed to ensure that examinations are conducted consistently, accurately, and in accordance with IRC, regulations, and IRS policies. Key controls include:

- Periodic reviews of examination case files by group managers,
- Standardized training for examiners, and
- Review of closed case files is conducted to monitor adherence to established procedures.

(5) The ET program has established a separation of duties of certain users' roles:

- Policy and procedure resides with ET Policy that is within SB/SE Specialty Examination Policy.
- Case selection resides with ET-WSD within SB/SE Examination Case Selection.
- Quality review resides within SB/SE Exam Quality and Technical Support.

(6) Embedded Quality is applied through a common set of attributes, capturing data within the following systems:

- Embedded Quality Review System (EQRS) for group management reviews, and
- National Quality Review System (NQRS) for closed case reviews.

(7) ET group managers regularly evaluate workload management, risk assessments, and resource allocation within their groups. The managers achieve the evaluations via workload and individual case reviews of the examiners within their group. The reviews provide feedback to examiners on their effectiveness and identify opportunities for improvements.

IRM 4.23.9.1.6 - Added the acronym OBBBA for One, Big, Beautiful Bill Act (Public Law 119-21) and ET for Employment Tax.

(1) Below are common acronyms used in this IRM section. Acronyms not listed below may be found in the Acronyms Database.

Acronym	Definition
AIMS	Audit Information Management System
ARC	Aging Reason Code
ASED	Assessment Statute Expiration Date
BMF	Business Master File
BPR	Business Performance Review
CI	Criminal Investigation
CCP	Centralized Case Processing
DC	Disposal Code
DITA	Designated Identity Theft Adjustment
DOJ	Department of Justice
EIN	Employer Identification Number
EO	Exempt Organizations
ERCS	Exam Return Control System
ET	Employment Tax
ET- WSD	Employment Tax - Workload Selection and Delivery
FEA	Fraud Enforcement Advisor
FFTF	Fraudulent Failure to File
FICA	Federal Insurance Contributions Act
FOIA	Freedom of Information Act
FTA	First Time Abatement
FTF	Failure to File
FTP	Failure to Pay

FUTA	Federal Unemployment Tax Act
ID Theft	Identity Theft
IMF	Individual Master File
LLC	Limited Liability Company
LB&I	Large Business & International
MFT	Master File Tax
NMF	Non-Master File
NQSO	Non-Qualified Stock Option
OBBBA	One, Big, Beautiful Bill Act
OSP	Office of Servicewide Penalties
PMFOL	Payor Master File On-line
PRC	Penalty Reason Codes
RAR	Revenue Agent's Report
RCA	Reasonable Cause Assistant
RRTA	Railroad Retirement Tax Act
SA	Special Agent
SAC	Special Agent in Charge
SB/SE	Small Business/Self-Employed
SC	Status Code
SFR	Substitute for Return
SSA	Supervisory Special Agent
TAS	Taxpayer Advocate Service
TBOR	Taxpayer Bill of Rights
TC	Transaction Code
TE/GE	Tax Exempt and Government Entities
TFRP	Trust Fund Recovery Penalty

TIN	Taxpayer Identification Number
TPEA	Trade Preferences Extension Act

IRM 4.23.9.1.7 - The "Related Resources" subsection has been revised to ensure that the most up-to-date supporting documents, systems, and external materials are readily available to facilitate correct application of the policy. To achieve this, several improvements were made, including: rewriting paragraphs to make them clear, concise, and well-organized, allowing readers to quickly find, understand, and apply the information on their first read, correcting and updating hyperlinks (URLs) to ensure accuracy and reliability, and reformatting hyperlinks to plain language, making it easier for readers to access and navigate to the relevant resources.

(1) The following table lists the primary sources of guidance:

Source	Title	Description of Guidance
IRM 20.1	Penalty Handbook	This IRM provides the policy and procedures for civil penalty administration by the IRS.
IRM 25.1	Fraud Handbook	This IRM provides comprehensive direction to IRS employees on how to recognize, develop, and handle tax fraud.
IRM 4.2.2	Disaster Assistance Relief	This IRM provides comprehensive direction to IRS employees for making, communicating, and documenting compliance relief determinations when a taxpayer has been affected by a federally declared disaster and may qualify for relief from compliance activity.
IRM 4.10.6	Penalty Considerations	This IRM provides techniques for examiners to recognize, develop and finalize penalty determinations. It also discusses common taxpayer defenses and furnishes guidelines for documenting workpapers.
IRM 4.23	Employment Tax	This provides servicewide instructions for employees of all operating divisions involved with the correct filing, reporting, and payment of employment taxes. IRM 4.23 serves as the foundation for consistent administration of employment taxes by various IRS operating divisions.

