



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

20.1.2

FEBRUARY 27, 2024

## EFFECTIVE DATE

(02-27-2024)

## PURPOSE

- (1) This transmits revised IRM 20.1.2, Penalty Handbook, Failure to File/Failure to Pay Penalties.

## MATERIAL CHANGES

- (1) IRM 20.1.2.2.1, When Timely Mailing Equals Timely Filing or Paying (Received Date vs. Filing/Payment Date): added clarification in (1) regarding zip code.
- (2) IRM 20.1.2.2.3.1, Extensions of Time to File: removed BMF returns to use foreign universal location codes in (10). IRM 20.1.2.2.3.1.1, Extension of Time to File Not Found: clarified (1) Note use of job aid for proper TC 460 input.
- (3) IRM 20.1.2.2.3.2.1, Extension Under Fresh Start Initiative: referenced Form 1127-A as historical.
- (4) IRM 20.1.2.2.5, Manual Penalty Adjustments: clarified (2) instructions for manual penalty adjustments.
- (5) IRM 20.1.2.2.6.3, Wrong Return Posted First: (2) clarified command code ADJ54 instructions.
- (6) IRM 20.1.2.3, Failure to File a Tax Return or to Pay Tax - IRC 6651: added IRC 6651(i) application to imputed underpayment failure to comply with IRC 6226(b)(4)(a)(ii) will be treated as a failure to pay.
- (7) IRM 20.1.2.3.7.4, Minimum Penalty: updated minimum penalty rates in table and (1) Note.
- (8) IRM 20.1.2.3.8.1.2, 1/4 Percent Penalty Rate - IRC 6651(h): added (2) to clarify what is needed when inputting an installment agreement and turning individual indicator on/off.
- (9) IRM 20.1.2.3.8.4, Failure to Pay Tax Shown on the Return- IRC 6651(a)(2): added penalty applies to partnership returns.
- (10) IRM 20.1.2.3.8.7.1, Example of Failure to File Penalty with Failure to Pay Tax Shown on Return: updated examples to more recent tax years.
- (11) IRM 20.1.2.3.8.7.2, Example of Failure to File Penalty for Deficiency: updated examples to more recent tax years.
- (12) IRM 20.1.2.3.8.7.3, Example of Failure to Pay Tax Upon Notice and Demand: updated examples to more recent tax years.
- (13) IRM 20.1.2.3.8.7.4, Example of Minimum Failure to File Penalty: updated examples to more recent tax years.
- (14) IRM 20.1.2.4.2, Penalty Computation: updated penalty base rate to new inflation amount.
- (15) IRM 20.1.2.4.3, Penalty Relief: added paragraph (2) to clarify First Time Abate does not apply to IRC 6698(a)(2) penalties.
- (16) IRM 20.1.2.5, Failure to File Partnership Return Using Electronic Media: updated penalty rates in (6) table.
- (17) IRM 20.1.2.6.2, Penalty Computation: updated penalty base rate to new inflation amount.

- (18) Minor editorial and style changes have been made throughout this IRM. Website addresses, form references and IRM references were reviewed and updated as necessary.

#### **EFFECT ON OTHER DOCUMENTS**

This material supersedes IRM 20.1.2 dated March 9, 2022.

#### **AUDIENCE**

All operating division employees working with penalties.

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Acting Director, Business Support Office  
Small Business/Self-Employed

20.1.2

Failure To File/Failure To Pay Penalties

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20.1.2-1 Revenue Procedure 84-35

20.1.2-2 References

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20.1.2.1  
(02-27-2024)  
**Program Scope and Objectives**

