

## IRM PROCEDURAL UPDATE

**DATE: 08/04/2016**

**NUMBER: sbse-20-0816-1273**

**SUBJECT: Intentional Disregard Penalty**

**AFFECTED IRM(s)/SUBSECTION(s): 20.1.7.3.2**

**CHANGE(s):**

**IRM 20.1.7.3.2(7) discusses the method to compute the intentional disregard penalty under IRC 6721(e)(2) related to returns or statements that were filed on incorrect media**

1. The Intentional Disregard of the Rules and Regulations penalty applies when the facts and circumstances show that the filer knowingly or willfully failed to comply with the requirements of IRC 6721.
2. Intentional disregard occurs when a filer who knows, or should know of a rule or regulation, chooses to ignore its requirements. The facts should show the filer:
  - a. Was required to file,
  - b. Knew or should have known of the requirement to file, and
  - c. Consciously chose not to file or recklessly disregarded (i.e., ignored) the duty to file the information return.
3. Treas. Reg 301.6721-1(f)(3)(i) provides that a pattern of failures indicates intentional disregard. The greater the number of failures, the greater the likelihood some of those failures could be due to intentional disregard.
4. Additional indications of the existence of intentional disregard are:
  - o Did the filer correct the failure promptly after the discovery of the failure,
  - o Did the filer correct the failure within thirty days after notification of the failure by the IRS, and
  - o Did the filer avoid an administrative inconvenience or was the cost of compliance greater than an IRC 6721 penalty?
5. For instance, intentional disregard may exist when it would be less expensive for the filer to pay the penalties under IRC 6721 rather than to comply with the filing requirements of Treas. Reg. 301.6721-1(f)(3)(i).
6. The Intentional Disregard of the Rules and Regulations penalty is \$100 (for returns required to be filed by December 31, 2010) for each information return required to be correctly filed, or if greater:
  - a. 10 percent of the total amount required to be reported on the information returns for dividends, patronage dividends, interest, fishing boat operators, royalties, and wage and tax statement per IRC 6721(e)(2)(A) , or

- b. 5 percent of the total amount required to be reported on the information returns for brokers, exchange of partnership interest, or disposition of donated property payments per IRC 6721(e)(2)(B).

**NOTE:** For returns required to be filed on or after January 1, 2011 and before January 1, 2016, the \$100 amount in paragraph (6) above increases to \$250. For returns required to be filed on or after January 1, 2016, the amount increases to \$500, subject to annual inflationary adjustment.

- 7. When the intentional disregard is due to filing on incorrect media as required by IRC 6011(e) (see IRM 20.1.7.6, *Regulations Requiring Returns on Magnetic Media*), the method to compute the aggregate amount of the items required to be reported correctly under either IRC 6721(e)(2)(A) or IRC 6721(e)(2)(B) is as follows:
  - a. Step (1): Take the average of the amounts reported on all the returns or statements that were incorrectly paper-filed for the calendar year.
  - b. Step (2): Multiply the average from step (1) by the number of returns that are subject to penalty (i.e., the number of paper-filed returns above 250).
  - c. Step (3): Multiply step (2) by the applicable percentages in either IRC 6721(e)(2)(A) or IRC 6721(e)(2)(B).
  - d. Step (4): Multiply the number of returns subject to penalty by \$500 (for returns and statements required to be filed after December 31, 2015, subject to annual inflationary adjustments).
  - e. Step (5): Compare the result in step (3) and (4), and assess the greater amount.
- 8. Form 8300 -The intentional disregard penalty for failing to file a correct Form 8300 under IRC 6050I(a) is the greater of:
  - a. \$25,000, or
  - b. The amount of cash required to be reported in the transaction up to \$100,000.

The penalty applies to cash amounts exceeding \$10,000 received by a trade or business (as defined by IRC 162).

The information required to be provided by the recipient of the cash includes: the name, address, and TIN of the person providing the cash; the amount of cash received; and the date and nature of the transaction.

The Form 8300 is required to be filed within 15 days of the receipt of the reportable amount.

**NOTE:** The intentional disregard penalty on Form 8300 is subject to a pre-assessment administrative appeal. Generally this penalty will only be assessed as a result of an area office examination. See IRM 4.26.10.11, *Penalties*, for guidance on penalty applicability.

9. There is **no maximum dollar limitation** for the Intentional Disregard of the Rules and Regulations Penalty.
10. No more than one penalty per return can be imposed even if there is more than one failure on the same information return. However, where a return is filed with multiple failures and the penalty amounts differ, the higher penalty will be imposed.

**EXAMPLE:** Only one penalty may be imposed on a return that is filed both late and incomplete. If the failure to provide the information is due to intentional disregard, but the late filing is not, the intentional disregard penalty should be imposed.