



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

20.1.6

MAY 22, 2024

EFFECTIVE DATE

(05-22-2024)

PURPOSE

- (1) To transmit revised IRM 20.1.6, Penalty Handbook, Preparer and Promoter Penalties.

MATERIAL CHANGES

- (1) IRM 20.1.6.2.2, Penalty Reference Numbers: updated table and a note below with PRN 624 changes effective 01/01/2025.
- (2) IRM 20.1.6.5.7, Failure to Be Diligent in Determining Eligibility - IRC 6695(g): updated title, deleted due diligence requirements and examples for old tax years ending on or before December 31, 2011 and moved overview items for due diligence requirements to this subsection.
- (3) IRM 20.1.6.5.7.1, Failure to Be Diligent in Determining Eligibility for Earned Income Tax Credit - IRC 6695(g) for Tax Years Ending on or After December 21, 2011 and Before January 1, 2016: deleted overview items for due diligence requirements from this subsection and moved to IRM 20.1.6.5.7.
- (4) IRM 20.1.6.5.7.2, Failure to Be Diligent in Determining Eligibility for Earned Income Tax Credit - IRC 6695(g) for Tax Returns or Claims for Refund for Tax Years Beginning After December 31, 2015 and Before January 1, 2018: deleted overview items for due diligence requirements from this subsection and moved to IRM 20.1.6.5.7.
- (5) IRM 20.1.6.5.7.3, Failure to Be Diligent in Determining Eligibility for Earned Income Tax Credit - IRC 6695(g) for Tax Returns or Claims for Refund for Tax Years Beginning After December 31, 2017: deleted overview items for due diligence requirements from this subsection and moved to IRM 20.1.6.5.7.
- (6) IRM 20.1.6.6(2), Program Action Cases Overview: updated paragraph to include if an understatement of tax is present, examiners should consider penalties on the individual taxpayer and return preparer.
- (7) IRM 20.1.6.6, Program Action Cases Overview: simplified content to avoid restating IRM 4.1.10, Return Preparer Program Coordinator, information.
- (8) IRM 20.1.6.16, Appeal Rights: included referral guidance when Appeals employees have a return preparer penalty issue.
- (9) IRM 20.1.6.19(5), Third Party Contacts - IRC 7602(c): simplified content by deleting duplication from IRM 4.11.51, Return Preparer Program and linking to reference instead.
- (10) Exhibit 20.1.6-1, IRC 6695 Base and Inflation Rates: updated chart to show the IRC 6695 (a)-(g) inflationary rates for returns filed in 2025.
- (11) Updated the IRS Independent Office of Appeals title throughout IRM.
- (12) Editorial changes made throughout including correcting links, grammar and plain language.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 20.1.6 dated March 30, 2023.

AUDIENCE

All Small Business/Self Employed (SB/SE), Large Business & International (LB&I), Taxpayer Services (TS), Tax Exempt and Government Entities (TEGE) Examiners, Taxpayer Advocate Service (TAS), Office of Professional Responsibility (OPR), and IRS Independent Office of Appeals (Appeals) employees working with penalties.

Nicole Young Scott
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Small Business/Self-Employed

20.1.6

Preparer and Promoter Penalties

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20.1.6.1
(05-22-2024)
Program Scope and Objectives

- (1) **Purpose:** The purpose of this IRM section is to convey policy as set by the Office of Servicewide Penalties (OSP) as it relates to tax return preparer and promoter penalties.
- (2) **Audience:** This IRM provides guidelines to be followed by all operational and processing functions, servicewide.

Note: Some divisional IRMs provide supplemental guidance to address preparer and promoter penalties.
- (3) **Policy Owner:** The Business Support Office (BSO) is under Operations Support (OS). SB/SE is responsible for overseeing civil penalties, including tax return preparer and promoter penalties.
- (4) **Program Owner:** OSP is responsible for preparer and promoter penalty policy.
- (5) **Primary Stakeholders:** All organizations and business units who address preparer and promoter penalties
- (6) **Contact Information:** To recommend changes or make any other suggestions to this IRM, email OSP at *Servicewide Penalties Team. Also see IRM 1.11.6.5, Providing Feedback About an IRM Section - Outside of Clearance.

20.1.6.1.1
(03-30-2023)
Background

- (1) Tax return preparer and promoter penalties are important tools for IRS enforcement. Penalties provide the IRS with an important tool to enhance voluntary compliance by taxpayers. See IRM 1.2.1.12.1, Policy Statement 20–1 (Formerly P-1–18), Penalties are used to enhance voluntary compliance.

20.1.6.1.2
(05-22-2024)
Authority

- (1) Pertinent Internal Revenue Code (IRC) sections related to tax return preparers and promoters include:
 - IRC 6694
 - IRC 6695
 - IRC 6700
 - IRC 6701
 - IRC 6713
 - IRC 7402
 - IRC 7407
 - IRC 7408

20.1.6.1.3
(03-30-2023)
Roles and Responsibilities

- (1) IRM 20.1.6 provides servicewide policy for the administration of tax return preparer penalties and promoter penalties.
- (2) IRM 20.1.13 provides servicewide policy for the administration of material advisor and reportable transactions penalties.
- (3) IRS operating divisions/business unit (OD/BU) functions may develop additional guidance or reference materials for their specific OD/BU functional administrative needs. These reference materials must receive approval from OSP prior to distribution and must remain consistent with the following:
 - a. The procedures set forth in this IRM, and
 - b. The philosophy of Policy Statement 20-1. See IRM 1.2.1.12.1.

- (4) Overall responsibility for the penalty programs is assigned to the OSP. The OSP is charged with coordinating policy and procedures concerning the administration of penalty programs and ensuring consistency with the penalty policy statement.
- (5) Every function in the IRS has a role in proper tax return preparer and promoter penalty administration. It is essential each function conduct its operations with an emphasis on promoting voluntary compliance.
- (6) Examiners should keep in mind the following objectives when handling each tax return preparer and promoter penalty case:
 - a. Make a good decision from the onset. A wrong decision, even though eventually corrected, may have a negative impact on voluntary compliance.
 - b. Afford each taxpayer the opportunity to have the taxpayer's interests heard and considered.
 - c. Provide opportunity for incorrect decisions to be corrected.
 - d. Treat each case in an impartial and honest way.
 - e. Use each tax return preparer penalty and promoter penalty case as an opportunity to educate the taxpayer, help the taxpayer understand legal obligations and rights, assist the taxpayer in understanding procedural rights, and observe the taxpayer's procedural rights.
 - f. Promptly process and resolve each taxpayer's case.
- (7) All actions will be done in accordance with the Taxpayer Bill of Rights as listed in IRC 7803(a)(3).

Note: Additional information may be found at <https://www.irs.gov/taxpayer-bill-of-rights>.

- (8) Taxpayers may express concern having had difficulty obtaining a solution to a problem or timely and appropriate response to an inquiry. In these instances, see IRM 20.1.1.1.6.2, Taxpayer Advocate Service (TAS), for more information.

20.1.6.1.4
(05-22-2024)

**Program Management
and Review**

- (1) Every function in the IRS has a role in proper penalty administration. It is essential each function conduct its operations with an emphasis on promoting voluntary compliance. Appropriate business reviews should be conducted to ensure consistency with the penalty policy statement (Policy Statement 20-1) and philosophy. Attention should be directed to the coordination of penalty programs between offices and functions to ensure approaches are consistent and penalty information is used for identifying and responding to compliance problems.
- (2) Supervisors should continuously review information for trends which may suggest changes in compliance programs, training courses, educational programs, penalty design, and penalty administration. Supervisors should institute, on an ongoing basis, a quality review system to evaluate the timely and correct disposition of penalty cases and encourage consistent administration of penalties.

20.1.6.1.5
(05-22-2024)

Program Controls

- (1) Internal Management Document (IMD) Certification: this IRM is annually recertified as required by SPDER and regularly updated when new legislation or policy is published.

- 20.1.6.1.6
(05-22-2024)
Terms and Acronyms
- (1) Refer to Exhibit 20.1.6-2, Acronyms, for a list of acronyms used within this IRM section.
- 20.1.6.1.7
(10-13-2021)
Related Resources
- (1) Additional forms and resources include:
- Form 5809, Preparer Penalty Case Control Card, for operating divisions using Examination Returns Control System (ERCS).
- Note:** TE/GE penalty investigations will be controlled and established on Reporting Compliance Case Management System (RCCMS).
- Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, for assertion of various civil penalties.
 - Form 5816, Report of Tax Return Preparer Penalty Case, an examination report for IRC 6694/6695/6713 penalties.
 - Exhibit 20.1.6-1 for inflation adjusted penalty rates for applicable IRC sections contained within this IRM.
- 20.1.6.1.8
(05-22-2024)
Fair and Consistent Approach to Penalty Administration
- (1) The IRS's approach to tax return preparer and promoter penalty administration must ensure the following:
- a. **Accuracy:** The IRS must arrive at the correct conclusion for each penalty decision. Accuracy is essential. Erroneous penalty assessments and incorrect calculations confuse taxpayers and undermine the overall competency of the IRS.
 - b. **Impartiality:** IRS employees are responsible for administering penalties in an even-handed manner which is fair and impartial to both the government and the taxpayer.
 - c. **Consistency:** The IRS should apply the tax return preparer and promoter penalty equally in similar situations. Taxpayers base their perceptions about the fairness of the system on their own experience and the information they receive from the media and others. If the IRS does not administer penalties uniformly (guided by the applicable statutes, regulations, and procedures), overall confidence in the tax system is jeopardized.
 - d. **Representation:** Taxpayers must be given the opportunity to have their interests heard and considered. Employees need to take an active and objective role in case resolution so all factors are considered.
- 20.1.6.1.9
(05-22-2024)
Written Supervisory Approval of Penalty Assessments
- (1) IRC 6751(b), Approval of Assessment, provides, in general, no penalty under the 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. This provision is effective for notices issued and penalties assessed after December 31, 2000.
- Note:** See IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments, and IRM 20.1.1.2.3.1, Timing of Supervisory Approval, for further information.
- (2) Penalties asserted as listed in this IRM must secure supervisory approval in accordance with IRC 6751(b) and the manual provisions in the above Note.

20.1.6.2
(05-22-2024)
Penalty Case

- (1) To ensure there is not an already open program action case (PAC) or criminal investigation, the examiner should contact the tax return preparer coordinator (RPC) prior to starting a tax return preparer penalty investigation.
- (2) If an SB/SE Field examiner identifies behaviors for which return preparer penalties may apply under IRC 6694, Understatement of Taxpayer's Liability by Tax Return Preparer, or IRC 6695, Other Assessable Penalties with Respect to the Preparation of Tax Returns for Other Persons, the examiner must:
 - Document the taxpayer case file to reflect the return preparer's involvement in and responsibility for the preparation of the tax return, See IRM 4.10.9.7.10, Documenting Return Preparer Penalty Consideration, and
 - Submit a referral for consideration by the Return Preparer Penalty Working Group (RPPWG) or establish a return preparer penalty case.

Note: If a referral is submitted, the information will be considered with other available data and, if appropriate, a return preparer penalty case will be established for further development by the RPPWG. See IRM 4.11.51, Examining Officer's Guide (EOG), Return Preparer Program and Interim Guidance for Submitting Return Preparer Penalty Referrals.

- (3) When the determination is made a tax return preparer may be responsible for the understatement of tax, the examiner should appropriately document consideration of all penalties, in Lead Sheet 300 - Penalty Approval Form, or its functional equivalent.
- (4) When the examiner works the penalty case rather than referring the case to the RPPWG, upon supervisory approval, the separate tax return preparer penalty examination case will be controlled and established on ERCS or RCCMS for TE/GE cases. Appropriate approvals will be secured and documented in this case file as it is separate and distinct.
- (5) The following subsections are reminders for use of the Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties. This form must be signed by both the originator and supervisor. Forms not signed by both should be returned to the examiner for signature.

20.1.6.2.1
(03-30-2023)
Optional Penalty Case Referral to Return Preparer Penalty Working Group (RPPWG)

- (1) As of October 1, 2022, SB/SE field examiners may refer a preparer penalty case to the RPPWG instead of working the preparer penalty examination themselves.
- (2) SB/SE Field examiners submitting referrals need to complete the required taxpayer and preparer information on the RPPWG SharePoint site and submit. *Return Preparer Penalty Working Group (RPPWG) (sharepoint.com)*
- (3) Penalty case file actions for contacting LDC, CI and obtaining supervisory approval will be completed in the RPPWG.

20.1.6.2.2
(05-22-2024)
Penalty Reference Numbers

- (1) The applicable penalty reference number (PRN) is provided on Form 8278. Therefore, it is crucial the examiner always use the most current version of the form available from the Electronic Publishing Services catalog.
- (2) The PRN is used to generate the notice language the taxpayer receives.

- (3) The PRN is used to assess the penalty on Master File (MF) by posting a TC 240 on either Master File Tax (MFT) 13 for Business Master File (BMF) entities or MFT 55 for Individual Master File (IMF) entities.
- (4) The notice received by the taxpayer provides an explanation of the penalty being assessed (or references the explanation provided by the examiner), the amount due, and is the notice and demand required by IRC 6671 for payment and the other actions available.
- (5) The following is a list of the PRN's relating to this IRM:

IRC Section	Title	PRN	PRN effective 01/01/2025
6694(a)	Understatement of Taxpayer's Liability Due to Unreasonable Position	645	645
6694(b)	Understatement of Taxpayer's Liability Due to Willful or Reckless Conduct	650	650
6695(a)	Failure to Furnish Copy to Taxpayer	624	714
6695(b)	Failure to Sign Return	624	715
6695(c)	Failure to Furnish Identifying Number	624	716
6695(d)	Failure to Retain Copy or List	624	717
6695(e)	Failure to File Correct Information Returns	624	718
6695(f)	Negotiation of Check	626	626
6695(g)	Failure to be Diligent in Determining Eligibility for Certain Tax Benefits	627	627
6700	Promoting an Abusive Tax Shelter	628	628
6701	Aiding and Abetting the Understatement of a Tax Liability	631	631
6713	Disclosure or Use of Information by Tax Return Preparer	633	633

- (6) Computer programming is expected to be completed 01/01/2025 for the PRN 624 changes in the table above.

20.1.6.2.3
(03-30-2023)
**No-Change and
Discontinued
Investigation Cases**

- (1) When completing Form 8278, Column 9(c) should be blank for no-change and discontinued investigation cases. In addition, Column 9(d) corresponding to the affected penalty, should be 0.00.

Note: These instructions apply to all tax return preparer and promoter penalty no-change and discontinued investigation cases discussed in this IRM.

- (2) The Form 8278, Item 9(d) of 0.00 results in the PRN with a 0.00 amount posting to the MFT 55 (for IMF entities) or MFT 13 (for BMF entities) Civil Penalty Master File and the DLN of the administrative case file.

Note: This does not apply to program action cases. See IRM 4.1.10.4, Program Action Case Overview (PAC).

