



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

20.1.12

OCTOBER 6, 2021

EFFECTIVE DATE

(10-06-2021)

PURPOSE

- (1) This transmits IRM 20.1.12, Penalty Handbook, Penalties Applicable to Incorrect Appraisals.

MATERIAL CHANGES

- (1) IRM 20.1.12.1.1. Added stakeholder audience and clarified language.
- (2) IRM 20.1.12.1.1. Moved penalty computation and penalty not applicable to IRM 20.1.12.3
- (3) IRM 20.1.12.1.5. Added definitions moved from IRM 20.1.12.7.1 (1).
- (4) IRM 20.1.12.1.5. Added table for terms and acronyms used in the IRM and eliminated link to IRM 20.1.1.
- (5) IRM 20.1.12.1.13. Subsection revised to standardize list to other IRM 20.1 parts.
- (6) IRM 20.1.12.2. Modified instructions to examiners and attorneys submitting a referral prior to penalty assertion.
- (7) IRM 20.1.12.2. Added instructions for appraisers and valuation specialists determining misstatements.
- (8) IRM 20.1.12.3. Added penalty computation and penalty not applicable from IRM 20.1.12.1.1
- (9) IRM 20.1.12.7.1. Deleted due to elimination of multi-tiered review process, Interim Guidance Memo LB&I-20-0120-001, Interim Guidance on IRC 6695A Penalty Case Reviews.
- (10) IRM 20.1.12.7 (1). Added a condition for mandatory referrals to Lead Development Center.
- (11) IRM 20.1.12.7.1 (1). Moved to IRM 20.1.12.1.5, Terms, Definitions and Acronyms.
- (12) IRM 20.1.12.7 (3). Deleted due to elimination of multi-tiered review process, Interim Guidance Memo LB&I-20-0120-001, Interim Guidance on IRC 6695A Penalty Case Reviews.
- (13) IRM 20.1.12.7.3 (2) and (3). Deleted due to elimination of multi-tiered review process, Interim Guidance Memo LB&I-20-0120-001, Interim Guidance on IRC 6695A Penalty Case Reviews.
- (14) IRM 20.1.12.7.3 (4). Modified due to elimination of multi-tiered review process, Interim Guidance Memo LB&I-20-0120-001, Interim Guidance on IRC 6695A Penalty Case Reviews.
- (15) IRM 20.1.12.7.4. Deleted due to elimination of multi-tiered review process, Interim Guidance Memo LB&I-20-0120-001, Interim Guidance on IRC 6695A Penalty Case Reviews
- (16) IRM 20.1.12-2. Exhibit deleted as job aid was eliminated.(MM-DD-YYYY)
- (17) Editorial changes were made throughout to update references and hyperlinks, clarify terms and instructions and adjust formatting.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 20.1.12 dated December 18, 2017 and incorporates Interim Guidance Memo LB&I-20-0120-001, Interim Guidance on IRC 6695A Penalty Case Reviews.

AUDIENCE

Small Business/Self Employed (SB/SE), Large Business & International (LB&I), and Tax Exempt and Government Entities (TEGE) Examiners, Estate & Gift Tax Attorneys, and Appeals.

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20.1.12

Penalties Applicable to Incorrect Appraisals

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20.1.12.1
(10-06-2021)
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 penalties for incorrect appraisals.
 - (2) **Audience:** This IRM provides policy and guidelines to be followed by all operating division employees and processing functions that address appraiser penalties..
- Note:** Some divisional IRMs may provide supplemental guidance to address incorrect appraisals.
- (3) **Policy Owner:** The Business Support Office (BSO) is under Operations Support (OS). The SB/SE Operations Support BSO office is responsible for overseeing civil penalties including penalties for incorrect appraisals.
 - (4) **Program Owner:** Office of Servicewide Penalties (OSP) is responsible for incorrect appraisal penalties.
 - (5) **Primary Stakeholder:** SB/SE, TEGE, LB&I
 - (6) **Contact Information:** To recommend changes or make any other suggestions to this IRM, e-mail OSP at *servicewide.penalties.team@irs.gov*. Also see IRM 1.11.6.6, Providing Feedback About an IRM Section - Outside of Clearance.

