



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.11.8

JUNE 14, 2023

EFFECTIVE DATE

(06-14-2023)

PURPOSE

- (1) This transmits revised IRM 8.11.8, Miscellaneous Penalties.

BACKGROUND

- (1) This section contains general information about Miscellaneous Penalties worked by the IRS Independent Office of Appeals (Appeals).

MATERIAL CHANGES

- (1) Added new IRM 8.11.8.1, Program Scope and Objectives, and related sections containing internal control information required by IRM 1.11.2.2.5, Address Management and Internal Controls.
- (2) TBOR content updated based on guidance from the Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration). See IRM 8.11.8.1.1, Background.
- (3) Added a reference to IRM 25.30.2, Service Level Agreement between the IRS Independent Office of Appeals and the Taxpayer Advocate Service. See IRM 8.11.8.1.6, Related Resources.
- (4) Added instructions on Appeals coordinated issue (ACI) procedures for IRC 6695A Penalty cases. See IRM 8.11.8.4.1, ATE Consideration of IRC 6695A.
- (5) Made editorial changes (including grammar, spelling, citations, and minor clarifications) throughout this IRM.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 8.11.8 dated 10/24/14.

AUDIENCE

Appeals

Steven M. Martin
Director, Case and Operations Support

8.11.8

Miscellaneous Penalties

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8.11.8.1
(06-14-2023)
Program Scope and Objectives

- (1) Purpose: This revised IRM section describes the consideration of miscellaneous penalties by the IRS Independent Office of Appeals (Appeals). Specifically, IRM 8.11.8:
 - a. Gives general information about miscellaneous penalties worked in Appeals;
 - b. Provides procedures for new penalty receipts and closings; and
 - c. Provides procedures specific to miscellaneous penalties.
- (2) Audience: The primary users of this IRM section are Appeals Technical Employees (ATEs).
- (3) Policy Owner: Policy, Planning, Quality and Analysis (PPQ&A) is under the Director of Case and Operations Support (C&OS).
- (4) Program Owner: Appeals Policy is the program office responsible for providing technical and procedural guidance to the Appeals organization, and is under the Director, PPQ&A.
- (5) Contact Information: Appeals employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM.

8.11.8.1.1
(06-14-2023)
Background

- (1) This IRM adheres to Penalty Policy Statement P-20-1, which addresses fair and equitable implementation and application of penalty provisions, and requires all Service functions to develop procedures that promote:
 - Consistency in the application of penalties compared to similar cases;
 - Fair and impartial analysis of the facts in each case; and
 - The proper application of the law to the facts of the case.
- (2) As stated in IRC 7803(e)(3), the Appeals mission is to resolve Federal tax controversies without litigation on a basis that is fair and impartial to both the Government and the taxpayer, promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws, and enhances public confidence in the integrity and efficiency of the IRS. Appeals accomplishes its mission by considering protested and Tax Court cases and negotiating settlements in a manner which ensures Appeals employees act in accord with the Taxpayer Bill of Rights (TBOR) in every interaction with taxpayers. The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, 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), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

8.11.8.1.2
(06-14-2023)
Authority

- (1) IRC Subtitle F, Chapter 68, contains most of the civil penalty provisions.
- (2) IRM 1.2.1.12.1, Policy Statement 20-1 (formerly P-1-18), Penalties are used to enhance voluntary compliance, sets forth the Service's position regarding penalties.
- (3) IRM 20.1, Penalty Handbook, provides servicewide instructions for working penalty cases.

8.11.8.1.3
(06-14-2023)
Responsibilities

- (1) The Director, C&OS is the executive responsible for Appeals' policy and procedural guidance.
- (2) The Director, PPQ&A is responsible for program oversight.
- (3) The policy analyst shown on the Product Catalog page as the "Content POC (Point of Contact)" is the assigned author of this IRM.

8.11.8.1.4
(06-14-2023)
Program Reports

- (1) PPQ&A provides trends and data analyses and detailed summary reports for Appeals.