- 20.1.6.2.4
(05-16-2012)
Civil Penalty Name Line
- (1) Form 2363, Master File Entity Change, is not required to establish the civil penalty name line when the related MFT 30 filing status is married filing joint (MFJ).
 - (2) Form 8278 Item 1, Name of Taxpayer (single name) is used to establish the civil penalty for all MFT 55 accounts including taxpayers with an MFT 30, MFJ filing status.
 - (3) The civil penalty name line is automatically established using Form 8278, Items 1, 2, 3, 5, and 7 when there is an entity module.
 - a. Use IMFOL "E" for IMF and BMFOL "E" for BMF to verify there is an entity module for non-filers.
 - b. When there is not an entity module, complete Form 2363, Trans. Code 000, to create an entity. Complete the name, address, and EIN or SSN. Send to Centralized Case Processing (CCP) two weeks before closing the case.
- 20.1.6.2.5
(10-13-2021)
Soliciting Examination Payment
- (1) See IRM 4.20.1.3, Issue Resolution - Solicit Payment, for guidelines for using the tiered interview approach for soliciting payment, securing levy source information, and coordinating with Collection.
- 20.1.6.3
(03-30-2023)
Overview—Preparer and Promoter Penalties
- (1) There are two categories of penalties addressed in this IRM subsection. They are as follows:
 - Preparer penalties and actions to pursue injunction
 - Promoter penalties and actions to pursue injunction
- 20.1.6.3.1
(08-25-2020)
Preparer Penalties and Action to Pursue Injunction
- (1) Preparer penalties and actions to enjoin are as follows:
 - IRC 6694, Understatement of Taxpayer's Liability by Tax Return Preparer
 - IRC 6695, Other Assessable Penalties With Respect to the Preparation of Tax Returns for Other Persons
 - IRC 6701, Penalties for Aiding and Abetting Understatement of Tax Liability
 - IRC 6713, Disclosure or Use of Information by Preparers of Returns
 - IRC 7402, Jurisdiction of District Courts
 - IRC 7407, Action to Enjoin Tax Return Preparers
- 20.1.6.3.2
(08-25-2020)
Promoter Penalties and Action to Pursue Injunction
- (1) Promoter penalties and actions to enjoin are as follows:
 - IRC 6700, Promoting Abusive Tax Shelters, Etc.
 - IRC 6701, Penalties for Aiding and Abetting Understatement of Tax Liability
 - IRC 7402, Jurisdiction of District Courts
 - IRC 7408, Actions to Enjoin Specified Conduct Related to Tax Shelters and Reportable Transactions

20.1.6.4
(03-30-2023)
IRC 6694
**Understatement of
Taxpayer's Liability by
Tax Return Preparer**

- (1) Review IRM 20.1.6.19, Third Party Contacts—IRC 7602(c).
- (2) Estate and gift tax attorneys and LB&I, SB/SE, and TE/GE examiners should determine if tax return preparer penalties are warranted. The determination is based on all the facts and circumstances of the case including both oral testimony and written evidence developed during the examination process of the tax return prepared by the tax return preparer for the client.
- (3) SB/SE field examiners may refer IRC 6694 penalties to the RPPWG or work the penalty case themselves. All other examiners are to establish controls and work the penalty case, as appropriate.
- (4) Campus examination operations tax return preparer scheme referral procedures are in IRM 4.19.10.6, Potential Return Preparer Scheme Identification.
- (5) Determining whether or not to proceed with a tax return preparer penalty investigation is documented on the penalty lead sheet of the examination tax return preparer's client case file. When the determination is made that the tax return preparer may or may not be responsible for the understatement of tax use the appropriate penalty lead sheet for:
 - SB/SE Examination: Use Lead sheet 300-Civil Penalty Approval Form.
 - Estate and gift tax examiners: Use the penalty lead sheet in the Notebook Job Aid.
 - LB&I examiners: Use leadsheet SAIN 011 to document the decision to proceed or not.
 - Other BODs: Use a functional equivalent.
- (6) Disclosure guidelines preclude reference to an examination of another taxpayer in the tax return preparer's client case file. When the determination is made the tax return preparer may be responsible for the understatement of tax, in lead sheet 300-Penalty Approval Form, or its functional equivalent, consideration of all applicable penalties should be documented. Examiners must discuss their recommendations with their supervisor and secure approval before initiating a tax return preparer penalty investigation. See IRM 20.1.6.1.9, Written Supervisory Approval of Penalty Assessments for additional information regarding the documentation of approval by supervisors for penalties.

Note: Campus examination employees will document their tax return preparer penalty determination on Form 4700, Examination Workpapers.

- (7) If the supervisor approves the penalty investigation, the separate penalty examination case will be controlled and established on ERCS. Use Form 5809, Preparer Penalty Case Control Card, for operating divisions using ERCS. Form 5809 is signed by the supervisor and retained in the tax return preparer penalty case file. Appropriate approvals will be secured on this case file as well, as it is separate and distinct.

Reminder: TE/GE penalty investigations will be controlled and established on RCCMS.

20.1.6.4.1
(05-22-2024)
**IRC 6694 Penalties That
May Apply to a Tax
Return Preparer**

- (1) This section includes the following:
- IRC 6694(a), Understatement Due to Unreasonable Positions
 - IRC 6694(b), Understatement Due to Willful or Reckless Conduct
- Note:** See *Training Publication 26809-102*, Return Preparer Penalties IRC 6694 and 6695 (Student Guide), Catalog Number 74638Q.

20.1.6.4.2
(05-22-2024)
**Tax Return Preparer
Defined**

- (1) Section 8246 of The Small Business Work Opportunity Tax Act of 2007 (SBWOTA) amended IRC 7701(a)(36), Tax Return Preparer, expanding the definition of tax return preparer for periods after May 25, 2007, to any person (including a partnership or corporation) who prepares for compensation, or who employs one or more persons to prepare for compensation, all or a substantial portion of a tax return or claim for refund.
- (2) 26 CFR 301.7701-15(a) and various revenue rulings provide information on the definition of a tax return preparer, including nonsigning tax return preparers.
- (3) 26 CFR 301.7701-15(f) provides guidance on persons who are **not** tax return preparers.
- (4) See Chapter 1 of *Training Publication 26809-102*, Return Preparer Penalties IRC 6694 and 6695, Catalog Number 74638Q.
- (5) A nonsigning tax return preparer who prepares a schedule, entry, or portion constituting a substantial portion of the return may be considered a tax return preparer. In making the decision as to what constitutes a “substantial portion,” examiners should consider the size and complexity of the item relative to the taxpayer’s gross income and the size of the understatement attributable to the item in comparison to the taxpayer’s reported tax liability. To determine whether an individual is a nonsigning tax return preparer, see 26 CFR 301.7701-15(b)(2) and 26 CFR 301.7701-15(b)(3).
- (6) See IRC 7701(a)(36)(B), Tax Return Preparer, for exceptions to the general definition of tax return preparer.

20.1.6.4.3
(10-13-2021)
Firm Liability

- (1) **Prior to January 1, 2009**, regulations encompassed a “one preparer per firm” rule treating the signing preparer as the tax return preparer subject to the IRC 6694 penalty. Under the prior regulations, if there is no signer in a firm, the individual with overall supervisory responsibility for the advice given by the firm with respect to the return or claim is the non signer subject to penalty.
- (2) **After December 31, 2008**, 26 CFR 1.6694-1(b) changed the rule under previous regulations. During the course of identifying the individual who is primarily responsible for the position, the IRS may advise multiple individuals within the firm they may be deemed the individual within the firm who is primarily responsible for the position. A penalty, however, may only be assessed against the individual in the firm who is the primarily responsible tax return preparer. See 26 CFR 301.7701-15(b)(3).

20.1.6.4.4
(10-13-2021)
**Employers Subject to
IRC 6694 Penalty**

- (1) **For years after December 31, 2008**, 26 CFR 1.6694-2(a)(2) provides corporations, partnerships, and other firms who employ a tax return preparer may be subject to a penalty under IRC 6694(a).

- (2) A firm employing a tax return preparer subject to the penalty under IRC 6694 (or a firm in which the individual tax return preparer is a partner, member, shareholder, or other equity holder) is also subject to the penalty if, and only if, the following:
- a. One or more members of the principal management (or principal officers) of the firm or a branch office participated in or knew of the conduct proscribed by IRC 6694(a);
 - b. The corporation, partnership, or other firm entity failed to provide reasonable and appropriate procedures for review of the position for which the penalty is imposed; or
 - c. The corporation, partnership, or other firm entity disregarded its reasonable and appropriate review procedures through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) in the formulation of the advice, or the preparation of the return or claim for refund, that included the position for which the penalty is imposed.

20.1.6.4.5
(05-22-2024)
Rev. Proc. 2009-11
Section 3

- (1) Rev. Proc. 2009-11, Section 3, Returns and Claims for Refund Subject to the Section 6694 Penalty, identifies categories of returns to which the penalties under IRC 6694 apply. The categories are as follows:
- a. Income Tax Returns—Subtitle A (e.g., Form 1040, U.S. Individual Income Tax Return, Form 1041, U.S. Income Tax Return for Estates and Trusts, Form 1120, U.S. Corporation Income Tax Return)
 - b. Estate and Gift Tax Returns—Subtitle B (e.g., Form 706, U.S. Estate (and Generation-Skipping Transfer) Tax Return and Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return)
 - c. Employment Tax Returns—Subtitle C (e.g., Form 940, Employer’s Annual Federal Unemployment (FUTA) Tax Return, Form 941, Employer’s Quarterly Federal Tax Return, Form 943, Employer’s Annual Tax Return for Agricultural Employees)
 - d. Miscellaneous Excise Tax Returns—Subtitle D (e.g., Form 720, Quarterly Federal Excise Tax Return, Form 2290, Heavy Highway Vehicle Use Tax Return)
 - e. Alcohol, Tobacco, and Certain Other Excise Taxes—Subtitle E (e.g., Form 8725, Excise Tax on Greenmail)

Note: Rev. Proc. 2009–11, obsoleted Notice 2008-12, *IRB 2008-3 280*, Notice 2008-46, *IRB 2008-18 868*. Rev. Proc. 2009–11 modified and superseded the list of forms in *Notice 2008-13* and *IRB 2008-3 282*.

20.1.6.4.6
(10-13-2021)
IRC 6694(a)
Understatement Due to
Unreasonable Positions

- (1) SBWOTA both increased the penalty amount under IRC 6694(a) and made it applicable with respect to all tax returns, amended returns and claims for refund, including estate tax returns and gift tax returns, generation-skipping transfer tax returns, employment tax returns, and excise tax returns. SBWOTA and Tax Extenders and Alternative Minimum Tax Relief Act (TEAMTRA) also changed the standards of conduct return preparers must meet in order to avoid imposition of the IRC 6694(a) penalty. The tax return preparer penalty under IRC 6694(a) applies to tax returns and claims for refund filed after May 25, 2007, if there is an understatement of a taxpayer’s liability due to an unreasonable position, and either of the following:

- a. The position was properly disclosed, but there was no reasonable basis for the position, or
- b. The position was not properly disclosed and there was not substantial authority for the position.

- (2) SBWOTA increased the penalty applicable to IRC 6694(a), Understatement Due to Unreasonable Positions, to the greater of \$1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to returns, amended returns and claims for refund prepared after May 25, 2007.

20.1.6.4.7
(10-13-2021)
**IRC 6694(a)(2)—
Unreasonable Position**

- (1) The standard for the disclosed position is reasonable basis.
- (2) The standard for positions not disclosed is substantial authority if the position is not a tax shelter (as defined in IRC 6662(d)(2)(C)(ii)) or a reportable transaction to which IRC 6662A, Imposition of Accuracy-related Penalty on Understatements With Respect to Reportable Transactions, applies.

20.1.6.4.7.1
(05-22-2024)
**Reasonable
Basis—Standard for
Disclosed Position**

- (1) “Reasonable basis” has the same meaning as in 26 CFR 1.6662-3(b)(3) or any successor provision of the accuracy-related penalty regulations.
- (2) 26 CFR 1.6662-3(b)(3) states, “Reasonable basis is a relatively high standard of tax reporting, that is, significantly higher than not frivolous or not patently improper. The reasonable basis standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim. If a return position is reasonably based on one or more of the authorities set forth in 26 CFR 1.6662-4(d)(3)(iii) (taking into account the relevance and persuasiveness of the authorities, and subsequent developments), the return position will generally satisfy the reasonable basis standard[.]”

Note: Chapter 2 of *Training Publication 26809-102* Training Publication 26809-102 provides further guidance on this issue.

20.1.6.4.7.2
(10-13-2021)
**Substantial Authority
Standard for Positions
Not Disclosed**

- (1) The substantial authority standard is less stringent than the more likely than not standard (the standard is met when there is a greater than 50 percent likelihood of the position being upheld), but more stringent than the reasonable basis standard as defined in 26 CFR 1.6662-3(b)(3). See 26 CFR 1.6662-4(d)(2).
- (2) For tax shelters and reportable transactions to which IRC 6662A, Imposition of Accuracy-related Penalty on Understatements With Respect to Reportable Transactions, applies see IRM 20.1.6.4.9, Tax Shelters and Reportable Transactions.

20.1.6.4.8
(07-26-2017)
**Adequate Disclosure
Defined**

- (1) The criteria for adequate disclosure is outlined and defined in the following IRM sections:
 - a. See IRM 20.1.6.4.8.1, Signing Tax Return Preparer Adequate Disclosure.
 - b. See IRM 20.1.6.4.8.2, Nonsigning Tax Return Preparer Adequate Disclosure.
- (2) See 26 CFR 301.7701-15(b)(2) for definition of nonsigning tax return preparer.

20.1.6.4.8.1
(10-13-2021)
**Signing Tax Return
Preparer Adequate
Disclosure**

- (1) Disclosure of a position for which there is a reasonable basis, but not substantial authority is adequate if the signing tax return preparer meets the following standards:
- (2) The position is disclosed in accordance with 26 CFR 1.6662-4(f) on the following:
 - a. A properly completed and filed Form 8275, Disclosure Statement, or Form 8275-R, Regulation Disclosure Statement, as appropriate; or
 - b. On the tax return in accordance with the annual revenue procedure described in 26 CFR 1.6662-4(f)(2).
- (3) The tax return preparer provides the taxpayer with the prepared tax return including the disclosure in accordance with 26 CFR 1.6662-4(f).
- (4) For returns or claims for refund subject to penalties pursuant to IRC 6662, Imposition of Accuracy-related Penalty on Underpayments, other than the accuracy-related penalty attributable to a substantial understatement of income tax under IRC 6662(b)(2) and IRC 6662(d):
 - a. The tax return preparer advises the taxpayer of the penalty standards applicable to the taxpayer under IRC 6662, and
 - b. The tax return preparer also contemporaneously documents the advice in the tax return preparer's files.

20.1.6.4.8.2
(10-13-2021)
**Nonsigning Tax Return
Preparer Adequate
Disclosure**

- (1) Disclosure of a position for which there is a reasonable basis standard but does not satisfy the substantial authority standard is adequate if the nonsigning tax return preparer meets either of the following standards:
 - a. The position is disclosed in accordance with 26 CFR 1.6662-4(f) on a properly completed and filed Form 8275, Disclosure Statement, or Form 8275-R, Regulation Disclosure Statement, as applicable; or
 - b. The position is disclosed on the return in accordance with an annual revenue procedure described in 26 CFR 1.6662-4(f)(2).
- (2) If a nonsigning tax return preparer provides advice to a taxpayer with respect to a position for which there is a reasonable basis but does not satisfy substantial authority, disclosure of the position is adequate if:
 - a. The tax return preparer advises the taxpayer of any opportunity to avoid penalties under IRC 6662A, Imposition of Accuracy-related Penalty on Understatements With Respect to Reportable Transactions, that could apply to the position, if relevant, and of the standards for disclosure to the extent applicable.
 - b. The tax return preparer also contemporaneously documents the advice in the tax return preparer's files. The contemporaneous documentation should reflect the affected taxpayer has been advised by a tax return preparer in the firm of the potential penalties and the opportunity to avoid penalties through disclosure.
- (3) If a nonsigning tax return preparer provides advice to another tax return preparer with respect to a position for which there is a reasonable basis but not substantial authority, disclosure of the position is adequate if:
 - a. The tax return preparer advises the other tax return preparer disclosure under IRC 6694(a) may be required.

- b. The tax return preparer also contemporaneously documents the advice in the tax return preparer's files. The contemporaneous documentation should reflect the tax return preparer outside the firm has been advised disclosure under IRC 6694(a) may be required.

20.1.6.4.9
(05-22-2024)

**Tax Shelters and
Reportable Transactions**

- (1) Notice 2009-5, IRB 2009-3 309, provides TEAMTRA's standard of more likely than not for tax shelters and reportable transactions applies for taxable years ending after October 3, 2008.
 - a. It is reasonable to believe positions have a "more likely than not" chance of being upheld on their merits if a tax return preparer has analyzed the pertinent facts and authorities and concluded, in good faith, there is greater than a 50 percent likelihood the tax treatment will be upheld if the IRS challenges it.
 - b. The analysis prescribed by 26 CFR 1.6662-4(d)(3)(iii) (or any successor provision) for purposes of determining whether substantial authority is present applies for purposes of determining whether the more likely than not standard is satisfied. Whether a tax return preparer meets this standard will be determined based upon all facts and circumstances, including the tax return preparer's due diligence.
 - c. Notice 2009-5, IRB 2009-3 309, also provides an interim compliance rule for tax shelter transactions not listed or otherwise reportable under IRC 6662A, Imposition of Accuracy-related Penalty on Understatements With Respect to Reportable Transactions. A position will not be deemed an "unreasonable position" if there is substantial authority for the position and the tax return preparer advises the taxpayer of the penalty standards applicable to the taxpayer.

Note: These interim compliance rules do not apply to a position, described in IRC 6662A, that is a reportable transaction with a significant purpose of federal tax avoidance or evasion or a listed transaction.

20.1.6.4.10
(10-13-2021)

**Reasonable Cause
Exception**

- (1) The penalty under IRC 6694(a) will not be imposed if, considering all the facts and circumstances, it is determined the understatement was due to reasonable cause and the tax return preparer acted in good faith. See 26 CFR 1.6694-2(e). A tax return preparer may be found to have acted in good faith when the tax return preparer relied on the advice of a third-party who is not in the same firm as the tax return preparer and who the tax return preparer had reason to believe was competent to render the advice. The advice may be written or oral, but in either case the burden of establishing the advice was received is on the tax return preparer.
- (2) The other factors to consider include the following:
 - a. Nature of the error causing the understatement: Whether the error resulted from a provision so complex, uncommon, or highly technical a competent tax return preparer of returns or claims of the type at issue reasonably could have made the error. The reasonable cause and good faith exception does not apply to an error apparent from a general review of the return or claim for refund by the tax return preparer.
 - b. Frequency of errors: Whether the understatement was the result of an isolated error (such as an inadvertent mathematical or clerical error) rather than a number of errors. Although the reasonable cause and good

faith exception generally applies to an isolated error, it does not apply if the isolated error is so obvious, flagrant or material it should have been discovered during a review of the return or claim. Furthermore, the reasonable cause and good faith exception does not apply if there is a pattern of errors on a return or claim for refund even though any one error, in isolation, would have qualified for the reasonable cause and good faith exception.

