Lesson 4

Section 6700 Penalty

Overview

Introduction

Congress enacted § 6700 to penalize promoters, organizers, sellers, and professional advisors of abusive tax avoidance transactions. The term "abusive tax avoidance transaction" (ATAT) is generally applied to any plan or arrangement having some connection to taxes which includes a false or fraudulent statement concerning the tax benefits of participation.

Lesson 4 discusses the penalty imposed in § 6700 as it applies to transactions within the scope of enforcement responsibilities assigned to the Tax Exempt Bonds (TEB) program. See IRM 4.81.1.1.

Objectives

At the end of this lesson, you will be able to:

- Identify potential § 6700 penalty cases
- Explain the procedure for obtaining approval to establish a § 6700 penalty case
- Explain the requirements under § 6700 that must be satisfied in order to assert the penalty
- Compute the § 6700 penalty
- Explain the procedures for assessing the § 6700 penalty
- Explain the special claim for refund procedures found in § 6703

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Overview, Continued

Contents

This lesson contains the following topics:

Section 1

The Section 6700 Penalty

Overview

Code § 6700

Section 6700(a) provides that any person who:

1. (A) organizes (or assists in the organization of) 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 such plan or arrangement,

   AND

2. makes or furnishes or causes another person to make or furnish (in connection with such organization or sale) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter,

shall pay a penalty with respect to each activity described in item 1 above.

Applicability

The § 6700 penalty applies to activities occurring on or after September 4, 1982.

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Overview, Continued

Assessment Statute

Section 6700 penalties can be assessed at any time. There is no statute of limitations. See IRM 4.32.2.11.2.

See also Cappozzi v. United States, 980 F.2d 872 (2d Cir. 1992); *Lamb v. United States*, 977 F.2d 1296 (8th Cir. 1992); *Sage v. United States*, 908 F.2d 18 (5th Cir. 1990); and IRS FSA 200129011 (July 20, 2001).

Amendment

Pub. L. No. 101-239, § 7734(a) of the Omnibus Budget Reconciliation Act (OBRA) of 1989, amended § 6700 by:

- inserting "(directly or indirectly)" after "participates" in item 1 on the previous page (underlined text), and
- inserting "or causes another person to make or furnish" after "makes or furnishes" in item 2 on the previous page (underlined text).

Although the amendment applies to activities occurring on or after January 1, 1990, the OBRA legislative history suggests that these changes were made to clarify the pre-OBRA law. See H.R. Rep. No. 101-247, at 829 (1989). ("The bill also clarifies that the penalty applies to direct and indirect actions.").

Definitions

Who is a person?

Section 7701(a)(1) defines a person as an individual, a trust, an estate, partnership, association, company, or corporation.

Who can be a "Promoter"? (i.e. an organizer or participant in the sale)

The § 6700 penalty may apply to bond counsel, investment bankers, issuers, conduit borrowers, financial advisors, feasibility consultants, engineers, counsel to any of those participants, and any other persons, who:

1. are involved in the organization or sale of State or local government bonds, and

2. know or have reason to know that their opinions, offering documents, reports, or other statements (or materials on which they relied in making such statements) are false or fraudulent as to any matter material to the tax exemption of the interest on the bonds.

A person who makes a statement facilitating the issuance or sale of State or local government bonds (including a sale occurring subsequent to the issuance of the bonds) is involved in the organization or sale of such bonds. See H.R. Rep. No. 101-247, at 829 (1989).

Thus, all the various participants in a bond offering can be a "promoter" for purposes of § 6700, provided they were involved in the organization or sale of the bonds and they knew or should have known information was false or fraudulent as to any matter material to the tax exemption of the interest on the bonds. See IRS CCA 200610018 (March 10, 2006).

"Organization or sale of the bonds would occur if a participant made a statement that facilitated the issuance of the bonds. If a participant knew their opinion, offering document, report, or statement was false with respect to a material matter, then the Service could potentially impose a penalty under § 6700 against the participant, so long as the other requirements of § 6700 were met." IRS CCA 200610018 (March 10, 2006).

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What is a Plan or Arrangement?

The terms "investment plan or arrangement" and "other plan or arrangement" include "obligations issued by or on behalf of State or local governments which are represented to be described in § 103(a) of the Code." See H.R. Rep. No. 101-247, at 829 (1989).

