



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

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MEMORANDUM FOR AREA DIRECTORS, FIELD EXAMINATION

FROM: Heather J. Yocum */s/ Heather J. Yocum*  
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SUBJECT: Procedures for Assessing IRC 6698 and IRC 6699 Penalties

This memorandum issues interim guidance for assessing [IRC 6698](#), *Failure to File Partnership Return*, and [IRC 6699](#), *Failure to File S Corporation Return*, penalties until [IRM 4.10.6](#), *Penalty Considerations*, is published. Please distribute this information to all affected employees within your organization.

**Background:** Examiners will no longer establish separate penalty cases in Examination Returns Control System (ERCS) for [IRC 6698](#) and [IRC 6699](#) penalties. Instead, the penalties will be assessed under the applicable tax module (Master File Tax (MFT) 02 or MFT 06) and tax year of the entity being examined. Examiners must maintain all documentation (including the penalty lead sheet) associated with the penalty assessment in the RGS case file of the partnership, S corporation or U.S. Real Estate Mortgage Investment Conduit (REMIC).

**Procedural Change:** Effective 07/13/2023, examiners must assess [IRC 6698](#) and [IRC 6699](#) penalties using partial assessment procedures in [Attachment 1 – Interim Guidance SBSE-04-0723-0014](#), and guidance in [IRM 20.1.2.4.4.1](#), *Procedures for Assessment or Abatement After 01/01/2022*, and [IRM 20.1.2.6.4.1](#), *Procedures for Assessment or Abatement After 01/01/2022*.

**Effect on Other Documents:** This guidance will be incorporated into [IRM 4.10.6](#), *Penalty Considerations*, by a date not to exceed two years from the date of this memorandum.

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

Attachment 1

Distribution: [IRS.gov](#)

## Attachment 1 – Interim Guidance: SBSE-04-0723-0014

The following changes are hereby effective as of the date of this memorandum for IRM 4.10.6.X.

### 4.10.6.X IRC 6698 and IRC 6699 Penalty Overview

(1) Generally, failure to file penalties under [IRC 6698](#), *Failure to File Partnership Return*, and [IRC 6699](#), *Failure to File S Corporation Return*, are assessed by Field Examination when:

- The taxpayer does not meet the criteria in [Notice 2022-36](#), *Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020*, (relief under Notice 2022-36 does not apply to returns filed after September 30, 2022);
- Reasonable cause (see [IRM 4.10.6.X.1\(2\)](#)) and first time abate (FTA) (see [IRM 4.10.6.X.1\(3\)](#)) relief aren't applicable;
- The correct penalty amount was not assessed when the delinquent [Form 1065](#), *U.S. Return of Partnership Income*; [Form 1066](#), *U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return*; or [Form 1120-S](#), *U.S. Income Tax Return for an S Corporation*, return was processed;
- A substitute for return (SFR) transaction code (TC) 150, *Return Filed & Tax Liability Assessed*, is posted on the module and a delinquent [Form 1065](#), [Form 1066](#), or [Form 1120-S](#), is secured by the examiner during an audit (see [IRM 4.4.9.6](#), *Delinquent Return Received After SFR TC 150 Posted at MF*, for guidance on processing the return) or the case is closed agreed or unagreed without securing a return (see [IRM 4.12.1.8.4](#), *Substitute for Return*, and [IRM 4.4.9.5](#), *SFR*, for additional guidance);

**Note:** If a delinquent return is secured and there is no SFR TC 150 on the module, the examiner must process the return following the procedures in [IRM 4.4.9.4](#), *Delinquent Return Secured – No TC 150 Posted*.

- For late filed returns, the statute of limitations has not expired prior to assessment of the penalty. See [IRM 20.1.2.2.8](#), *Restrictions on Assertions*.

**Note:** There is no statute of limitations for assessing any penalty for filing late or paying late when a return has not been filed by the taxpayer.

### 4.10.6.X.1 IRC 6698 and IRC 6699 Penalty Consideration

(1) Prior to asserting an [IRC 6698](#) or [IRC 6699](#) penalty, the examiner must verify the penalty was not previously assessed by researching either BMFOLT or TXMODA. See [IRM 20.1.2.4.1\(4\) & \(5\)](#), *Assertion Criteria*, and [IRM 20.1.2.6.1\(4\) & \(5\)](#), *Assertion Criteria*, for applicable transaction codes and penalty reference numbers (PRN).