- c. **Materiality of errors:** Whether the understatement was material in relation to the correct tax liability. The reasonable cause and good faith exception generally applies if the understatement is of a relatively immaterial amount. Nevertheless, even an immaterial understatement may not qualify for the reasonable cause and good faith exception if the error or errors creating the understatement are sufficiently obvious or numerous.
- d. **Preparer's normal office practice:** Whether the tax return preparer's normal office practice, when considered together with other facts and circumstances, such as the knowledge of the tax return preparer, indicates the error in question would rarely occur and the normal office practice was followed in preparing the return or claim in question. Such a normal office practice must be a system for promoting accuracy and consistency in the preparation of returns or claims and generally would include, in the case of a signing tax return preparer, checklists, methods for obtaining necessary information from the taxpayer, a review of the prior year's return, and review procedures. Notwithstanding the above, the reasonable cause and good faith exception does not apply if there is a flagrant error on a return or claim for refund, a pattern of errors on a return or claim for refund, or a repetition of the same or similar errors on numerous returns or claims.
- e. **Reliance on Advice of Others:** Whether the tax return preparer relied on the advice of a third-party who is not in the same firm as the tax return preparer and who the tax return preparer had reason to believe was competent to render the advice. The advice may be written or oral, but in either case the burden of establishing the advice was received is on the tax return preparer. A tax return preparer is not considered to have relied in good faith if the advice is unreasonable on its face, if the tax return preparer knew or should have known the third-party advisor was not aware of all relevant facts, or if the tax return preparer knew or should have known (given the nature of the tax return preparer's practice), at the time the tax return or claim for refund was prepared, the advice was no longer reliable due to developments in the law since the time the advice was given.
- f. **Reliance on generally accepted administrative or industry practice:** Whether the tax return preparer reasonably relied in good faith on generally accepted administrative or industry practice in taking the position that resulted in the understatement. A tax return preparer is not considered to have relied in good faith if the tax return preparer knew or should have known (given the nature of the tax return preparer's practice), at the time the return or claim for refund was prepared, that the administrative or industry practice was no longer reliable due to developments in the law or IRS administrative practice since the time the practice was developed.

20.1.6.4.11
(10-13-2021)

Penalty Computation

- (1) SBWOTA increased the IRC 6694(a) penalty for understatements due to unreasonable positions from \$250 to the greater of \$1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer from the preparation of a return or claim with respect to which the penalty was imposed. Examiners calculating the penalty using 50 percent of the income derived (or to be derived) by the tax return preparer from the preparation of a return or claim must elevate the calculation determination through the examiner's supervisor to the functional RPC. For SB/SE Examination, the area RPC is used in lieu of the functional RPC. The RPC will then consult with the appropriate local Counsel contact person.

20.1.6.4.12
(08-29-2019)

Understatement Due to Willful or Reckless Conduct—IRC 6694(b)

- (1) Standard of conduct for IRC 6694(b) remains the same for both pre- and post-SBWOTA.
- (2) There must be an understatement of liability for the penalty under IRC 6694(b) to be considered. It should be imposed when the following conditions are met:
 - a. Any part of the understatement was due to a willful attempt by a tax return preparer to understate the liability for tax on the return or claim; or
 - b. Reckless or intentional disregard of rules or regulations by a tax return preparer.
- (3) Prior to SBWOTA, IRC 6694(b) was applied only to income tax return preparers.
- (4) For information about IRC 6694(b) and referrals to the Office of Professional Responsibility (OPR), see IRM 20.1.6.12, Office of Professional Responsibility (OPR).
- (5) For statute of limitations information as it relates to IRC 6694(b), see IRM 20.1.6.18, Statute of Limitations.
- (6) For appeal rights information, see IRM 20.1.6.16, Appeal Rights.

20.1.6.4.12.1
(10-13-2021)

IRC 6694(b)—Burden of Proof

- (1) Under IRC 7491(c), the IRS bears the burden of production in any court proceeding with respect to the liability of any individual for a penalty. Under IRC 7427, Tax Return Preparers, the IRS bears the burden of proof on the issue of whether the tax return preparer willfully attempted to understate the tax liability.
- (2) A tax return preparer is considered to have recklessly or intentionally disregarded a rule or regulation if the tax return preparer takes a position on the return or claim for refund contrary to a rule or the tax return preparer knows of, or is reckless in not knowing of, the rule or regulation in question. A tax return preparer is reckless in not knowing of a rule or regulation if the tax return preparer makes little or no effort to determine whether a rule or regulation exists, under circumstances which demonstrate a substantial deviation from the standard of conduct a reasonable tax return preparer would observe in the situation.
- (3) The following are examples of willful or reckless conduct from 26 CFR 1.6694-3(d):
 - a. A taxpayer provided a tax return preparer with detailed check registers reflecting personal and business expenses. One of the expenses was for domestic help, and this expense was identified as personal on the check register. The tax return preparer knowingly deducted the expenses of the

taxpayer's domestic help as wages paid in the taxpayer's business. The tax return preparer is subject to the penalty under IRC 6694(b).

- b. A taxpayer provided a tax return preparer with detailed check registers to compute the taxpayer's expenses. However, the tax return preparer knowingly overstated the expenses on the return. After adjustments by the examiner, the tax liability increased significantly. Because the tax return preparer disregarded information provided in the check registers, the tax return preparer is subject to the penalty under IRC 6694(b).

20.1.6.4.12.2
(10-13-2021)
**Penalty
Computation—IRC
6694(b)**

- (1) SBWOTA increased the IRC 6694(b) penalty to the greater of \$5,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to returns, amended returns, and claims for refund prepared on or after May 26, 2007.
- (2) The PATH Act increased the IRC 6694(b) penalty to the greater of \$5,000 or 75 percent of income derived (or to be derived) by the tax return preparer with respect to returns, amended returns, and claims for refund prepared for tax years ending after December 18, 2015.
- (3) If both IRC 6694(a) and IRC 6694(b) penalties apply to a tax return preparer, the IRC 6694(b) penalty amount must be reduced by the IRC 6694(a) penalty amount per IRC 6694(b)(3), Reduction in Penalty.
- (4) Examiners should ensure the combined assessment of IRC 6694(a) and IRC 6694(b) penalties against a tax return preparer do not exceed the greater of \$5,000 or 75 percent of the income derived (or to be derived) by the tax return preparer with respect to returns, amended returns, and claims for refund prepared for tax years ending after December 18, 2015.
- (5) Examiners calculating the IRC 6694(b) penalty using 75 percent (or 50 percent) of the income derived (or to be derived) by the tax return preparer from the preparation of a return or claim must elevate the calculation determination through the examiner's manager to the functional RPC. The RPC will then consult with the appropriate local Counsel contact person.

Note: AT Examiners working authorized investigations are no longer required to submit penalty calculations to the RPC.

20.1.6.5
(03-30-2023)
**IRC 6695 Penalties That
May Apply to a Tax
Return Preparer**

- (1) Review IRM 20.1.6.19, Third Party Contacts - IRC 7602(c).
- (2) The IRC 6695 penalties only apply to tax return preparers. See IRM 20.1.6.4.2, Tax Return Preparer Defined. The following is a list of penalties found in IRC 6695:

Caution: The amounts listed below are base rates subject to an annual inflation index. Please consult Exhibit 20.1.6-1 for the most current rates. The penalty rates are based on the year in which the return was filed.

- a. IRC 6695(a), Failure to Furnish Copy to Taxpayer, a \$50 penalty will be asserted for each failure, with a maximum of \$25,000 per tax return preparer per calendar year;
- b. IRC 6695(b), Failure to Sign Return, a \$50 penalty will be asserted for each failure, with a maximum of \$25,000 per tax return preparer, per calendar year;

- c. IRC 6695(c), Failure to Furnish Identifying Number, no more than one penalty may be imposed with respect to a single return or claim for refund. A \$50 penalty will be asserted for each failure, with a maximum of \$25,000 per tax return preparer, per calendar year;
- d. IRC 6695(d), Failure to Retain Copy or List, a \$50 penalty will be asserted for each failure, with a maximum of \$25,000 to any return period;
- e. IRC 6695(e), Failure to File Correct Information Returns, the penalty is \$50 for each failure to file a return as required by IRC 6060, Information Returns of Tax Return Preparers, and \$50 for each failure to include a required item in the return. The maximum amount for any return period is \$25,000;
- f. IRC 6695(f), Negotiation of Check, the penalty is \$500 for each negotiated check. There is no maximum amount; and
- g. IRC 6695(g), Failure to be Diligent in Determining Eligibility for Certain Tax Benefits, any tax return preparer who fails to comply with the due diligence requirements of IRC 6695(g) will be charged a \$500 penalty for each failure. There is no maximum amount.

20.1.6.5.1
(10-13-2021)

**Failure to Furnish Copy
to Taxpayer-IRC 6695(a)**

- (1) The IRC 6695(a) penalty applies if the tax return preparer fails to comply with IRC 6107(a), Furnishing Copy to Taxpayer. Under IRC 6107(a) a tax return preparer is required to furnish a completed copy of the return or claim for refund to the taxpayer before (or at the same time) the return or claim for refund is presented to the taxpayer for signature.
 - a. This copy may be given to the taxpayer in any media, including electronic media, acceptable to both the taxpayer and the tax return preparer.
 - b. In the case of an electronically filed return, a complete copy of a taxpayer's return or claim for refund consists of the electronic portion of the return or claim for refund, including all schedules, forms, attachments, and jurats, which were filed with the IRS. The copy provided to the taxpayer must include all information submitted to the IRS to enable the taxpayer to determine what schedules, forms, electronic files, and other supporting materials have been filed with the return.
 - c. The copy, however, need not contain the identification number of the paid tax return preparer. The electronic portion of the return or claim for refund may be contained on a replica of an official form or on an unofficial form. On an unofficial form, however, data entries must reference the line numbers or descriptions on an official form. See 26 CFR 1.6107-1(a)(2).
- (2) If there is an employment arrangement between two or more tax return preparers, the requirement to furnish a copy only applies to the person who employs (or engages) one or more other tax return preparers. Similarly, if there is a partnership arrangement, the requirement to furnish a copy only applies to the partnership. See 26 CFR 1.6707-1(c).
- (3) The IRC 6695(a) penalty does not apply if the failure is due to reasonable cause and not due to willful neglect.
- (4) The penalty for failure to furnish a copy to the taxpayer will not be imposed solely if the following are true:
 - a. A person is a nonsigning tax return preparer under 26 CFR 301.7701-15(b)(2), or

- b. A person is a tax return preparer under 26 CFR 301.7701-15(b)(3) on account of having prepared another return (e.g., the partnership return) which affects the amounts reported on the return in question (e.g., the partner's return).
- (5) The IRC 6695(a) penalty will also not be imposed where a tax return preparer deletes certain information from the copy furnished to the taxpayer if the taxpayer holds an elected or politically appointed position with the government of the United States or a state or political subdivision thereof and who in order to carry out their official duties, has arranged their affairs so the taxpayer has less than full knowledge of the property held or of the debts they're responsible for. See 26 CFR 1.6695-1(a)(2).

20.1.6.5.2
(05-22-2024)
**Failure to Sign
Return—IRC 6695(b)**

- (1) The IRC 6695(b) penalty applies if the tax return preparer, who is required by regulations to sign the taxpayer's return or claim for refund, fails to sign the return or claim for refund that are not signed electronically, using the appropriate method prescribed by the Secretary after it is completed and before it is presented to the taxpayer for signature.
- a. In the case of electronically signed tax returns, the signing tax return preparer need not sign the return prior to presenting a completed copy of the return to the taxpayer. The signing tax return preparer, however, must furnish to the taxpayer all information that will be transmitted as the electronically signed tax return contemporaneously with furnishing the Form 8879, IRS e-file Signature Authorization. The information may be furnished on a replica of an official form. The signing tax return preparer shall electronically sign the return in the manner prescribed by the commissioner in forms, instructions, or other appropriate guidance. See 26 CFR 1.6695-1(b)(2). Also, see IRM 3.42.5.7.1.3, IRS e-file Signature Authorization Forms, for signatures on electronically filed returns.
 - b. If the tax return preparer required to sign the return or claim for refund is unavailable to sign, another tax return preparer must review the entire return or claim for refund and then sign the return or claim for refund. If more than one tax return preparer is involved in the preparation of the return or claim for refund, the tax return preparer with primary responsibility for the overall substantive accuracy of the return or claim for refund is the tax return preparer who must sign the return or claim for refund. See 26 CFR 1.6695-1(b)(1).
- (2) A signing tax return preparer must provide a signature on returns or claims for refund filed on or after January 1, 2009. Rev. Proc. 2009-11, IRB 2009-3 313, section 4.02, identifies categories of returns and claims for refund required to be signed by a tax return preparer in order to avoid a penalty under IRC 6695(b).
- (3) IRC 6695(b) no longer requires a manual signature. The IRS will permit tax return preparers to sign original returns and amended returns by rubber stamp, mechanical device, or computer software program. These alternative methods of signing must include either a facsimile of the individual tax return preparer's signature or the individual tax return preparer's printed name. Tax return preparers utilizing one of these alternative means are personally responsible for affixing their signatures to returns. See Notice 2004-54, IRB 2004-33 209. The signature requirement may also be satisfied if the tax return preparer

signs the completed return, makes a photocopy of the return, and the taxpayer signs and files the photocopy. See Rev. Rul. 78-370, 1978-2 C.B. 336.

- (4) If a tax return preparer is physically unable to sign a return because of a temporary or permanent disability, the IRC 6695(b) penalty should not be imposed if the words "Unable to Sign" are printed, typed, or stamped on the tax return preparer signature line. Also, the tax return preparer's name should be printed, typed, or stamped under the signature line after the return is completed, and before it is presented to the taxpayer for signature. See Rev. Proc. 79-7, 1979-1 C.B. 486.
- (5) The IRC 6695(b) penalty does not apply if the failure was due to reasonable cause and not due to willful neglect. If a tax return preparer asserts reasonable cause, the tax return preparer should provide a written statement to substantiate the tax return preparer's claim of reasonable cause.
- (6) The penalty for failure to sign will not be imposed if the following are true:
 - a. A person is a nonsigning tax return preparer under 26 CFR 1.301.7701-15(b)(2), or
 - b. A person is a tax return preparer under 26 CFR 1.301.7701-15(b)(3) on account of having prepared another return (e.g., the partnership return) which affects the amounts reported on the return in question (e.g., the partner's return).

20.1.6.5.3 (03-30-2023)

Failure to Furnish Identifying Number—IRC 6695(c)

- (1) The IRC 6695(c) penalty applies if the tax return preparer fails to comply with IRC 6109(a)(4), Furnishing Identifying Number of Tax Return Preparer. Under IRC 6109(a)(4) and the regulations thereunder, the return or claim for refund must contain the following:
 - a. The identifying number of the tax return preparer required to sign the return or claim for refund under IRC 6695(b), and
 - b. The identifying number of the partnership or employer (if there is a partnership or employment arrangement between two or more tax return preparers).
- (2) A tax return preparer is not required to affix an identification number to the taxpayer's copy of the return. See preamble to T.D. 9436, IRB 2009-3 268.
- (3) Effective January 1, 2011, tax return preparers must have a valid Preparer Tax Identification Number (PTIN) to prepare returns. The PTIN is to be used as of January 1, 2011, as the tax return preparer identifying number. See PTIN Requirements for Tax Return Preparers at <https://www.irs.gov/tax-professionals/ptin-requirements-for-tax-return-preparers> and Treas. Reg 1.6109-2(d). If there is an employment arrangement or association the related EIN must also be on the tax return.
- (4) The IRC 6695(c) penalty does not apply if the failure was due to reasonable cause and not due to willful neglect.
- (5) The penalty will not be imposed if the following are true:
 - a. A person is a nonsigning tax return preparer under 26 CFR 1.301.7701-15(b)(2) or

- b. A person is a tax return preparer under 26 CFR 1.301.7701-15(b)(3) on account of preparing another return (e.g., the partnership return) which affects the amounts reported on the return in question (e.g., the partner's return).

(6) IRC 6695(c) penalties will not be imposed against the following:

- a. A tax return preparer who is employed or engaged by a person who is also a tax return preparer of the return or claim for refund, or
- b. A tax return preparer who is a partner in a partnership which is also a tax return preparer of the return or claim for refund.

