

LB&I Process Unit

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Process Overview

Penalty for Failure to Include Reportable Transaction Information with Return

As part of the American Jobs Creation Act of 2004, Congress enacted IRC 6707A along with other penalty provisions related to the disclosure of certain transactions and the failure to report them properly on tax returns. The IRS, in carrying out its authority, requires taxpayers and certain third parties to maintain and submit records pertaining to any reportable transactions.

IRC 6707A imposes a monetary penalty on taxpayers who fail to disclose any reportable transactions information which is required under IRC 6011 to be included with such return or, where applicable, on a statement sent to the IRS Office of Tax Shelter Analysis (OTSA). IRC 6707A covers two different kinds of transactions: reportable transactions, which are those the Secretary has determined as having a potential for tax avoidance or evasion; and listed transactions, which are reportable transactions that are the same as or substantially similar to those that the Secretary specifically identified as tax-avoidance transactions. Treas. Reg. 1.6011-4(b) describes five categories of reportable transactions:

- Listed transactions
- Confidential transactions
- Transactions with contractual protection
- Loss transactions
- Transactions of interest

As part of the Small Business Jobs Act of 2010, Congress enacted section 6707A for penalties assessed after December 31, 2006. Subject to maximum and minimum amounts, the penalty changed from a stated dollar amount to a percentage of the decrease in tax shown on the return as a result of a reportable transaction effective for penalties assessed after December 31, 2006. On March 26, 2019, the IRS issued final treasury regulations for section 6707A.

Generally, a taxpayer with reportable transactions who is required to file a tax return must file IRS Form 8886, *Reportable Transaction*.

Process Overview (cont'd)

Penalty for Failure to Include Reportable Transaction Information with Return

Disclosure Statement with the tax return and, for the first filing pertaining to a particular reportable transaction, send a copy to OTSA. See Treas. Reg. 1.6011-4(e). Certain exceptions apply whereby Form 8886 need not be filed with the original return but must still be filed with OTSA. See Treas. Reg. 1.6011-4(e)(1), (2)(i) (discussing loss carrybacks, late receipt of Schedule K-1, and retroactive reportable transactions).

The penalty amount is 75 percent of the decrease in tax shown on the return as a result of the reportable transaction subject to specified maximum and minimum amounts depending on the type of transaction (listed transaction vs. other reportable transaction), and type of participant (natural person vs. entity).

Transaction Type	Natural Person		Otherwise	
	Maximum	Minimum	Maximum	Minimum
Listed Transaction	\$100,000	\$5,000	\$200,000	\$10,000
Other Reportable Transactions	\$10,000	\$5,000	\$50,000	\$10,000

For purposes of calculating the penalty, the term “decrease in tax” means the difference between the amount of tax reported on the filed return and the amount of tax that would be reported on a hypothetical return without the reportable transaction. The amount of tax on the hypothetical return considers adjustments that result mechanically in backing out the reportable transaction. It also considers any other tax that results from reportable transactions not reported on the taxpayer’s return. The term “return” includes original returns, amended returns, and applications for tentative refunds in every case where all three terms are relevant.

Process Overview (cont'd)

Penalty for Failure to Include Reportable Transaction Information with Return

Section 6707A does not provide any exception to imposition of the penalty for reasonable cause or good faith. However, except for listed transactions, the IRS may rescind the penalty if rescission would promote tax compliance and effective tax administration. Congress explicitly denied taxpayers the ability to challenge in court the commissioner's denial of a request to rescind the penalty.

Section 6707A penalty is not subject to deficiency procedures.

The statute of limitations generally follows the statute of limitations for the applicable return. However, for a listed transaction, IRC 6501(c)(10) provides additional time to assess the penalty if the taxpayer did not disclose the transaction on the return. The statute of limitations will not expire before one year after the earlier of the following:

- The date the taxpayer provides the information required per IRC 6011, or
- The date a material advisor meets the requirements of IRC 6112.

Summary of Process Steps

Penalty for Failure to Include Reportable Transaction Information with Return

Process Steps

Step 1	Determine whether the taxpayer has participated in a reportable transaction.
Step 2	If the taxpayer participated in a reportable transaction, determine whether the taxpayer was required to file Form 8886 with its tax return and if so, whether it was complete and accurate.
Step 3	Determine whether the taxpayer was required to file Form 8886 with OTSA and if so, whether it was completed and accurate.
Step 4	If Form 8886 was not filed with the tax return and was required to be, or was filed but not complete or accurate, consider the IRC 6707A penalty.