Did the Promoter "Make or Furnish" a False Statement?

Merely establishing a violation with respect to §§ 103 and 141 through 150 is not sufficient to trigger the application of § 6700. Instead, along with other factors, it must be established that a false or fraudulent statement was made or furnished with respect to any material matter.

A statement can be either written or oral. There are two types of statements that fall within the statutory bar of § 6700: 1) statements directly addressing the availability of tax benefits, and 2) statements concerning factual matters that are relevant to the availability of tax benefits. IRS CCA 200610018 (March 10, 2006).

Statements in the tax-exempt bond area include opinions, offering documents, reports, or other statements (or materials relied upon in making such statements) that are false or fraudulent as to any matter material to the tax exemption of the interest on the bonds. See H.R. Rep. No. 101-247, at 829.

"In addition to actually making statements regarding the tax benefits of a transaction or facts necessary to determine the tax benefits, a person may be liable for the penalty if they furnished such statements. Thus, the Service might be able to impose the penalty against participants who provided such statements to the investors. For example, participants who disseminate false statements, and knew they were false, as part of their activities in organizing and promoting the bond offering, such as a program advisor, may have furnished false statements." IRS CCA 200610018 (March 10, 2006).

Finally, in order to impose the penalty, there need not be reliance by the purchasing taxpayer on the false or fraudulent statement. "Thus, a penalty could be imposed based upon the offering materials of the arrangement without an audit of any purchaser of interests." S. Rep. No. 97-494, at 185 (1982).

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Definitions, Continued

Was the False Statement "Material"?

The statutory requirement of materiality is satisfied as long as the promoter's false or fraudulent statements would have "substantial impact on the decision-making process of a reasonably prudent investor." However, imposition of the penalty does not require actual reliance by an investor on the promoter's false or fraudulent statements or the actual underreporting of a tax liability as a result of the promoter's statements. S. Rep. No. 97-494, at 185 (1982).

"In bond offerings, statements concerning the exemption of interest on the bonds or facts relevant to that issue are clearly material, as a key factor for investors is whether the interest will be exempt from taxation." IRS CCA 200610018 (March 10, 2006).

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Did the Promoter "Know or Have Reason to Know" that a Statement was False?

In order to assert the § 6700 penalty, a determination must be made as to whether the promoter knew or had reason to know that the statements the promoter made or furnished regarding the excludability of interest earned on the bonds were false or fraudulent.

Whether a promoter knew or had reason to know that statements contained in the bond documents were false or fraudulent depends upon the promoter's role. The greater the promoter's knowledge of the bond-financed project and involvement in the issuance, marketing, and sale of the bonds, the more likely it is that the promoter knew or should have known that the bonds would not meet the requirements of § 103(a). IRS FSA 200129011 (July 20, 2001).

The courts often look to three factors to determine whether a person had the requisite knowledge to violate § 6700.

1. The extent of the person's reliance on knowledgeable professionals.
2. The person's level of sophistication and education.
3. The person's familiarity with tax matters.

See United States v. Estate Pres. Servs., 202 F.3d 1093, 1103 (9th Cir. 2000).

Proof of actual knowledge is not required. Rather, it is appropriate to rely on objective evidence of the promoter's knowledge of the transaction. S. Conf. Rep. No. 97-530, at 572 (1982). *See also United States v. Campbell*, 897 F.2d 1317, 1321-22 (5th Cir. 1990).

It is not appropriate, however, to impute knowledge to the promoter beyond the level of comprehension required by the promoter's role in the transaction. S. Conf. Rep. No. 97-530, at 572 (1982).

Thus, for example, the promoter "would be able to rely, as to matters of fact or expectation relevant to his or her opinion, on information provided by other parties (including the issuer) absent actual knowledge or a reason to know of its inaccuracy or the use of statements not credible or reasonable on their face. On the other hand, the promoter must draw [his or her] own legal conclusions from that information." H.R. Rep. No. 101-247, at 1398 (1989).

Section 2

Asserting the Penalty

Overview

Introduction

Whether the § 6700 penalty should be asserted in a particular case is a highly factual determination and can only be made on a case by case basis. Section 6703(a) provides that the Service bears the burden of proof with respect to each element of § 6700. The burden of proof must be met by a preponderance of evidence.