20.1.6.5.4
(08-25-2020)
**Failure to Retain Copy
or List—IRC 6695(d)**

- (1) The IRC 6695(d) penalty applies if the tax return preparer fails to comply with IRC 6107(b), Copy or List to Be Retained by Tax Return Preparer. Under IRC 6107(b) and the regulations thereunder, a tax return preparer must do the following:
 - a. Retain a completed copy of the return or claim for refund, or alternatively retain a record (by list, card file, electronically, or otherwise) of all the taxpayers, their taxpayer identification numbers, the taxable years, and the type of returns or claims for refund prepared.
 - b. Retain a record (by copy of the return or claim for refund or by a list, card file, electronically, or otherwise) of the name of the tax return preparer required to sign the return or claim for refund under IRC 6695(b) for each return or claim for refund presented to the taxpayer.
 - c. Make such copy or list available for inspection upon request by the IRS for a three year period following the close of the return period. See IRC 6060(c), Return Period Defined.
- (2) If there is an employment arrangement between two or more tax return preparers, the requirement to retain a copy or list only applies to the person who employs (or engages) one or more tax return preparers. Similarly, if there is a partnership arrangement, the requirement to retain a copy or list only applies to the partnership. See 26 CFR 1.6107-1(c).
- (3) The IRC 6695(d) penalty does not apply if the failure was due to reasonable cause and not due to willful neglect.
- (4) The penalty for failure to retain a copy or list will not be imposed if the following are true:
 - a. A person is a nonsigning tax return preparer under 26 CFR 301.7701-15(b)(2), or
 - b. A person is a tax return preparer under 26 CFR 301.7701-15(b)(3) on account of having prepared another return (e.g., the partnership return) which affects the amounts reported on the return in question (e.g., the partner's return).

20.1.6.5.5
(10-13-2021)
**Failure to File Correct
Information
Returns—IRC 6695(e)**

- (1) The IRC 6695(e) penalty applies if the tax return preparer fails to comply with IRC 6060, Information Returns of Tax Return Preparers. Under IRC 6060(a), and 26 CFR 1.6060-1(a)(1), each person who employs (or engages) one or more signing tax return preparers must retain a record of the name, taxpayer identification number, and place of work of each tax return preparer employed (or engaged) by the preparer. For purposes of IRC 6060, a partnership is treated as the employer of the partners.

Note: Employers satisfy the filing requirement of IRC 6060 by retaining a record of the information described above and by making that record available for inspection upon request by the IRS. See 26 CFR 1.6060-1(a)(1).

- (2) The record may be in any form of documentation so long as it discloses on its face which individuals were employed (or engaged) as tax return preparers during that period.
- (3) The record must be retained and made available for inspection for a three-year period following the close of the return period to which it relates. The term "return period" means the twelve month period beginning on July 1st of each year.
- (4) If a tax return preparer is not employed by another tax return preparer, such tax return preparer is treated as their own employer for purposes of this penalty. Therefore, if a tax return preparer is a sole proprietor, the tax return preparer must retain and make available a record.
- (5) The IRC 6695(e) penalty does not apply if the failure was due to reasonable cause and not due to willful neglect.
- (6) The IRC 6695(e) penalty must be assessed within three years after the return or claim for refund was filed.

20.1.6.5.6
(10-13-2021)
**Negotiation of
Check—IRC 6695(f)**

- (1) The IRC 6695(f) penalty applies if the tax return preparer endorses or otherwise negotiates (directly or through an agent) a refund check (including an electronic version of a check) issued to a taxpayer (other than the tax return preparer).
- (2) The penalty applies to a tax return preparer who directs (either on Form 8888 or on the direct deposit line of the return) the IRS to deposit a taxpayer's refund into a bank account in the tax return preparer's name or into a bank account under the tax return preparer's control.
- (3) Taxpayers sometimes request their refunds be direct deposited into a bank account in the tax return preparer's name or into a bank account under the tax return preparer's control when taxpayers do not have their own bank account. Even if a taxpayer has requested the direct deposit to be made in this manner, the tax return preparer is still subject to the IRC 6695(f) penalty for complying with the request.
- (4) The tax return preparer may not endorse or negotiate a check for a taxpayer even though the tax return preparer was designated as the taxpayer's representative on a Form 2848, Power of Attorney.
- (5) The penalty is imposed for each refund check or direct deposit of a refund. It does not vary based on how much compensation the tax return preparer receives from the taxpayer, the amount of the refund check, or the amount of the direct deposit.
- (6) A person in a business other than tax return preparation who fills out or reviews returns for customers may be a tax return preparer and, thus, subject to the IRC 6695(f) penalty if such person endorses or otherwise negotiates the customer's refund check. See Rev. Rul. 86-55, 19861 C.B. 373.

20.1.6.5.6.1
(08-25-2020)
**Exceptions to IRC
6695(f)**

- (1) A tax return preparer will not be considered to have endorsed or otherwise negotiated a check as a result of having affixed the taxpayer's name to a refund check for the purpose of depositing the check into an account in the name of the taxpayer or in the joint names of the taxpayer and one or more other persons (excluding the tax return preparer). See 26 CFR 1.6695-1(f)(1).
- (2) In certain circumstances, a tax return preparer-**bank** may cash a refund check and remit the cash to the taxpayer or may accept a refund check for deposit to the taxpayer's account. A tax return preparer-bank may do the following:
 - a. Cash a refund check and remit all the cash to the taxpayer.
 - b. Accept a refund check for deposit in full to the taxpayer's account, provided the bank does not initially endorse or negotiate the check (unless the bank has made a loan to a taxpayer on the basis of the anticipated refund).
 - c. Endorse a refund check for deposit in full to the taxpayer's account pursuant to a written authorization of the taxpayer (unless the bank has made a loan to the taxpayer on the basis of the anticipated refund).
 - d. Subsequently endorse or negotiate a refund check as part of the check clearing process after initial endorsement or negotiation by the taxpayer. See Treas. Reg. 1.6695-1(f)(2).
- (3) There is no reasonable cause exception to this penalty.

20.1.6.5.7
(05-22-2024)
**Failure to Be Diligent in
Determining Eligibility
for Certain Tax
Benefits—IRC 6695(g)**

- (1) The IRC 6695(g) penalty applies if a tax return preparer fails to comply with due diligence requirements.

Note: The penalty should be applied per failure, not per return. Therefore, if a tax return preparer fails to exercise due diligence in determining eligibility for, or the amount of, more than one of the named tax benefits, the return preparer may be subject to multiple penalties.
- (2) The penalty has no reasonable cause exception.
- (3) For exceptions to the penalty see 26 CFR 1.6695-2, Tax return preparer due diligence requirements for certain tax returns and claims.
- (4) Visits with tax return preparers to determine compliance with the due diligence requirements are not third-party contacts. See IRM 20.1.6.19, Third Party Contacts - IRC 7602(c) for more information on third-party contacts.
- (5) See Treas. Reg. 1.6695-2(b)(4) regarding record retention.
- (6) See Treas. Reg. 1.6695-2(c) regarding special rule for firms.
- (7) See Treas. Reg. 1.6695-2(d) regarding exceptions to the penalty.

20.1.6.5.7.1
(05-22-2024)

Failure to Be Diligent in Determining Eligibility for Earned Income Tax Credit—IRC 6695(g) for Tax Returns or Claims for Refund for Tax Years Ending on or After December 31, 2011 and Before January 1, 2016

- (1) For tax returns or claims for refund for tax years ending on or after December 31, 2011, and before January 1, 2016, the IRC 6695(g) penalty applies if a tax return preparer fails to comply with due diligence requirements with respect to determining eligibility for, or the amount of, the earned income tax credit (EIC).
- (2) Under 26 CFR 1.6695-2(b), the tax return preparer must comply with the following due diligence requirements for tax returns or claims for refund for tax years ending on or after December 31, 2011.
 - a. The tax return preparer must complete Form 8867 or such other form and provide such other information as may be required by the IRS to be submitted in the manner required by forms, instructions, or other appropriate guidance.
 - b. The tax return preparer's completion of Form 8867 (or successor form) must be based on information provided to the tax return preparer or otherwise reasonably obtained or known by the tax return preparer.
 - c. The tax return preparer must either complete the earned income credit worksheet in the Form 1040 instructions or such other form and such other information as may be prescribed by the IRS or otherwise record in one or more documents in the tax return preparer's paper or electronic files the EIC computation, including the method and information used to make the computation.
 - d. The completion of the earned income credit worksheet or other permitted record must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained or known by the tax return preparer.
 - e. The tax return preparer must not know, or have reason to know, any information used by the tax return preparer in determining the taxpayer's eligibility for, or the amount of, the EIC is incorrect. The tax return preparer may not ignore the implications of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. A tax return preparer must make reasonable inquiries if a reasonable and well-informed tax return preparer knowledgeable in the law would conclude the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. The tax return preparer must also contemporaneously document in the files the reasonable inquiries made and the responses to these inquiries.

20.1.6.5.7.2
(05-22-2024)

Failure to Be Diligent in Determining Eligibility for Child Tax Credit; American Opportunity Tax Credit; and Earned Income Tax Credit—IRC 6695(g) for Tax Returns or Claims for Refund for Tax Years Beginning After December 31, 2015 and Before January 1, 2018

- (1) For tax returns or claims for refund for tax years ending on or after December 31, 2015, and before January 1, 2018, the IRC 6695(g) penalty applies if a tax return preparer fails to comply with due diligence requirements with respect to determining eligibility for, or the amount of, the Child Tax Credit (CTC), Additional Child Tax Credit (ACTC), Credit for Other Dependents (ODC), American Opportunity Tax Credit (AOTC), or the EIC.
- (2) Under 26 CFR 1.6695-2(b), the tax return preparer must comply with the following due diligence requirements for tax returns or claims for refund for tax years beginning after December 31, 2015 and before January 1, 2018.
 - a. The tax return preparer must complete Form 8867 or such other form and provide such other information as may be required by the IRS to be submitted in the manner required by forms, instructions, or other appropriate guidance.

- b. The tax return preparer's completion of Form 8867 (or successor form) must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained or known by the tax return preparer.
- c. The tax return preparer must either complete the appropriate worksheet in the Form 1040 instructions or such other form and provide such other information as may be prescribed by the IRS or otherwise record in one or more documents in the tax return preparer's paper or electronic files the credit computation, including the method and information used to make the computation.
- d. The completion of the credit worksheet or other permitted record must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained or known by the tax return preparer.
- e. The tax return preparer must not know, or have reason to know, any information used by the tax return preparer in determining the taxpayer's eligibility for, or the amount of, the credit is incorrect. The tax return preparer may not ignore the implications of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. A tax return preparer must make reasonable inquiries if a reasonable and well-informed tax return preparer knowledgeable in the law would conclude the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. The tax return preparer must also contemporaneously document in the tax return preparer's files the reasonable inquiries made and the responses to these inquiries.

20.1.6.5.7.3
(05-22-2024)

Failure to be Diligent in Determining Eligibility for Certain Tax Benefits—IRC 6695(g) for Tax Returns or Claims for Refund for Tax Years Beginning After December 31, 2017

- (1) For tax returns or claims for refund for tax years ending on or after December 31, 2017, the IRC 6695(g) penalty applies if a tax return preparer fails to comply with due diligence requirements with respect to determining eligibility for, or the amount of, Head of Household (HOH) filing status, CTC, ACTC, ODC, AOTC, or EIC.
- (2) Under 26 CFR 1.6695-2(b), the tax return preparer must comply with the following due diligence requirements for tax returns or claims for refund for tax years beginning after December 31, 2017.
 - a. The tax return preparer must complete Form 8867.
 - b. The tax return preparer's completion of Form 8867 must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained or known by the tax return preparer.
 - c. The tax return preparer must either complete the appropriate worksheet in the Form 1040 instructions or such other form and such other information as may be prescribed by the IRS or otherwise record in one or more documents in the tax return preparer's paper or electronic files the credit computation, including the method and information used to make the computation.
 - d. The completion of the credit worksheet or other permitted record must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained or known by the tax return preparer.
 - e. The tax return preparer must not know, or have reason to know, any information used by the tax return preparer in determining the taxpayer's eligibility for the HOH filing status, or the eligibility or amount of, the credit is incorrect. The tax return preparer may not ignore the implications

of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. A tax return preparer must make reasonable inquiries if a reasonable and well-informed tax return preparer knowledgeable in the law would conclude the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. The tax return preparer must also contemporaneously document in the tax return preparer's files the reasonable inquiries made and the responses to these inquiries.

20.1.6.5.8
(03-30-2023)

**Other Considerations -
IRC 6695**

- (1) Revenue officers and examiners (e.g., tax auditors, tax compliance officers, estate and gift tax attorneys, and revenue agents) may assert IRC 6695 penalties or refer the penalty case to the RPPWG. See IRM 20.1.6.2.1, Optional Penalty Case Referral to Return Preparer Penalty Working Group (RPPWG).
- (2) For information about referrals to OPR, see IRM 20.1.6.12, Office of Professional Responsibility (OPR).
- (3) For statute of limitation information, see IRM 20.1.6.18, Statute of Limitations.
- (4) For appeals information, see IRM 20.1.6.16, Appeal Rights.

20.1.6.5.9
(10-13-2021)

Collection Procedures

- (1) When Collection employees secure delinquent returns or claims for refund and determine a tax return preparer has not complied with the provisions of IRC 6695, a penalty will be asserted. The Collection employee who secures the delinquent return or claim will be responsible for requesting the assertion of these penalties.
- (2) Effective January 1, 2011, tax return preparers must have and use a valid PTIN to prepare returns. See the PTIN application website at <https://www.irs.gov/tax-professionals/ptin-requirements-for-tax-return-preparers>. If there is an employment arrangement or association, the related EIN must also be on the tax return.
- (3) The tax return preparer may be contacted if relevant information is needed.
- (4) Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, is used to assert tax return preparer penalties. Form 8278 will be forwarded to Collection CCP function for input.

20.1.6.6
(05-22-2024)

**Program Action Cases
Overview**

- (1) A program action case (PAC) is a preparer project where clients of questionable preparers are examined to determine whether preparers are accurately preparing returns. If an understatement of tax is present, examiners should consider penalties on the individual taxpayer and the return preparer. See IRM 4.1.10.4 , Program Action Case Overview (PAC).
- (2) A PAC can result in the assessment of IRC 6694 and/or IRC 6695 penalties.
- (3) A tax return preparer can violate both IRC 6694 and IRC 6701, but both penalties may not be assessed with respect to the same document. See IRC 6701(f)(2). Coordination should occur between the RPCs and the Lead Development Center (LDC) at various stages of the PAC process.

- (4) Visit Knowledge Management's Virtual Library for a listing of SB/SE's RPCs. TE/GE examiners should contact the TE/GE Fraud Specialist.
- 20.1.6.6.1
(09-17-2010)
**Operating Divisions /
Business Units (OD/BU)
PAC Functional
Procedures**
- (1) IRM 20.1.6.6, Program Action Case Overview, guidance is applicable to all OD/BU PAC.
- (2) However, an OD/BU may have additional guidance it requires for its functional coordinators and it should also be followed.
- 20.1.6.7
(08-25-2020)
**Penalty for Unauthorized
Preparer Disclosure or
Use—IRC 6713**
- (1) Review IRM 20.1.6.19, Third Party Contacts - IRC 7602(c).
- (2) IRC 6713 imposes a penalty for each unauthorized disclosure or use of information furnished for, or in connection with, the preparation of an individual income tax return. The penalty may be asserted against a tax return preparer or any person providing services in connection with the preparation of an income tax return.
- 20.1.6.7.1
(03-30-2023)
Asserting the Penalty
- (1) Examiners assert the penalty (e.g., tax auditors, tax compliance officers, estate and gift tax examiners, and revenue agents). IRC 6713 penalty cases are not referred to the RPPWG.
- (2) If return information was used or disclosed pursuant to a provision of the Code permitting use or disclosure, then the penalty will not be asserted.
- (3) Taxpayers, during examinations, may express concern their tax information was disclosed or used for a purpose other than to prepare, or assist in preparing, their income tax return.
- (4) Written supervisory approval is required for this penalty's assertion.
- (5) ERCS controls are established using Form 5809, Preparer Penalty Case Control Card, or functional equivalent. See IRM 20.1.6.8, Operating Division Business Unit Return Preparer Penalty Functional Procedures, for OD/BU functional procedure cites.
- Reminder:** TE/GE penalty investigations are controlled and established on RCCMS.
- (6) If any person prepares a return for compensation or provides services in connection with the preparation of an income tax return, and knowingly or recklessly discloses or uses return information improperly, the examiner should consider making a criminal referral under IRC 7216, Disclosure or Use of Information by Preparers of Returns, to the Treasury Inspector General for Tax Administration (TIGTA). Visit TIGTA's website at https://www.treasury.gov/tigta/contact_report.shtml for further guidance for a criminal referral under IRC 7216.
- 20.1.6.7.2
(08-25-2020)
**Other Considerations -
IRC 6713**
- (1) For each unauthorized disclosure or use of return information under IRC 6713, a penalty of \$250 may be asserted. The total amount cannot exceed \$10,000 per person per calendar year.
- (2) If a disclosure or use is made in connection with a crime relating to the misappropriation of another person's taxpayer identity, whether or not such crime

involves any tax filing, the penalty increases to \$1,000 for each use or disclosure, with a maximum of \$50,000 per person per calendar year. This penalty applies to disclosures or uses made on or after July 1, 2019 (the date the Taxpayer First Act of 2019 was enacted).

