



OFFICE OF
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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR KATHLEEN K. RAUP
SB/SE CC:SB:2:PHI:1

FROM: Pamela W. Fuller
Senior Technician Reviewer CC:PA:APJP:1

SUBJECT: Section 6721 Penalty Assessment

This is in response to your request for advice regarding the assessment of penalties under Section 6721 of the Internal Revenue Code. Specifically, your questions were as follows:

May the Detroit Computing Center assess penalties against a taxpayer for the same violation under both sections 6721(a) and 6721(e) of the Code?

If the penalty under section 6721(a) is assessed, and Service determines later that there was intentional disregard, may the Service abate the section 6721(a) penalty and assess the section 6721(e) penalty? What if the penalty has already been paid?

With respect to the first issue, the Service cannot assess penalties against a taxpayer for the same violation under both sections 6721(a) and 6721(e) of the Code.

Section 6721(a) provides generally that in the case of a failure to file a required information return, a failure to include all required information, or the inclusion of incorrect information on such return, a penalty of \$50 is imposed with respect to each return. The amount of the penalty under section 6721(a) of the Code may be reduced either to \$30 per return or \$15 per return if the failures are corrected. Section 6721(b).

The amount of the penalty is higher if the failure was due to intentional disregard of the requirements to file or include correct information, pursuant to section 6721(e). Section 6721(e)(2) states that "the penalty imposed under subsection (a) shall be \$100..."

Section 301.6721-1(a)(1) states that "No more than one penalty will be imposed under this paragraph (a)(1) with respect to a single information return ..." Therefore, the

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Service cannot assess both the \$50 penalty under section 6721(a) and the higher amount determined under section 6721(e) for the same taxpayer for the same return.

With regard to the second question, where the Service assesses the penalty pursuant to 6721(a), and subsequently determines that there was intentional disregard of the filing requirements and the higher 6721(e) penalty is appropriate, the Service will not be barred from asserting the higher penalty. The Service may supplement its assessment pursuant to section 6204(a) of the Code. Supplemental assessments may be made, within the period of limitations prescribed for assessments, whenever it is ascertained that any assessment is imperfect or incomplete in any material respect. *Brookhurst v. United States*, 931 F.2d 554 (9th Cir.1991).

It is probably more appropriate, because of the change in the theory supporting the penalty, to abate the section 6721(a) penalty and make a new assessment pursuant to section 6721(e). This may be done at any time as long as the period of limitations on assessments is still open. See *Service Bolt & Nut Co. v. Commissioner*, 724 F.2d 519 (6th Cir. 1983). Unless there is an explicit agreement between the Service and the taxpayer regarding an abatement, abatement does not estop the Service from reasserting a liability. See *Gray v. Commissioner*, 104 F.2d 1226 (10th Cir. 1997). If the taxpayer has already paid the section 6721(a) penalty, the Service should assess the intentional disregard penalty at the same time as it abates the original penalty in order to avoid generating a refund.

We hope this is helpful. If you need further assistance, please call Nancy Rose at (202) 622-4910.