(2) Other helpful information sources include:

- Employment Tax Small Business Knowledge Base provides guidance, resources and information for ET examiners to aid in identifying, developing, and resolving employment tax issues.
- Specialist Referral System can be used by any employee, regardless of operating division. In addition to requesting assistance or a referral, SRS may be used to submit informal questions or to request a consultation with an employment tax specialist to discuss employment tax potential in an examination.
- Contacts, Tools, and Training provides contact information and program assignments for SB/SE ET Policy Analysts and SB/SE ET group contacts and areas of coverage.

(3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the IRC, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3). For additional information about the TBOR see IRC 7803(a)(3) . For additional information about TBOR, see Pub 5170 , Taxpayer Bill of Rights or Taxpayer Bill of Rights.

(4) The Taxpayer Advocate Service (TAS) is an independent organization within the IRS, led by the National Taxpayer Advocate, that helps taxpayers and protects taxpayer rights. TAS offers free help to taxpayers when a tax problem is causing a financial difficulty, when they've tried and been unable to resolve their issue with the IRS, or when they believe an IRS system, process, or procedure just isn't working as it should. TAS strives to ensure that every taxpayer is treated fairly and knows and understands their rights under the TBOR. TAS has at least one taxpayer advocate office located in every state, the District of Columbia, and Puerto Rico.

(5) IRS employees are required to protect the privacy of sensitive but unclassified (SBU) data for taxpayers and personnel, including personally identifiable information (PII), such as federal tax information (FTI), tax return, financial, and employment information regardless of format. For further information, see the Privacy, Government Liaison and Disclosure (PGLD) maintained knowledge base homepage.

IRM 4.23.9.4(1) - Employee Benefits, Exempt Organizations, and Employment Taxes (EEE) Counsel has revised paragraph (1) to improve transparency and help examiners understand the approval of initial penalty determinations.

(1) IRC 6751(b)(1) states, in general, that no penalty under the IRC 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. At this time, the Secretary has not designated any higher-level official to approve initial determinations.

Note: See IRM 20.1.1.2.3.1, Timing of Supervisory Approval, for information related to the timing of supervisory approval.

IRM 4.23.9.4(2) - EEE Counsel has revised paragraph (e) to improve transparency and help examiners understand what is exempt from the management approval requirement.

(2) IRC 6751(b)(2) exempts from the managerial approval requirement:

- Additions to tax under IRC 6651 for FTF a tax return or to pay tax and
- Penalties that are automatically calculated through electronic means.

IRM 4.23.9.4(3) - EEE Counsel has recommended paragraph (3) be added to define "automatically through electronic means."

(3) A penalty is automatically calculated through electronic means if an IRS computer program automatically generates a notice to the taxpayer that proposes the penalty. If the taxpayer responds in writing or otherwise to the automatically generated notice and challenges the proposed penalty or amount of tax to which the penalty is attributable, and an IRS employee considers the response before the penalty is assessed or a notice of deficiency is issued that includes the penalty, the penalty is no longer considered automatically calculated through electronic means.

IRM 4.23.9.4(4) - The paragraph instructs examiners to document the case file to ensure consistent, verifiable compliance with IRC 6751(b). All subsequent paragraphs have been renumbered.

(4) For the timing of the supervisory approval refer to IRM 20.1.1.2.3.1, Timing of Supervisory Approval, and IRM 20.1.5.2.1, Supervisory Approval of Penalties - IRC 6751 Procedural Requirements.

IRM 4.23.9.4(5) - Revised paragraph (5) to improve transparency and help taxpayers understand how to access documents relevant to a penalty determination.

(5) The examiner must document the approval of the penalty.

Reminder: The use of a penalty approval form is recommended (for example, Lead Sheet 300, Civil Penalty Approval Form, SAIN 011 Lead Sheet, Form 4700, signed comment on Form 5464, Form 8278, or Form 5701). It is recommended the use of an electronic approval

on penalty lead sheets and taxpayer agreement documents to enhance record integrity, supervisory accountability, and evidentiary reliability.

IRM 4.23.9.7(2) - Revised paragraph (2) to provide a plain language definition of negligence.

(2) Negligence means failing to act as a reasonable person would, including: :

- Not making a reasonable effort to follow tax laws,
- Not exercising ordinary care when preparing tax returns, or
- Not keeping adequate records.

