



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.11.1

NOVEMBER 19, 2021

EFFECTIVE DATE

(11-19-2021)

PURPOSE

- (1) This transmits revised IRM 8.11.1, Penalties Worked in Appeals, Return Related Penalties in Appeals.

BACKGROUND

- (1) This section contains general information about penalties worked in Appeals and return related penalties in Appeals.

MATERIAL CHANGES

- (1) Updated the text to reflect the new formal title of Appeals: the IRS Independent Office of Appeals. See IRM 8.11.1.1 (1), Program Scope and Objectives.
- (2) Incorporated Interim Guidance Memorandum AP-08-1120-0021, Reissuance of Appeals Conference Procedures. See IRM 8.11.1.2.7 (5), Consideration of Penalty Cases.
- (3) Made editorial changes (including grammar, spelling, citations, and minor clarifications) throughout this IRM.
- (4) Updated Taxpayer Bill of Rights (TBOR) content based on guidance from the Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration). See IRM 8.11.1.1.1 (2), Background.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 8.11.1 dated July 3, 2019. This IRM incorporates Interim Guidance Memorandum AP-08-1120-0021, Reissuance of Appeals Conference Procedures, which is dated November 6, 2020.

AUDIENCE

Appeals

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8.11.1

Return Related Penalties in Appeals

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8.11.1.1
(11-19-2021)
Program Scope and Objectives

- (1) *Purpose:* This IRM section describes the consideration of return related penalties by the IRS Independent Office of Appeals (Appeals). Specifically, IRM 8.11.1:
 - a. gives general information about return related penalties worked in Appeals;
 - b. establishes penalty settlement authority;
 - c. provides procedures for new penalty receipts and closings; and
 - d. recommends IRM resources, including decision tools and other IRM sections.
- (2) *Audience:* The primary users of this IRM section are Appeals Technical Employees (ATEs).
- (3) *Policy Owner:* Policy, Planning, Quality and Analysis is under the Director of Case and Operations Support.
- (4) *Program Owner:* Appeals Policy is the program office responsible for providing technical and procedural guidance to the Appeals organization, and is under the Director of Policy, Planning, Quality and Analysis.
- (5) *Contact Information:* Appeals employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM.

8.11.1.1.1
(11-19-2021)
Background

- (1) This IRM adheres to Penalty Policy Statement P-20-1, which addresses fair and equitable implementation and application of penalty provisions, and requires all Service functions to develop procedures that promote:
 - Consistency in the application of penalties compared to similar cases;
 - Unbiased analysis of the facts in each case; and
 - The proper application of the law to the facts of the case.
- (2) Appeals accomplishes its mission by considering protested and Tax Court-docketed cases, holding conferences, and negotiating settlements in a manner that ensures Appeals employees act in accord with the Taxpayer Bill of Rights (TBOR) in every interaction with taxpayers. The TBOR lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

8.11.1.1.2
(07-03-2019)
Authority

- (1) See IRC Subtitle F, Chapter 68, which contains most of the civil penalty provisions.
- (2) Policy Statement 20-1 (formerly P-1-18), which is found in IRM 1.2.1.12.1, sets forth the Service's position regarding penalties.
- (3) IRM 20.1, Penalty Handbook, which provides Servicewide instructions for working penalty cases.

8.11.1.1.3
(07-03-2019)
Responsibilities

- (1) The Policy analyst shown on the Product Catalog page as the originator is the assigned author of this IRM.

8.11.1.1.4
(07-03-2019)

Program Reports

- (1) Policy, Planning, Quality and Analysis (PPQA) provides trend and data analyses and detailed summary reports for Appeals.

8.11.1.1.5
(07-03-2019)

Terms and Acronyms

- (1) See IRM Exhibit 8.1.1-1, Common Terms Used in Appeals, for common terms and definitions used in IRM Part 8. Terms listed in that exhibit are not included in this section.
- (2) The table below lists commonly used acronyms and their definitions:

Acronym	Definition
ACM	Appeals Case Memorandum
CSC	Case Summary Card
PENAP	Post-assessment Penalty Appeal
PRC	Penalty Reason Code
VSD	Virtual Service Delivery

8.11.1.1.6
(07-03-2019)

Related Resources

- (1) This IRM is the primary source of guidance on this program.
- (2) This IRM is supplemented by the information in IRM 20.1, Penalty Handbook, and its sections.