- (1) **Purpose:** This IRM discusses the penalties for failure to file or pay as required in the Internal Revenue Code (IRC). It includes the penalties for the following failures:
  - a. Failure to file tax returns or to pay tax (IRC 6651).
  - b. Failure to file a timely and complete partnership return, Form 1065 (IRC 6698).
  - c. Failure to file a timely and complete Real Estate Mortgage Investment Conduit (REMIC) return, Form 1066 (IRC 6698).
  - d. Failure to file a timely and complete S corporation return, Form 1120-S (IRC 6699).
  - e. Failure to file a partnership return via the required medium (failure to e-file when required) (IRC 6721(a)(2)(A)).
- (2) This IRM is the authoritative source of information regarding servicewide policy and procedure with respect to these penalties. Additional procedural requirements beyond those in this IRM may exist within specific functional areas to meet the area's needs, as long as those requirements do not conflict with servicewide policy or required procedure.
- (3) **Audience:** All operating division employees who address the penalties for failure to file or pay addressed in this IRM.
- (4) **Policy Owner:** The Business Support Office (BSO) is under Operations Support (OS). SB/SE is responsible for overseeing civil penalties, including the penalties for failure to file or pay.
- (5) **Program Owner:** The Office of Servicewide Penalties (OSP) is responsible for policy with respect to the penalties in this IRM.
- (6) **Primary Stakeholders:** All organizations and business units who address the penalties for failure to file or pay.
- (7) **Contact Information:** To recommend changes or any suggestions with respect to this IRM section, e-mail OSP at *Servicewide Penalties Team@irs.gov* . Also see IRM 1.11.6.6, Providing Feedback About an IRM Section - Out of Clearance.

20.1.2.1.1  
(03-19-2019)  
**Background**

- (1) The law requires taxpayers to file returns to report income and taxes due. The specific rules for filing are outlined in Treasury Regulations and in the instructions for filing the required returns.
- (2) The law also requires taxpayers to pay any tax due at the time the tax is required to be paid.
- (3) Taxpayers who fail to file and/or pay as required are subject to additions to tax referred to as penalties. The purpose of these penalties is to encourage voluntary compliance with the requirements for filing and paying by imposing an avoidable cost on non-compliant taxpayers.

20.1.2.1.2  
(03-19-2019)  
**Authority**

- (1) IRC 6651 provides penalties for failure to file tax returns and for failure to pay tax.
- (2) IRC 6698 provides for a penalty for failure to file a partnership or REMIC return, or for failure to include all information on a partnership return as required by IRC 6031.

- (3) IRC 6699 provides for a penalty for failure to file an S corporation return, or for failure to include all information on an S corporation return as required by IRC 6037.
- (4) IRC 6721(a)(2)(A), in conjunction with IRC 6724(d)(2)(A) , and 26 CFR 301.6011-3(c), provides for a penalty for partnerships with more than 100 partners for failure to file electronically as required by IRC 6011(e)(2).

20.1.2.1.3  
(02-27-2024)  
**Responsibilities**

- (1) The Director of Business Support, within SB/SE Operations Support, is the director responsible for the servicewide civil penalty program.
- (2) Overall responsibility for civil penalty programs is assigned to OSP. OSP is a matrix organization residing in the Business Support (Small Business/Self Employed) Function. OSP is charged with coordinating policy and procedures concerning the administration of civil penalty programs, ensuring consistency with the penalty policy statement, reviewing and analyzing penalty information, researching penalty effectiveness on compliance trends, and determining appropriate action necessary to promote voluntary compliance.
- (3) Each IRS organization is responsible for establishing an internal process for managing their procedures based upon these Servicewide policies and may develop additional guidance or reference materials for their specific functional administrative needs. However, such reference material must receive approval from OSP prior to distribution and must remain consistent with the policies and general procedural requirements set forth in this IRM, Policy Statement 20-1 (for example, Penalty Policy Statement) in IRM 1.2.1.12.1, Penalties are used to enhance voluntary compliance, and any other guidance relating to civil penalties.
- (4) All employees should keep the following objectives in mind when handling each penalty case:
  - a. Similar cases and similarly-situated taxpayers should be treated alike.
  - b. Each taxpayer should have the opportunity to have their interests heard and considered.
  - c. Strive to make a right decision in the first instance. A wrong decision, even though eventually corrected, has a negative impact on voluntary compliance.
  - d. Provide adequate opportunity for incorrect decisions to be corrected.
  - e. Treat each case in an impartial and honest way (i.e., approach the job, not from the government's or the taxpayer's perspective, but in the interest of fair and impartial enforcement of the tax laws).
  - f. Use each penalty case as an opportunity to educate the taxpayer, help the taxpayer understand their legal obligations and rights, assist the taxpayer in understanding their appeal rights, and in all cases, observe the taxpayer's procedural rights.
  - g. Endeavor to promptly process and resolve each taxpayer's case.
  - h. Resolve each penalty case in a manner which promotes voluntary compliance.
- (5) In 2014 the IRS adopted a Taxpayer Bill of Rights outlining fundamental rights of every taxpayer (see Publication 1). It is imperative all penalty considerations take place within the framework of those rights.