Note: The term **disregard** includes careless, reckless, or intentional disregard. The determination that negligence applies in any employment tax case is a combined judgment by the examiner and supervisor.

IRM 4.23.9.12(8) - Added a brief instruction to explain the one-time nature of FTA would improve taxpayer understanding and reduce future confusion or repeat requests.

(8) If the FTA waiver or abatement applies and there is no TC 290 for zero with penalty reason code "018", "020", or "021", , the examiner must offer the FTA waiver or abatement to the taxpayer and clearly explain why it applies, even if the taxpayer does not specifically request it. The explanation should also inform the taxpayer that FTA is a one-time administrative waiver for the applicable period and MFT.

Note: IRM 20.1.1.3.6.1 provides additional information on when an FTA conclusion will not apply.

IRM 4.23.9.13(1) - Moved information regarding reasonable cause in paragraph (1) to its own subsection IRM 4.23.9.13.1. Simplified paragraph (1) to have information regarding IRC 6721 and IRC 6722. Added a reminder to apply IRC 6751 procedures.

(1) Civil penalties (Information Return Penalties) may be asserted for failure to comply with information reporting requirements. The primary civil penalties that apply to information returns are:

- Failure to file correct information returns (IRC 6721), and
- Failure to furnish correct payee statements (IRC 6722).

Note: The penalty for not filing a correct information return is separate from the penalty for not furnishing the correct statement to the payee. If the taxpayer doesn't file a correct Form 1099 and doesn't furnish a correct Form 1099 to the payee, then both penalties will apply.

Reminder: The assertion of information return penalties requires the personal, written approval of the examiner's immediate supervisor. Refer to IRM 4.23.9.4, Managerial Approval, IRM 20.1.5.2.1, Supervisory Approval of Penalties – IRC 6751 Procedural Requirements, and IRM 20.1.1.2.3.1, Timing of Supervisory Approval for more information regarding the supervisory approval requirement.

IRM 4.23.9.13(4) - Removed note from paragraph (4).

(4) By law, the Form(s) W-2 for back year examinations are delinquent. Only Form(s) W-2C that are filed by the last day of January of the following year are considered timely filed and not be subject to a penalty. Therefore, if reasonable cause does not exist, the examiner must prepare and enclose a penalty case file in addition to the employment tax case file for delinquent Form(s) W-2. For instructions refer to IRM 4.23.8.12, Information Return Penalty Case File.

IRM 4.23.9.13.1 - Subsection added titled "Reasonable Cause for Penalties for Failure to File Certain Information Returns or Furnish Certain Statements." The contents of this paragraph are from paragraph of IRM 4.23.9.13.

(1) To avoid penalties for failing to file information returns or furnish statements, the entity must show "reasonable cause" for the failure, and not just willful neglect. To qualify, the entity must provide a written statement, under penalty of perjury, explaining the reasonable cause for the failure. For more information, refer to IRM 20.1.7.12.1, Reasonable Cause, and the Penalties Knowledge Base - Information Returns.

IRM 4.23.9.13.2 - The subsection has been revised to update and simplify the instructions. As part of this revision, the reporting threshold amount has been updated from "\$600 or more" to "total at the threshold amount under IRC 6041A or greater during the year." This change is consistent with the requirements of the OBBBA, specifically Section 70433. The reporting threshold amount will be subject to annual adjustments for inflation, starting after calendar year 2026. They also incorporate OBBBA Section 70201(f), which expands the IRC information reporting requirements for certain payments of cash tips beginning in tax year 2025, and OBBBA Section 70202(c), which expands the IRC information reporting requirements for certain payments of qualified overtime compensation beginning in tax year 2025.

The revision incorporate the electronic filing requirements set forth in Treas. Reg. 301.6011-2.

(1) If the following four conditions are met, a payor must generally report a payment on Form 1099-NEC, Nonemployee Compensation, as nonemployee compensation:

- The payor made the payment to someone who is not their employee,
- The payor made the payment as remuneration for services in the course of their trade or business (including government agencies and nonprofit organizations),
- The payor made the payment to an individual, partnership, estate, or (for some payments), a corporation, and
- The payor made reportable payments during the year to a payee totaling at least the threshold amount under IRC 6041A during the year.

Note: See the General Instructions for Certain Information Returns (Forms 1097, 1099, 1098, 3921, 3922, 5498, and W-2G) for the adjusted reporting threshold for a given year.

