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From:

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To:

Cc:

Subject: FW: 8938 Penalty Question

The section 6038D penalty is not itself part of a deficiency - so it cannot be subject to deficiency procedures on that ground. Sections 6665 and 6671 operate to treat some penalties as subject to deficiency procedures if they are calculated on the basis of a tax that is itself subject to deficiency procedures. These Code sections contain language that refers only to penalties in chapter 68 (or subchapter B of chapter 68), so that they do not expressly cover the penalty in section 6038D. Even if they did extend to that penalty, however, the section 6038D penalty is not calculated on the basis of a tax that is itself subject to deficiency procedures; instead, the penalty is in specific amounts set forth in the statute. As a result, the section 6038D penalty is assessable by the Service without following deficiency procedures first.