It is imperative, therefore, that there is sufficient evidence gathered to satisfy each element of § 6700 before asserting the penalty.

See IRS FSA 200129011 (July 20, 2001) and *Barr v. United States*, 67 F.3d 469 (2d Cir. 1995).

Case Establishment

Identifying § 6700 cases

TEB identifies § 6700 leads by reviewing, as part of its normal examination activities, the use, expenditure, and investment of proceeds of the bond issue and what the various participants knew, or should have known, with regard to such use, expenditure or investment of bond proceeds.

If, in the course of an examination, a TEB examiner determines a separate § 6700 penalty investigation is warranted, the TEB IRC § 6700 Committee should be contacted for development and evaluation.

If the TEB IRC § 6700 Committee approves the penalty investigation, the separate penalty examination case will be controlled and established on the TE/GE Reporting Compliance Case Management System (RCCMS).

TEB IRC § 6700 Committee

TEB operates an IRC § 6700 Committee to evaluate, at the discretion of the Director, recommendations from Field Operations (FO) that FO be granted approval to open a promoter penalty case.

The TEB IRC § 6700 Committee receives, reviews, authorizes and assigns § 6700 penalty cases. The TEB IRC § 6700 Committee has sole authority to approve TEB promoter investigations.

The purpose of the TEB IRC § 6700 Committee is to ensure consistency and uniformity in selecting promoters for investigation within TEB. The Committee is comprised of representatives from Chief Counsel and TEB.

Once a referral is authorized, group managers will assign § 6700 cases priority status. Section 6700 cases will be developed for potential promoter penalties and/or injunctions, and penalties will be applied when appropriate.

Asserting the Penalty

Requirements

Before the Service can assess the § 6700 penalty against a promoter, it must first establish that:

1. the promoter organized or participated (directly or indirectly) in the sale of the bonds;

2. the promoter made or furnished (or caused another person to make or furnish) a statement with respect to the allowability of deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the bonds;

3. the statement in 2 is false or fraudulent as to any material matter; and

4. the promoter knew or had reason to know that the statement in 2 was false or fraudulent.

With regard to the item 1 above, an examiner should investigate the promoter's activities to determine the scope and nature of the promoter's involvement in the transaction.

With respect to items 2 and 3 above, the examiner should review the offering documents, as well as examine all the documents related to the use, expenditure, and investment of proceeds of the bond issue to determine whether the promoter made any false and fraudulent statements with respect to the allowability of a credit or excludability of any interest earned by the bondholders.

Lastly, the examiner will need to determine whether the promoter knew or had reason to know that the statements the promoter made or furnished regarding the excludability of interest earned on the bonds were false or fraudulent.

See IRS FSA 200129011 (July 20, 2001).

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Is the Service Required to Declare the Bonds Taxable in Order to Assert the § 6700 Penalty?

Section 6700 applies "even if the Service insulated bondholders from the effect of a declaration of taxability of a bond sold as tax-exempt by entering into a closing agreement with the issuer of the bonds. Furthermore, so long as there has been a determination that a false or fraudulent statement (which may include a conclusion of law based on a false or fraudulent statement) has been utilized, action under § 6700 is not precluded by failure of the Service to enter into a closing agreement, to declare taxability, or otherwise penalize the issuer or owners of the bond in question."

H.R. Rep. No. 101-247, at 1398 (1989).

Example 1

On December 31, 1985, the City issued mortgage revenue bonds to finance the acquisition and construction of a housing project that was to provide a number of low to moderate housing units. The Service audited the bonds and determined that the bonds did not meet the requirements of § 103 and, thus, that the interest earned on the bonds was not exempt from federal income tax. In April of 1999, the Service sent a preliminary adverse determination letter to the City advising the City of its proposed determination, the reasons therefore, and the City's right to an administrative appeal. The City filed a timely protest in which it advised the Service that it had redeemed all of the bonds before the adverse determination letter was sent. Because the bonds had been redeemed, the Service closed its audit of the bonds.

Even thought it did not pursue the audit of the bonds, the Service may assert the § 6700 penalty against the various parties who participated in the organization and sale of the bonds.

IRS FSA 200129011, 2001 WL 819408 (IRS FSA) (July 20, 2001).

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Is the Service Required to Establish that an Investor Relied on the False Statement?