(2) Payers must file a copy of all Forms 1099-NEC prepared and furnished to recipients for a calendar year with a Form 1096, Annual Summary and Transmittal of U.S. Information Returns, to the IRS on or before January 31 of the year succeeding such calendar year for which payments were made regardless of how they are submitted. Payers must provided a Form 1099-NEC to the recipients by January 31 of the year succeeding such calendar year for which they are made. See Treas. Reg. 1.6041-6(b).

Note: If the due date for filing a return falls on a Saturday, Sunday, or legal holiday, then the payer may file the return on the next business day.

(3) Payers required to file 10 or more information returns in a calendar year are required to file them electronically. The 10-or-more requirement is calculated by aggregating certain information returns including Form 1099 series, Form 1042-S and Form W-2 filed with Social Security Administration. For further information, refer to Treas. Reg. 301.6011-2.

(4) OBBBA (Public Law 119-21) created information return reporting requirements for no tax on tips (Section 70201(f)) and no tax on overtime (Section 70202(c)).

- a. For no tax on tips, the employer must report the amount of cash tips the employee received and their qualifying position.
- b. For no tax on overtime, the employer must report the amount qualified overtime compensation.

Note: Employers may qualify for transitional relief for tax year 2025 from the new information reporting requirements for cash tips and qualified overtime compensation see Notice 2025-62. For more information refer to the Transitional Penalty Relief for

New Information Return Reporting Under OBBBA page on the Penalties Knowledge Base.

IRM 4.23.9.13.3 - This subsection has been rewritten to improve clarity and readability. These updates ensure that the instructions and guidance are current and easily accessible, helping promote consistent and accurate application of the policy. The revision incorporate the electronic filing requirements set forth in Treas. Reg. 301.6011-2. They also incorporate OBBBA Section 70201(f), which expands the IRC information reporting requirements for certain payments of cash tips beginning in tax year 2025, and OBBBA Section 70202(c), which expands the IRC information reporting requirements for certain payments of qualified overtime compensation beginning in tax year 2025.

(1) An employer must make and furnish a Form W-2 to employees for remuneration paid during the calendar year. The Form W-2 must show, among other information, the total amount of wages paid subject to withholding of income tax, the total amount of wages paid subject to FICA tax (including Additional Medicare Tax), and the total amounts of income tax and FICA tax (including Additional Medicare Tax) withheld from wages for each employee in a calendar year. Refer to IRC 6051(a) and Treas. Reg. 31.6051-1 for more information.

(2) Generally, the time for furnishing Form(s) W-2 to the employee for a calendar year is on or before January 31 of the year succeeding such calendar year. For more information refer to Treas. Reg. 31.6051-1(d).

Note: If an employee who has been terminated before the end of the calendar year requests their employer to provide their Form W-2 earlier, the employer is required to furnish it within 30 days of the employee's request or 30 days after the final wage payment, whichever occurs later.

(3) An employer must submit a copy of all Form(s) W-2 made and furnished to employees, along with a completed Form W-3, Transmittal of Wage and Tax Statements, with the Social Security Administration. Generally, Form W-2 must be filed on or before January 31 of the year succeeding such calendar year for which they are made regardless of how they are filed. Refer to Treas. Reg. 31.6051-1 for more information .

(4) Payers required to file 10 or more information returns in a calendar year are required to file them electronically. The 10-or-more requirement is calculated by aggregating certain information returns including Form 1099 series, Form 1042-S and Form W-2 filed with Social Security Administration. For further information, refer to Treas. Reg. 301.6011-2.

(5) One, Big, Beautiful Bill Act (OBBBA) (Public Law 119-21) created information return reporting requirements for no tax on tips (Section 70201(f)) and no tax on overtime (Section 70202(c)).

- a. For no tax on tips, the employer must report the amount of cash tips the employee received and their qualifying position.
- b. For no tax on overtime, the employer must report the amount qualified overtime compensation.

Note: Employers may qualify for transitional relief for tax year 2025 from the new information reporting requirements for cash tips and qualified overtime compensation see Notice 2025-62. For more information refer to the Transitional Penalty Relief for New Information Return Reporting Under OBBBA page on the Penalties Knowledge Base.

(6) If an employee's original Form W-2 had errors, a Form W-2C, Corrected Wage and Tax Statement, must be provided to them. It must be furnished to employees whenever the originally issued Form W-2 was incorrect. The Form W-2C and a completed Form W-3C, Transmittal of Corrected Wage and Tax Statements, must be submitted to the Social Security Administration on or before the date the information returns for the period that correction is made would be due.