Summary of Process Steps (cont'd)

Penalty for Failure to Include Reportable Transaction Information with Return

Process Steps

[Step 5](#)

If Form 8886 was not filed with OTSA and was required to be, consider the IRC 6707A penalty.

[Step 6](#)

Follow the procedures for opening an IRC 6707A penalty examination.

[Step 7](#)

Set up the IRC 6707A penalty case file.

[Step 8](#)

Calculate the amount of penalty based on the type of transaction and type of participant.

Summary of Process Steps (cont'd)

Penalty for Failure to Include Reportable Transaction Information with Return

Process Steps

<u>Step 9</u>	Obtain written supervisory approval of your initial determination of the penalty before proceeding with penalty assessment. The IRM states that approval of the IRC 6707A penalty is a two-tier review.
<u>Step 10</u>	Prepare Revenue Agent Report (RAR) and follow procedures based on agreed/unagreed penalty cases or no-change cases.
<u>Step 11</u>	Consider whether the IRC 6707A penalty should be abated.
<u>Step 12</u>	Consider whether the IRC 6707A penalty should be rescinded (available only for non-listed transactions).

Summary of Process Steps (cont'd)

Penalty for Failure to Include Reportable Transaction Information with Return

Process Steps

[Step 13](#)

Follow case closing procedures applicable to penalty not assessed and not appealed, closed with quick assessment, or no-change procedures.

Step 1: Determine Participation

Penalty for Failure to Include Reportable Transaction Information with Return

Step 1

Determine whether the taxpayer has participated in a reportable transaction.

Considerations	Resources
<p>Did the taxpayer participate in one of the reportable transactions listed below?</p> <ul style="list-style-type: none">▪ Listed transactions.▪ Confidential transactions.▪ Transactions with contractual protection.▪ Loss transactions.▪ Transactions of interest. <p>This determination will vary based upon which version of the regulations under 1.6011-4 were in effect at the time of the transaction, so the actual language of the regulations must be consulted. The version of the regulations that applies to a transaction at the time it was entered by the taxpayer will remain even if the regulations were subsequently modified.</p>	<ul style="list-style-type: none">▪ IRC 6707A▪ Treas. Reg. 301.6707A-1▪ Treas. Reg. 1.6011-4(b)▪ OTSA Website▪ Audit Tool – IRC 6707A Applicability Flowchart

Step 1: Determine Participation (cont'd)

Penalty for Failure to Include Reportable Transaction Information with Return

[Step 1](#)

Considerations	Resources
<p><u>Listed Transactions</u></p> <ul style="list-style-type: none"> ▪ Determine if the tax return reflects a tax strategy that is described in the published guidance as a listed transaction. If, during examination, it appears the taxpayer might have participated in a listed transaction, issue the Tax Shelter Information Document Request (IDR). Refer to OTSA Website for current list of listed transactions. <p><u>Confidential Transactions</u></p> <ul style="list-style-type: none"> ▪ Determine if the tax return contains a tax benefit from a transaction offered under conditions of confidentiality. Did the taxpayer pay a minimum fee to an advisor? ▪ Minimum Fee: <ul style="list-style-type: none"> – Corporations (other than S corporations), \$250,000. – Partnerships or trusts with all owners being corporations (other than S corporations), \$250,000. – All others, \$50,000. 	<ul style="list-style-type: none"> ▪ IRC 6707A ▪ Treas. Reg. 301.6707A-1 ▪ Treas. Reg. 1.6011-4(b) ▪ OTSA Website ▪ Audit Tool – IRC 6707A Applicability Flowchart

Step 1: Determine Participation (cont'd)

