SMALL BUSINESS/SELF-EMPLOYED DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

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MEMORANDUM FOR AREA DIRECTORS, SB/SE FIELD EXAMINATION

FROM: Heather J. Yocum /s/ Heather J. Yocum
Director, Examination Field and Campus Policy

SUBJECT: Interim Guidance on Technical Services Penalty Review

Purpose: This memorandum provides interim guidance for Technical Services reviewing penalties prior to issuing a notice of deficiency until IRM 4.8.9, *Statutory Notices of Deficiency* is published. Please ensure this information is distributed to all affected employees within your organization.

Procedural Change: See Attachment 1 for procedural changes.

Effect on Other Documents: This guidance is effective immediately and will be incorporated into the impacted IRMs listed above by a date not to exceed two years from the date of this memorandum.

Contact: Ronald Zarriello, Program Manager, Examination Field and Campus Policy, Field Exam General Processes.

Attachment: Attachment 1 – IRM 4.8.9

Distribution: IRS.gov

Attachment 1 – IRM 4.8.9

4.8.9.8.4
Proper Consideration and Computation of Penalties

(1) All appropriate penalties should be asserted and computed correctly.

(2) The penalty lead sheet should comment on the assertion or non-assertion of applicable penalties, including reasonable cause situations.

(3) The negligence portion of the accuracy-related penalty should not be applied automatically in a no-show case. See IRM 20.1.5.8.1(5), *Negligence*.

(4) The substantial understatement portion of the accuracy-related penalty should be properly considered in a no-show case as discussed in IRM 20.1.5.9.2(6), *Penalty Assertion*.

(5) For cases using Report Generation Software (RGS), the return filing date should be correctly input to ensure correct delinquency penalty computation, if applicable.

(6) When required, the case file should include a copy of the immediate supervisor's or designated higher level official's written approval for the assertion of penalties (see IRM 20.1.5.2.3, *Supervisory Approval of Penalties – IRC 6751 Procedural Requirements*, penalty approval requirements, and IRM 20.1.5.2.3.1(3), *Documenting Supervisory Approval of Penalties*, for examples of acceptable written approval formats).

> **Reminder:** Two and ten year bans on claiming certain credits require supervisory approval of penalties. See IRM 20.1.5.3.5, *Two and Ten Year Bans on Claiming the Earned Income Tax Credit (EITC), Child Tax Credit (CTC), Additional Child Tax Credit (ACTC), and American Opportunity Tax Credit (AOTC)*.

(7) If the case file lacks a copy of the written penalty approval (when required, see IRM 20.1.5.2.3), the reviewer should secure a copy from the examiner or the examiner's supervisor.

> **Reminder:** For penalties assessed on or after December 23, 2024, written supervisory approval must be obtained on or before the date the pre-assessment notice is mailed (see Treas. Reg. 301.6751(b)-1, *Supervisory and higher level official approval for penalties*).

(8) The reviewer's immediate supervisor or higher level official will approve additional penalties before issuing the notice of deficiency when the reviewer identifies and asserts a penalty (requiring supervisory approval) the examiner didn't assert (e.g., negligence as an alternative position to substantial understatement).

(9) A copy of the written penalty approval must be attached to all statutory notices of deficiency (SNOD) issued to the taxpayer where penalties requiring supervisory approval are asserted.

(10) Refer to the following for guidance:

(11) IRC 6751(b), *Approval of assessment*.

(12) IRM 20.1.5.2.3, Supervisory Approval of Penalties - IRC 6751 Procedural

Requirements.

- IRM 20.1.5.4, *Examination Penalty Assertion*.

4.8.9.8.7
Proper Managerial Involvement

(1) Removed

(2) Removed