20.1.2.1.4  
(03-19-2019)  
**Program Management  
and Review**

- (1) Every function in the IRS has a role in proper penalty administration. It is essential each function conduct its operations with an emphasis on promoting voluntary compliance. Appropriate reviews should be conducted to ensure consistency with the penalty policy statement (Policy Statement 20-1) and philosophy.

20.1.2.1.5  
(02-27-2024)  
**Program Controls**

- (1) IMD Certification: this IRM is annually recertified as required by SPDER and regularly updated when new legislation or policy is published.

20.1.2.1.6  
(02-27-2024)  
**Terms/Definitions/  
Acronyms**

- (1) The following is a list of terms, definitions and acronyms used throughout this IRM:

Acronym or Term	Definition
BMF	Business Master File - database containing business tax return and account information.
CFR	Code of Federal Regulations
Command Code	Text-based commands used in the IDRS environment to access and enter data.
CP	Computer Paragraph - refers to computer generated internal and external notices.
CRN	Credit Reference Number - identifies the type of refundable credit recorded in an account.
DLN	Document Locator Number - a control number made up of multiple parts used in transaction identification and also to file supporting documentation for the transaction. The DLN is broken down into its individual parts in Document 6209 Section 4.
Doc Code	A two-digit code in positions 4 - 5 within a DLN used in identifying the data source of transactions recorded.
EO	Exempt Organizations
ES penalty	Estimated tax penalty under either IRC 6654 or IRC 6655.
FFTF	Fraudulent Failure to File
FTA	First Time Abate
HC	Hold Code - code included with an input transaction to communicate to the computer system whether notices and/or refunds should be held or released.

Acronym or Term	Definition
IDRS	Integrated Data Retrieval System - system used by IRS employees to access taxpayer account information and to enter information to be recorded.
IMF	Individual Master File - database containing individual tax return and account information.
IRC	Internal Revenue Code - Title 26 of the United States Code.
IRM	Internal Revenue Manual
IRN	Item Reference Number
PC	Priority Code - code included with an input transaction to signify specific conditions have been taken into account in the decision to record a given transaction.
PRC	Penalty Reason code - code included with a penalty removal transaction identifying the reason for removing the penalty. Used for statistical and reporting purposes.
PRN	Penalty Reference Number - number included with penalty assessment identifying the reason for assessment. Used for statistical and reporting purposes.
PINEX	IDRS command code - Penalty and Interest Notice and Explanation
RC	Reason Code - code included with an input transaction to insert specific paragraphs in taxpayer notices explaining the reason for an adjustment.
SFR	Substitute for Return - prepared by IRS for a taxpayer under authority of IRC 6020(b), if the taxpayer has not filed a return.
TC	Transaction Code - a three-digit numeric code used to identify what type of transaction has been recorded in a taxpayer's account.
TIF	Taxpayer Information File - example command code TXMOD/SUMRY

20.1.2.1.7  
(02-27-2024)