Penalty for Failure to Include Reportable Transaction Information with Return


Step 1

Considerations	Resources
<p><u>Transactions with Contractual Protection</u></p> <ul style="list-style-type: none"> ▪ Determine if the tax return contains a tax benefit from a transaction in which the taxpayer or related party has the right to a full or partial refund of fees if all or part of the intended tax consequences from the transaction are not sustained. Determine whether the tax return reflects a transaction in which the fees are contingent on the tax benefit being realized from the transaction. <p><u>Loss Transactions</u></p> <ul style="list-style-type: none"> ▪ Determine if the tax return contains an IRC 165 loss that equals or exceeds the applicable threshold. <ul style="list-style-type: none"> – Corporations (excluding S corporations) and partnerships with corporations (excluding S corporations) as partners, \$10 million in any single tax year or \$20 million in any combination of tax years. – Individuals, trusts, S corporations and other partnerships, \$2 million in any single tax year or \$4 million in any combination of tax years; \$50,000 for a single tax year if loss is from section 988 transaction, in case of individual or trust. 	<ul style="list-style-type: none"> ▪ IRC 6707A ▪ Treas. Reg. 301.6707A-1 ▪ Treas. Reg. 1.6011-4(b) ▪ OTSA Website ▪ Audit Tool – IRC 6707A Applicability Flowchart

Step 1: Determine Participation (cont'd)

Penalty for Failure to Include Reportable Transaction Information with Return

[Step 1](#)

Considerations	Resources
<p><u>Transaction of Interest</u></p> <ul style="list-style-type: none">▪ Determine if the taxpayer is one of the types of classes of individuals or entities identified as participants in a transaction of interest per the published guidance. <p> CONSULTATION: Examiner should consult with local counsel if the examiner believes that the transaction is a reportable transaction and disclosure procedures apply.</p>	<ul style="list-style-type: none">▪ IRC 6707A▪ Treas. Reg. 301.6707A-1▪ Treas. Reg. 1.6011-4(b)▪ OTSA Website▪ Audit Tool – IRC 6707A Applicability Flowchart▪ IRM 4.32.4.2.2 at (3)

Step 2: Determine Form 8886 Filing with Return

Penalty for Failure to Include Reportable Transaction Information with Return

Step 2

If the taxpayer participated in a reportable transaction, determine whether the taxpayer filed Form 8886 with a return and whether it was complete and accurate.

Considerations	Resources
<p>Review the taxpayer's tax return and determine if the taxpayer filed Form 8886 with the return. Determine whether Form 8886 was completed accurately according to its instructions and Treas. Reg. 1.6011-4(d).</p> <p>If the taxpayer was required to file Form 8886 and fails to do so, issue an IDR to the taxpayer requesting their explanation as to why they did not file the form and their citations of tax law for not filing Form 8886.</p>	<ul style="list-style-type: none">▪ IRC 6707A▪ Treas. Reg. 1.6011-4 ▪ Treas. Reg. 301.6707A-1

Step 3: Determine Form 8886 Filing with OTSA

Penalty for Failure to Include Reportable Transaction Information with Return

Step 3

Determine whether the taxpayer filed Form 8886 with Office of Tax Shelter Analysis (OTSA).


Considerations	Resources
Examiner should contact OTSA to determine if Form 8886 has been filed with OTSA and the date and tax year of the form. Examiner should provide OTSA the taxpayer's name, tax identification number (TIN), year or years of interest, type of transaction, and whether the disclosure was incomplete or not attached to the return.	<ul style="list-style-type: none">▪ Treas. Reg. 1.6011-4(e)▪ Treas. Reg. 301.6707A-1(c)▪ IRM 4.32.4.3.2.1 at (1)▪ OTSA Disclosure Request

Step 4: Assess Penalty if Form 8886 not Filed or not Complete or Accurate

Penalty for Failure to Include Reportable Transaction Information with Return

Step 4

If Form 8886 was not filed with the tax return and was required to be, or was filed but not complete or accurate, consider the IRC 6707A penalty.


Considerations	Resources
<p>Examiner should consider assessing the IRC 6707A penalty if it is determined that:</p> <ul style="list-style-type: none"> ▪ Form 8886 was not filed with the original return and was required to be, or ▪ Form 8886 filing was not complete or accurate. <p>Where applicable, examiner should review and consider the taxpayer’s responses to the IDR issued requesting why the taxpayer did not file Form 8886.</p> <p>Examiner must evaluate the taxpayer’s participation in a reportable transaction within the meaning of the regulations. This determination will vary based upon which version of the regulations is in effect for the transaction, so the actual language of the regulations must be consulted.</p> <p> CONSULTATION: Examiner should consult with local counsel if the examiner believes that the transaction is a reportable transaction and disclosure procedures apply.</p>	<ul style="list-style-type: none"> ▪ IRC 6707A ▪ Treas. Reg. 1.6011-4(d) ▪ Treas. Reg. 301.6707A-1 ▪ Treas. Reg. 301.6707A-1(e) ▪ IRM 4.32.4.3.2 at (1) ▪ IRM 4.32.4.9 ▪ Treas. Reg. 1.6011-4(c)(3)(i)(A) through (3)(i)(G) ▪ IRM 4.32.4.2.2 at (1) ▪ IRM 4.32.4.2.2 at (3)