- (3) The IRC 6713 penalty can be asserted in conjunction with any other tax return preparer penalty.
 - (4) For information about IRC 6713 referrals to OPR, see IRM 20.1.6.12, Office of Professional Responsibility (OPR).
 - (5) There is no statute of limitations for this penalty.
 - (6) For appeal rights information, see IRM 20.1.6.16, Appeal Rights.
- (1) The OD/BU functional return preparer procedures provide guidance for its examiners respectively.

20.1.6.8
(03-30-2023)
**Operating Division
Business Unit Return
Preparer Penalty
Functional Procedures**

20.1.6.8.1
(05-22-2024)
**Examiners Operating
Division Business Unit
Functional Guidance
Topics**

- (1) The OD/BU functional guidance addresses the following:

The OD/BU functional guidance addresses:
Auditing the taxpayer.
Identifying tax return preparer problems.
Gathering pertinent information from audit of tax return preparers clients' tax return.
Finishing tax return preparer's client tax case.
Establishing and working a tax return preparer penalty.
Referring an SB/SE penalty case via the established link <i>Return Preparer Penalty Working Group (RPPWG) (sharepoint.com)</i>
Contacting the RPC.
Preparing Form 5809, Preparer Penalty Case Control Card, to establish on ERCS. Reminder: TE/GE penalty investigations will be controlled and established on RCCMS.
Determining the statute.
Charging time to tax return preparer penalty case.
Determining when to forward a copy of the completed Form 5809 or the procedure for the functional equivalent of Form 5809 to the RPC.
Contacting the tax return preparer and conducting the interview.
Determining if tax return preparer penalties are warranted.

The OD/BU functional guidance addresses:

Preparing Form 5816, Report of Tax Return Preparer Penalty Case.

Following closing procedures for agreed, unagreed, no-change, and prompt assessment cases.

- (2) The OD/BU functional guidance also provides guidelines for preparation of tax return preparer penalty and related forms:

Form	Title
Form 872-D	Consent to Extend the Time on Assessment of Tax Return Preparer Penalty
Form 5816	Report of Tax Return Preparer Penalty Case
Form 8278	Assessment and Abatement of Miscellaneous Civil Penalties
Form 8484	Report of Suspected Practitioner Misconduct
Form 4665	Report Transmittal
Form 3244-A	Payment Posting Voucher—Examination
Form 2859	Request for Quick or Prompt Assessment
Form 3198	Special Handling Notice for Examination Case Processing, or functional equivalent
Form 5809	Preparer Penalty Case Control Card, or the functional equivalent Note: TE/GE penalty investigations will be controlled and established on RCCMS.

20.1.6.8.2
(03-30-2023)
**Operating Division
Business Unit (OD/BU)
Functional Procedures**

- (1) The OD/BU functional procedures are found in these locations:
- SB/SE, Examination: IRM 4.1.10, Return Preparer Program Coordinator, and SB/SE Return Preparer Knowledge Management.
 - SB/SE, Estate and Gift: IRM 4.25.7.4, Return Preparer Penalties.
 - SB/SE, Employment Tax: IRM 4.23.17, Preparer Penalty Procedures for SB/SE Employment Tax.
 - TE/GE: IRM 4.75.40.23.4, Preparer Penalties
 - LB&I Knowledge Management

20.1.6.9
(10-13-2021)
**Processing and
Assessment of Tax
Return Preparer
Penalties Overview**

- (1) The OD/BU functional procedures provide guidance for processing and assessment of tax return preparer penalties. See IRM 20.1.6.8 above.
- (2) Tax return preparer penalties are assessed or abated on the MF civil penalty module using Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties. Check one box in Item 3, MFT, either IMF 55 for individual tax return preparers or BMF 13 for business tax return preparers.

- a. These procedures allow tracking of tax return preparer penalty assessments or abatements. The information must be input completely and correctly for data on the tax return preparer penalty program to be accurate.
- b. Form 8278 has important reminders and detailed instructions for completing the form.

20.1.6.9.1
(03-30-2023)

**Centralized Case
Processing Functional
Procedures**

- (1) When multiple penalties apply to the same tax return preparer for the same period:
 - a. Input the first penalty to be assessed using Blocking Series 52X.
 - b. Input subsequent penalties using Blocking Series 53X.
 - c. Annotate Form 8278 with the correct blocking series opposite each penalty to facilitate terminal input.
 - d. With Blocking Series 53X, CP Notice 55 will be generated to alert Files to associate Form 5147, IDRS Transaction Record, for subsequent penalty assessments with the penalty case file containing the input and source documents. The notice is not generated until after the input of the Form 8278.
- (2) Form 8278 instructions require both the originator and supervisor sign and date the form. A supervisor's signature, which indicates the immediate supervisor's approval of the penalty, is sufficient to meet the requirements of IRC 6751 and Form 8278. An acting supervisor with an approved designation to act is considered an immediate supervisor for the purpose of IRC 6751. See IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments.
- (3) Review Form 8278 for required signatures as follows:
 - a. Verify originator's signature in Block 10a: If Block 10a does not contain an originator's signature, Form 8278 and the associated case file should be returned to the supervisor using Form 3210 procedures.
 - b. Verify supervisor's signature in Block 11a: If Block 11a does not contain a supervisor's signature, the Form 8278 and the associated case file should be returned to the attention of the originator's supervisor using Form 3210 procedures.

Note: If the case has an imminent statute and it must be returned for a signature, ensure expedite handling.
- (4) Once the tax examiner verifies the required signatures are present, the tax examiner will input their name and date in Block 12a.

20.1.6.10
(10-13-2021)

**Action to Enjoin
Preparers—IRC 7407 &
IRC 7408**

- (1) Review IRM 20.1.6.19, Third Party Contacts - IRC 7602(c).
- (2) Review IRM 20.1.6.17, Affidavits Overview.
- (3) Under IRC 7407, the IRS has the power to seek an injunction prohibiting a tax return preparer from engaging in certain practices. The United States may bring a civil action in the U.S. District Court for the district of one of the following:
 - a. The tax return preparer's residence,
 - b. The tax return preparer's principal place of business, or

- c. The residence of the taxpayer with respect to whose return the action is brought.
- (4) Tax return preparer practices causing the IRS to initiate injunctive action include the following:
 - a. Conduct subject to IRC 6694 and IRC 6695 penalties.
 - b. Conduct subject to criminal penalties.
 - c. Misrepresentation of the tax return preparer's eligibility to practice before the IRS, or experience and education as an income tax return preparer.
 - d. Guarantee of payment of a tax refund or of allowance of a tax credit.
 - e. Other fraudulent or deceptive conduct substantially interfering with proper administration of the Internal Revenue laws.
- (5) If the court finds the tax return preparer has engaged in one or more of the enumerated practices, it may enjoin the preparer from further engaging in such conduct if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct. If the court finds that the tax return preparer has continually or repeatedly engaged in those practices and that an injunction prohibiting such conduct would not be sufficient to prevent the tax return preparer's interference with tax laws, it may enjoin the preparer from acting as a tax return preparer.
- (6) The Committee Reports for the Tax Reform Act of 1976 (which enacted IRC 7407) indicated injunctive relief sought by the IRS must be commensurate with the conduct which led to the seeking of the injunction. For example, if a tax return preparer, who is only experienced in preparing individual returns, overstates his qualifications as a tax return preparer by claiming expertise in the preparation of corporate returns, it is anticipated any injunction would be directed toward the misrepresentation itself or the preparation of corporate returns and not toward preventing the tax return preparer from preparing any returns at all. Furthermore, if some of an employer's employee-preparers have engaged in conduct leading to a request for an injunction against the further preparation of returns, any injunction is to be sought only against those tax return preparers and not the employer (or other employees), unless the employer (or other employees) is actively involved in the improper conduct.
- (7) **Actions to Enjoin Specific Conduct Related to Tax Shelters and Reportable Transactions.** A civil action may be brought under IRC 7408, Actions to Enjoin Specified Conduct Related to Tax Shelters and Reportable Transactions, to enjoin specified conduct. The action may be brought in the U.S. District Court for the district in which the individual resides, has his principal place of business, or has engaged in specified conduct. See IRM 20.1.6.15 for additional information.
- (8) The term "specified conduct" means any action, or failure to take action, that is one of the following:
 - a. Subject to penalty under IRC 6700, IRC 6701, IRC 6707, or IRC 6708; or
 - b. In violation of Treasury Department Circular No. 230, Regulations Governing Practice Before the Internal Revenue Service (Circular 230).
- (9) The court may grant injunctive relief against any person if it finds the following:
 - a. The person has engaged in any specified conduct, and
 - b. Injunctive relief is appropriate to prevent recurrence of such conduct.

- (10) See IRM 4.32.2.9.1, Injunctions, and IRM 4.32.3.7.1, Steps in an Injunction Case, for additional information.
- (11) The IRC does not explicitly provide any limitation period for seeking an injunction under IRC 7407.

20.1.6.10.1
(09-17-2010)

**Action on Injunctions:
Seeking an Injunction**

- (1) Any examiner conducting an investigation under IRC 6694, IRC 6695, IRC 6700, or IRC 6701, will consider whether an injunction should be sought under IRC 7407 or IRC 7408. In addition, an injunction may be sought by an examiner to whom an investigation is assigned for activities specified in IRC 7407 or other specified conduct under IRC 7408.

20.1.6.10.1.1
(09-17-2010)

**Identifying Persons
Subject to an Injunction**

- (1) IRS personnel who become aware of tax return preparers engaged in activities identified in IRC 7407(b)(1)(A) through (D), Action to Enjoin Tax Return Preparers, will notify in writing the LDC or Office of Tax Shelter Analysis (OTSA) of the facts and circumstances.

20.1.6.10.2
(08-25-2020)

**Coordination With Other
Penalties**

- (1) The injunction authorized under IRC 7407 is coordinated with civil penalties under IRC 6694 and IRC 6695 and criminal tax provisions. In addition, IRC 7407 can be used in conjunction with IRC 7408, if appropriate.
- (2) An injunction may be sought without regard to whether penalties have been or may be assessed against any tax return preparer.

20.1.6.11
(08-25-2020)

E-file Program

- (1) Tax return preparers may participate in the IRS e-file program.

20.1.6.11.1
(08-25-2020)

**Standards for Tax
Return Preparer**

- (1) Tax return preparers in the IRS e-file program must meet standards reflected in Rev. Proc. 2007-40, Pub 3112, IRS E-File Application and Participation, and Pub 1345, Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns. Penalties asserted against tax return preparers are a factor in determining suitability for the IRS e-file program. RPCs will notify electronic filing coordinators (EFCs) of all penalties asserted on tax return preparers.
- (2) Section 6 of Rev. Proc. 2007-40 broadly defines the applicability of tax return preparer penalties for those participating in the IRS e-file program. The IRS may assert all appropriate tax return preparer, non-preparer, and disclosure penalties against an authorized IRS e-file provider as warranted under the circumstances.
- (3) SB/SE area offices may establish multi-functional teams to visit electronic filers to determine their compliance with the IRS e-file program procedures. A team approach is preferred if resources are available. A team consists of two (2) representatives who may be from examination. Examiners who participate on these teams charge their time to Activity Code 522.
- (4) See IRM 4.21.1, Monitoring the IRS e-file Program, for more information.
- (5) See IRM 3.42.4, Electronic Tax Administration—IRS e-file for Business Tax Returns, and IRM 3.42.5, Electronic Tax Administration—IRS e-file for Individual Income Tax Returns, for more information on the e-file program.

20.1.6.11.2
(08-25-2020)
**Individual Income Tax
Return Preparers—e-file
Rules**

- (1) The Worker, Homeownership, and Business Assistance Act of 2009 added a special rule for tax return preparers of individual income tax returns. See IRC 6011(e)(3), Special Rule for Tax Return Preparers.
- (2) The provision generally requires any individual income tax return prepared and filed by a tax return preparer be filed on magnetic media when such tax return preparer is a specified tax return preparer for the calendar year during which such return is filed.
- (3) “Specified tax return preparer” means, with respect to any calendar year, any tax return preparer, as defined in IRC 7701(a)(36) and 26 CFR 301.7701-15, unless such tax return preparer reasonably expects to file 10 or fewer individual income tax returns during such calendar year. If a person who is a tax return preparer is a member of a firm, the person is a specified tax return preparer unless the firm members in the aggregate reasonably expect to file 10 or fewer individual income returns in a calendar year.
- (4) Solely for the 2011 calendar year, a tax return preparer will not be considered a specified tax return preparer if the tax return preparer reasonably expects, or if the tax return preparer is a member of a firm, the firm’s members in the aggregate reasonably expect, to file fewer than 100 individual income tax returns in the 2011 calendar year. See 26 CFR 301.6011-7(a)(3).
- (5) The term “individual income tax return” means any return of the tax imposed by subtitle A on individuals, estates, or trusts.
- (6) The effective date is for returns filed after December 31, 2010.

20.1.6.12
(08-25-2020)
**Office of Professional
Responsibility (OPR)**

- (1) OPR supports the IRS’s strategy to enhance enforcement of the tax law by ensuring tax practitioners adhere to professional standards and follow the law. OPR is authorized to interpret and apply Circular 230 and is generally responsible for matters related to practitioner conduct and exclusively responsible for discipline.

Note: OPR’s authorizing statute is Title 31 U.S.C. section 330. This statute gives OPR broad authority to regulate the practice of representatives before the Department of Treasury for violation of the regulations which are found at 31 CFR Title 10, commonly known as Circular 230.

- (2) OPR is responsible for reviewing, investigating, and resolving alleged ethical violations of the professional standards of competence, integrity, and conduct by tax practitioners who represent taxpayers before the IRS, and for identifying and resolving alleged violations of the applicable professional standards enumerated by Circular 230.
- (3) Individuals who may practice before the IRS pursuant to the provisions of Circular 230 include but are not limited to the following:
 - Attorneys
 - Certified public accountants
 - Enrolled retirement plan agents
 - Enrolled actuaries
 - Enrolled agents

Note: Appraisers who provide appraisals for federal tax purposes are also subject to Circular 230.

20.1.6.12.1
(08-25-2020)

Practice Before the IRS

- (1) Practice before the IRS encompasses all matters connected with a presentation to the IRS or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the IRS.
- (2) Such presentations include, but are not limited to the following:
 - a. Preparing documents
 - b. Filing documents
 - c. Corresponding and communicating on behalf of a client with the IRS
 - d. Rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion
 - e. Representing a client before the IRS at conferences, hearings and meetings
- (3) Practice also may consist of providing written advice, including advice based on an unreasonable factual or legal assumption as well as giving a false opinion, knowingly, recklessly or through gross incompetence.

Note: Enrolled actuaries are limited to representation with respect to issues involving specific employee and annuity plans as defined in section 10.3(d)(2) of Circular 230. Similarly, enrolled retirement plan agents are limited to representation with respect to issues involving certain employee plans and forms under the 5300 and 5500 series which are filed by retirement plans and plan sponsors, but not with respect to actuarial forms or schedules. See section 10.3(e)(2) of Circular 230.

- (4) An unenrolled tax return preparer who prepares and signs a taxpayer's tax return as the tax return preparer may represent the taxpayer before examiners, customer service representatives, or similar officers and employees of the IRS during an examination of the taxable year or period covered by that tax return. This right does not permit these individuals to represent the taxpayer, regardless of the circumstances requiring representation, before appeals officers, revenue officers, counsel or similar officers or employees. For tax returns prepared and signed after 2015, Rev. Proc. 2014-42 requires participation in the Annual Filing Season Program in order to act as a taxpayer's representative before the IRS.

20.1.6.12.2
(08-29-2019)

Sanctions for Violation of the Regulations

- (1) In general, OPR may sanction a practitioner, after notice and an opportunity for a proceeding, who is shown to be incompetent or disreputable (within the meaning of section 10.51 of Circular 230) or who willfully violates any regulation enumerated by Circular 230 or, who with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client.
- (2) Sanctions available to OPR include issuing a censure (a public reprimand), and suspending or disbaring the practitioner's privilege to practice before the IRS.
- (3) In certain situations, OPR may impose a monetary penalty on a practitioner who engages in conduct subject to sanction. If the practitioner was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the monetary penalty may also be imposed on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. The amount of the penalty may not exceed the gross income derived

(or to be derived) from the conduct giving rise to the penalty. A monetary penalty imposed on a practitioner may be in addition to, or in lieu of, any suspension, disbarment or censure of the practitioner and may be in addition to a monetary penalty imposed on an employer, firm or other entity.