20.1.12.1.1
(10-06-2021)
Background

- (1) Section 1219 of the Pension Protection Act of 2006 added IRC 6695A, Substantial and Gross Valuation Misstatements Attributable to Incorrect Appraisals. This penalty provision allows the Service to assert a penalty against any person who prepared an appraisal of the value of property and who knew, or reasonably should have known, the appraisal would be used in connection with a return or claim for refund and the appraisal results in a substantial valuation misstatement (within the meaning of IRC 6662(e)), a substantial estate or gift tax valuation understatement (within the meaning of IRC 6662(g)), or a gross valuation misstatement (within the meaning of IRC 6662(h)) with respect to such property.
- (2) This penalty applies to appraisals prepared with respect to returns or submissions filed after August 17, 2006. However, if the appraisal relates to a facade easement donation, the penalty applies to returns filed after July 25, 2006.

20.1.12.1.2
(12-18-2017)
Authority

- (1) The Service has authority to penalize and to seek injunctions against appraisers. Prior to the passage of the Pension Protection Act of 2006 (Pub. L. No. 109-280), appraisers could only be subject to penalties under IRC 6700, Promoting abusive tax shelters, etc., or IRC 6701, Penalties for aiding and abetting understatement of tax liability.

20.1.12.1.3
(10-06-2021)
Responsibilities

- (1) The Director of Business Support, within SB/SE Operations Support, is responsible for the servicewide civil penalty program.
- (2) Overall responsibility for civil penalty programs is assigned to the Office of Servicewide Penalties (OSP). OSP is a matrix organization residing in the Business Support (Small Business/Self Employed) Function. OSP is charged with coordinating policy and procedures concerning the administration of civil penalty programs, ensuring consistency with the penalty policy statement,

reviewing and analyzing penalty information, researching penalty effectiveness on compliance trends, and determining appropriate action necessary to promote voluntary compliance.

- (3) Each IRS organization is responsible for establishing an internal process for managing their procedures based upon these Servicewide policies and may develop additional guidance or reference materials for their specific functional administrative needs. However, such reference material must receive approval from the Office of Servicewide Penalties (OSP) prior to distribution and must remain consistent with the policies and general procedural requirements set forth in this IRM, Policy Statement 20-1 (e.g., Penalty Policy Statement) in IRM 1.2.1.12.1, and any other guidance relating to civil penalties.
- (4) All employees should keep the following objectives in mind when handling each penalty case:
 - a. Similar cases and similarly situated taxpayers should be treated alike.
 - b. Each taxpayer should have the opportunity to have his or her interests heard and considered.
 - c. Strive to make a right decision in the first instance. A wrong decision, even though eventually corrected, has a negative impact on voluntary compliance.
 - d. Provide adequate opportunity for incorrect decisions to be corrected.
 - e. Treat each case in an impartial way (i.e., approach the job, not from the government's or the taxpayer's perspective, but in the interest of fair and impartial enforcement of the tax laws).
 - f. Use each penalty case as an opportunity to educate the taxpayer, help the taxpayer understand his or her legal obligations and rights, and assist the taxpayer in understanding his or her appeal rights.
 - g. Endeavor to promptly process and resolve each taxpayer's case.
 - h. Resolve each penalty case in a manner which promotes voluntary compliance.
- (5) 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 <http://www.irs.gov/taxpayer-bill-of-rights>

20.1.12.1.3.1
(12-18-2017)

**Fair and Consistent
Approach to Penalty
Administration**

- (1) The IRS's approach to the administration of penalties for incorrect appraisals must ensure the following:
 - a. **Consistency:** The IRS should apply the penalty for incorrect appraisals 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.
 - b. **Accuracy:** The IRS must arrive at the correct determination for each penalty decision. Accuracy is essential. Erroneous penalty assessments and incorrect calculations confuse taxpayers and undermine the overall competency of the IRS.
 - c. **Impartiality:** IRS employees are responsible for administering penalties in an even-handed manner that is fair and impartial to both the government and the taxpayer.

- 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.

20.1.12.1.4
(12-18-2017)
**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 reviews should be conducted to ensure consistency with the penalty policy statement (Policy Statement 20-1) and philosophy.
- (2) To promote the goal of consistency and fairness, OSP will review semi-annually a sample of penalty assessments, provided by SB/SE Research & Organizational Accountability (R&OA). See IRM 20.3.1, Civil Penalty Accuracy Review Process. The report of findings is shared with the Director, Business Support, the CFO, and other leadership as needed. The completed report is uploaded to an enterprise shared folder. Other reports may be prepared when a significant issue develops, such as a correction to programming affecting many taxpayers.