(2) [IRC 6698](#) and [IRC 6699](#) penalties are subject to reasonable cause relief. The examiner must consider if the taxpayer meets the reasonable cause relief provision prior to assessing [IRC 6698](#) and [IRC 6699](#) penalties. See [IRM 20.1.1.3.2](#), *Reasonable Cause*; [IRM 20.1.2.4.3](#), *Penalty Relief*; [IRM 20.1.2.6.3](#), *Penalty Relief*, and [IRM 20.1.2.4.3.1](#), *Revenue Procedure 84-35*, for additional guidance. If the taxpayer qualifies for reasonable cause relief, the examiner must take the following steps when closing the case:

- a. On [Form 5344](#), *Examination Closing Record*, Item 2, *Penalty Reason Code*, include the appropriate penalty reason code (PRC) from the first table in [Exhibit 20.1.1-2](#), *Penalty Reason Code Chart*.
- b. On [Form 3198](#), *Special Handling Notice for Examination Case Processing*, check *Other Instructions* and include: "Taxpayer met criteria for reasonable cause relief. Enter PRC from Item 2 of Form 5344."

(3) [IRC 6698\(a\)\(1\)](#) and [IRC 6699\(a\)\(1\)](#) penalties are subject to first time abate relief. The examiner must consider if the taxpayer meets the FTA relief provision prior to assessing [IRC 6698\(a\)\(1\)](#) and [IRC 6699\(a\)\(1\)](#) penalties and if FTA relief is applicable follow all procedures in [IRM 20.1.1.3.3.2.1](#), *First Time Abate (FTA)*, and [IRM 20.1.1.5.1](#), *Master File Penalty Reason Codes*. If the taxpayer qualifies for FTA relief, the examiner must take the following steps when closing the case:

- a. On [Form 5344](#), Item 2, *Penalty Reason Code*, include either PRC 018 or 020; see [IRM 20.1.1.3.3.2.1\(15\)](#), for guidance on which PRC to use.
- b. On [Form 3198](#) check *Other Instructions* and include: "Taxpayer met criteria for first time abate. Enter PRC from Item 02 of Form 5344."

(4) The examiner must document the consideration of [IRC 6698](#) and [IRC 6699](#) penalties, including assertion or non-assertion, on Lead Sheet 300-1. See [IRM 4.10.9.7.8](#), *Workpapers: Documenting Penalties*, for additional guidance.

**Reminder:** When asserting an [IRC 6698](#) or [IRC 6699](#) penalty, the examiner must create a "New Issue" in the partnership's or S corporation's RGS case file and use the generic lead sheet to create a penalty issue lead sheet. See [Documenting Penalties - Creating a Penalty Issue](#); [IRM 4.10.15.7.9.1](#), *Issue Types*; [IRM 4.10.15.7.10\(2\)](#), *Workpapers/Adjustments – Penalties*; and [IRM 4.10.9.6.2](#), *Issue Lead Sheets*, for additional information.

#### **4.10.6.X.2**

##### **IRC 6698 and IRC 6699 Managerial Approval**

(1) [IRC 6698](#) and [IRC 6699](#) penalties must be approved (in writing) by the immediate supervisor of the individual making the initial determination (i.e., the examiner). See [IRM 20.1.1.2.3\(2\)](#), *Approval Prerequisite to Penalty Assessments*.

(2) Approval is documented on the *Civil Penalty Approval Form* (Tab 2 within *Lead Sheet 300, Civil Penalty and Approval Form (LS 300)*), with the applicable penalty listed in the Primary Position section:

- [IRC 6698](#), *Failure to File Partnership Return*, or
- [IRC 6699](#), *Failure to File S Corporation Return*.

(3) The examiner must save the signed *Civil Penalty Approval Form* (Tab 2 within *Lead Sheet 300*) in RGS Office Documents (OD) and ensure the file is named correctly (e.g., 300-01.02 – 6698 Penalty Approval). See [RGS File Naming Conventions Job Aid](#) for additional information.

#### **4.10.6.X.3**

##### **IRC 6698 and IRC 6699 Penalty Computation**

(1) The examiner should compute the penalty using the [Penalty Computation Tool](#). See [IRM 20.1.2.4.2](#), *Penalty Computation*, and [IRM 20.1.2.6.2](#), *Penalty Computation*, for additional guidance.

(2) The examiner should save the penalty explanation in the [Penalty Computation Tool](#) as a PDF in the RGS OD folder and ensure the file is named correctly with the appropriate reference code and descriptive name (e.g., 501-02 – 6698 Penalty Computation). See [RGS File Naming Conventions Job Aid](#) for additional information.

(3) Once the penalty amount is computed, the examiner must use partial assessment procedures to assess the penalty. See [IRM 4.10.6.X.4](#), *IRC 6698 and IRC 6699 Penalty Assessment*, and [IRM 4.10.6.X.5](#), *IRC 6698 and IRC 6699 Partial Assessment Package*.

#### **4.10.6.X.4**

##### **IRC 6698 and IRC 6699 Penalty Assessment**

(1) [IRC 6698](#) and [IRC 6699](#) penalties are processed as partial assessments under the applicable tax module (Master File Tax (MFT) 02 or MFT 06) and tax year of the entity being penalized.