8.11.1.2
(07-03-2019)

Introduction to Penalties Worked in Appeals

- (1) Penalties may be asserted for failing to comply with many filing, paying, and reporting requirements in the Internal Revenue Code. Non-return penalties, such as preparer penalties and penalties for valuation misstatements attributable to incorrect appraisals, may also be asserted.
- (2) IRC Subtitle F, Chapter 68, contains most of the civil penalty provisions. They are called “additions to the tax,” “additional amounts,” or “assessable penalties.” For simplicity, they are referred to as “penalties” throughout this IRM section.
- (3) Policy Statement 20–1 (formerly P-1-18), which is found in IRM 1.2.1.12.1, sets forth the Service’s position regarding penalties. See IRM 1.2.1.12, Policy Statements for Penalties and Interest Activities.
- (4) IRM 20.1, Penalty Handbook, provides the following Servicewide instructions for working penalty cases:
 - a. Information for all functions on types of penalties imposed by the Internal Revenue Code
 - b. Guidelines for considering abatement based on reasonable cause exceptions
 - c. Types of penalties that can be appealed and the process for appealing
- (5) This IRM section provides Appeals’ procedures for controlling and working various types of penalty cases in Appeals.
- (6) This IRM section supplements the information in IRM 20.1, Penalty Handbook, and its sections.

- 8.11.1.2.1
(07-03-2019)
Supervisory Approval of Penalties Before Appeals' Consideration
- (1) The examiner's immediate supervisor (or designated higher level official) generally must approve, in writing, an examiner's initial penalty determination per IRC 6751(b).
 - (2) See IRM 20.1.5.2.3, Supervisory Approval of Penalties - IRC 6751 Procedural Requirements, and IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments, for more information, including exceptions to the supervisory-approval requirement.

- 8.11.1.2.2
(07-03-2019)
Types of Penalties Received in Appeals
- (1) Several types of proposed or assessed penalties can be protested to Appeals. Below are some examples (not all-inclusive):

Type of Penalty Case	Description
Deficiency (Penalties subject to deficiency procedures)	<p>Some penalties are subject to the deficiency procedures of IRC Subchapter B of Chapter 63. A penalty based on a liability determined under the deficiency procedures is considered at the same time the tax deficiency is considered.</p> <p>Example: IRC 6662, Imposition of Accuracy-Related Penalty on Underpayments, IRC 6662A, Imposition of Accuracy-Related Penalty on Understatements with Respect to Reportable Transactions, and IRC 6663, Imposition of [Civil] Fraud Penalty, are all penalties subject to deficiency procedures.</p>
Penalties not subject to deficiency procedures	<p>There are several "stand-alone" penalties that Congress specifically provided would not be subject to the deficiency procedures and do not have Tax Court Protest rights. The Service has provided procedures permitting taxpayers to request administrative review of several of these penalties.</p>
PENAPs	<p>In Compliance, taxpayers have an opportunity to speak with the examiner's supervisor before penalties are assessed, with some exceptions. Most of these penalties may be abated on grounds of reasonable cause. Appeals sees these penalties as post-assessed. PENAP penalties are not subject to deficiency procedures and do not have Tax Court Protest rights. See IRM 8.11.4, Penalty Appeals (PENAP), for more information.</p>

Type of Penalty Case	Description
Claim for Refund	After penalties are paid, taxpayers are entitled to the claim-for-refund provisions. The taxpayer may bring suit in a U.S. District Court or the U.S. Court of Federal Claims at any time after the earlier of: (a) the date of any notice of claim disallowance, or (b) the date that is six months after the date of the taxpayer's filing of the refund claim. A refund or credit of an overpayment is barred if the time for filing a claim has expired or, if the claim was timely filed, the time has expired for filing suit. See IRC 6511(a), IRC 6511(b), and IRC 6514.
Special Claim for Refund	Congress provided special rules to mitigate potential hardship for taxpayers subject to certain "stand-alone" penalties which are not subject to the deficiency procedures. Examples of these penalties that are worked in Appeals are: <ul style="list-style-type: none"> • Understatement of taxpayer's liability by tax return preparer under IRC 6694. See IRM 8.11.3. • Promoting abusive tax shelters under IRC 6700. See IRM 8.11.7.2. • Aiding and abetting under IRC 6701. See IRM 8.11.7.3. • Frivolous tax submission penalties under IRC 6702. See IRM 8.11.8.2.
Return Preparer Penalty	See IRM 8.11.3.

(2) The following additional rules apply to additions to tax:

IF	THEN
Addition to tax is related to a deficiency	<p>Addition to tax is subject to the deficiency procedures and must be included in the statutory notice of deficiency (90-Day Letter).</p> <p>Note: Additions to tax under IRC 6651 for Failure to File, Failure to Pay and Fraudulent Failure to File that relate to the deficiency are subject to deficiency procedures. Failure to pay under IRC 6651(a)(2) should not be computed on a deficiency when a return has been filed by the taxpayer. See IRM 8.17.7.4(6), Failure to Pay Penalty, IRC 6651(a)(2) and IRC 6651(a)(3).</p>
Addition to tax is not related to a deficiency	<p>Addition to tax must be separately assessed within the applicable statute of limitations.</p> <p>Note: Without a related deficiency, the Tax Court will not consider the IRC 6651(f) Fraudulent Failure to File penalty. Instead, depending on the amount of time remaining on the assessment statute, taxpayers will generally be granted pre-assessment appeal rights. See IRM 20.1.2.3.7.5.1(3)-(4), FFTF Penalty Assessment—Procedural Requirements.</p>

8.11.1.2.3
(07-03-2019)
**Assessed Penalty
Settlement Authority**

- (1) ATEs consider settlements of appeals of **assessed** penalties for less than the full amount assessed. Delegation Order 8-8 (Rev. 1) delegates the authority to settle cases to Appeals Team Managers (ATMs) and Appeals Team Case Leaders as to their respective cases. See IRM 1.2.2.9.8, Delegation Order 8-8 (Rev. 1) (formerly DO-66, Rev. 15), Authority of Appeals in Protested and Tax Court Cases.