Step 5: Assess Penalty if Form 8886 not Initially Filed with OTSA

Penalty for Failure to Include Reportable Transaction Information with Return

Step 5

If Form 8886 was not filed with OTSA and was required to be, consider the IRC 6707A penalty.

Considerations	Resources
<p>Examiner should consider assessing the IRC 6707A penalty if it is determined that the taxpayer did not file a Form 8886 with OTSA with respect to the initial year Form 8886 is required to be filed.</p> <p> CAUTION: Taxpayer is required to file a Form 8886 with the tax return for each year in which the taxpayer participates in a reportable transaction. The taxpayer is required to file a duplicate copy of Form 8886 with OTSA for only the first year of participation with respect to that reportable transaction.</p>	<ul style="list-style-type: none">▪ IRC 6707A▪ OTSA Website▪ IRM 4.32.4.2 at (6)▪ IRM 4.32.4.2 at (7)

Step 6: Follow Exam Opening Procedures

Penalty for Failure to Include Reportable Transaction Information with Return

Step 6

Follow the procedures for opening an IRC 6707A penalty examination.

Considerations	Resources
<p>The potential section 6707A penalty case must be established on the Examination Returns Control System (ERCS) and should include the appropriate project and tracking codes. Examiners must complete Form 5345-D, <i>Examination Request-ERCS Users</i> and check the box “Control Penalty Investigation.” Use Source Code 99 and penalty MFT P5. The case is created and tracked on ERCS and will not be on the Audit Information Management System (AIMS) database.</p> <p>All time related to the penalty case will be charged to Activity Code 505.</p>	<ul style="list-style-type: none"> ▪ IRM 4.32.4.3.1.1 ▪ IRM 4.32.4.3.2.1

Step 7: Set up the Penalty Case File

Penalty for Failure to Include Reportable Transaction Information with Return

Step 7

Set up the IRC 6707A penalty case file.

Considerations	Resources
<p>Examiner must include in the case file documents describing the transaction requiring disclosure and an explanation of the category of the reportable transaction. The file should include a statement of facts and explanation by the examiner to support the determination of the taxpayer's participation in a reportable transaction.</p> <p>The case file must contain a statement whether the taxpayer filed a Form 8886. If Form 8886 was filed, the examiner must include a statement of facts and explanation of the examiner's conclusion as to why the form was not considered complete or accurate, or not timely filed.</p>	<ul style="list-style-type: none">▪ IRM 4.32.4.3.2.3 at (1) and (2)▪ IRM 4.32.4.3.2.3 at (3) and (4)

Step 7: Set up the Penalty Case File (cont'd)

Penalty for Failure to Include Reportable Transaction Information with Return

[Step 7](#)

Considerations	Resources
<p>Below is a list of documents to be included in the case file for all listed and non-listed reportable transactions:</p> <ul style="list-style-type: none"> ▪ Copy of opening letter, if required. ▪ Form 2848, <i>Power of Attorney and Declaration of Representative</i>. ▪ Form 872, <i>Consent to Extend the Time to Assess Tax</i>, if applicable. ▪ The IRC 6707A 30-day letter or post-assessment letter. ▪ Signed Form 895, <i>Notice of Statute Expiration</i>. ▪ Information on associated flow-through entities, e.g. Schedule K-1. ▪ Other information necessary to identify related cases. ▪ Copy of associated income tax return that gave rise to disclosure obligation, if applicable. ▪ Penalty calculation, including detailed computation schedule. ▪ The IRC 6707A Case Overview and Record of Approval. ▪ Completed Form 8278, <i>Assessment and Abatement of Miscellaneous Civil Penalties</i>. Use Penalty Reference Number (PRN) 648. 	<ul style="list-style-type: none"> ▪ IRM 4.32.4.3.2.3