20.1.12.1.5
(10-06-2021)
**Terms/Definitions/
Acronyms**

- (1) Refer to the following employee title definitions:
 - The examiner is generally the revenue agent assigned to the examination.
 - The attorney is the Estate and Gift tax attorney assigned to the examination.
 - The examining appraiser is the IRS appraiser or valuation specialist assigned to the examination.
- (2) The following table defines terms and acronyms used throughout this IRM section:

ABBREVIATIONS	DEFINITION
AC	Activity Code
AIMS	Audit Information Management System
BSO	Business Support Office
CCP	Centralized Case File
CFR	Code of Federal Regulations
DO	District Office
EIN	Employer Identification Number
ERCS	Examination Returns Control System
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
IMS	Issue Management System
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
LB&I	Large Business & International
MFT	Master File Tax
OD/BU	Operating Division/Business Unit
OS	Operations Support
OSP	Office of Servicewide Penalties
POA	Power of Attorney
PRN	Penalty Reference Number
R&OA	Research & Organizational Accountability
SB/SE	Small Business/Self Employed
SSN	Social Security Number
TC	Transaction Code
TE/GE	Tax Exempt/Government Entities
TIN	Taxpayer Identification Number

20.1.12.1.6
(12-18-2017)

Related Resources

(1) Additional forms and resources include:

- Form 8278 for assertion of various civil penalties
- Exhibit 20.1.12-1, IRC 6695A - Pro forma Explanation of Adjustments
-

20.1.12.2

(10-06-2021)

Who Asserts the Penalty

- (1) Examiners and attorneys have responsibility for asserting the IRC 6695A, Substantial and Gross Valuation Misstatements Attributable to Incorrect Appraisals, penalty.
- (2) Examiners and attorneys will submit a referral for Engineering Program assistance and/or consultation related to potential penalties, prior to asserting the penalty, when assistance of an IRS appraiser or valuation specialist is needed, and a potential IRC 6695A recommendation from an examining appraiser was not received. Referrals can be made via the Specialist Referral System located at <https://srs.web.irs.gov/> and should specify the case as a 6695A case.
- (3) If IRS appraisers or valuation specialists assigned to an income or, estate or gift tax examination determine a valuation misstatement has occurred in accordance with provisions set forth in IRC 6695A, the examining appraiser will:
 1. Obtain the immediate supervisor's written approval (email, memorandum, or other written form), and
 2. Notify the examiner or attorney the case is a potential IRC 6695A penalty case through a memorandum. See IRM 20.1.12.7.2.

20.1.12.3

(10-06-2021)

Asserting the IRC 6695A Penalty

- (1) An IRC 6695A appraiser penalty case will be conducted as a separate and distinct case from the related tax examination.
- (2) During the related tax examination, examiners and attorneys will, as warranted, develop facts and circumstances to determine whether or not an IRC 6695A appraiser penalty case should be opened. This determination will be documented in the examination workpapers.
- (3) All discussions related to appraiser penalties with either the taxpayer, return preparer, or designated power of attorney, will be limited to the development of facts to determine the applicability of a penalty. Penalties under IRC 6695A will **not** be proposed in the presence of the taxpayer.
- (4) Generally, an IRC 6695A penalty against an appraiser will not be proposed until the related tax examination is completed at the group level. The appraiser penalty case can proceed when the related tax examination case is closed agreed, closed no response after default, is in Appeals or is in Tax Court.

Caution: If the statute of limitation on the IRC 6695A penalty will expire within 180 days, then the penalty case file should be worked, or a statute extension should be obtained so a protective assessment can be made if needed. See IRM 20.1.12.4, Statute of Limitations.

- (5) The penalty does not apply if the appraiser can establish the appraisal value "more likely than not" was correct. Pending further guidance, consult Counsel regarding "more likely than not" determinations.
- (6) The amount of the IRC 6695A penalty is the lesser of:
 - a. The greater of:
10% of the amount of the underpayment (defined by IRC 6664(a) attributable to the misstatement)
or
\$1,000, or
 - b. 125% of the gross income received from the preparation of the appraisal.