Note: Delegation Order 8-2 was rescinded.

- (2) The ATM will sign the Form 5402, Appeals Transmittal and Case Memo.

8.11.1.2.4
(07-03-2019)
Carding Penalty Cases

- (1) Instructions for carding penalty cases are located in IRM 8.20.5.31.1, Civil Penalty (MFT 13 & 55) Case Carding.

8.11.1.2.5
(07-03-2019)
**Assignment of Penalty
Cases**

- (1) The ATM will assign the penalty case to an ATE based upon the complexity of the penalty issue.
- (2) The ATM or designated official will assign the case to an ATE on the Appeals Centralized Database System (ACDS).

8.11.1.2.6
(07-03-2019)

**New Receipt Procedures
for Appeals Technical
Employees (ATEs)**

- (1) Upon receipt of the case, the ATE follows the procedures in IRM 8.2.1.4, Receipt of New Assignment by an Appeals Technical Employee (ATE). These procedures include, but are not limited to, the following:
 - Complete the statute verification and contact the taxpayer or authorized representative within **45 calendar days**. With respect to statute verification, refer to IRM 8.21.3, Appeals Technical Employees Statute Responsibility.

Note: ATMs will be reasonable in extending the contact time frame if circumstances (e.g., leave, workload, case complexity or other priorities) prevent the ATE from meeting it. If the ATM extends this time frame, the ATE will document this decision and the agreed upon time frame in CARATS on ACDS. **But the statute verification time frame shall not be extended beyond 45 days.** If the contact time frame is extended beyond 75 days, then the ATM will contact the taxpayer/representative by correspondence, providing a status of the case and to whom the case is assigned.

 - Verify that the case file is complete and all file data is present per IRM 20.1.1.3.5.1(4), Subsequent Requests for Penalty Relief. See IRM 8.2.1.5, Returning a Case to Examination - ATE, for grounds for returning a case to Examination.
- (2) Validate the Case Summary Card (CSC) information and make updates, if necessary.
 - (3) If a subsequent correction is needed to ACDS, take the following actions:
 - Change the data fields by using the “Validations” tab on the bottom tool bar of the Case Activity Record.
 - All other changes not available in the Validations tab must be submitted to APS using secured email.
 - (4) There are several TYPE codes used on ACDS to identify the type of penalty case, including:

TYPE Codes	IRC Section/Description	When Used/IRM Reference or For General Information IRM Reference
I	Income Tax	Return Related Penalties - these are deficiency or deficiency-type pre-assessed penalties. IRM 8.11.1.3
PENAP	Penalty Appeals	IRM 8.11.4
6676	IRC 6676, Erroneous Claim for Refund or Credit penalty case	IRM 8.11.1.3.7
6694(a)	IRC 6694(a), Understatement Due to [Preparer's] Unreasonable Positions	IRM 8.11.3

TYPE Codes	IRC Section/Description	When Used/IRM Reference or For General Information IRM Reference
6694(b)	IRC 6694(b), Understatement Due to [Preparer's] Willful or Reckless Conduct	IRM 8.11.3
6695(a)-(g)	IRC 6695(a)-(g), Tax Preparer Penalty for specified failures	IRM 8.11.3
6695A	IRC 6695A, Substantial and Gross Valuation Misstatements Attributable to Incorrect Appraisals	IRM 8.11.8
6700	IRC 6700, Penalty for Promoting Abusive Tax Shelters	IRM 8.11.7
6701	IRC 6701, Penalties for Aiding and Abetting Understatement of Tax Liability	IRM 8.11.7
6702	IRC 6702, Frivolous Tax Submissions	IRM 8.11.8
6704	IRC 6704, Failure to Keep Certain Records	IRM 20.1.8.4.9
6705	IRC 6705, Failure by Broker to Provide Notice to Payors	IRM 20.1.10.14
6706	IRC 6706, Original Issue Discount Information Requirements	IRM 20.1.10.15
6707	IRC 6707, Failure to Furnish Information Regarding Reportable Transactions	IRM 8.11.7
6707A	IRC 6707A, Penalty for Failure to Include Reportable Transaction Information with Return	IRM 8.11.7
6708	IRC 6708, Failure to Maintain Lists of Advisees With Respect to Reportable Transactions	IRM 8.11.7
6709	IRC 6709, Penalties with Respect to Mortgage Credit Certificates	IRM 8.11.8.4
OTHPEN	Other IRC penalty code sections not specified	If there is no specified "TYPE" code for the IRC penalty code section asserted, use "OTHPEN" and enter the IRC section in "Notes".