Step 7: Set up the Penalty Case File (cont'd)

Penalty for Failure to Include Reportable Transaction Information with Return

[Step 7](#)

Considerations	Resources
<p>Below are additional documents required for non-listed reportable transactions only:</p> <ul style="list-style-type: none">▪ Any information relevant to the presence or absence of the rescission factors, see IRM 4.32.4.10.▪ Examiner should document negative and positive findings, see Treas. Reg. 301.6707A-1(e) for future details.	<ul style="list-style-type: none">▪ Treas. Reg. 301.6707A-1(e)▪ IRM 4.32.4.3.2.4 at (1)▪ IRM 4.32.4.3.2.4 at (2)▪ IRM 4.32.4.10

Step 8: Calculate the Amount of Penalty

Penalty for Failure to Include Reportable Transaction Information with Return

Step 8

Calculate the amount of penalty based on the type of transaction and type of participant.

Considerations	Resources
<p>The Small Business Jobs Act of 2010 amended the section 6707A penalty retroactive to penalties assessed after December 31, 2006. The application of the section 6707A penalty remained unchanged with only the calculation of the penalty amount being amended.</p> <p>IRC 6707A penalty may be applied in addition to any other applicable penalty. The penalty for each reportable transaction is 75% of the decrease in tax shown on the return as a result of the transaction or the decrease that would have resulted from the transaction if it were respected for federal tax purposes. The penalty is further subject to minimums and maximums. See Treas. Reg. 301.6707A-1(d), explaining the precise calculation of the amount of the penalty.</p>	<ul style="list-style-type: none">▪ IRM 4.32.4.3.2.2 at (1) ▪ IRC 6707A▪ Treas. Reg. 301.6707A-1(d)

Step 8: Calculate the Amount of Penalty (cont'd)

Penalty for Failure to Include Reportable Transaction Information with Return

Step 8

Considerations	Resources
<p>Amounts of penalty depends on the type of transaction and type of participant.</p> <ul style="list-style-type: none"> ▪ Listed transactions: <ul style="list-style-type: none"> – Individuals <ul style="list-style-type: none"> ▪ \$5,000 minimum ▪ 75% of the decrease in tax from the listed transaction ▪ \$100,000 maximum – All other taxpayers <ul style="list-style-type: none"> ▪ \$10,000 minimum ▪ 75% of the decrease in tax from the listed transaction ▪ \$200,000 maximum ▪ Other reportable transactions: <ul style="list-style-type: none"> – Individuals: <ul style="list-style-type: none"> ▪ \$5,000 minimum ▪ 75% of the decrease in tax from the reportable transaction ▪ \$10,000 maximum – All other taxpayers <ul style="list-style-type: none"> ▪ \$10,000 minimum ▪ 75% of the decrease in tax from the reportable transaction ▪ \$50,000 maximum 	<ul style="list-style-type: none"> ▪ IRC 6707A(b) ▪ Treas. Reg. 301.6707A-1(a) ▪ IRM 4.32.4.3.2.2 ▪ Issue Snapshot – <i>IRC 6707A Penalty for Failure to Include Reportable Transaction Information with Return</i>

Step 9: Obtain Written Supervisory Approval

Penalty for Failure to Include Reportable Transaction Information with Return

Step 9

Obtain written supervisory approval before communicating the initial determination that IRC 6707A penalty applies.

Considerations	Resources
<p>For all penalties subject to section 6751(b)(1), written supervisory approval required under section 6751(b)(1) must be obtained prior to issuing any written communication of penalties to a taxpayer that offers the taxpayer an opportunity to sign an agreement or consent to assessment or proposal of the penalty.</p> <p>IRC 6707A penalty approval process requires a second level approval at the Territory Manager level. If maximum penalty is applicable, the second level approval goes up to SB/SE Area Director or LB&I Director of Field Operation.</p>	<ul style="list-style-type: none">▪ IRC 6751(b)▪ IRM 4.32.4.4▪ IRM Exhibit 4.32.4-4▪ IRM 20.1.1.2.3.1

Step 10: Follow RAR Procedures

Penalty for Failure to Include Reportable Transaction Information with Return

Step 10


Prepare Revenue Agent Report (RAR) and follow procedures based on agreed/unagreed penalty cases or no-change cases.