IRM 4.23.9.13.4 - This subsection has been rewritten to improve clarity and readability. The content of paragraph (2) was replaced with a link to the primary source, IRM 20.1.7.8.3, Exceptions and Special rules. Paragraph (5) was added to provide a reference to Notice 2025-62. The notice provides penalty relief for tax year 2025 from the new information reporting requirements under OBBBA Section 70201(f) for cash tips and qualified overtime compensation under OBBBA Section 70202(c) to employers and other payers for not filing correct information returns and not providing correct payee statements to employees and other payees.

(1) IRC 6721 imposes a penalty for FTF correct and timely information return including in the proper format and electronically, when required.

Note: No more than one IRC 6721 penalty can be imposed with respect to an information return even if there is more than one failure on the same information return (for example, a return was filed late and with incorrect TIN). When a return is filed with multiple failures and the penalty amounts differ, the higher penalty will be imposed.

Note: Examiners may use the Information Returns Penalty Table of Contents on the Penalties Knowledge Base.

(2) If the failure to timely file correct information returns is due to intentional disregard of the filing requirements, there is no maximum limit on the amount of penalties. See IRM 4.23.9.13.5.

(3) An exception for de minimis failures is provided in IRC 6721(c) and outline in IRM 20.1.7.8.3 , Exceptions and Special Rules.

(4) IRC 6721(d) provides lower limitations for persons with gross receipts of not more than \$5 million. See IRM 4.23.9.13.5.

(5) Notice 2025-62 provides penalty relief for tax year 2025 from the new information reporting requirements for cash tips and qualified overtime compensation under OBBBA. IRS employees should consider this relief before asserting penalties for FTF correct information returns or furnish correct payee statements related to those new reporting requirements. For more information refer to Transitional Penalty Relief for New Information Return Reporting Under OBBBA page on the Penalties Knowledge Base.

IRM 4.23.9.13.5 - The title of the subsection was revised to "Penalty for Failure to Furnish Correct Payee Statements." This subsection has been rewritten to improve clarity and readability. The content of paragraph (2) was replaced with a link to the primary source, IRM 20.1.7.8.3, Exceptions and Special rules. Paragraph (5) was added to provide a reference to Notice 2025-62. The notice provides penalty relief for tax year 2025 from the new information reporting requirements under OBBBA Section 70201(f) for cash tips and qualified overtime compensation under OBBBA Section 70202(c) to employers and other payers for not filing correct information returns and not providing correct payee statements to employees and other payees.

(1) IRC 6722 imposes a penalty for failure to furnish a correct and timely payee statement.

Note: No more than one IRC 6722 penalty will be imposed with respect to an information return, even if there is more than one failure on the same information return (for example, a return was filed late and with incorrect TIN).

Note: Examiners may use the Information Return Penalty Tool (Excel) on the Penalties Knowledge Base - Information Returns.

(2) If the failure to furnish correct information returns is due to intentional disregard of the requirements, there is no maximum limit on the amount of penalties. See IRM 4.23.9.13.5.

(3) An exception for de minimis failures as provided by IRC 6722(c) and outline in IRM 20.1.7.9.2 , Exceptions and Special Rules.

(4) IRC 6722(d) provides lower limitations for persons with gross receipts of not more than \$5 million. See IRM 4.23.9.13.5.

(5) Notice 2025-62 provides penalty relief for tax year 2025 from the new information reporting requirements for cash tips and qualified overtime compensation under OBBBA. IRS employees should consider this relief before asserting penalties for FTF correct information returns or furnish correct payee statements related to those new reporting requirements. For more information refer to Transitional Penalty Relief for New Information Return Reporting Under OBBBA page on the Penalties Knowledge Base.

IRM 4.23.9.13.6 - This subsection has been rewritten to improve clarity and readability. The information has been reorganized and supplemented with direct links to key source materials.

(1) The applicable penalty rates and maximum penalties for businesses with gross receipts of \$5 million or less depending on the required filing date of the return or statement for returns required to be filed and statements required to be furnished can be found at Penalties Knowledge Base or Exhibit 20.1.7-2 , IRC 6721 & IRC 6722 Penalty Rates for Small Businesses with Gross Receipts Less Than or Equal to \$5 Million. The penalty rates are adjusted for inflation and applicable to each code sections 6721 and 6722 separately.