8.11.1.2.7
(11-19-2021)

Consideration of Penalty Cases

- (1) ATEs will resolve the cases as expeditiously as possible.
- (2) Appeals will not concede penalty issues to obtain a concession on other issues in the case. Penalties should sometimes be settled, but the settlement must be based on reasonable cause, facts and the law, taxpayer circumstances and compliance history, and hazards of litigation.

Note: Not all penalties that Appeals considers have reasonable cause provisions, and those penalties are listed throughout this IRM section.

- (3) Familiarize yourself with the most current edition of Document 6209, IRS Processing Codes and Information.
- (4) When considering a penalty issue, use account information that is less than 60 days old. However, depending on the type of penalty, a current transcript may be necessary.
- (5) Appeals holds conferences to resolve issues in dispute. PENAP conferences are usually held by telephone or correspondence. If the taxpayer or representative requests an in-person conference, follow the procedures in:
 - a. IRM 8.6.1.5.1, Conference Practice,
 - b. IRM 8.6.1.5.5, Virtual Service Delivery (VSD).

8.11.1.2.7.1
(10-01-2012)

Reasonable Cause

- (1) Penalty cases handled in Appeals may involve complex and questionable reasonable cause issues.
- (2) The following questions should be used to determine if the taxpayer has established reasonable cause, and should be considered in your final determination. Your decision must be clearly documented in the ACM, and the facts and circumstances must support the decision:
 - a. Do the taxpayer's explanations directly relate to the penalty that was assessed?
 - b. Do the dates and times coincide with the taxpayer's explanation?
 - c. Could the noncompliance have been anticipated and/or prevented?
 - d. Did the taxpayer make an honest mistake?
 - e. Has the taxpayer provided sufficient detail (dates, relationships, documents) to determine if ordinary business care and prudence was exercised?
 - f. Is the taxpayer an individual, third party such as a reporting agent, accountant or lawyer?
 - g. Is there a history of the taxpayer being assessed the same penalty?
 - h. Were there prior abatements of the same or similar penalties?

- (3) Refer to IRM 20.1.1.3.2, Reasonable Cause, for more information.

8.11.1.2.7.2
(11-12-2013)

Statutory Exceptions and Administrative Waivers

- (1) Statutory exceptions and administrative waivers are two very separate categories that are placed together because in many instances an administrative waiver is an extension of rules that were provided for by statute. For more information, see IRM 20.1.1.3.3, Statutory Exceptions and Administrative Waivers.

8.11.1.2.7.3

(11-12-2013)

Administrative Waivers

- (1) The IRS may formally interpret or clarify a provision to provide administrative relief from a penalty that would otherwise be assessed. An administrative waiver may be addressed in either a policy statement, news release, or other formal communication stating that the policy of the IRS is to provide relief from a penalty under specific conditions. For more information, see IRM 20.1.1.3.3.2, Administrative Waivers.

8.11.1.2.7.4

(07-03-2019)

Correction of Service Error

- (1) An IRS error can be any error made by the IRS in computing or assessing tax, crediting accounts, etc. See IRM Exhibit 20.1.1-2, Penalty Reason Code Chart, for the appropriate PRC to be used when abating either a systemically generated or manually input penalty. For more information, see IRM 20.1.1.3.4, Correction of Service Error.

8.11.1.2.7.5

(07-03-2019)

Hazards of Litigation

- (1) Penalties may be settled based on hazards of litigation. Unlike Compliance, Appeals may consider the hazards of litigation in attempting to reach a settlement. The proper use of this settlement authority given to Appeals is critical in fulfilling its mission.
- (2) The settlement process is based on the ATE's experience and judgment after considering the facts and the law.
- (3) ATEs must evaluate the facts pertinent to the issue under consideration, the applicable law, and the potential outcome in the event the case is litigated.
- (4) The hazards of litigation are the uncertainties of the outcome of the court's decision in the event of a trial.
- (5) Litigating hazards generally fall into three categories: factual, legal and evidentiary.

Note: Lack of case law should not be considered a hazard of litigation.

- (6) Appeals may weigh these factors and determine an appropriate settlement range for the issue and obtain a realistic settlement.