- (4) OPR may also seek Department of Justice assistance in obtaining an injunction.
- (5) OPR may also disqualify any appraiser for a violation of the rules applicable to appraisers.

20.1.6.12.3
(03-30-2023)

**Referral to the Office of
Professional
Responsibility**

- (1) Circular 230 section 10.53 specifies if an officer or employee of the IRS has reason to believe a practitioner, as described above, has violated any provision of Circular 230, the officer or employee must promptly make a written report to the Director of OPR of the suspected violation.
- (2) Based on the above, the decision to refer a particular matter to OPR is not an issue for negotiation with a taxpayer or practitioner. OPR referrals may not be negotiated as a settlement item with respect to any IRS or Title 26 tax matter.
- (3) The potential for a matter to be referred to OPR should never be discussed with a taxpayer or a practitioner. In certain situations, it is acceptable to remind a practitioner of the practitioner's duties relative to Circular 230; however, IRS employees should never imply or infer a referral to OPR will result in disciplinary action against a practitioner.
- (4) Each referral to OPR should describe and document the practitioner's actions supporting disciplinary action. Include a summary of the suspected misconduct providing as much detail as possible regarding the alleged misconduct along with supporting documentation.
- (5) Once an IRS employee makes a referral with the approval of the employee's supervisor, OPR will contact the employee within 30 days to acknowledge the referral. OPR may request additional information once the referral undergoes review.
- (6) Discretionary referrals to OPR include penalties assessed under:
 - IRC 6694(a)
 - IRC 6695(a) through (g)

Note: Referrals of assessed IRC 6694(a) penalties should be based on a pattern of failing to meet the required penalty standards under IRC 6694(a).

- (7) Mandatory referrals to OPR include penalties assessed under:
 - IRC 6694(b)
 - IRC 6700
 - IRC 6701
- (8) Federal courts have the authority to permanently prohibit individuals from practicing before the IRS. This usually results from an injunction suit after an IRC 6700 or IRC 6701 investigation. Examiners assigned promoter investigations should consider a referral to OPR where practitioner misconduct is present and a complaint for injunction is not filed for the practitioner misconduct.

- (9) When making a referral to OPR involving a Circular 230 practitioner, examiners will do the following:
- a. Complete and forward Form 8484, Suspected Practitioner Misconduct Report for the Office of Professional Responsibility, to the Director of OPR through the area RPC based on a tax return preparer or promoter penalty(s).
 - b. Review IRM 4.11.55.5.2.1.2, Situations Which May Warrant a Referral, for other civil penalty examinations, return examinations that are not civil penalty examinations, and practitioner actions that may warrant a referral to OPR.
- (10) Form 8484, Suspected Practitioner Misconduct Report for the Office of Professional Responsibility, is used for the referral to OPR. The referent must complete all parts of Form 8484 following the instructions attached to the form.

Note: Provide a detailed explanation of the suspected misconduct. Attach all supporting documentation to the referral, including reports of penalty assessment against tax practitioners.

- (11) Completing the Referral
- a. Follow procedures in IRM 4.11.55.5.2.2, Referral to the OPR—Procedures, when a referral is warranted.
 - b. OPR requires management approval for misconduct reports. Management approval ensures the misconduct reports are based on objective, generally understood standards of practitioner service and professionalism. RPCs are a valuable resource and may assist with OPR referrals. In SB/SE Examination, area RPCs have been established. SB/SE Employment, Estate and Gift, and Excise each have an RPC. SB/SE Collection can contact SB/SE Examination area RPCs for OPR referral questions. LB&I and TE/GE also have an RPC.

20.1.6.13
(08-25-2020)
**Penalty for Promoting
Abusive Tax
Shelters—IRC 6700**

- (1) Review IRM 20.1.6.19, Third Party Contacts—IRC 7602(c).
- (2) The penalty for promoting abusive tax shelters is imposed on any person who:
- a. Organizes (or assists in the organization of) a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement; or
 - b. Participates (directly or indirectly) in the sale of any interest in any entity or plan or arrangement in a) above; and
 - c. Makes or furnishes or causes another to make or furnish (in connection with such organization or sale)—(i) A statement with respect to the allowance of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter, or (ii) A gross valuation overstatement as to any material matter.

Note: Abusive tax shelters are now also referred to as abusive tax avoidance transactions.

- (3) For penalty computation information, see IRM 4.32.2.12.5.2, Computation of IRC 6700 Penalties.

- (4) For more information about referrals to OPR, see IRM 20.1.6.12, Office of Professional Responsibility (OPR).
- (5) For appeal rights information related to IRC 6700, see IRM 4.32.2.12.9, Post-Assessment Rights.
- (6) Special claim procedure information can be found in IRM 4.32.2.12.9.1.1, Special Claim Procedures for Penalties Under IRC 6694(b), IRC 6700 and IRC 6701, and are applicable per IRC 6701(c).
- (7) There is no statute of limitations on assessment with respect to the promoter penalty imposed by IRC 6700.

20.1.6.13.1
(03-30-2023)
**LB&I and SB/SE
Functional Guidance**

- (1) Under no circumstances should an examiner start a promoter investigation without documented approval from the LDC for SB/SE and TE/GE or Technical Tax Shelter Promoter Committee (TTSPC) for LB&I.
- (2) IRM 4.32.2.2, Overview of Abusive Transactions (AT) Program, contains an overview of the IRC 6700, IRC 6701, IRC 6707, and IRC 6708 penalty program concerning the promoters of abusive tax avoidance transactions and the examination of taxpayer participants.
- (3) IRM 4.32.2, The Abusive Transactions (AT) Process, contains the administrative procedures.
- (4) IRM 4.32.3, Coordination and Roles of Cross-Functional Units, contains the cross-functional guidance.
- (5) Knowledge Management's Virtual Library contents functional procedures and guidance for SB/SE and LB&I.
- (6) The SB/SE LDC processes referrals concerning promoters of abusive tax avoidance transactions. The LDC evaluates referrals based on established criteria and authorizes IRC 6700 investigations when warranted. After investigations are authorized, case files are forwarded to the appropriate area's PSP for assignment to the field.
- (7) OTSA collects and analyzes information about abusive tax shelters and transactions, and coordinates LB&I's tax shelter planning and operation.

20.1.6.13.2
(08-25-2020)
**Coordination With Other
Provisions**

- (1) The penalty under section 6700 is in addition to all other penalties that may be imposed under the Code. However, under IRC 6701(f)(3), Coordination With Section 6700, no penalty may be assessed under IRC 6700 on any person with respect to any document for which a penalty is assessed on such person under IRC 6701. This provision allows the IRS to choose which penalty to assert if both apply to a set of facts, but prohibits the IRS from assessing penalties under both sections for the same document.
- (2) IRC 6694(b) imposes a penalty if a tax return preparer understates a taxpayer's liability as a result of willful or reckless conduct. In some instances, a person who is subject to the penalty under IRC 6700 may also be subject to the penalty under IRC 6694(b).
- (3) IRC 7206(2), Aid or Assistance, imposes a criminal penalty on any person who willfully aids or assists in making fraudulent or false statements. In some cases, promoters might be criminally prosecuted under IRC 7206(2), for

assisting, procuring, or advising the preparation or presentation of a return or other document which is fraudulent or false.

- (4) IRC 7408 authorizes the United States to commence a civil action at the request of the Secretary to enjoin any person from further engaging in conduct subject to the penalty under IRC 6700, Promoting Abusive Tax Shelters, etc. The promoter penalty under IRC 6700 and the injunction actions under IRC 7408 are more effective when applied prior to the time investors file their returns. Therefore, abusive tax avoidance transactions should be identified and IRC 6700 penalty investigations authorized by the LDC should be initiated promptly. Also refer to IRM 4.32.2.6, Case Control/Case Assignment Procedures.

20.1.6.14
(08-25-2020)

Penalties for Aiding and Abetting—IRC 6701

- (1) Review IRM 20.1.6.19, Third Party Contacts—IRC 7602(c).
- (2) Review IRM 20.1.6.17, Affidavits Overview.
- (3) IRC 6701 is the penalty for aiding and abetting understatement of tax liability.
- (4) The penalty is for any person who does the following:
- a. Aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document;
 - b. Knows (or has reason to believe) such portion will be used in connection with any material matter arising under the internal revenue laws; and
 - c. Knows such portion (if so used) would result in an understatement of the liability for tax of another person.
- (5) The burden of proof for this penalty lies with the government. Most court decisions hold the government need only establish its proof by a preponderance of evidence rather than the clear and convincing evidence standard.
- (6) The penalty is \$1,000, however, if the return, affidavit, claim or other document relates to a corporation, the penalty is \$10,000.
- (7) For appeal rights, see IRM 4.32.2.12.9.1, Appeals for IRC 6700 and IRC 6701.
- (8) For special claim procedures, see IRM 4.32.2.12.9.1.1, Special Claim Procedures for Penalties Under IRC 6694(b), IRC 6700 and IRC 6701, applicable per IRC 6701(c).
- (9) There is no statute of limitation on assessment of penalties under IRC 6701 because the penalty does not depend on the filing of a return.
- (10) When the IRC 6701 penalty is asserted against a practitioner or an appraiser, an information referral to OPR is mandatory. See IRM 20.1.6.12, Office of Professional Responsibility (OPR).

20.1.6.14.1
(10-13-2021)

Activities Subject to the Penalty

- (1) Key words in the penalty are “document,” “knows,” and “understatement.” For the penalty to be imposed, the person penalized must be implicated in the preparation or presentation of a document some portion of which the person knows or has reason to know, will be used in connection with a material matter arising under the tax laws and knows such position would result in an understatement of tax liability if so used.

- a. In general, tax counselors who advise clients to take unsupported filing positions or to file false or fraudulent returns are subject to the penalty.
 - b. The authors of legal opinions made available to promoters of tax shelters may also be liable for the penalty. The penalty may be imposed even if the opinion does not contain any false advice if the writer knows that the opinion is based on inaccurate assumptions and/or knows of other facts which render the legal advice false.
 - c. The penalty can be imposed for gratuitous advice or assistance in preparing any document.
 - d. In order to aid in the understatement of another's tax, it is not necessary to actually prepare the tax return or document that leads to the understatement. A person who controls the activities of subordinates and either orders the subordinates to act, or does not prevent their participation in actions that person knows will produce an understatement, is subject to the penalty under IRC 6701.
- (2) The definition of procures, subordinate, and advises are as follows:
- a. The term "procures" includes ordering (or otherwise causing) a subordinate to do an act subject to the penalty. It also includes knowing of, and not attempting to prevent, participation by a subordinate in such an act.
 - b. The term "subordinate" means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision or control. Such direction must be direct and immediate. Where a subordinate is directed or expected, as a condition of retaining his position, to participate in the prohibited activity by a person who directs, supervises, or controls such subordinate, the latter person is the one potentially subject to the penalty.
 - c. The term "advises" includes actions of independent contractors such as lawyers and accountants who counsel a particular course of action.
- Note:** A person furnishing typing, reproduction, or other mechanical assistance with respect to a document is **not** to be considered as having aided or assisted in the preparation of the document for purposes of the statute solely by reason of such assistance.
- (3) Congressional intent in enacting the provision.
- a. A tax advisor would not be subject to this penalty for suggesting to a client an aggressive but supportable filing position even though that position was later rejected by the courts and even though the client was subjected to the substantial understatement penalty. However, if the advisor suggested a position which the advisor knew could not be supported on any reasonable basis under the law, the penalty would apply.
 - b. No person will be subject to the penalty unless they are "directly involved in aiding or assisting in the preparation of a false or fraudulent document under the tax laws." Thus, the preparation of a correct schedule by a tax return preparer to be incorporated in a return will not expose the tax return preparer of the schedule to a penalty even though the tax return preparer is aware other portions of the return may be fraudulent.
- (4) Single penalty per taxpayer per period.
- a. If a penalty is imposed on a person with respect to a federal tax document, no penalty shall be imposed under IRC 6701 on such person

with respect to any other federal tax document relating solely to the same taxpayer and the same taxable period, or, if there is no taxable period, the same taxable event. If, however, such other federal tax document is also related to another taxpayer or another taxable period or taxable event, a second penalty may be imposed under IRC 6701 with respect to such other federal tax document.

- b. A husband and wife who make a joint return of income tax are considered to be the same taxpayer for the taxable year.

Note: Someone who assists two taxpayers in preparing false documents would be liable for a \$2,000 penalty whereas the penalty would be only \$1,000 if he had advised in the preparation of two false documents for the same taxpayer. Similarly, an advisor who prepares a false partnership return and then false Schedules K-1 for 10 individual partners would be subject to a \$10,000 penalty.

- (5) **Example 1:** A tax advisor would not be subject to the penalty for suggesting an aggressive but supportable filing position to a client even though that position was later rejected by the courts and even though the client was subjected to the substantial understatement penalty.
- (6) **Example 2:** However, if the tax advisor suggested a position which the advisor knew could not be reasonably supported by statute or regulation, and the advisor prepared (or assisted in the preparation of) a document for the underlying tax return reflecting that insupportable position, the penalty could apply.
 - a. Thus, if a person prepares a return (or a schedule or other portion of a return) for a client reflecting a deduction of an amount the preparer knows is not deductible, the tax return preparer could be subject to the penalty.
 - b. However, if a person prepares a schedule or other portion of a return reflecting positions which are reasonably supported by rules or regulations, the person will not be subject to an IRC 6701 penalty even if other portions of the return are erroneous or fraudulent.
- (7) **Example 3:** Mr. C, an accountant, prepared a 2015 return for Taxpayer D, a client. Mr. C knowingly overstated D's expenses on the return, thereby creating a net operating loss (NOL) for the year. Mr. C prepared amended returns for Taxpayer D for 2013 and 2014, claiming refunds for those years based on the 2015 NOL carryback. The carryback was not exhausted in 2014. Mr. E, another accountant, prepared Taxpayer D's 2016 return using the information presented to Mr. E by Taxpayer D, including copies of the document prepared by Mr. C. Mr. E is unaware of the overstatement of expenses by Mr. C and deducted the remaining unused NOL on Taxpayer D's 2016 return.
 - a. Mr. C is liable for three separate IRC 6701 penalties for his role in preparing Taxpayer D's 2013, 2014, and 2015 returns, which Mr. C knew, or had reason to know would result in understatements of Taxpayer's D's 2013, 2014, and 2015 federal income tax liabilities.
 - b. Mr. E, however, was unaware of the overstatement of expenses on the 2015 return and is unaware of the understatement of tax liability on the 2016 return. Thus, Mr. E is not liable for an IRC 6701 penalty.
- (8) **Example 4:** On January 15, 2016, Mr. A, an individual, offers to donate a painting to museum X. Mr. B, the curator of the museum, agrees to accept the painting. Mr. B offers to backdate a receipt for the donation to December 30,

2015. Mr. B knows the receipt will be used to substantiate Mr. A's charitable deduction. Mr. A uses the backdated receipt to claim a charitable deduction for 2015.

- a. Mr. B has aided in the preparation of a federal tax document knowing the document will be used in connection with a material tax matter and it will result in an understatement of tax.
- b. Thus, Mr. B is liable for the IRC 6701 penalty.

- (9) **Example 5:** Taxpayer F retains Mr. G., an appraiser, to appraise rare books she wishes to donate to a university. Mrs. F tells Mr. G. she needs the appraisal to substantiate a charitable contribution deduction for federal income tax purposes. Mr. G. knows the fair market value of the books may be any amount between \$50,000 and \$75,000. Mr. G. offers to provide Mrs. F an appraisal, for a fee, indicating the books are worth \$100,000. Mr. G. indicates to Mrs. F that if the IRS challenges the valuation, the appraisal of \$100,000 can be used to negotiate a fair market value of \$75,000.
- a. Mrs. F agrees to pay the fee for the appraisal indicating the books are worth \$100,000, and Mr. G. prepares the appraisal.
 - b. Mr. G. has aided in the preparation of a document knowing the document will be used in connection with a material tax matter and it will result in the understatement of tax liability. Thus, Mr. G. is liable for the IRC 6701 penalty.
- (10) **Example 6:** Mrs. H, an accountant, overstates the value of depreciable property on an estate tax return. Mrs. H knows there is no reasonable basis for the valuation. Mrs. H also knows the valuation claimed on the estate tax return will not understate the tax liability of the estate because of the application of the unified credit. Mrs. H, however, intends that the value claimed on the return will be used by the beneficiary of the estate in computing depreciation deductions. Mrs. H has aided in the preparation of a tax document and knows the estate tax return will result in an understatement of the tax liability of the beneficiary. The IRC 6701 penalty therefore applies.
- (11) **Example 7:** Mr. A, an attorney, knowingly understates an item of partnership income in preparing a partnership return for calendar year 2015. Mr. A prepares and transmits to the partners Schedules K-1 for the 10 individual partners for the same calendar year reflecting the understated income. Mr. A is subject to 10 separate \$1,000 IRC 6701 penalties for his preparation of ten Schedules K-1 which Mr. A knew would, if used, result in understatements of the federal tax liabilities of the 10 partners on their federal income tax returns. Mr. A will not be subject to an eleventh penalty in connection with the partnership return itself, since the partnership itself is not liable for income tax and the only understatements of tax liability are the understatements of tax liability on the 10 partners' individual returns.
- (12) **Example 8:** Mrs. B, an officer of an S corporation under IRC 1361(a)(1), S Corporation Defined, prepares the corporation's tax return for calendar year 2015. Mrs. B intentionally understates the corporation's net capital gain for the taxable year, resulting in an understatement of the corporation's tax liability under IRC 1374, Tax Imposed on Certain Built-in Gains. Mrs. B also prepares Schedules K-1 for the individual shareholders for the same calendar year reflecting the understated capital gain. Mrs. B is subject to a \$10,000 penalty for her aid in the preparation of the small business corporation return and a \$1,000 penalty for each Schedule K-1 prepared.