Considerations	Resources
<p>After the Territory Manager approves assertion of the section 6707A penalty, the examiner prepares and issues the RAR with the 30-day letter. The RAR package consists of the following documents:</p> <ul style="list-style-type: none">▪ Form 4549-A, <i>Report of Income Tax Examination Changes</i>. Examiners must manually prepare the Form, listing the type of tax as Form 8278 with IRC 6707A and amount listed on page 2.▪ Form 870, <i>Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment</i>.▪ Form 886-A, <i>Explanation of Items</i>.▪ Computation workpaper.▪ Pub 1, <i>Your Rights as a Taxpayer</i>▪ Pub 5, <i>Your Appeal Rights and How to Prepare a Protest if You Don't Agree</i>.▪ Pub 594, <i>The IRS Collection Process</i>. <p>For agreed IRC 6707A case, taxpayer must sign Form 870.</p>	<ul style="list-style-type: none">▪ IRM 4.32.4.5 at (2) ▪ IRM 4.32.4.5.1

Step 10: Follow RAR Procedures (cont'd)

Penalty for Failure to Include Reportable Transaction Information with Return

[Step 10](#)


Considerations	Resources
 DECISION POINT: If, after opening an IRC 6707A penalty case, it is later determined that the penalty doesn't apply, the examiner must issue a no-change letter specifically addressing the IRC 6707A penalty.	<ul style="list-style-type: none">▪ IRM 4.32.4.5.2▪ IRM Exhibit 4.32.4-5

Step 11: Consider Penalty Abatement

Penalty for Failure to Include Reportable Transaction Information with Return

Step 11

Consider whether the IRC 6707A penalty should be abated.


Considerations	Resources
<p>Examiner can abate the penalty only if the penalty does not legally apply and was assessed in error.</p> <p>IRC 6707A penalty is considered a strict liability penalty and there is no reasonable cause exception as defense.</p> <p> DECISION POINT: If the examiner determines that an assessment must be abated in full or in part, the examiner must first obtain managerial approval and ensure that the approval record is included with the case file. The examiner should then follow the procedures set forth in IRM 4.32.4.8 at (2) establishing the penalty case on ERCS and closing the case file from the group.</p>	<ul style="list-style-type: none">▪ IRM 4.32.4.8 at (1) ▪ IRM 4.32.4.8 at (2)

Step 12: Consider Penalty Rescission

Penalty for Failure to Include Reportable Transaction Information with Return

Step 12

Consider whether the IRC 6707A penalty should be rescinded (available only for non-listed transactions).


Considerations	Resources
<p>Listed transactions are not eligible for rescission consideration. Examiner should consider all factors weighing in favor of rescission and determine if rescission of the penalty in full or in part is appropriate.</p> <p>Examiner handling an IRC 6707A penalty investigation related to non-listed reportable transaction should attempt to documents facts related to any potential rescission.</p> <p>To request rescission, a taxpayer must have exhausted the administrative remedies available within the Office of Appeals regarding the proposed assessment of the penalty, unless the person has agreed in writing to the assessment of the penalty and has agreed not to file or prosecute a claim for refund or credit of the penalty, administratively or through litigation, other than by requesting rescission.</p> <p> DECISION POINT: The taxpayer must seek rescission within 30 days of notice and demand or full payment of the penalty, whichever is earlier. The taxpayer must send the rescission request to LBI:ADCCI:CPA:WDD:OTSA for review and the procedures within IRM 4.32.4.9 should be followed.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 301.6707A-1(e) ▪ IRM 4.32.4.9 ▪ IRM 4.32.4.10 ▪ IRM 4.32.4.3.2 at (3) ▪ IRM 4.32.4.9 at (2) ▪ IRM 4.32.4.9

Step 13: Follow Case Closing Procedures

Penalty for Failure to Include Reportable Transaction Information with Return

Step 13

Follow case closing procedures applicable to penalty not assessed and not appealed, closed with quick assessment, or no-change procedures.