8.11.1.2.8

(07-03-2019)

Closing Procedures for Appeals Technical Employees (ATEs)

- (1) This section discusses the general process used by the ATE to close penalty cases.
- (2) Use ACDS APGolf to generate all forms and letters.
- (3) Prepare the ACM to outline the facts and circumstances supporting sustention or abatement of the penalty. This could include, but is not limited to:
 - Documenting taxpayer's filing history
 - Citing case law
 - Discussing hazards of litigation

IRM 8.6.2, Appeals Case Memo Procedures, provides additional information on the preparation of ACMs.
- (4) Use the ACDS customized Form 5402:
 - Show the affected tax periods included in the case
 - Route the case to the Account and Processing Support (APS) unit who will process the adjustments
 - List penalty transaction codes

- Provide a source document to adjust the taxpayer's account based on the case determination
- Include special instructions related to processing the case
- Notate in the remarks section of the Form 5402 when a certified claim disallowance letter had been issued (e.g., Letter 1363, Appeals Partial Disallowance of Refund Claim - Certified Letter, and/or Letter 1364, Appeals Full Disallowance of Refund Claim - Certified Letter), instructing APS to enter this information in the **Notes** field on ACDS. The reason for this requirement is to ensure duplicate certified letters are not issued, which may erroneously extend the two-year period to file suit with the applicable court.
- Send feedback to Compliance when an address is provided in the **Route To:** field on the Form 5402.

Note: See the discussion of APS's closing procedures and explanation of the closing code and blocking series below.

- Use the correct ARDI Code. If penalties have not been paid, ARDI Code 2 should be used when penalties are sustained or partially abated. ARDI Code 7 should be used when penalties are fully abated.

(5) Prepare the applicable ACDS closing letter.

8.11.1.2.8.1
(07-03-2019)

Miscellaneous Civil Penalties Closing Forms

- (1) When assessing civil penalties use the most current version of Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties. Then:
- Prepare Form 5402 and the ACM outlining the settlement of the case.
 - Prepare Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties.

The required Form 5402 provides a summary of the case resolution and identifies the penalties, while the Form 8278 is the source document for IDRS actions. The following table provides guidelines for the required documents:

IF	ON	ENTER
The penalty is sustained	Form 5402	Transaction Code (TC) 290 for zero dollars (–\$0.00–) in the appropriate column in number 12. Write in “Use blocking series 96X”.
	Form 8278	TC 290 (–\$0.00–) in a blank space on the form. Write in “Use blocking series 96X.” For pre-assessment Appeal agreed cases, Columns 9(b), 9(c), 9(d) are used to assess the penalty. An amount must be entered into 9(d).
The penalty is not sustained (in full or part)	Form 5402	TC 290 with a blocking series 97X (reversal of penalty abatement refusal) in the appropriate column in number 12.
	Form 8278	TC 290 with a blocking series 97X (reversal of penalty abatement refusal) in a blank space on the form. For pre-assessment Appeal sustained in part, amount sustained is the 9(d) amount. PENAP - if assessment abatement in full or in part is granted, the amount abated is 9(e) and 9(f). See IRM Exhibit 20.1.1-2, Penalty Reason Code Chart, for PRC to enter in 9(f). Prior to abating penalty, secure transcript to verify the penalty to be abated in full or in part was assessed.

- (2) Use Form 3870, Request for Adjustment, for interim adjustments and adjustments to accounts and Form 5403, Appeals Closing Record, for cases that are RGS generated.

Note: Use of blocking series 96X (penalty abatement refusal) for the TC 290 (-0-) transaction prevents the abatement of a penalty sustained by Appeals. Only Appeals personnel are permitted to use blocking series 96X and 97X.

8.11.1.2.9
(07-03-2019)

Account and Processing Support (APS) Closing Procedures

- (1) APS's closing procedures have been moved to IRM 8.20.7.16, Civil Penalty MFT 13 (BMF) MFT 55 (IMF) Closing Procedures.

8.11.1.3
(07-03-2019)

Return Related Penalties Worked in Appeals

- (1) This section provides policies and procedures for IRC 6662, IRC 6662A, IRC 6663, and IRC 6676 penalties worked in Appeals. The updates to this section include procedural recommendations as a result of changes in legislation and are found in applicable sections of the IRM. Reasonable cause and good faith exceptions to IRC 6662 and IRC 6662A penalties are discussed in IRC 6664.

IRC Section	Penalty Description	Penalty Amount	Related IRM(s)
6662(c)	Negligence or Disregard of Rules or Regulations	20 percent of the portion of the underpayment attributable to the misconduct	IRM 20.1.5.8
6662(d)	Substantial Understatement of Income Tax	20 percent of the portion of the underpayment attributable to the misconduct	IRM 20.1.5.9
6662(e)(1)(A)	Substantial Valuation Misstatement	20 percent of the portion of the underpayment attributable to the misconduct	IRM 20.1.5.10.1
6662(e)(1)(B)	Valuation Misstatement Penalties for Transfer Pricing Transactions under IRC Section 482	20 percent of the portion of the underpayment attributable to the misconduct	IRM 20.1.5.10.2
6662(f)	Substantial Overstatement of Pension Liabilities	20 percent of the portion of the underpayment attributable to the misconduct	IRM 20.1.5.11
6662(g)	Substantial Estate or Gift Tax Valuation Understatement	20 percent of the portion of the underpayment attributable to the misconduct	IRM 20.1.5.12
6662(h)	Gross Valuation Misstatement	40 percent of the portion of the underpayment attributable to a gross valuation misstatement	IRM 20.1.5.10.3
6662A	Accuracy-Related Penalty with Respect to Reportable Transactions	20 percent of the reportable transaction understatement. The penalty rate is increased to 30 percent of the reportable transaction understatement where the transaction was not properly disclosed.	IRM 20.1.5.17
6663	Civil Fraud	75 percent of the portion of the underpayment attributable to fraud	IRM 20.1.5.16