In order to impose the penalty, there need not be reliance by the purchasing taxpayer on the false or fraudulent statement or actual underreporting of tax. "These elements have not been included because they would substantially impair the effectiveness of this penalty. Thus, a penalty could be imposed based upon the offering materials of the arrangement without an audit of any purchaser of interests."

S. Rep. No. 97-494, at 185 (1982).

Referral to the Office of Professional Responsibility

OPR Referrals

Section 6700 penalties, when proposed against a promoter who is a practitioner subject to Circular 230, are mandatory referrals to the Office of Professional Responsibility (OPR).

Circular 230 Section 10.53 specifies that if an agent has reason to believe that a practitioner has violated any provision of Circular 230, the agent must promptly make a written report to the Director of the Office of Professional Responsibility of the suspected violation.

Based on the above, the decision to refer a particular matter to OPR is not an issue for negotiation with the promoter, and OPR referrals may not be negotiated as a settlement item with respect to any proposed § 6700 penalty.

Although it is acceptable in certain situations to remind a practitioner of his or her duties relative to Circular 230, agents should never imply or infer that a referral to OPR will result in disciplinary action against the promoter, and the potential that a matter may be referred to OPR should never be discussed with the promoter in a manner that may be perceived in any way as a threat.

Completing the Referral

Agents can use Form 8484, *Report of Suspected Practitioner Misconduct*, to make the referral to OPR.

Each referral to OPR should describe and document the practitioner's actions in order to support disciplinary action. Include a summary of the suspected misconduct that provides as much detail as possible regarding the misconduct in question along with supporting documentation.

Once an IRS employee makes a referral, OPR will contact the employee within 30 days to acknowledge the referral and possibly follow up with a request for information.

See IRM 20.1.6.11.3, *Referral to the Office of Professional Responsibility*.

Refer to the Office of Professional Responsibility intranet site for additional information on procedures for referrals to OPR

Case Closing

RCCMS Case Closing Procedures

To close a § 6700 penalty case from RCCMS, follow the instructions under IRM 4.81.5.7.8.1.7 if the penalty is being assessed and the promoter does not agree.

When a § 6700 investigation results in a closing agreement, the case should be closed in accordance with IRM 4.81.5.7.8.1.6.

Closing Agreements

Closing agreement amounts may be based on the application of § 6700 penalties.

The closing agreement should clearly state that the payment is being made in resolution of an § 6700 examination. The closing agreement should also clearly state whether the payment is to be treated as a penalty and whether such payment is deductible.

Section 3

Computing the Penalty

Overview

Introduction

Recall from Section 1 of this Lesson that the § 6700 penalty applies to activities occurring on or after September 4, 1982, and there is no statute of limitations on assessment. In addition, the penalty amount has been amended on three occasions since the original enactment of § 6700. As a result, calculation of the penalty amount will depend upon when the activities subject to the penalty occurred.

On or After September 4, 1982

For activities occurring on or after September 4, 1982 and before July 19, 1984, the penalty amount is equal to the **greater** of $1,000 or **10 percent** of the gross income derived or to be derived by such person from such activity.

See Pub. L. No. 97-248, § 320 (enacting § 6700 effective September 4, 1982).

On or After July 19, 1984

For activities occurring on or after July 19, 1984 and before January 1, 1990, the penalty amount is equal to the **greater** of $1,000 or **20 percent** of the gross income derived or to be derived by such person from such activity.

See Pub. L. No. 98-369, § 143 (effective July 19, 1984).

On or After January 1, 1990

For activities occurring on or after January 1, 1990 and before October 23, 2004, the penalty amount is equal to the **lesser** of $1,000 per activity or, if the promoter can establish that it is lesser, **100 percent** of the gross income derived (or to be derived) by such person from such activity.

See Pub. L. No. 101-239, § 7734 (effective January 1, 1990).

On or After October 23, 2004

For activities (other than gross valuation overstatements) occurring on or after October 23, 2004, the penalty amount is equal to **50 percent** of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.

See Pub. L. No. 108-357, Title VIII, § 818 (effective October 23, 2004).

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What is an "Activity"?