(2) The applicable penalty rates and maximum penalties for businesses with gross receipts of more than \$5 million depending on the required filing date of the return or statement for returns required to be filed and statements required to be furnished can be found at Penalties Knowledge Base or Exhibit 20.1.7-1, IRC 6721 & IRC 6722 Penalty Rates for Large Businesses and Government Entities (Other Than Federal Entities) with Gross Receipts Over \$5 Million (Average annual gross receipts for the most recent 3 taxable years). The penalty rates in this table are adjusted for inflation and applicable to each code sections 6721 and 6722 separately.

(3) For the exceptions to information returns penalties, which includes safe harbor for certain de minimis errors:

- a. IRC 6721 refer to IRM 20.1.7.8.3, Exceptions and Special Rules
- b. IRC 6722 refer to IRM 20.1.7.9.2, Exceptions and Special Rules

IRM 4.23.9.18 - Subsection has been added titled "Penalty for Erroneous Claim for Refund or Credit." This subsection provides instructions and guidance on the erroneous claim for refund or credit penalty under IRC 6676. The addition of this subsection is a result of changes made by the OBBBA, specifically Section 70605(f), which amended IRC 6676. The amendment expanded the scope of the penalty by replacing the reference to "income tax" with "income or employment tax." This new subsection aims to provide clarity and guidance on the application of this penalty.

(1) IRC 6676 imposes a penalty when a taxpayer submits a claim for refund or credit of income or employment tax for an excessive amount, and there is no reasonable cause for the claimed tax treatment.

Note: The penalty under IRC 6676 applies to claims for credit or refund that arises from a taxpayer filing an original return, an amended return, claim, or any other form or writing that contends the taxpayer made an overpayment of tax for a particular tax year. The penalty does not apply to requests for abatement.

(2) The penalty under IRC 6676 shall apply to claims for credit or refund for employment tax only if they were filed after July 4, 2025.

(3) Examiners must consider the applicability of the IRC 6676 penalty when a claim for refund is disallowed in full or part. They must document in the workpapers the reason(s) for asserting or not asserting the IRC 6676 penalty, including any reasonable-cause considerations. Their immediate supervisor must personally approve in writing the initial determination to assert the penalty. For more information regarding the supervisory approval requirement refer to:

- IRM 4.23.9.4, Managerial Approval,
- IRM 20.1.5.20.4.1, Penalty Assertion,
- IRM 20.1.5.2.1, Supervisory Approval of Penalties – IRC 6751 Procedural Requirements,
- IRM 20.1.1.2.3, Approval Requirements for Penalty Assessments, and
- IRM 20.1.1.2.3.1, Timing of Supervisory Approval.

(4) The penalty is 20 percent of the excessive amount claimed. The excessive amount is defined as the amount of the claim for refund or credit that exceeds the amount allowable for any taxable year. The penalty shall not apply to any portion of the disallowed claim for refund or credit that is subject to penalties under IRC 6662, 6662A, or 6663.

(5) Case procedures:

- a. **Deficiency Procedures:** The IRC 6676 penalty should be included on an examination deficiency report when determination of the penalty depends on the determination of a deficiency. The term "deficiency" typically does not apply to employment taxes (see IRC 6211). An exception occurs when there is an IRC 7436 issue.

Note: The IRC 6676 penalty amount is to be manually written in the penalty section of the employment tax examination report forms with a reference to "IRC 6676 Penalty" until such time the report writing application is revised.

- b. **Non-Deficiency Procedures:** In all other cases in which the IRC 6676 penalty is applicable, the penalty is not dependent on the existence of a deficiency and is therefore assessable without following deficiency procedures. See IRM 20.1.5.20.5, Case Procedures WITHOUT Deficiency Procedures.

(6) To avoid uncertainty, the IRC 6676 penalty should be assessed within three years of the date that the claim for refund or credit was filed. The Assessment Statute Expiration Date (ASED) for assessment of an erroneous claim penalty can be extended using Form 872-EC, Consent to Extend the Time on Assessment—Section 6676 Erroneous Claim for Refund or Credit Penalty. For more information, see IRM 20.1.5.20.2, Statute Consideration.

(7) For more information regarding this penalty, refer to IRM 20.1.5.20, IRC 6676, Erroneous Claim for Refund or Credit Penalty.

IRM 4.23.9 - Editorial changes were made throughout the IRM to improve clarity, readability, and eliminate redundancies. Updates included correcting website addresses, legal references, titles, spelling, grammar, and IRM references. Web and email addresses were replaced with plain language hyperlinks to enhance accessibility and user experience.