IRC Section	Penalty Description	Penalty Amount	Related IRM(s)
6662(b)(6)	Penalty for Underpayment Attributable to Transactions Lacking Economic Substance	20 percent of the portion of the underpayment attributable to any transaction lacking economic substance that is disclosed	IRM 20.1.5.13
6662(i)	Nondisclosed Noneconomic Substance Transactions	40 percent of the portion of the underpayment attributable to nondisclosed noneconomic substance transactions	IRM 20.1.5.13.1
6662(j)	Undisclosed Foreign Financial Asset Understatement	40 percent of the portion of the underpayment attributable to transactions involving undisclosed foreign financial assets	IRM 20.1.5.14
6662(k)	Inconsistent Estate Basis Reporting	20 percent of the underpayment attributable to reporting any inconsistent estate basis	IRM 20.1.5.15
6676	Erroneous Claim for Refund or Credit	20 percent of the "excessive amount"	IRM 20.1.5.18
Note: Use TYPE Code "I" for all of the above penalties except for IRC 6676 penalties, which use TYPE Code "6676".			

8.11.1.3.1
(11-12-2013)
Effect of Statutory Changes

- (1) Since penalties may impact many IRC filing, paying and reporting requirements, many major tax acts contain revisions to the penalty sections in Chapter 68 of the IRC. See IRM 20.1, Penalty Handbook, for any statutory changes that may affect the penalty at issue.

8.11.1.3.2
(07-03-2019)
Statute of Limitations

- (1) Generally, the statute of limitations for the return related penalties listed above that use ACDS TYPE Code "I" is the same as the statute of limitations for underpayments of the tax required to be reported on the income tax return. For information on the statute of limitations for IRC 6676 penalty cases, see IRM 8.11.1.3.7.

8.11.1.3.3
(07-03-2019)
Penalty Relief

- (1) For penalty relief on the above applicable penalties, see IRM 20.1.5.7, Penalty Relief.
- (2) With respect to the IRC 6676 penalty, the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) provides that any excessive amount which is attributable to any transaction described in IRC 6662(b)(6) will not be treated as due to reasonable cause.

8.11.1.3.4
(07-03-2019)

Stacking of Penalties

- (1) Stacking of the IRC 6662, IRC 6663, IRC 6662A, and IRC 6676 penalties is not permitted.
- (2) The maximum amount of the IRC 6662 penalty imposed on a portion of an underpayment of tax is 20 percent (or 40 percent in certain circumstances) of that portion of underpayment (even if that portion of the underpayment is attributable to more than one type of misconduct proscribed under IRC 6662). See IRM 20.1.5.17.3, Coordination with Other Penalties. The 30 percent penalty only applies in an IRC 6662A penalty.

8.11.1.3.5
(07-03-2019)

Accuracy-Related and Civil Fraud Penalties

- (1) For common features of both penalties, see IRM 20.1.5.3.2, Common Features of Accuracy-Related and Civil Fraud Penalties.
- (2) For allocation of both penalties, see IRM 20.1.5.3.3, Allocation of an Underpayment.

8.11.1.3.6
(07-03-2019)

Processing Fraud Penalty Cases

- (1) Appeals has authority to eliminate or partially concede the civil fraud penalty under IRC 6663. Appeals can partially concede the fraudulent failure to file penalty under IRC 6651(f), to an amount less than 75 percent but greater than zero, in any case under its sole jurisdiction.

Caution: In any case where criminal prosecution against the taxpayer was recommended to the Department of Justice, the recommendation or concurrence of Counsel is required for reduction or elimination of the sections 6663 and 6651(f) penalties—whether or not the criminal prosecution recommendation resulted in a conviction. This requirement also applies to any related taxpayer involved in the same transaction, and to the same taxpayer with respect to any tax year or period affecting the tax year or period for which criminal prosecution was recommended. (See Delegation Order 8–8, IRM 1.2.2.9.8.) The concurrence of Counsel is required for the reduction of any criminal fraud income item. To indicate concurrence, the appropriate official in Counsel's office signs in the space provided at the bottom of Form 5402 before Appeals closes the case to APS. Refer to IRM 8.7.1.9, Cases Involving Criminal Prosecution and Restrictions on Appeals Jurisdiction in Criminal Cases, for cases in which a recommendation for criminal prosecution is pending.

