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From:

Sent: Friday, June 6, 2014 7:35 AM

To:

Cc:

Subject: 6694/6695 Question

Hi

We have looked into your inquiry regarding the investigation of 6694/6695 penalties.

The three year SOL on the 6694(a) and 6695 penalties will begin to run with the due date/filing date of the underlying return. The procedures you mentioned which provide that the return preparer penalty will not “generally” be proposed until the exam is complete are consistent with what is provided in the IRM with respect to these type of preparer penalty exams. IRM 20.1.6.4 provides that the determination of whether the 6694/6695 penalties are warranted is made based on all the facts and circumstances developed during the examination process of the underlying prepared return. This is consistent with the fact that generally information with respect to the exam of the underlying return will be necessary to develop any potential 6694/6695 penalty. IRM 8.11.3.2(2) provides that in the case of preparer penalty cases based on underlying tax returns, “in general, an unagreed penalty case will not be sent to Appeals before the related tax return is submitted to Appeals.” Now, this does not specifically say that the preparer penalty *investigation* cannot actually begin before that time. Accordingly, in a specific circumstance, initiating an investigation of any applicable preparer penalty while the examination of the underlying taxpayer’s return continues does not appear to be specifically prohibited. However, the taxpayer’s underlying return will need to be sent to Appeals before the preparer penalty case can be sent to Appeals.

If there is a delay initiating a preparer penalty exam because of the length of time needed to complete the exam of the underlying tax return, there are procedures in the IRM to deal with an impending expiring SOL. If the underlying exam is prolonged, the IRM provides specific procedures if there is little time left with respect to the 3 year SOL on the preparer penalty. IRM 20.1.6.19.1(3) provides specific procedures for short statute preparer penalty cases. Specifically, if the statute is about to expire and the preparer does not agree to an extension, the penalty is assessed. The preparer still has post-assessment appeal rights in that situation just like an pre-assessment rights matter. Examiners are not to submit preparer penalty cases to Appeals if less than 180 days remains on the SOL when received by Appeals. In such cases, the examiner should seek a consent to extend the SOL. Again, if the SOL is about to expire and no

consent to extend can be obtained, the penalty is assessed by Compliance. See IRM 20.1.6.21 and 8.11.3.2(2).

While there does not appear to be an explicit prohibition on beginning the preparer investigation prior to completion of the exam of the underlying return, it is clear that it cannot be sent forward to Appeals prior to the underlying return matter. However, since the determination of whether the 6694/6695 penalty is applicable is based on the facts and circumstances developed during the underlying exam of the tax return, generally such preparer penalties exam would not begin until that process is complete and the relevant facts determined. However, there does not seem to be a requirement that the actual exam of any potential preparer penalty must not be *started* prior to the completion of the return exam. To the extent an examination of the return preparer is delayed and there is not sufficient time on the SOL, the IRM procedures mentioned above should be followed when such a short statute of limitations exists.

If you have any additional questions in this matter, please let me know.

Thanks