- (7) If the claimed value of the property on the return or claim for refund, which is based on an appraisal, results in a substantial valuation misstatement, substantial estate or gift tax valuation understatement, or gross valuation misstatement, with respect to such property, the examiner or attorney should open an IRC 6695A penalty case.
- Substantial Valuation Misstatement.** A substantial valuation misstatement under Chapter 1 (Normal Taxes and Surtaxes) occurs when the claimed value of the property is 150% or more of the correct amount of such valuation, IRC 6662(e).
 - Substantial Estate or Gift Tax Valuation Understatement.** A substantial estate or gift tax valuation understatement occurs if the value of the property claimed is 65% or less of the amount determined to be the correct amount of such valuation, IRC 6662(g).
 - Gross Valuation Misstatement.** A gross valuation misstatement under Chapter 1 (Normal Taxes and Surtaxes) occurs when the claimed value of the property is 200% or more of the correct amount of such valuation, IRC 6662(h).
 - Gross Estate or Gift Tax Valuation Understatement.** A gross estate or gift tax valuation understatement occurs if the value of the property claimed is 40% or less of the amount determined to be the correct amount of such valuation, IRC 6662(h).

20.1.12.4
(12-18-2017)

Statute of Limitations

- The statute of limitations on assessment for an IRC 6695A penalty expires three years from the date on which:
 - The return, with respect to which the penalty is assessed, was filed (a return filed prior to the due date is deemed to be filed on the due date), or
 - The claim for refund, with respect to which the penalty was assessed, was filed.
 - The statute on the appraiser penalty case under IRC 6695A can be extended using Form 872-AP, Consent to Extend the Time on Assessment of IRC Section 6695A Penalty.
- Note:** Extension of the statute on the related tax case does **not** extend the IRS 6695A penalty statute.
- A transcript of the return on which the appraiser penalty is based should be included in the appraiser penalty case file for accurate monitoring of the statute expiration date.
 - Signed consents should be obtained when the statute of limitations for assessing the appraiser penalty will expire within 180 days. See IRM 25.6.22.2.1(2), Guidelines for Soliciting Extensions.

20.1.12.5
(08-27-2010)

Power of Attorney (POA)

- If a representative is to be included in correspondence or discussions of the IRC 6695A penalty, a Form 2848, Power of Attorney and Declaration of Representative, is required reflecting "Civil Penalties" in Part I Line 3.
- Form 8821, Tax Information Authorization is used to authorize one or more appointee(s) to inspect and/or receive the appraisers confidential tax information in any office of the IRS. Item 3(a) Tax Matters must designate "Civil Penalty" for the IRC 6695A Civil Penalty.

(3) Additionally, please ensure:

- a. The applicable "Year(s) or Period(s)" box is complete (i.e., "Dec. 31, 2008" or "12/31/2008," and not merely "2008" or "08"), and
- b. The forms are processed according to Operating Division procedures in conjunction with IRM 21.3.7.5 guidance.

20.1.12.6
(10-06-2021)
**Field Examination
Procedures**

(1) If the examiner or attorney determines a penalty is warranted, the examiner or attorney will prepare Form 5345-D, Examination Request-ERCS (Examination Returns Control System) Users, and secure the group manager's approval. ERCS has the capability to request controls on penalty cases not controlled on Audit Information Management System (AIMS).

(2) From the ERCS menu, select "Request Return", then using submenu # 2, selects "Control Penalty Investigation." Additional form instructions are noted below:

- a. Check One Box Only – Select the "Control Penalty Investigation" box;
- b. Taxpayer Name/Name Control – The name control of the appraiser;
- c. TIN – The TIN of the appraiser who prepared the appraisal used in connection with preparation of the return or claim for refund;
- d. Tax Period – The tax period of the return or claim for refund in which the appraisal was used;
- e. Form Type – Enter "Not applicable";
- f. Activity Code – Enter "552";

Note: Based on the Activity Code "552," ERCS will automatically enter the MFT "PB" and the Source Code "99";

- g. Statute Date – Enter applicable date (3 years from the date the related return was filed, unless an extension has been secured, then enter the extension date. If the penalty relates to a claim for refund, the statute date is 3 years from the date the claim was filed). The statute is extended for the appraiser using Form 872-AP;
- h. Project Code – If the appraiser penalty case is related to a project, enter the appropriate project code;
- i. Tracking Code – If the appraiser penalty case is related to a project with a unique tracking code, enter the appropriate tracking code;
- j. Related Return Information - The return or claim for refund claimed the value of the property based on the appraisal; and
- k. Group Managers will indicate approval for the appraiser penalty case by signing and dating this form.

