

ID: CCA_2023071413184746

[Third Party Communication:

UILC: 6751.02-00

Date of Communication: Month DD, YYYY]

Number: **202346021**

Release Date: 11/17/2023

From: [REDACTED]
Sent: Friday, July 14, 2023 1:18:47 PM
To: [REDACTED]
Cc: [REDACTED]
Bcc:
Subject: RE: IRC 6676 Penalty

Hi [REDACTED],

Your analysis for the differences in deficiency/non-deficiency procedure is correct. As for timing of managerial approval for cases with deficiency procedures, the proposed regulation is not controlling yet and as currently written will not be controlling retroactively. Therefore, the current standards on timing of managerial approval are as follows:

9th Circuit: Approval required before assessment, or, if earlier, before the relevant supervisor loses discretion of whether or not to approve the assertion of the penalty. *Laidlaw's Harley Davidson v. Commissioner*, 29 F.4th 1066 (9th Cir. 2022).

10th Circuit: Approval required before SND is issued. *Minemyer v. Commissioner*, 2023 WL 314832 (10th Cir. 2023).

11th Circuit: Approval required before assessment of penalty. *Kroner v. Commissioner*, 48 F.4th 1272 (11th Cir. 2022).

Everywhere else: Approval required no later than when Exam "formally notifies the taxpayer, in writing, that it has completed its work and made an unequivocal decision to assert penalties." *Belair Woods, LLC v. Commissioner*, 154 T.C. 1 (2020).

Fell free to reach out if you have any questions or concerns.

[REDACTED]

[REDACTED]