Recall from Section 1 of this Lesson that Paragraph (1) of § 6700(a) provides that any person who:

> (1)(A) organizes (or assists in the organization of) any investment plan or arrangement, or any other plan or arrangement,
>
> **OR**
>
> (1)(B) participates (directly or indirectly) in the sale of any interest in any such plan or arrangement…

shall pay a penalty with respect to each activity described in paragraph (1).

Pub. L. No. 101-239, § 7734(a) (effective on or after January 1, 1990) amended § 6700(a)(2) by clarifying that the penalty amount applies "with respect to each activity described in paragraph (1)." The amendment further provides that "activities described in paragraph (1)(A) with respect to each arrangement shall be treated as a separate activity and participation in each sale described in paragraph (1)(B) shall be treated as a separate activity."

The legislative history explains that "[i]n calculating the amount of the penalty," the organizing of a plan or arrangement and the sale of each interest in a plan or arrangement "constitute separate activities. The committee has made these modifications because the courts have differed in their interpretations of the provisions of present law. The committee believes that its modifications will eliminate confusions for cases arising in the future." *See* H.R. Rep. No. 101-247, at 829 (1989).

IRM 4.81.6.5.3.7

For purposes of applying the § 6700 penalty to a tax-exempt bond transaction, the sale of each bond denomination is treated as a separate activity.

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Example 1

In 1996 through 2000, the promoter, a law firm, participated in the formation of 18 bond issuances and issued 18 bond opinions with respect to such issuances. In 2005, the Service determined that the promoter violated § 6700 in connection with the 18 bond issuances and assessed a penalty in the amount of $1,781,367. The bond issuances were sold in $5,000 increments. Through discovery, the Service determined that the specific fees paid to the promoter, and the value of the bond issues, were as follows:

Bond #	Principal Amount	Fees
1	$4,300,000	$51,000
2	$16,000,000	$77,000
3	$3,750,000	$77,500
4	$15,800,000	$94,000
5	$15,000,000	$102,700
6	$9,550,000	$75,000
7	$19,850,000	$102,500
8	$10,200,000	$125,000
9	$12,600,000	$125,000
10	$13,750,000	$125,000
11	$22,500,000	$125,000
12	$6,000,000	$60,000
13	$5,875,000	$54,000
14	$14,500,000	$145,000
15	$14,000,000	$140,000
16	$8,500,000	$81,667
17	$6,600,000	$66,000
18	$14,925,000	$155,000
Total	$213,700,000	$1,781,367

Because the total principal amount of the 18 bonds issuances was $213,700,000, and the bond issuances were sold in $5,000 increments, the promoter participated in 42,740 ($213,700,000 / $5,000) separate sale activities.

The rule for activities occurring on or after January 1, 1990 and before October 23, 2004 provides that the penalty amount is equal to the **lesser** of $1,000 or **100 percent** of the gross income derived by the promoter from such activity.

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Example 1, (continued)

In this case, the § 6700 penalty amount is equal to $1,781,367, the total amount of fees paid to the promoter (100 percent of the gross income derived by the promoter from the activities), because this amount is less than $42,740,000 ($1,000 multiplied by the number of separate sale activities*).

See Hargrove & Costanzo v. United States, 2008 WL 4133928 (E.D.Cal.2008). (The example in this Lesson applies the rule in IRM 4.81.6.5.3.7 to the facts in *Hargrove*.) In *Hargrove*, the Court rejected the position of the Service that the sale of each bond denomination is treated as a separate activity, and concluded that there was not enough evidence before the Court to determine whether the promoter "organized" or "participated in the sale" of any obligations issued by or on behalf of a State or local government that were represented to be tax-exempt.

For another example of the application of the rule in IRM 4.81.6.5.3.7, see *Grant, Konvalinka, & Harrison, P.C. v. United States*, 612 F.Supp.2d 950 (E.D.Tenn.2009) (declining to follow *Hargrove*'s "misguided" analysis, while at the same time, "not necessarily concluding the government's interpretation of the statute is correct").

* It could also be argued that, because the promoter was involved in facilitating 18 separate bond issuances, the promoter was also involved in 18 separate "organizing" activities in addition to the 42,740 "sale" activities.

Example 2

The facts are the same as in **Example 1**, except the activities occurred in 2005 through 2009.

The rule for activities occurring on or after October 23, 2004 provides that the penalty amount is equal to **50 percent** of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.