8.11.8.1.5
(06-14-2023)
Terms and Acronyms

- (1) See IRM Exhibit 8.1.1-1, Common Terms Used in Appeals, for common terms and definitions used in IRM Part 8, Appeals. Terms listed in that exhibit are not included in this section.
- (2) The table below lists commonly used acronyms and their definitions:

Acronym	Definitions
CDP	Collection Due Process
CSC	Case Summary Card
PENAP	Post-assessment Penalty Appeal

8.11.8.1.6
(06-14-2023)
Related Resources

- (1) This IRM is the primary source of guidance on this program.
- (2) This IRM is supplemented by the information in IRM 20.1, Penalty Handbook, and its sections.
- (3) In accordance with IRM 25.30.2.3, Statement of Commitment, Appeals will work collaboratively with the Taxpayer Advocate Service (TAS) to enhance the taxpayer experience. For more information, see IRM 25.30.2, Service Level Agreement between the IRS Independent Office of Appeals and the Taxpayer Advocate Service.

8.11.8.2
(10-28-2013)
**IRC Section 6673 -
Sanctions and Costs
Awarded by the Courts**

- (1) The IRC 6673(a)(1) penalty is imposed by the Tax Court against a taxpayer who initiates proceedings in the court primarily to delay the case or whose position in the proceedings is frivolous or groundless, or who has unreasonably failed to pursue available administrative remedies. See IRM 8.22.8.10.2 , IRC 6673(a)(1) Tax Court Imposed Penalty, for more information on Collection Due Process (CDP) cases, Assessment of Civil Penalties under IRC 6673 .
- (2) The IRC 6673(a)(2) penalty can be imposed by the Tax Court against any person admitted to practice before the Tax Court who has unreasonably and vexatiously multiplied the proceedings. See IRM 20.1.10.8, IRC 6673 - Sanctions and Costs Awarded by Courts.
- (3) These cases are controlled on Appeals Centralized Database System (ACDS) with TYPE Code = OTHPEN.

- (4) ATEs may be assigned post-assessed IRC 6673 penalty cases for consideration if the taxpayer appeals after assessment or during consideration of a CDP case.

8.11.8.2.1
(10-24-2014)
Account and Processing Support (APS) Card-in and Closing Procedures for IRC 6673 Penalties

- (1) Account and Processing Support (APS) card-in and closing procedures for IRC 6673 Penalties has been moved to IRM 8.20.5.32.7 , IRC § 6673 - Sanctions and Costs Awarded by the Courts Penalty (Reconsideration) Case Carding, and IRM 8.20.7.20.15.2 , CDP Assessment of Civil Penalties under IRC 6673 Closing Procedures, respectively.

8.11.8.2.2
(06-14-2023)
Appeals Technical Employee (ATE) Consideration of IRC 6673

- (1) The penalty is imposed on various types of cases which include both deficiency and CDP cases. See IRM 8.22.8.10.2, IRC 6673(a)(1) Tax Court Imposed Penalty, for more information on IRC 6673(a)(1).
- (2) APS will assess the IRC 6673(b)(2) penalty promptly upon receipt of the judgment (i.e., order of the court).
- (3) The penalty amount imposed by the Tax Court under IRC 6673(a)(1) cannot exceed \$25,000, is assessed at the same time as the deficiency, and is collected as part of the tax.
- (4) See the IRC 6673 webpage within the *IRS Knowledge Management Webpage*.

8.11.8.3
(06-14-2023)
IRC 6702 - Frivolous Tax Submissions

- (1) IRC 6702 provides for civil penalties for frivolous tax submissions. Penalties assessed under IRC 6702(a) or IRC 6702(b) are not subject to administrative appeal rights.
- (2) Taxpayers seeking judicial review of an IRC 6702(a) or IRC 6702(b) penalty must first fully pay the entire penalty and then file a claim for refund with the IRS within two years of the date of payment. If the IRS does not issue a determination allowing or disallowing the claim within six months, the taxpayer may file suit in the U.S. district court having jurisdiction or U.S. Court of Federal Claims. If the IRS issues a disallowance letter, the taxpayer generally has two years from the date the disallowance letter was sent to the taxpayer to file suit contesting this penalty in the U.S. district court having jurisdiction or U.S. Court of Federal Claims.
- (3) Taxpayers may seek a reduction of the frivolous tax submission penalty under IRC 6702(d). Per section 5.03 of Rev. Proc. 2012-43, penalty reduction requests are also not subject to administrative appeal. For more information on IRC 6702 reduction, see IRM 8.22.8.10.4, IRC 6702(a) and 6702(b) Frivolous Return/Submission and IRC 6682 Questionable W-4 Penalties.
- (4) See IRM 20.1.10, Miscellaneous Penalties, for general information on IRC 6702 penalties, and IRM 8.22.8, Liability Issues and Relief from Liability, for information on IRC 6702 penalty issues raised as part of a CDP case.