- (2) The following table provides actions which may be required based on the statute of limitations **and** the case resolution:

IF	AND	THEN
The three-year period of limitations for assessment has not expired for a non-docketed case	there is a partial concession of the civil fraud penalty or the fraudulent failure to file penalty to an amount less than 75% of the fraudulent portion of the underpayment but greater than zero	secure a closing agreement.
The three-year period of limitations for assessment has not expired for a docketed case	there is a partial concession of the civil fraud penalty or the fraudulent failure to file penalty to an amount less than 75% of the fraudulent portion of the underpayment but greater than zero	it is usually not necessary to secure a closing agreement, because the stipulated-decision filed with the court is sufficient. Always consult with Counsel when considering a closing agreement in a docketed case.
Period of limitations for assessment has expired except for fraud	the evidence warrants litigating the fraud penalty	execute a closing agreement where mutual concession settlement is worked out for <ul style="list-style-type: none"> • a deficiency with no fraud penalty, or • fraud penalty or the fraudulent failure to file penalty to an amount less than 75% of the fraudulent portion of the underpayment but greater than zero
Period of limitations for assessment has expired except for fraud	the evidence of fraud is insufficient to warrant litigation	concede the deficiency in tax and the fraud penalty

- (3) Return a case to the Compliance office when it appears important new information or evidence was purposely withheld from the Compliance Officer, or where information requires extensive verification and consideration by the area office. For more information, see IRM 8.2.1.5, Returning a Case to Examination - ATE, and IRM 8.6.1.7.5, Taxpayer Provides New Information.
- (4) Consult with your ATM when any new information or evidence implies a fraud potential in a case under Appeals' jurisdiction. With the concurrence of the ATM:
 - in docketed cases, where fraudulent documents have impeached the credibility of the taxpayer, cease the settlement negotiations and notify Counsel that you are forwarding the case for trial preparation.
 - in non-docketed cases, return the new evidence for Compliance's review and consideration of fraud penalty assertion.
- (5) In all mail-order-ministry/vow-of-poverty cases where the civil fraud penalty has been asserted, consult local SB/SE Counsel prior to closing the case if there is any substantial doubt about whether the civil fraud penalty should be sustained or conceded.

8.11.1.3.7
(07-03-2019)
IRC 6676

- (1) As background, the Small Business and Work Opportunity Tax Act of 2007 (SBWOTA), enacted on May 25, 2007, added IRC 6676, Erroneous Claim for Refund or Credit penalty. This section was subsequently amended by the PATH Act, which was enacted on December 18, 2015. The PATH Act amended IRC 6676 by changing the **reasonable basis** exception to a **reasonable cause** exception. As amended, the IRC 6676 penalty may be imposed on a taxpayer who files an erroneous claim for refund or credit with respect to income tax that is excessive and for which there is no reasonable **cause** for the claimed tax treatment.

Note: The PATH Act repealed the exception from the IRC 6676 penalty for the earned income credit. Erroneous claims for the earned income credit and other refundable credits are now subject to the section 6676 penalty.

- (2) For claims filed before December 18, 2015, an IRC 6676 penalty may be imposed on a taxpayer who files an erroneous claim for refund or credit with respect to income tax that is excessive and for which there is no reasonable **basis** for the claimed tax treatment. See IRM 20.1.5.18, IRC 6676, Erroneous Claim for Refund or Credit Penalty.
- (3) ACDS TYPE Code “6676” is used to control an IRC 6676 penalty case on ACDS.
- (4) The IRC 6676 penalty is generally **not** subject to deficiency procedures. Therefore, the penalty should generally **not** be included on the examination report (30-day letter) or statutory notice of deficiency relating to the disallowed claim for refund or credit return or the filed income tax return. However, when an excessive amount of a refund claim is attributable to a disallowed refundable credit, the excessive amount is part of a deficiency and the IRC 6676 penalty, on the excessive amount, is subject to deficiency procedures. In all cases where the excessive amount is not part of a deficiency, the IRC 6676 penalty is assessable without following deficiency procedures. For more information about deficiency procedures and the IRC 6676 penalty, see IRM 20.1.5.18.4, Case Procedures WITH Deficiency Procedures.
- (5) IRC 6676 cases are generally subject to pre-assessment and appeal rights procedures.

8.11.1.3.7.1
(07-03-2019)
**Carding Procedures for
IRC 6676**

- (1) APS’s procedures for carding IRC 6676 cases are now located in IRM 8.20.5.31.3, IRC § 6676 Penalty Case Carding.

8.11.1.3.7.2
(07-03-2019)
**ATE Consideration for
IRC 6676**

- (1) The ATE and APS will verify if the correct number of case files have been forwarded for Appeals’ consideration. In some cases only the penalty case will be forwarded as the claim case will be agreed. Depending on the number of case files received by Appeals, APS will create a separate work unit for each case. If both cases are unagreed, the ATE should have two case files for IRC 6676 penalty cases. Generally, Examination will not propose the penalty until the disallowed amount of the claim for refund or credit is determined. See IRM 20.1.5.18.4, Case Procedures WITH Deficiency Procedures, and IRM 20.1.5.18.5, Case Procedures WITHOUT Deficiency Procedures. Examination will close both files together unless they must be processed and closed separately because of issues with the period of limitations for assessment.