(3) Form 5345-D is used for ERCS users. Non-ERCS users should use Form 5345-B, Examination Request Non-ERCS Users and complete the Form 5345-B in the same manner.

(4) Once managerial approval is secured, the examiner or attorney will distribute copies of Form 5345-D or Form 5345-B as follows:

- a. Original – Remains in the penalty case file;
- b. Group Copy – Retained in the group for control purposes.

(5) Examiner or attorney time charges for the specific IRC 6695A appraiser penalty case will be charged to the MFT PB record, which applies it to activity code (AC) 552 for the appraiser's TIN. Time charges cannot be charged directly to AC 552.

Reminder: Written supervisory approval is required to be secured before the first communication of the penalty to the person on whom the penalty is applied is issued.

- (6) After securing approval, the examiner or attorney should contact the appraiser using Letter 4477, Appraiser Appointment Letter, to schedule an audit appointment. The purpose of this meeting will be to gather sufficient facts to determine whether the appraiser can establish the value in the appraisal meets the “more likely than not” exception as provided in IRC 6695A(c).

Note: A scheduled audit appointment does not necessitate the parties to meet face to face if alternative means allow for the gathering of facts.

- (7) The IRS appraiser or valuation specialist may assist the examiner or attorney in preparing an Information Document request (IDR) to the subject appraiser requesting the basis for meeting the “more likely than not” exception.
- (8) If the appraiser cannot establish the “more likely than not” exception applies, the examiner or attorney must propose an IRC 6695A penalty.
- (9) Examiners and attorneys will make appropriate third party contacts to develop all facts relevant to the determination of the appropriateness of the penalty. IRM 4.11.57, Third Party Contacts, contains the procedures for third party contacts and guidance for examiners and attorneys making third party contacts (Letter 3164-P (DO), Third party notification for IRC 6700/6701 investigations, can be used for notification).
- (10) If the examiner or attorney determines no penalty is warranted, Letter 4478, Appraiser Penalty No-Change Letter, will be prepared at the group level and left undated in the file. Technical Services will date and issue the letter if the case is selected for sample review; otherwise, the letter will be issued by Centralized Case Processing. (CCP). Form 3198 is used to alert CCP to issue Letter 4478.

Note: Check the “Other Letter” block within the “Letter Instructions for CCP” section. In the “Other Letter” block the Letter is 4478. Complete the “For Years” line. Form 3198, Special Handling Notice for Examination Case Processing, is attached to the outside of the case file.

- (11) After consideration of all facts and circumstances, if the examiner or attorney determines an IRC 6695A penalty applies, the examiner or attorney will prepare Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, and Form 886-A, Explanation of Items, or its equivalent.
- (12) Form 886-A, (or its equivalent), should include the following information:
 - a. The basis for asserting of the penalty,
 - b. Why the “more likely than not” statutory exception does not apply, and
 - c. The appraiser’s position regarding the penalty.
- (13) The examiner or attorney will prepare Letter 4485, Appraiser Penalty Assessment Notification Letter. This letter will advise the appraiser of the proposed penalty, solicit payment, and provide an explanation of the dispute process. A copy of Form 886-A, Explanation of Items (or its equivalent) and other pertinent documents or workpapers should be included with this correspondence.

20.1.12.7

(10-06-2021)

Referrals and Penalty Case Review Procedures

- (1) Generally, examiners and attorneys should exercise discretion when referring an appraiser to the Office of Professional Responsibility (OPR) based upon an assessed IRC 6695A penalty. Discretionary referrals to OPR should be based on a pattern of conduct that is subject to IRC 6695A penalty. However, where there is a willful violation of IRC 6695A, a referral to OPR is mandatory. A referral to the SB/SE Lead Development Center (LDC) is mandatory when a penalty is asserted and the appraiser is not the subject of an open promoter investigation.
 - a. The Office of Professional Responsibility referrals – use Form 8484, Suspected Practitioner Misconduct Report. A copy of Form 886-A, Explanation of Items (or its equivalent), and other pertinent documents or workpapers should also be forwarded. Send the referral Form 8484 via secure e-mail to **OPR referrals*.
 - b. SB/SE LDC – use the Form 14242. A copy of *Form 886-A* (or its equivalent) and other pertinent documents or workpapers should be included. Email the Form 14242 using secure e-mail to **LDC*.
- (2) Generally, an IRS appraiser or valuation specialist will recommend the IRC 6695A penalty to the examiner or attorney if a valuation issue meets the thresholds for a substantial or gross valuation misstatement as defined in IRC 6662(e), (g) and IRC 6662(h).

