

Office of Chief Counsel
Internal Revenue Service
Memorandum

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date: October 03, 2007

to: Laurie Tuzynski
Program Manager
SB/SE Exam Policy
Servicewide Penalties
Attn: Lorraine Byrd

from: Ashton P. Trice
Chief, Branch 2
(Procedure & Administration)

subject: Section 6676 Penalty

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

This memorandum responds to your request for assistance dated July 5, 2007 in which you asked several questions regarding the application of the penalty under section 6676.

Issues

- 1.
2. How is the section 6676 penalty calculated?
- 3.

Conclusions

1.

2. The manner by which the penalty is calculated is 20% of the excessive amount. Excessive amount is defined in the statute as the amount by which the claim for refund or credit exceeds the allowable amount of the claim, but the earned income credit is not included in determining the excessive amount.

3.

Law and Analysis

B. Calculation of the Section 6676 Penalty

Section 6676 applies to all excessive/erroneous claims for refund or credit with respect to income taxes. In addition, the penalty shall apply to any income tax return, whether original or amended, or other form, provided that the return or form presents a claim for refund or credit for an excessive amount.

The manner by which the penalty is calculated is 20% of the excessive amount. Excessive amount is defined in the statute as the amount by which the claim for refund or credit exceeds the allowable amount of the claim. Any claim for refund or credit relating to the Earned Income Credit under section 32 is excluded from the computation of the penalty. The following is a simple formula which can be used to understand the computation of the penalty:

X = amount of claim for refund or credit requested
Y = amount of claim for refund or credit allowed
X-Y = excessive amount
 $20\%(X-Y)$ = Amount of the section 6676 penalty

For example, on March 8, 2008, taxpayer mails Form 1040, U.S. Individual Income Tax Return, along with a check for \$400 to cover the amount due to the applicable Service

Center. On June 10, 2008, taxpayer files Form 1040X, Amended U.S. Individual Income Tax Return, as a result of changes in the amount of itemized deductions. Taxpayer claims a refund (line 23 of Form 1040X) in the amount of \$2000. On consideration of the claim, it is determined that the taxpayer is not entitled to a refund in the amount of \$2000, rather the amount of the refund allowed is only \$1000. The disparity is not due to any argument having a reasonable basis. The excessive amount is \$1000 (\$2000-\$1000). Taxpayer will be assessed a penalty in the amount of \$200 (20%(\$2000-\$1000)).

It is also important to note that the penalty will not apply if the taxpayer is able to show reasonable basis for the claim for refund or credit, or if any portion of the excessive amount of the claim for refund or credit is subject to a penalty under sections 6662, 6662A or 6663.

If the claim for refund or credit with respect to income tax originates with a credit offset for tax such as those listed on page 2 of the Form 1040, U.S. Individual Income Tax Return, then that credit offset is included in the computation of the penalty. As previously mentioned, the one exception to that general rule is that the Earned Income Credit is excluded from the penalty calculation.

C.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

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Please call 622-4940 if you have any further questions.