In this case, the § 6700 penalty amount is equal to $890,683.50, which is **50 percent** of the total amount of fees paid to the promoter (50% x $1,781,367).

Section 4

Penalty Assessment and Refund Procedures

Assessment Procedures

Who Asserts the Penalty?	Examiners recommend assertion of the § 6700 penalty. Also refer to IRM 4.32.2.11, *Penalty Assessment.*
Are Deficiency Procedures Required?	Section 6703(b) provides that deficiency procedures do not apply to the assessment or collection of § 6700 penalties. The Service can assess § 6700 penalties without providing a notice of deficiency and the promoter cannot petition the Tax Court.
Non-deficiency Procedures	After managerial approval for a proposed § 6700 penalty is secured, the penalty is assessed, whether or not the promoter agrees with the penalty. When a § 6700 penalty is assessed, the promoter is sent a penalty assessment notice and demand (i.e. "billed") for payment of the amount due. There are no pre-assessment appeal rights for § 6700 penalties. See IRM 4.32.2.11.11.1(1).

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Managerial Approval

Section 6751(b) requires that certain penalties, including § 6700 penalties, must be approved by the immediate supervisor of the examiner or such higher level official as the Secretary may designate.

Generally, an immediate supervisor is the person who writes an employee's evaluation or approves the employee's leave. On-the-Job Instructors do not qualify as the "immediate supervisor" for the purpose of § 6751(b).

This approval must be documented in writing and should be retained in the penalty case file. Other business units within TE/GE use Form 13130, Penalty Screening Committee Approval Record, to document this approval, however, a document similar to Form 13130 can be used. While not required, it is recommended that proposed penalties also be reviewed by the TEB IRC § 6700 Committee and by the Chief Counsel.

Form 8278

Form 8278, *Assessment and Abatement of Miscellaneous Civil Penalties*, is the form used by examiners for the manual assessment or abatement of miscellaneous civil penalties that are not subject to deficiency procedures. Form 8278 requires that both the examiner and manager sign and date the form.

Form 8278 provides the applicable Penalty Reference Number (PRN). The PRN (#628) is used to generate the notice language the taxpayer receives. The notice taxpayer receives is the § 6671 required notice and demand for payment to the taxpayer that provides an explanation of the penalty being assessed (or references the explanation provided by the examiner), the amount due, and the other actions available.

Refund Procedures

Claims for Refund, In General

If the § 6700 penalty has been paid in full, the promoter has two years from the date of payment to file a claim for refund. Promoters use Form 6118, *Claim for Refund of Tax Return Preparer Penalties and Promoter Penalties*, to submit claims for refund of penalties timely paid.

If the claim is denied and a written request for penalty assessment reconsideration is received timely, Appeals may consider the claim for refund in the same manner as any other claim for refund, except in cases where the penalty is protested on moral, religious, political, constitutional, conscientious, or similar grounds.

The promoter may bring a refund suit in either the U.S. Court of Federal Claims or the U.S. District Court having jurisdiction within two years of the date of the notice of claim disallowance or upon the expiration of six months after the date of filing the claim.

Special Claim for Refund Procedures

Section 6703(c) provides special claim for refund procedures for promoters assessed penalties under § 6700.

Within 30 days after the day that notice and demand is made, promoters may pay 15 percent of the penalty and file a claim for refund of § 6700 penalties. Form 6118, mentioned above, is also used by promoters to file claims for refund under this special procedure.

Promoters may appeal the denial of a special claim for refund. If a written request for penalty assessment reconsideration is received timely, Appeals may consider the claim for refund in the same manner as any other claim for refund, except in cases where the penalty is protested on moral, religious, political, constitutional, conscientious, or similar grounds.

The promoter may bring a refund suit in the U.S. District Court having jurisdiction within 30 days of the date of the notice of claim disallowance, or within 30 days after the expiration of six months from the date of filing the claim, whichever is earlier.

Under § 6703(c), collection action and the running of the statute of limitations on collection are suspended from the date the claim for refund is filed until the claim is finally resolved administratively or judicially (i.e., by Appeals or by the U.S. District Court).

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Refund Procedures, Continued

Processing Claims for Refund

Section 6700 claims for refund received by the Campus are sent by Campus Examination Classification to the SB/SE Lead Development Center (SB/SE LDC) in Laguna Niguel, CA. The SB/SE LDC will ensure the claims are reviewed by the appropriate examination personnel.