Note: Examination should place copies of relevant documents from the IRC 6676 penalty case file into the penalty section of the income tax case file (if applicable) to ensure that documentation relating to the IRC 6676 penalty will be available should the files become separated.

- (2) IRC 6676 has a reasonable **cause** provision for claims filed on or after December 18, 2015, and a reasonable **basis** provision for claims filed before December 18, 2015. See IRM 4.10.6.4, Finalizing Penalty Determinations, and IRM 20.1, Penalty Handbook.
- (3) The IRC 6676 penalty does not apply to any portion of the disallowed amount of the claim for refund or credit that is subject to IRC 6662, IRC 6663, and IRC 6662A penalties.
- (4) The amount of the IRC 6676 penalty is 20 percent of the “excessive amount.” The **excessive amount** is the amount of the claim for refund or credit that exceeds the amount allowable for any taxable year. See IRM 20.1.5.18, IRC 6676, Erroneous Claim for Refund or Credit Penalty.
- (5) For statute consideration of pre-assessed IRC 6676 penalty cases, see IRM 20.1.5.18.

Note: The Assessment Statute Expiration Date (ASED) for the income tax case and the IRC 6676 penalty could be different dates, or the dates could be the same if the claim for refund is the original tax return. In any event, the ASED for assessment of a tax deficiency and the ASED for assessment of the IRC 6676 penalty must be separately controlled and protected by means of the appropriate consent forms.

- (6) To avoid uncertainty, the IRC 6676 penalty should be assessed within three years of the date when the claim for refund or credit was filed. The ASED for the IRC 6676 penalty can be extended using Form 872-EC, Consent to Extend the Time on Assessment of IRC section 6676 Erroneous Claim for Refund or Credit Penalty. Generally, consents should be obtained 180 days before the end of the three-year period after the filing of the claim or 180 days before the end of a previously extended period for assessing the erroneous claims penalty. A current transcript for the filed claim for refund or credit should be included in the penalty case file for accurate monitoring of the statute expiration date of the filed claim for refund or credit.
- (7) The IRC 6676 penalty case file should be transmitted to Appeals with Form 3198, Special Handling Notice for Examination Case Processing, on the outside front cover of the file with the “Civil Penalties (Form 8278)” box under “Special Features” checked.
- (8) The penalty case file should include a separate assessment Form 8278 or Form 3870 for each penalty tax year:
 - Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, is used for IRC 6676 penalty cases **except** for married-filing-joint (MFJ) income tax return claims. Form 8278 should **not** be used for MFJ penalty cases. The penalty is assessed on MFT 55 for IMF and MFT 13 for BMF with Penalty Reference Number (PRN) 565 using Form 8278. Verify that the supervisor’s signature is on Line 11a of Form 8278.
 - Form 3870, Request for Adjustment, is used when asserting the IRC 6676 penalty on MFJ income tax returns. Verify that the supervisor’s

signature is on line 14 of Form 3870. The penalty “related” case, for a MFJ income tax return claim, must be assessed on **MFT 30 with PRN 687**.

Note: See IRM 8.11.1.2.1, Supervisory Approval of Penalties Before Appeals’ Consideration, and IRM 20.1.5.2.3, Supervisory Approval of Penalties - IRC 6751 Procedural Requirements, for more information on supervisory approval of penalties.

- (9) Other pertinent documents or workpapers should be included in the penalty case file when it is sent to Appeals, including:
- Letter 4143-C, 30-day Letter for IRC Section 6676 Penalty
 - Form 5838-EC, Agreement to Assessment and Collection of IRC section 6676 Erroneous Claim for Refund or Credit Penalty
 - Form 886-A, Explanation of Items
 - For other documents that should be in the IRC 6676 penalty case file, see IRM 20.1.5.18.6, Non-deficiency Related Case File for Disallowed Claims.
- (10) The ATE will follow normal closing procedures. See IRM 8.11.1.2.8, Closing Procedures for Appeals Technical Employees (ATEs).

Note: The ATE will notify APS in the notes of the Form 5402 to process the Form 8278 when the case is closed.

8.11.1.3.8
(07-03-2019)
**Deficiency Related
Estimated Tax Penalty
Adjustments**

- (1) If an estimated tax penalty is considered during Appeals’ consideration of a deficiency related case and an adjustment will be made, use Form 5403, Appeals Closing Record.
- (2) See IRM 20.1.3.3.2, Adjustments after Penalty Assessment; IRM 8.17.7.8, Estimated Tax Penalties, IRC 6654 and IRC 6655; IRC 6654, Failure by Individual to Pay Estimated Income Tax; and IRC 6655, Failure by Corporation to Pay Estimated Income Tax.
- (3) Estimated tax penalties are systemically generated with TC 176 at the time an original return is posted to an account.
- (4) To adjust a computer-generated IMF estimated tax penalty, follow the instructions outlined in IRM 8.20.7, Closing Procedures, for entering adjustments to estimated tax penalty amounts on Form 5403.