Considerations	Resources
<p> CAUTION: All IRC 6707A penalty case files need to be closed following the particular case closing procedures to ensure the closed case file can be secured from files using the Document Locator Number (DLN) associated with Transaction Code (TC) 240 and PRN 648.</p> <p>Penalty proposed but the case has not been quick-assessed or appealed:</p> <ul style="list-style-type: none">▪ Follow normal closing procedures, send case to Centralized Case Processing (CCP).▪ Request assessment of the penalty by CCP using Form 8278.	<ul style="list-style-type: none">▪ IRM 4.32.4.12 ▪ IRM 4.32.4.12.1

Definitions

Penalty for Failure to Include Reportable Transaction Information with Return

Description

- Confidential Transaction – a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a minimum fee.
- Listed Transaction – a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.
- Loss Transaction – any transaction resulting in the taxpayer claiming a loss under section 165 that exceeds minimum thresholds.
- Reportable Transaction – any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.
- Transaction of Interest – a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a transaction of interest.
- Transaction with Contractual Protection – a transaction for which the taxpayer or related party has the right to a full or partial refund of fees if all or part of the intended tax consequences from the transaction are not sustained.

Other Considerations / Impact to Audit

Penalty for Failure to Include Reportable Transaction Information with Return

Considerations	Resources
<ul style="list-style-type: none">▪ IRC 6707A(e) requires a taxpayer that has Securities and Exchange Commission (SEC) filing requirements under sections 13 or 15(d) of the Securities Exchange Act of 1934 to disclose its liability for sections 6707A, 6662A and 6662(h) penalty assessments. If IRC 6707A penalty has been assessed, determine whether the taxpayer disclosed the penalty in its SEC filing requirements.	<ul style="list-style-type: none">▪ IRC 6707A(e)▪ Rev. Proc. 2005-51▪ Rev. Proc. 2007-25▪ IRM 4.32.4.1.1 at (5)

Index of Referenced Resources

Penalty for Failure to Include Reportable Transaction Information with Return

IRC 6011 - *General Requirement of Return, Statement, or List*

IRC 6112 - *Material Advisors of Reportable Transactions Must Keep List of Advisees, Etc.*

IRC 6501 - *Limitations on Assessment and Collection*

IRC 6707A - *Penalty for Failure To Include Reportable Transaction Information With Return*

Treas. Reg. 1.6011-4 - *Requirement of Statement Disclosing Participation in Certain Transactions by Taxpayers*

Treas. Reg. 301.6707A-1 - *Failure To Include on Any Return or Statement Any Information Required To Be Disclosed Under Section 6011 With Respect to a Reportable Transaction*

Rev. Proc. 2005-51

Rev. Proc. 2007-25

IRM 4.32.4 - *Abusive Transactions, IRC 6707A Penalty for Failure to Include Reportable Transaction Information With Return*

IRM 20.1.1.2.3.1 – *Timing of Supervisory Approval*

Training and Additional Resources

Penalty for Failure to Include Reportable Transaction Information with Return	
Type of Resource	Description(s)
Saba Meeting Sessions	<ul style="list-style-type: none">▪ <i>Reportable Transactions Penalties IRC 6707A & 6662A - 2014 Saba Meeting</i>
Reference Materials	<ul style="list-style-type: none">▪ <i>BNA Tax Management U.S. Income Portfolio 648-1st</i>
Other Training Materials	<ul style="list-style-type: none">▪ Audit Tool – IRC 6707A Applicability Flowchart▪ Audit Tool – IRC 6707A Penalty Computation Schedule - Individual▪ Audit Tool – IRC 6707A Penalty Computation Schedule - Other▪ Issue Snapshot - <i>IRC 6707A Penalty for Failure to Include Reportable Transaction Information With Return</i>▪ <i>IRC 6707A Penalty Syndicated Conservation Easement - August 13, 2020</i>

Glossary of Terms and Acronyms

Term/Acronym	Definition
AIMS	Audit Information Management System
CCP	Centralized Case Processing
DLN	Document Locator Number
ERCS	Examination Return Control System
IDR	Information Document Request
OTSA	Office of Tax Shelter Analysis
PRN	Penalty Reference Number
RAR	Revenue Agent Report
SEC	Securities and Exchange Commission
TC	Transaction Code
TIN	Tax Identification Number

Index of Related Practice Units

Associated UIL(s)	Related Practice Unit
9470	<i>How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 Losses</i>