Section 5

Coordination with Other Penalties

Overview

Statutory Provision	Section 6700(c) provides that the penalty imposed by § 6700 shall be in addition to any other penalty provided by law.
Code § 6701(f)(3) – Civil Penalty	In general, the § 6700 penalty is in addition to all other penalties that may be imposed under the Code. However, under § 6701(f)(3), no penalty may be assessed under **§ 6700** on any person with respect to any document for which a penalty is assessed on such person under **§ 6701.** The provision under § 6701(f)(3) allows the IRS to choose which penalty to assert if both § 6700 and § 6701 apply to a set of facts, but prohibits the Service from assessing penalties under both sections for the same document. See the discussion in IRM 20.1.6.13.4, *Coordination with Other Penalties*.
Code § 7206(2) – Criminal Penalty	Section 7206(2) applies to any person who willfully aids or assists in making fraudulent or false statements. In some cases, promoters might be criminally prosecuted under § 7206(2) for assisting, procuring, or advising the preparation or presentation of a return or other document which is fraudulent or false.

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Overview, Continued

Code § 7408, Actions to Enjoin Specified Conduct

Section 7408 authorizes a civil action to enjoin any person from further engaging in conduct subject to the penalty under § 6700. The action may be brought in the U.S. District Court for the district in which the individual resides, has his or her principal place of business, or has engaged in the conduct subject to the penalty.

The court may grant injunctive relief against any person if it finds:

1. that the person has engaged in any conduct subject to the penalty under § 6700, and

2. that injunctive relief is appropriate to prevent recurrence of such conduct.

Seeking an Injunction

Any examiner conducting an investigation under § 6700 will consider whether an injunction should be sought under § 7408.

The promoter penalty under § 6700 and the injunction actions under § 7408 are more effective when applied prior to the time investors file their returns. Therefore, § 6700 penalty investigations that have been authorized by the TEB IRC § 6700 Committee should be initiated promptly.

An investigation under § 7408, will be conducted in the same fashion as an investigation under § 6700. See IRM 4.32.2.9, *Injunctive Action*, and IRM 4.32.3.6.1, *Steps in an Injunctive Case*, for procedural guidance.

Coordination with Other Penalties

The injunction authorized under § 7408 is coordinated with the penalty under § 6700.

Statute of Limitations

The Code does not provide any limitation period for seeking an injunction under § 7408.

Summary

Review

Lesson 8 discussed the § 6700 penalty as it applies to transactions within the scope of enforcement responsibilities assigned to the TEB program.

TEB is committed to pursuing investigations of promoters of ATATs. These investigations are designated as priority work. The are a variety of tools available to TEB agents to combat promoters of ATATs, including:

- Assessing civil penalties against promoters under § 6700;
- Referring promoters subject to Circular 230 to the Office of Professional Responsibility for sanctions;
- Seeking injunctive relief under § 7408; and
- Referring promoters to the Criminal Investigation Division.

Before the Service can assess the § 6700 penalty against a promoter, it must first establish that (1) the promoter organized or participated in the sale of the bonds; (2) the promoter made or furnished or caused another person to make or furnish a statement with respect to any matter material to the tax exemption of the interest on the bonds; (3) such statement was false or fraudulent; and (4) the promoter knew or had reason to know that the statement was false or fraudulent.

The TEB IRC § 6700 Committee has sole authority to approve TEB promoter investigations. If, in the course of an examination, a TEB examiner determines a separate § 6700 penalty investigation is warranted, TEB IRC § 6700 Committee is to be contacted for development and evaluation.

Computation of the § 6700 penalty amount will depend upon when the activities subject to the penalty occurred. For purposes of applying the § 6700 penalty to a tax-exempt bond transaction, each bond denomination is treated as a separate activity.

The Service assesses § 6700 penalties without providing a notice of deficiency and the promoter cannot petition the Tax Court; however, examiners must secure managerial approval before the penalty can be assessed. This approval must be documented in writing and should be retained in the penalty case file.

Section 6700 penalties do not have pre-assessment appeal rights; however, the special claim for refund procedures in § 6703 permit promoters to pay 15 percent of the penalty and file a claim for refund, provided such payment is made within 30 days after the date of the notice and demand for payment.