8.11.8.4
(10-01-2012)
**IRC 6695A - Substantial
and Gross Valuation
Misstatements
Attributable to Incorrect
Appraisals**

- (1) IRC 6695A applies to any person who prepared an appraisal of the value of property and who knew, or reasonably should have known, the appraisal would be used in connection with a return or claim for refund and that appraisal results in a substantial valuation misstatement (within the meaning of IRC 6662(e)), a substantial estate or gift tax valuation understatement (within the meaning of IRC 6662(g)), or a gross valuation misstatement (within the meaning of IRC 6662(h)) with respect to such property. See IRM 20.1.12, Penalties Applicable to Incorrect Appraisals, for more information.
- (2) These cases are controlled on ACDS with TYPE Code = 6695A.
- (3) The penalty may apply whenever value is at issue, such as in the following:
 - Charitable contribution
 - Estate and Gift taxes

8.11.8.4.1
(06-14-2023)
**ATE Consideration of
IRC 6695A**

- (1) The ATE should research the *Specialized Examination Programs & Referrals Website* to determine if the issue is an Appeals coordinated issue (ACI) and if there is a Subject Matter Expert designated to the issue.
- (2) If the penalty is an ACI, the ATE must:
 - Add Feature Code "AI" when the coordinated issue is first identified. Either APS or the ATE may update ACDS with the Feature Code.
 - Make a referral to Appeals Technical Guidance through their manager upon assignment or preliminary review using Form 13381, Appeals Technical Guidance/International Referral. For more information on coordinated issues, see IRM 8.2.1.6, Preliminary Review of a Case - ATE, and IRM 8.7.3, Domestic and International Operations Programs.
 - Secure review and concurrence from the Technical Specialist before finalizing any resolution of the issue, including the penalty computation.

The ATE works appeals of IRC 6695A penalties in the same manner as appeals of any other proposed liability not subject to the deficiency procedures of subchapter B of Chapter 63 of the Internal Revenue Code.

- (3) IRC 6695A is an immediately assessable penalty, with post-assessment (but pre-payment) appeal rights. See IRM 20.1.12.10, Appeal Rights - IRC 6695A Cases.
- (4) There should be two case files: the related income or estate and gift tax case file, and the penalty case file. There should be two separate work unit numbers for each.
- (5) The amount of the IRC 6695A penalty is the lesser of:
 - a. the greater of 10 percent of the amount of the underpayment (defined by IRC 6664(a)) attributable to the misstatement or \$1,000 or
 - b. 125 percent of the gross income received from the preparation of the appraisal.
- (6) See Appraiser Penalties - IRC 6695A webpage within the *IRS Knowledge Management Webpage* and IRM 20.1.12, Penalties Attributable to Incorrect Appraisals.
- (7) The ATE will close the case using the following documents:

- Form 5402, Appeals Transmittal and Appeals Case Memo,
- Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties,
- Form 3870, Request for Adjustment, and
- Letter 1364, Full Disallowance of Refund Claim or Letter 1363, Partial Disallowance of Refund Claim, for notification of full or partial disallowance. ,

8.11.8.5
(10-01-2012)
**IRC 6709 - Penalties with
Respect to Mortgage
Credit Certificates**

- (1) This penalty is for making a material and negligent misstatement in any verified written statement made under penalties of perjury with respect to the issuance of a mortgage credit certificate.
- (2) These cases are controlled on ACDS with TYPE Code = 6709.
- (3) See IRM 20.1.10.15, IRC 6709 - Penalties with Respect to Mortgage Credit Certificates.

8.11.8.6
(10-24-2014)
**IRC 6721- Failure to File
Correct Information
Returns**

- (1) The term "information return" means any statement, form, or return as described in 26 CFR 301.6721-1(g) and IRC 6724(d)(1).
- (2) Cases involving Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, violations are controlled on ACDS with TYPE Code = 6721 (6721 Bank Secrecy Case and Primary Business Code 217). Change if necessary or submit the correction to APS.
- (3) See IRM 20.1.7, Information Return Penalties, for more information.

