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[Third Party Communication:

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From:

Sent: Friday, 12/4/15 5:31 PM

To:

Cc:

Bcc:

Subject: Re: 6721 Electronic Media Intentional Disregard Calculation

Hi ,

We are providing this analysis in response to your question regarding the proper procedure for computing the applicable percentage aggregate amount for a penalty to be imposed on a person who intentionally disregards the 6011(e) electronic media filing requirement.

Internal Revenue Code (“IRC”) section 6011(e) grants the Secretary authority to prescribe regulations determining which returns must be filed on magnetic media. However, the Secretary is generally prohibited from requiring any person to file returns on magnetic media, “unless such person is required to file at least 250 returns during the calendar year” Treasury Regulation section 301.6011–2 explicitly requires that persons filing more than 250 returns in a year must file the returns on magnetic media. If a person fails to file a return on magnetic media when required to do so, that person is deemed to have failed to file the return, and is subject to failure to file penalties.

IRC section 6721 imposes penalties on persons for each failure to timely file an information return. IRC section 6721(e) imposes higher penalty if the failure occurs due to an intentional disregard of the filing requirement. Under IRC section 6721(e), for returns required to be filed on or after January 1, 2016, the penalty under section 6721(a) generally will be \$520 per failure, or, if greater, a percentage of the aggregate amount of the items required to be correctly reported. The applicable penalty and the percentage of the aggregate amount of items required to be correctly reported depends upon the type of return to which the failure relates.

IRC section 6724(c) provides that a penalty may be imposed under section 6721 solely because a person failed to comply with the section 6011(e) requirement to file returns on magnetic media. Treasury Regulation 301.6721–1 explains that the penalties imposed under section 6721 for failure to file on magnetic media, when required to do so, are only imposed on each return filed in excess of 250. However, the IRC, Treasury Regulations, and Internal Revenue Manual are silent with regard to the procedure to be used for computing the applicable percentage aggregate amount of the penalty. Therefore, the computation of the percentage aggregate amount is a policy decision best left

to the discretion of the IRS Office of Servicewide Penalties (OSP). In doing so, however, OSP needs to determine a method of calculation that will be applied consistently for all cases.

Several options exist for the computation of this penalty. These options include (for a person who intentionally disregards the filing requirement in one calendar year by filing 300 paper returns), but are not limited to, the applicable percentage of the aggregate amount of the items required to be correctly reported: on returns 251-300; on the 50 returns with the highest amount reported; on the 50 returns with the lowest amount reported; on 50 randomly selected returns; or on the average amount reported on all 300 returns, multiplied by 50. The Office of Chief Counsel, Procedure and Administration, is happy to review the procedure that OSP chooses to use in order to compute this percentage aggregation penalty. In doing so, OSP may want to consider that the Congress' has increased the section 6721 penalty amount multiple times in the past ten years, which may suggest that a calculation resulting in the highest penalty amount should be imposed to deter violators.

Please contact _____ at _____ if you have any questions or concerns.