Note: If Mrs. B intentionally understated operating income rather than net capital gains, Mrs. B is subject to a \$1,000 penalty for each Schedule K-1 prepared, but is not subject to a penalty for the S corporation return since under these facts the S corporation is not subject to tax.

- (13) **Example 9:** Mrs. C, an accountant, prepares false income and gift tax returns for client Mr. D. Each of the returns is prepared for calendar year 2015. The calendar year 2015, however, relates to a period for which different taxes are imposed. Thus, there are two taxable periods for purposes of application of the penalty under IRC 6701: the calendar year 2015 which is the period for which the income tax is imposed, and the calendar year 2015 which is the period for which the gift tax is imposed. Mrs. C is subject to a penalty of \$2,000.

20.1.6.14.2
(08-25-2020)
**SB/SE and LB&I,
Functional Guidance**

- (1) Under no circumstances should an IRC 6701 investigation be started without documented approval from one of the following:
- LDC for SB/SE (unless the IRC 6701 penalty is being asserted in conjunction with findings from an income tax examination),
 - TTSPC for LB&I reportable transactions,
 - RPC for LB&I non-reportable transactions involving tax return preparers, or
 - LDC for TE/GE (unless the IRC 6701 penalty is being asserted in conjunction with findings from an examination).
- (2) IRM 4.32.2, The Abusive Transactions (AT) Process, contains the administrative procedures.
- (3) IRM 4.32.3, Coordination and Roles of Cross-Functional Units, contains the cross-functional guidance.
- (4) The SB/SE LDC processes referrals for IRC 6701 penalty investigation. Therefore, if during an income tax audit or by other means, it is determined there may be a recurrence of tax return preparer behavior violating IRC 6701, a referral must be made to the LDC. The LDC evaluates referrals based on established criteria and authorizes IRC 6701 investigations when warranted. After investigations are authorized, case files are forwarded to the appropriate area's PSP unit for assignment to the field.
- (5) The LB&I OTSA reviews referrals based on established criteria and presents the referral to the TTSPC. The TTSPC authorizes IRC 6701 investigations when warranted for reportable transactions. For tax return preparer investigations in LB&I which do not involve a reportable transaction, approval from the RPC is required and assistance of local counsel should be requested.

20.1.6.14.3
(05-16-2012)
**Development of the
Required Referral**

- (1) A person subject to penalty under IRC 6701 may be identified by one of the following:
- Area field examiner
 - Campus correspondence examiner
 - IRS appraiser and/or engineer
 - Any other IRS employee who determines the penalty might apply

Note: Many of these cases will be discovered during LB&I examinations. However, the referral should be based on the taxpayer under penalty investigation, in most cases, an SB/SE taxpayer.

20.1.6.14.3.1
(08-25-2020)

Evidence Supporting the Government's Burden of Proof

- (1) IRC 6694 penalties may only be imposed on tax return preparers. IRC 6701 penalties may be imposed on any person, including tax return preparers.
 - a. The government's burden of proof under IRC 6694(b) and IRC 6701 is not sustained by the mere presence of unreported income or overstated credits and deductions.
 - b. The focus is on the information establishing the knowledge, willfulness, or recklessness of the tax return preparer (e.g., information conveyed by the taxpayer to the tax return preparer, information known or reasonably known by the tax return preparer, and/or the inquiries or statements directed by the preparer to the taxpayer).

Example: If the tax return preparer fabricates deductions (without the taxpayer's knowledge), the tax return preparer could be liable for a penalty under IRC 6694(b) or IRC 6701 because he willfully attempted to understate the tax and/or because he prepared a return based on information known by the tax return preparer to result in an understatement of the taxpayer's tax liabilities.

- (2) Even though a tax return preparer may in good faith rely on the taxpayer to provide accurate information, the tax return preparer may not ignore the implications of such information and must make reasonable inquiries when information furnished appears to be incorrect or incomplete. It must be shown the tax return preparer failed to make any reasonable inquiry under circumstances required by rule or regulation, and a deliberate act of omission prevails.
- (3) The evidence should show the amount of understatement on each return related to IRC 6701 activity. Examples of evidence to be collected include, but are not limited to the following:
 - a. Tax returns or other documents prepared by the person under investigation. Although copies may be used during the investigation, originals or certified copies will be needed for introduction in court.
 - b. Affidavits taken from taxpayers whose federal tax returns were prepared by the person under investigation. These affidavits should define the items falsely reported on the filed return as well as any other tax return preparer violations. The affidavits are used for report purposes, but the individuals must be available to testify if the case goes to court. Review IRM 20.1.6.17, Affidavits Overview.
 - c. Computation of loss to the government due to the understatement of tax attributable to the tax return preparer.
 - d. False receipts or other documents to establish the involvement of the individual under investigation in aiding or assisting in the filing of false documents specified in IRC 6701.
 - e. Affidavits taken from third parties who can testify as to the tax return preparer's tax knowledge and personal responsibility in the preparation of the tax returns or other factors bearing on the investigation.
 - f. Refer also to IRM 4.32.2.8.6, Evidence.

20.1.6.14.4
(07-26-2017)

Coordination With Other Penalties

- (1) The penalty under IRC 6701 is not imposed on a person with respect to a federal tax document if a penalty with respect to such document has been assessed on such person under IRC 6694. The IRC 6701 penalty may be imposed, however, with respect to any other federal tax document for which the penalty under IRC 6694 has not been assessed, even though the

document relates to the same taxpayer and taxable year as a document with respect to which the penalty under IRC 6694 has been assessed.

- (2) A penalty under IRC 6701 may not be applied to the same activities that result in the application of a penalty under IRC 6700. Therefore, if a promoter develops promotional materials such as a prospectus and other documents which explain the promotion and those documents are used as the evidence supporting a penalty under IRC 6700 for organizing and promoting an abusive tax shelter, a penalty under IRC 6701 will not be assessed for those same documents. However, if the same promoter prepares a partnership tax return relating to the same tax plan or arrangement, a penalty can be assessed under IRC 6701 for each Schedule K-1 if an understatement of tax liability is reported on the investor's federal tax returns.

20.1.6.15
(08-29-2019)
**Actions to Enjoin
Specified Conduct
Related to Tax Shelters
and Reportable
Transactions—IRC 7408**

- (1) Review IRM 20.1.6.19, Third Party Contacts—IRC 7602(c).
- (2) Review IRM 20.1.6.17, Affidavits Overview.
- (3) A civil action may be brought under IRC 7408 to enjoin specified conduct. The action may be brought in the U.S. District Court for the district in which the individual resides, has his principal place of business, or has engaged in specified conduct.
- (4) If any citizen or resident of the United States does not reside in, and does not have his principal place of business in, any United States judicial district, such citizen or resident shall be treated for purposes of this as residing in the District of Columbia.
- (5) The term “specified conduct” means any action, or failure to take action, that is one of the following:
- a. Subject to penalty under IRC 6700, IRC 6701, IRC 6707, or IRC 6708; or
 - b. In violation of Circular 230.
- (6) The court may grant injunctive relief against any person if it finds the following:
- a. The person has engaged in any specified conduct and
 - b. Injunctive relief is appropriate to prevent recurrence of such conduct.
- (7) An investigation under IRC 7408, will be conducted in the same fashion as an investigation under IRC 6700 and IRC 6701.
- (8) The injunction authorized under IRC 7408 is coordinated with civil penalties under IRC 6700, IRC 6701, IRC 6707, and IRC 6708. See IRM 20.1.13 for information on penalties under IRC 6707 and IRC 6708 .
- (9) In addition, IRC 7408 can be used in conjunction with IRC 7402(a), if appropriate.
- (10) The Code does not provide any limitation period for seeking an injunction under IRC 7408.

20.1.6.15.1
(09-17-2010)
**Action on
Injunctions—Seeking an
Injunction**

- (1) Any examiner conducting an investigation under IRC 6700, IRC 6707, or IRC 6708 will consider whether an injunction should be sought under IRC 7408.
- (2) An injunction may be sought by an examiner to whom an investigation is assigned for activities specified in IRC 7407.

20.1.6.16
(05-22-2024)
Appeal Rights

- (1) Effective August 28, 2011, IRC 6694 and IRC 6695 tax return preparer penalties were redesignated as an Appeals Coordinated Issue (ACI). Review and concurrence is no longer required before settling a return preparer penalty. Appeals employees having a work unit with a return preparer penalty issue must make a referral to Appeals Technical Guidance through their manager upon assignment or preliminary review using Form 13381, Appeals Technical Guidance/International Referral.
- (2) Tax return preparer penalties may be subject to Rev. Proc. 2015-40, Procedures for Requesting Competent Authority Assistance under Tax Treaties, and Rev. Proc. 2017-25, SB/SE—Appeals Fast Track Settlement Procedure. See IRC 6320, Notice and Opportunity for Hearing Upon Filing of Notice of Lien, and IRC 6330, Notice and Opportunity for Hearing Before Levy.
- (3) Underlying tax cases - Unagreed cases. Some penalties are related to positions taken or items reported on underlying tax returns (the related tax return). In general, an unagreed penalty case will not be sent to Appeals before the related tax return is submitted to Appeals. Compliance will include in the tax return preparer case file information on the current status and location of the related return.
- (4) See IRM 8.11.3, Return Preparer Penalty Cases, for more on tax return preparer penalty appeals guidelines.

20.1.6.16.1
(05-22-2024)
Pre-Assessment Appeal Rights—IRC 6694, IRC 6695, and IRC 6713

- (1) 26 CFR 1.6694-4(a)(2) allows for pre-assessment appeals rights of IRC 6694 penalties. Although the regulation only relates to IRC 6694 penalties, examiners will follow the same guidelines for IRC 6695 penalties. IRC 6694, IRC 6695, and IRC 6713 penalties will have pre-assessment appeal rights.
- (2) The tax return preparer is sent a 30-day letter, Letter 1125, Transmittal of Preparer Penalty Report, with an examination report and Pub 5, Your Appeal Rights and How To Prepare a Protest If You Disagree, for appeal procedures. If there is no timely response to the letter, the penalty is assessed. Pre-assessment appeals consideration will be granted if requested for IRC 6694, IRC 6695, and IRC 6713 penalties.
- (3) Short statute cases
 - a. If the statutory period for assessment is about to expire and the tax return preparer will not agree to an extension, the penalty will be assessed. If the tax return preparer has not previously had the opportunity to request a hearing with Appeals, the tax return preparer, upon request, will be provided post-assessment appeal rights in the same way pre-assessment appeal rights would have been provided. Examiners will advise tax return preparer the period for filing a claim for refund under IRC 6694(c), Extension of Period of Collection Where Preparer Pays 15 Percent of Penalty, is not extended by a post-assessment appeal.
 - b. Examiners will not submit tax return preparer penalty cases to Appeals if less than 365 days remain on the statute of limitations when received by Appeals. In these instances, examiners will first solicit an extension of the statutory period for assessment.
 - c. See IRM 20.1.6.18, Statute of Limitations.

- 20.1.6.16.2
(05-22-2024)
**Post-Assessment
Appeal Procedures**
- (1) In cases where there has not been a prior hearing with Appeals, the tax return preparer may request, and will be granted, an appeals hearing after assessment. Advise tax return preparers the period for filing a claim for refund under IRC 6694(c) is not extended by a post-assessment appeal.
- 20.1.6.16.3
(05-22-2024)
**Denial of Claim No Prior
Appeals Hearing**
- (1) If a tax return preparer or promoter has not had a hearing with Appeals and files a claim for refund of assessed penalties, the tax return preparer or promoter may request, and will be granted, an appeals hearing after the proposed denial of the claim.
- 20.1.6.16.4
(05-22-2024)
**Denial of Claim Prior
Appeals Hearing**
- (1) Tax return preparers for IRC 6694, IRC 6695, and IRC 6713 penalties are currently permitted to request an appeals hearing if they file a claim and the claim is disallowed, even if the case was previously considered by Appeals in pre-assessment status.
- 20.1.6.16.5
(05-22-2024)
**Appeals for Special
Claims**
- (1) Tax return preparers and promoters may appeal the denial of a special claim for refund. Administrative appeal rights will be granted when the basis for the claim does not conflict with Appeals procedural rules set forth in Treas. Reg. 601.106(b) of the statement of procedural rules. An appeal should not be based on moral, political, constitutional, religious, or similar arguments.
- (2) See IRM 20.1.6.20.1, Special Claim—IRC 6694, IRC 6700, and IRC 6701.
- 20.1.6.17
(08-25-2020)
Affidavits Overview
- (1) An affidavit is a person's written declaration or statement of facts voluntarily made and confirmed by oath or affirmation before a person with authority for administering it. Affidavits relating to the tax return preparer program will usually be taken from taxpayers.
- (2) Affidavits are not used routinely in tax return preparer cases; however, affidavits are recommended in all cases where the IRS may ask the Department of Justice to seek an injunction. The affidavit will facilitate the filing of a suit, obtaining a preliminary injunction, and an early hearing. Form 2311, Affidavit, can be used for this purpose. See also IRM 4.16.1.3.2.1, Securing Affidavits.
- (3) The affidavit should identify and incorporate the following:
- a. Judicial district involved.
 - b. Name, TIN, business and home address, and business and home telephone numbers of the witness.
 - c. Persons present during the interview and their relation to the investigation.
 - d. Tax periods involved.
 - e. Specific false or fabricated portions of the return, if any.
- (4) The affidavit should include other relevant information pertaining to the tax return preparer including the following:
- a. Actions taken by the tax return preparer when informed of the client's examination (e.g., tax return preparer offered to supply false documents to support false deductions, the tax return preparer told the client to ignore the IRS, etc.).
 - b. Experience of the tax return preparer in preparing returns.
 - c. Education of the tax return preparer.

- d. Where the tax return preparer is or was working.
 - e. How the tax return preparer solicits clients and whether the tax return preparer is currently soliciting clients.
- (5) Examiners should make the following determinations and include them in the affidavit.
- a. How and when the taxpayer met the person under investigation.
 - b. What specific information the taxpayer gave to the person under investigation.
 - c. How and when the taxpayer gave the specific information to the person under investigation.
 - d. Whether the taxpayer signed the return, has seen the return, was provided a copy of the return, and had the return explained to them.
 - e. If the person under investigation was paid and how the fee was determined (e.g., a set fee, percent of the refund, etc.).
 - f. How the fee was paid (e.g., cash, check, money order, barter, etc.).
 - g. When the fee was paid (e.g., when the information was provided, after the return was completed, after the refund was received, etc.).
 - h. Whether the taxpayer asked the tax return preparer to put false items on the return or claim.

20.1.6.18
(03-30-2023)
Statute of Limitations

- (1) The statute of limitations on assessment of penalties depends on the applicable code section.
- a. IRC 6694(a) and IRC 6695 shall be assessed within 3 years after the return or claim for refund with respect to which the penalty is assessed was filed.
- Caution:** Extending the statute using Form 872, Consent to Extend the Time to Assess Tax, on a taxpayer's return does not extend the statute for the tax return preparer penalty case.
- b. There is no statute of limitations on assessment for IRC 6694(b), IRC 6700, IRC 6701, and IRC 6713 penalties.
 - c. There is no statute of limitations on actions to enjoin tax return preparers or promoters under IRC 7407 or IRC 7408.
- (2) The statute on a tax return preparer penalty case under IRC 6694(a) and IRC 6695 can be extended using Form 872-D, Consent to Extend the Time on Assessment of Tax Return Preparer Penalty. See Rev. Rul. 78-245, IRB 1978-1 C.B. 35.
- (3) A transcript of the underlying return the tax return preparer penalty is based upon should be included in the tax return preparer penalty case file for accurate monitoring of the statute expiration date.
- (4) Consents should be obtained when the statute of limitations for assessing the tax return preparer penalty will expire within 180 days and there is insufficient time to complete the examination. Also, the statute for assessment must be extended if the tax return preparer requests to go to Appeals and there is less than 365 days remaining on the statute for assessment, when received by Appeals. Ample time for processing is important because deficiency procedures do not apply to tax return preparer and promoter penalties.