20.1.12.7.1

(12-18-2017)

Examining Appraiser Procedures for Recommending an IRC 6695A Penalty

- (1) Examining appraiser procedures apply if there is an examining appraiser assigned to the case to examine the valuation issue.
- (2) The examining appraiser will establish whether the taxpayer's appraised value meets the penalty criteria set forth in IRC 6695A, and will obtain his/her manager's approval to notify the examiner or attorney when the case is a potential IRC 6695A case.
- (3) If approved, the examining appraiser will prepare a memorandum notifying the examiner or attorney. This memorandum is for internal use only and is not to be disclosed to the taxpayer or the subject appraiser.
- (4) This memorandum should include at a minimum:
 - a. Statement(s) about why the subject appraiser knew, or should have known, the subject appraisal would be used for federal income, estate, or gift tax purposes,
 - b. Supporting statement as to why the subject appraiser's value is incorrect, and
 - c. Type of valuation misstatement (either substantial or gross).

20.1.12.7.2

(10-06-2021)

Issue Management System (IMS) Examiner Procedures for Initiating an IRC 6695A Penalty Case

- (1) The Issue Management System (IMS) examiner:
 - a. Secures management approval to initiate a IRC 6695A appraiser penalty case, and
 - b. Initiates a penalty case on the subject appraiser.
- (2) Examiners and attorneys using IMS, open the penalty case with the following case information:
 - a. Subject appraiser's name
 - b. Subject appraiser's TIN
 - c. Activity code = 552

- d. MFT = PB
- e. Tax year(s) affected by subject appraisal
- f. Statute of limitation (SOL). Enter applicable date (3 years from the date the return was filed (or deemed filed if filed early), or if the penalty relates to a claim for refund, 3 years from the date the claim for refund was filed; unless an extension has been secured, then enter the extension date). The statute is extended for the appraiser using Form 872-AP,
- g. Form type = 8278, and
- h. Issue (UIL) = 06695.00-00

Note: If the case was opened in IMS by the examiner or attorney, the employee will be responsible for closing the case in IMS after the penalty portion is closed.

- (3) Examiners and attorneys not using IMS follow open case procedures in IRM 20.1.12.6, Field Examination Procedures

20.1.12.8
(10-06-2021)
Penalty Case File

- (1) Examiners and attorneys will attach Form 3198, Special Handling Notice for Examination Case Processing, to each penalty case file, identifying it as an IRC 6695A, appraiser penalty case.
- (2) Examiners and attorneys will use the current version of Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, and will enter the following information:
 - a. Line 1 – Enter appraiser name;
 - b. Line 2 – Enter appraiser address;
 - c. Line 3 – Check applicable box;
 - d. Line 5 – Enter penalty case year;
 - e. Line 6 – Enter the appropriate statute date;
 - f. Line 7 – Enter the appraiser SSN or business EIN;
 - g. Line 8 – Check applicable function;
 - h. Line 9, page 1 column (c) and (d) – Enter the number of violations and the penalty amount (if no penalty is proposed, enter -0-);
 - i. Line 10 – Enter examiner or attorney signature (originator), the date Form 8278 was completed, organization code, and phone number and
 - j. Line 11 – Approver signature and date to indicate approval of the penalty. Both must sign the form in order for it to be valid. If not, the form will be returned to the originator for the signatures using Form 3210 procedures. Statute imminent Forms 8278 will be sent by FAX.
- (3) Related Income Tax Workpapers - Include the first two pages of the related tax return, any schedules related to the understatement, and any relevant workpapers from the related file:
 - a. Copy of the original appraisal prepared by the appraiser;
 - b. Copy of the IRS Field Specialist Engineer's and/or outside fee appraiser's appraisal or appraisal review report;
 - c. Copy of the examiner's or attorney's examination report;
 - d. Any documents, interview notes, or affidavits pertinent to the determination of the appraiser penalty; and
 - e. Any other additional information deemed warranted by the examiner, attorney, or manager.