**Note:** [IRC 6698](#) and [IRC 6699](#) penalties have post-assessment appeal rights. See [4.10.6.X.6](#), *IRC 6698 and IRC 6699 Post-Assessment Appeal Rights*, for additional guidance.

(2) The examiner must use [Form 5344](#) to make the penalty assessment. When the assessment posts, it will be reflected as a TC 240, *Assessment of Miscellaneous Civil Penalty*, on the entity's tax module.

#### **4.10.6.X.4.1**

#### **IRC 6698 and IRC 6699 Partial Assessment Package**

(1) To submit a partial assessment for [IRC 6698](#) or [IRC 6699](#) penalties, the examiner must manually complete [Form 5344](#) and [Form 3198](#) following the procedures outlined in the [IRC 6698 & IRC 6699 Partial Assessment Job Aid](#).

(2) The examiner must e-Fax [Form 5344](#) and [Form 3198](#) to Memphis CCP at 855-235-6795, noting in the subject line of the e-Fax cover sheet “Partial Assessment – IRC 66XX.”

(3) IDRS should be monitored to ensure the penalty is properly assessed.

(4) Once the partial assessment is processed, the examiner must save the acknowledged [Form 5344](#) received from CCP in RGS Case File Documents (CFD) and ensure the file is named correctly (e.g., CLOSING – F5344 6698 Partial Assessment). See [RGS File Naming Conventions Job Aid](#) for additional information.

**Caution:** The case **cannot** close from the group prior to the [IRC 6698](#) or [IRC 6699](#) penalty posting to the tax module (MFT 02 or MFT 06). Therefore, the examiner must assess the applicable penalty as early in the examination as possible.

#### **4.10.6.X.5**

#### **IRC 6698 and IRC 6699 Taxpayer Notification**

(1) [IRC 6751\(a\)](#), *Computation of Penalty Included in Notice*, requires each penalty notice include the name of the penalty, applicable IRC section, and a computation of the penalty. [Letter 6580](#), *IRC 6698 Penalty Notification* and [Letter 6581](#), *IRC 6699 Penalty Notification*, provide the information required by IRC 6751(a), as well as payment and appeal rights information.

(2) After the assessment is made, the examiner must issue [Letter 6580](#) for [IRC 6698](#) penalties or [Letter 6581](#) for [IRC 6699](#) penalties to the taxpayer and include a copy of [Pub 5](#), *Your Appeal Rights and How to Prepare a Protest if You Disagree*. When applicable, the examiner must also send a copy of the letter to the taxpayer’s representative.

#### **4.10.6.X.6**

#### **IRC 6698 and IRC 6699 Post-Assessment Appeal Rights**

(1) The taxpayer has post-assessment appeal rights for [IRC 6698](#) and [IRC 6699](#) penalties. After the penalty is assessed and the taxpayer receives notification, the taxpayer has an opportunity to pay the penalty in full or submit a formal written protest requesting a conference with the Independent Office of Appeals (Appeals) to challenge the examiner’s findings.

(2) For additional guidance on [IRC 6698](#) and [IRC 6699](#) post-assessment Appeals rights, see [IRM 20.1.2.4.4.1\(3\)](#) and [IRM 20.1.2.6.4.1\(3\)](#).

#### 4.10.6.X.7

#### IRC 6698 and IRC 6699 Protested Penalties

(1) Prior to closing the case, the examiner must determine if the taxpayer will protest the [IRC 6698](#) or [IRC 6699](#) penalty. If the taxpayer intends to protest the penalty, the examiner must ensure the taxpayer submits a formal written protest. The examiner must document all actions on [Form 9984](#), Examining Officer's Activity Record.

**Note:** The taxpayer may submit one protest for all unagreed issues, including the [IRC 6698](#) or [IRC 6699](#) penalty, even though it is not included on the audit report.

(2) Once the formal written protest is received, the examiner must determine if the protest is adequate. See [Pub 5](#) for additional guidance regarding the adequacy of a formal written protest.

(3) Since the [IRC 6698](#) or [IRC 6699](#) penalty is not included on the audit report, the examiner must notate the following on [Form 3198](#) under Forward to Technical Services:

- Check *Unagreed to Appeals*
- Check *Other* and include: "Protested IRC 6698 penalty in the amount of \$XXXX.XX" or "Protested IRC 6699 penalty in the amount of \$XXXX.XX."

This ensures Appeals is aware the taxpayer protested the [IRC 6698](#) or [IRC 6699](#) penalty.

**Note:** Appealed [IRC 6698](#) and [IRC 6699](#) cases are closed in Status 21 to Technical Services.