- (5) A separate consent should generally be obtained for each taxable period under consideration, but the related taxpayer returns for which the penalties are applicable can be included on each consent.
- (6) See IRM 25.6.22.6.15, Preparer Penalty, and IRM 25.6.1.9.13.3, The Period of Assessment, for further information.
- (7) See IRM 4.32.2.12.10, Penalty Case Processing Procedures, for procedures when the ASED is less than 60 days. Per IRM 4.4.25.5, Quick Assessments on Civil Penalties, Form 8278, CCP Procedures, CCP prepares Form 2859, Request for Quick or Prompt Assessment.

20.1.6.19
(05-22-2024)

**Third Party
Contacts—IRC 7602(c)**

- (1) IRC 7602(c), Notice of Contact of Third Parties, generally requires that 45 days before IRS employees initiate contact with third parties for the determination or collection of a taxpayer's tax liability, the taxpayer must be given advance notice of IRS intent to contact third parties during a period (not greater than 1 year) which is specified in the notice. IRC 7602(c) also requires the IRS to make a record of persons contacted and provide that record to the taxpayer upon the taxpayer's request. See IRM 25.27.1, Third-Party Contacts, and third-party contacts on the Exam Procedures Knowledge Base for general examination procedures on third party contacts. In certain situations the notice and recordkeeping requirements of IRC 7602(c) may apply to contacts made to determine the applicability of tax return preparer penalties because these penalties are treated as a tax under IRC 6671, Rules for Application of Assessable Penalties. When IRC 7602(c) applies it is indicated below with reference to specific Code provisions.
- (2) During a routine examination, mandatory pro forma inquiries addressed to a taxpayer-client regarding the tax return preparer's compliance with IRC 6695(a) and IRC 6695(f) are not third party contacts.
 - a. The notice requirements of IRC 7602(c) are not immediately triggered if a taxpayer-client's response to pro forma questions asked as part of a routine examination provides a basis for conducting a tax return preparer penalty investigation.
 - b. If the taxpayer indicates the tax return preparer did not provide a copy of the return and/or the tax return preparer negotiated the refund check, examiners should briefly confirm and record the response, discontinue inquiry on the issue, and continue with the examination of the return. Contact the tax return preparer to determine if IRC 6695(a), and/or IRC 6695(f), penalties apply. If further contact with the taxpayer regarding the determination of a tax return preparer penalty is necessary, then it is a third-party contact with respect to the tax return preparer and third-party contact procedures apply.
- (3) IRC 6695(g) compliance visits with tax return preparers to determine whether the due diligence requirements are satisfied are not third party contacts with respect to the tax return preparer's clients.
- (4) During routine client examinations, a potential tax return preparer penalty issue under IRC 6694 is usually not subject to third party notification and record-keeping requirements.
 - a. The criteria for applying IRC 6694 penalties for unreasonable positions, willful attempts to understate the liability, and reckless or intentional

- disregard of rules and regulations are decided by the character of the adjusted return positions and the tax return preparer's part in the non-compliance.
- b. Information on the applicability of tax return preparer penalties is often a by-product of a taxpayer-client examination and does not always require examiners to directly address the taxpayer as a third party for information on the tax return preparer's conduct. The notice requirements of IRC 7602(c) are not immediately triggered by a taxpayer's response that provides a basis for conducting a tax return preparer penalty investigation. For example, in order to account for an erroneous return position and determine if an IRC 6662, Imposition of Accuracy-related Penalty on Underpayments, penalty applies against the taxpayer, examiners may ask taxpayers what information was given to the tax return preparer and to what extent the tax return preparer was informed of all relevant, underlying facts.
 - c. Information from the taxpayer in response to a proposed IRC 6662 penalty may indicate the advice exception applies. See Treas. Reg. 1.6664-4(c), Reliance on Opinion or Advice and IRM 20.1.5.7.2, Taxpayer's Effort to Report the Proper Tax Liability. Any contact with tax return preparers to determine the applicability of the taxpayer's penalty is a third-party contact. See the third-party contacts on the Exam Procedures Knowledge Base for procedures required prior to any third-party contact.
 - d. The notice and recordkeeping requirements come into effect whenever examiners address a tax return preparer's clients as a third party (e.g., whenever the examiner directly asks the client for information needed for making a determination on the tax return preparer's liability for a penalty). Before such an inquiry is initiated, examiners must follow the third-party contact procedures. See third-party contacts on the Exam Procedures Knowledge Base and then re-contact the tax return preparer's client.
- (5) Program Action Cases - See IRM 4.11.51, Return Preparer Program, for procedures.
- (6) Criminal Investigations—
- a. Examiners may conduct examinations of taxpayers' returns as part of a Program Action Case involving a tax return preparer (following third-party contact procedures) at the same time special agents are independently conducting a criminal investigation of the tax return preparer.
 - b. The pending criminal investigation exception under IRC 7602(c)(3)(C), Exceptions, applies to third-party contacts made by special agents in CI. It also applies to examiners or other IRS personnel while working under CI and assisting in a criminal investigation. In a parallel civil investigation of a tax return preparer or promoter where CI requests no-contact, the third-party notification letter, Letter 3164-P is not required.
- (7) IRC 6700 and IRC 6701- Contact with third parties for the purpose of the following are third-party contacts and are subject to IRC 7602(c) requirements:
- a. Investigating persons described in IRC 6700(a), Imposition of Penalty, who may be subject to a tax shelter promoter penalty, and
 - b. Investigating persons described in IRC 6701 who may be subject to a penalty for aiding and abetting the understatement of a tax liability.

- (8) IRC 6713- A violation regarding the prohibition on a tax return preparer's disclosure or use of tax return information is almost always brought to the attention of the IRS by the affected client of the tax return preparer. The unsolicited receipt of information from a third party is not a contact initiated by the IRS and so is not subject to IRC 7602(c) notification or reporting requirements.
- (9) IRC 7407 and IRC 7408 are legal proceedings to prohibit certain conduct and are not to determine or collect tax liabilities. IRC 7602(c) does not apply to the action to enjoin nor to referrals to Area Counsel or the Department of Justice. However, the underlying investigative actions requiring third-party contacts, such as certain contacts under paragraphs (2), (4), (5), and (7) above, are subject to IRC 7602(c) requirements.
- (10) TE/GE employees should consult their business unit specific IRM section for additional third-party contact guidance.

20.1.6.20
(08-25-2020)

Claims for Refund—IRC 6694, IRC 6695, IRC 6700, and IRC 6701

- (1) Tax return preparers use Form 6118, Claim for Refund of Tax Return Preparer and Promoter Penalties, for penalties under IRC 6694 and IRC 6695.
- (2) Promoters use Form 6118 to submit claims for penalties under IRC 6700 and IRC 6701.
- (3) The tax return preparer has three years from the date of payment to file a claim for refund of tax return preparer penalties under IRC 6694(a) and IRC 6695. See IRC 6696(d)(2), Claim for Refund, and Treas. Reg.1.6696-1(g).
- (4) For IRC 6700 and IRC 6701, a claim for refund of penalties paid timely must be made within 2 years of the date paid.
- (5) When Form 6118 is submitted for IRC 6694, IRC 6695, IRC 6700, IRC 6701 claims, see IRM 21.5.3, General Claims Procedures, for processing these claims for refund.
- (6) For SB/SE, IRC 6694 and IRC 6695 claims for refunds are sent by campus examination classification to the appropriate SB/SE area RPC of the filed claim. The RPC sends the claim to the examiner or the office of the examiner who asserted the tax return preparer penalty. Claims for other OD/BUs are sent to the RPC for the OD/BU. Claims missing Form 8867 should be sent to TS.
- (7) IRC 6700 and IRC 6701 claims for refund are sent by campus examination classification to the LDC in Laguna Niguel, CA. The SB/SE LDC will ensure the claims are reviewed by the appropriate examination personnel.

20.1.6.20.1
(03-30-2023)

Special Claim—IRC 6694, IRC 6700, and IRC 6701

- (1) Within 30 days after the day notice and demand is made, tax return preparers/promoters may pay 15 percent of the penalty and file a special claim for refund for IRC 6694, IRC 6700, and IRC 6701 penalties.
 - a. IRC 6694(c), Extension of Period of Collection Where Preparer Pays 15 Percent of Penalty, and IRC 6703(c), Extension of Period of Collection Where Person Pays 15 Percent of Penalty, provide special claim for refund procedures for tax return preparers/promoters assessed penalties under IRC 6694, IRC 6700, and IRC 6701. Form 6118 becomes a special claim when, within 30 days after the day notice and demand is made, tax return preparers/promoters pay 15 percent of the penalty.

- b. Under IRC 6694(c) and IRC 6703(c) collection action and the running of the statute of limitation on collection are suspended until the special claim is finally resolved administratively or judicially (e.g., by Appeals or by the Federal District Court).
- c. These special claims must be processed on an expedited basis, especially when Appeals consideration is warranted and will be granted.
- d. The examiner receiving the claim will request a transcript to validate TC 470 CC 95 was input to stay collection activity, see IRC 6694(c) and IRC 6703(c) special claims for refund. When TC 470 CC 95 is not on the MFT 55 module for IMF or MFT 13 module for BMF for these special claims Form 3177, Notice of Action for Entry on Master File, should be completed and emailed to Collection CCP for the input of the TC 470 CC 95.

Note: Select the email link corresponding to and including the name of the Area in which you work. The examiner will verify the TC 470 CC 95 on the MFT 55 module for IMF or MFT 13 module for BMF special claims, and document actions taken on the case activity record.

- e. For agreed special claims the examiner completes and faxes Form 3177 for input by collection of TC 472 CC 95, for the reversal of TC 470 CC 95. Email Form 3177 to Collection CCP. The examiner should document the action taken on the case activity record.
 - f. For unagreed special claims the examiner uses Form 3198, Special Handling Notice for Examination Case Processing, to flag the special claim case for the reversal of the TC 470 CC 95. The Other Instructions item will be checked in the Special Features section. The explanation is Form 3177, Notice of Action for Entry on Master File, with TC 472 CC 95 is completed by the function concluding the special claim. Email Form 3177 to Collection CCP.
- (2) The IRC 6694 special claims for refunds are sent by campus examination classification to the appropriate SB/SE area RPC of the filed claim.
 - (3) The IRC 6700 and IRC 6701 special claims for refund are sent by campus examination classification to the SB/SE LDC in Laguna Niguel, CA. The LDC will ensure the claim is reviewed by the appropriate examination personnel.
 - (4) Also see IRM 4.32.2.12.10.3.2.5, Claims for Refunds Procedures—SB/SE.

20.1.6.20.2
(10-13-2021)
**IRC 6694(d), Abatement
of Penalty Where
Taxpayer's Liability Not
Understated**

- (1) If at any time there is a final administrative determination or a final judicial decision that there was no understatement of liability in the case of any return or claim for refund with respect to which a penalty under IRC 6694(a) or IRC 6694(b) has been assessed, such assessment shall be abated.
- (2) If any portion of such penalty has been paid, the amount so paid shall be refunded to the person who made such payment as an overpayment of tax without regard to any period of limitations.
- (3) Form 6118 is used by the tax return preparer for IRC 6694(d), Abatement of Penalty Where Taxpayer's Liability Not Understated, claims.

- a. The examiner verifies the final administrative determination, or a final judicial decision cited by the tax return preparer for the client's return the penalty was based upon and there is currently no understatement of liability the penalty was based upon.
- b. There is no statute of limitations for these claims.

20.1.6.20.3
(10-13-2021)

**Campus Claim
Processing**

- (1) When Form 6118 is submitted for IRC 6694, IRC 6695, IRC 6700, or IRC 6701 claims, see IRM 21.5.3 for processing of these claims for refund.
- (2) The IRC 6694 and IRC 6695 claims for refunds are sent by campus examination classification to the appropriate SB/SE area RPC of the filed claim. Claims missing Form 8867 should be sent to TS.
- (3) The IRC 6700 and IRC 6701 claims for refund are sent by campus examination classification to the SB/SE LDC in Laguna Niguel, CA.
- (4) Two attempts by campus examination classification are made to request the administrative file before forwarding the claim to the appropriate office above.
- (5) Campus examination classification coordinates with Accounts Management for the input of TC 470 to stay collection activity for IRC 6694(c) and IRC 6703(c) special claims for refund.

Exhibit 20.1.6-1 (05-22-2024)
IRC 6695 Base and Inflation Rates

IRC	6695(a)	6695(b)	6695(c)	6695(d)	6695(e)	6695(f)	6695(g)
Title	Failure to Furnish Copy to Taxpayer	Failure to Sign	Failure to Furnish Identifying Number	Failure to Retain Copy or List	Failure to File Correct Information Returns	Negotiation of Check	Failure to be Diligent in Determining Eligibility for head of household filing status and Certain Tax Benefits
For taxable years beginning in 2015 (Base rate)	\$50 per return or claim; \$25,000 maximum	\$500 per check; No maximum	\$500 per item in return; No maximum				
For taxable years beginning in 2016	\$50 per return or claim; \$25,000 maximum	\$505 per check; No maximum	\$505 per item in return; No maximum				
For taxable years beginning in 2017	\$50 per return or claim; \$25,500 maximum	\$510 per check; No maximum	\$510 per item in return; No maximum				
Return filed in 2019	\$50 per return or claim; \$26,000 maximum	\$520 per check; No maximum	\$520 per item in return; No maximum				
Return filed in 2020	\$50 per return or claim; \$26,500 maximum	\$530 per check; No maximum	\$530 per item in return; No maximum				
Return filed in 2021	\$50 per return or claim; \$27,000 maximum	\$540 per check; No maximum	\$540 per item in return; No maximum				

Exhibit 20.1.6-1 (Cont. 1) (05-22-2024)
IRC 6695 Base and Inflation Rates

IRC	6695(a)	6695(b)	6695(c)	6695(d)	6695(e)	6695(f)	6695(g)
Return filed in 2022	\$50 per return or claim; \$27,000 maximum	\$545 per check; No maximum	\$545 per item in return; No maximum				
Return filed in 2023	\$55 per return or claim; \$28,000 maximum	\$560 per check; No maximum	\$560 per item in return; No maximum				
Return filed in 2024	\$60 per return or claim; \$30,000 maximum	\$600 per check; No maximum	\$600 per item in return; No maximum				
Return filed in 2025	\$60 per return or claim; \$31,500 maximum	\$635 per check; No maximum	\$635 per item in return; No maximum				

Exhibit 20.1.6-2 (05-22-2024)

Acronyms

Acronym	Definition
ACDS	Appeals Centralized Database System
ACI	Appeals Coordinated Issue
ACTC	Additional Child Tax Credit
AJCA	American Jobs Creation Act
AOTC	American Opportunity Tax Credit
ASED	Assessment Statute Expiration Date
AT	Abusive Transactions
ATE	Appeals Technical Employee
BMF	Business Master File
BSO	Business Support Office
BU	Business Unit
CCP	Centralized Case Processing
CTC	Child Tax Credit
DLN	Document Locator Number
EFC	Electronic Filing Coordinator
EIC	Earned Income Credit
EIN	Employer Identification Number
ERCS	Examination Return Control System
HOH	Head of Household
IDRS	Integrated Data Retrieval System
IMD	Internal Management Document
IMF	Individual Master File
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
LB&I	Large Business & International
LDC	Lead Development Center
MFJ	Married Filing Joint
MFT	Master File Tax
NOL	Net Operating Loss

Exhibit 20.1.6-2 (Cont. 1) (05-22-2024)**Acronyms**

Acronym	Definition
OD	Operating Division
ODC	Other Dependents Credit
OPR	Office of Professional Responsibility
OS	Operations Support
OSP	Office of Servicewide Penalties
OTSA	Office of Tax Shelter Analysis
PAC	Program Action Case
PATH	Protecting Taxpayers from Tax Hikes Act
PRN	Penalty Reference Number
PSP	Planning & Special Programs
PTIN	Preparer Tax Identification Number
RCCMS	Reporting Compliance Case Management System
RPC	Return Preparer Coordinator
RPPWG	Return Preparer Penalty Working Group
SB/SE	Small Business Self Employed
SBWOTA	Small Business Work Opportunity Tax Act
SSN	Social Security Number
TCJA	Tax Cuts and Jobs Act
TEAMTRA	Tax Extenders and Alternative Minimum Tax Relief Act
TE/GE	Tax Exempt Government Entities
TFA	Taxpayer First Act
TTSPC	Technical Tax Shelter Promoter Committee