Caution: All information on the appraiser's activities and the applicability of any penalties relating to the appraiser should be distinguished or separated from the taxpayer's case file. If the information were included in the case file, it could be disclosed to the taxpayer if the taxpayer requested a copy of the case file. This could constitute an IRS disclosure violation, since information regarding the appraiser's liability for penalties is confidential.

20.1.12.9
(08-27-2010)
IRC 6695A – Case File Assembly

- (1) The case file will include the following:
 - a. Form 3198, Special Handling Notice, for Examination Case Processing;
 - b. Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, using the current version from the Electronic Publishing website;
 - c. Form 886-A, Explanation of Items, or its equivalent;
 - d. Form 4318, Examination Workpaper Index, used by field examiners or Form 4700, Examination Workpapers used by Tax Auditors;
 - e. Form 9984, Examining Officers Activity Record;
 - f. Form 5345-D, Examination Request - ERCS (Examination Returns Control System) Users, or Form 5345-B, Examination Request Non-ERCS Users;
 - g. Copies of all correspondence to and from the appraiser;
 - h. Documentation of the appraiser interview(s);
 - i. Taxpayer and other third party contact interviews and affidavits;
 - j. Copy of relevant work papers as described in item 3 above (see IRM 20.1.12.8);
 - k. Copy of Form 8484, Suspected Practitioner Misconduct Report; and
 - l. Copy of the Form 14242, Reporting Abusive Tax Promotions and/or Promoters, (if applicable).

20.1.12.10
(08-27-2010)
Appeal Rights - IRC 6695A Cases

- (1) IRC 6695A penalties have post-assessment (but prepayment) penalty appeal rights.
- (2) An appraiser may file a claim for refund utilizing Form 843, Claim for Refund and Request for Abatement. If the claim is denied and the appraiser has not had post-assessment Appeals consideration, administrative appeal rights will be granted by the Area or Campus. Appeals will consider only reasons for disagreement that come within the scope of the tax laws; it will not consider moral, religious, political, constitutional, conscientious, or similar grounds. See the Statement of Procedural Rules at 26 CFR 601.106(b).
- (3) If the penalty has been paid in full, the appraiser may bring a refund suit in either the U.S. Court of Federal Claims or in a district court (1) immediately upon denial of the claim or (2) upon the expiration of six months from the date of filing the claim, if the Service has not acted in time. The appraiser's refund suit must be within two years of the date of the mailing by certified mail or registered mail of the notice of disallowance.

20.1.12.11
(08-27-2010)
IRC 6695A - Case Processing and Assessment Instructions

- (1) The IRC 6695A appraiser penalty case is not established or controlled on AIMS. The case must be established on ERCS prior to closing to Centralized Case Processing (CCP).

- (2) An IRC 6695A appraiser penalty case will not be subject to mandatory review. Groups will close the case to the functional Centralized Case Processing Support following functional guidelines.
- (3) An IRC 6695A appraiser penalty case will be assessed using Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties. This form is used by CCP to make the assessment. The assessments will be input to the Penalty Master File through IDRS using Command Code ADJ54, carrier Transaction Code (TC) 290 with a zero amount, penalty reference number (PRN) 581, and the amount of the penalty.

Reminder: Check the block for Civil Penalties (Form 8278), in the Special Features Section of Form 3198, Special Handling Notice for Examination Case Processing. The Form 3198 is attached to the outside of the case file.

- (4) A notice to the appraiser (generally, a CP 15) will be generated explaining the assessment and appeal rights.
- (5) If a penalty is proposed, the case will be closed from the group via ERCS with Disposal Code "12" and updated to Status Code "51."
- (6) If no penalty is proposed, the case will be closed from the group via ERCS with Disposal Code "02" and updated to Status Code "51."

Exhibit 20.1.12-1 (12-18-2017)**IRC 6695A - Pro forma Explanation of Items**

A pro forma Form 886-A, Explanation of Items, can be found at: <https://portal.ds.irsnet.gov/sites/vl015/RelatedResources/Appraisers-Form%20886-A%20For%20IRC6695A.pdf>