## Related Resources

- (1) IRM 3.14.1.6.21.2, Failure to File – FTF (Delinquency) Penalty Recomputation
- (2) IRM 3.14.1.6.21.3, Failure to Pay– (FTP) Penalty Computation
- (3) IRM 3.14.2.6.4.4, Natural Disaster Procedures
- (4) IRM 3.14.2.6.17.3, Failure to File (Delinquency) Penalty Recomputation
- (5) IRM 3.14.2.6.17.4, Missing Information Penalty IRC 6698/6699
- (6) IRM 3.14.2.6.17.5, Failure to Pay Penalty Recomputation
- (7) IRM 4.8.9.18.2, Failure to File (FTF) and Failure to Pay (FTP) Penalties - Delinquency Penalties
- (8) IRM 4.12.1.11, Penalties on Non-filers
- (9) IRM 4.23.9.9, Assertion of Failure to File Penalty
- (10) IRM 4.23.9.10, Assertion of Failure to Pay Penalty IRM 5.1.5.15.6, Failure to Pay Penalties and Restitution-Based Assessments (RBA)
- (11) IRM 5.1.15.6, Business Master File (BMF) IRC 6020(b) Adjustments
- (12) IRM 5.9.4.14, Failure to Pay Tax Penalty and Failure to Pay Estimated Income Tax Penalty
- (13) IRM 5.18.1.9.2.3.17, Penalties
- (14) IRM 5.19.23.4, Computing and Cross-Referencing Penalties
- (15) IRM 21.3.1.6.49.2, Adjusting CP 86 Accounts
- (16) IRM 21.3.8.10.3.4, Failure to Pay Penalty - Transaction Code TC 276/TC 270
- (17) IRM 21.7.4.4.3.1, Form 1066 Due Dates, Payments, and Extensions to File
- (18) IRM 21.7.4.4.4.11.1.9, Failure to File S Corporation Return Penalty
- (19) IRM 21.7.4.4.7.2, Penalties (Form 8752)
- (20) IRM 21.7.4.4.10, Federal Income Tax Withheld (FITW)/Backup Withholding (BUWH) on Income Tax Returns
- (21) IRM 21.4.5.14, Interest and Penalty Consideration for Category D Erroneous Refunds
- (22) IRM 21.7.9.4.1.6, Duplicate Filing Conditions Involving Returns Prepared Under IRC 6020(b)
- (23) IRM 21.8.1.2.16.1, Calculation of Failure to File (FTF) and Failure to Pay Penalties (FTP) on Taxpayers Abroad
- (24) The following are found on-line at [www.irs.gov](http://www.irs.gov):
  - *Rev. Proc. 2003–84*, [http://www.irs.gov/irb/2003-48\\_IRB/ar11.html](http://www.irs.gov/irb/2003-48_IRB/ar11.html)
  - *Rev. Rul. 2005–9*, [http://www.irs.gov/irb/2005-06\\_IRB/ar11.html](http://www.irs.gov/irb/2005-06_IRB/ar11.html)
  - *Rev. Rul. 2007–19*, [http://www.irs.gov/irb/2007-14\\_IRB/ar12.html](http://www.irs.gov/irb/2007-14_IRB/ar12.html)

20.1.2.2  
(03-09-2022)  
**Overview**

- (1) This IRM subsection covers additions to tax and penalties for failure to file certain returns or to pay tax.
- (2) IRC 6651 provides for additions to tax for failure to file returns required to be filed to report tax, and for failure to pay tax required to be reported on those returns.
- (3) IRC 6698 provides for a penalty for failure to file a complete partnership return as required under IRC 6031.
- (4) IRC 6699 provides for a penalty for failure to file a S-Corporation return as required by IRC 6037.
- (5) Penalties for failure to file information returns (other than partnership and S-Corporation returns) are discussed in IRM 20.1.7, Information Return Penalties.
- (6) Penalties for failure to file returns relating to exempt organizations and certain trusts are discussed in IRM 20.1.8, Employee Plans and Exempt Organizations Miscellaneous Civil Penalties.
- (7) The penalty for failure to make required payments under IRC 7519(f)(4)(A), is discussed in IRM 20.1.10.20, IRC 7519 Required Payments for Entities Electing Not to Have Required Taxable Year.

20.1.2.2.1  
(02-27-2024)  
**When Timely Mailing  
Equals Timely Filing or  
Paying (Received Date  
vs. Filing/Payment Date)**

- (1) IRC 7502, provides if any return or payment received after its due date, the return is to be treated as filed or paid on the postmark date, provided **all** of the following requirements are met:
  - a. The return or payment is deposited in the mail in the United States on or before the due date for filing or paying.
  - b. The envelope containing the return or payment is properly addressed.
  - c. The envelope contains sufficient postage for delivery.
  - d. The envelope was deposited with the United States Postal Service or a designated private delivery service. For a list of designated private delivery services see <https://www.irs.gov/filing/private-delivery-services-pds>.

**Note:** Properly addressed means the envelope was addressed to an IRS office identified in the return's instructions or on the IRS.gov web-site as an office where the return should be sent. The postmark date is irrelevant if the return was mailed to an IRS office not listed in the IRS instructions for processing the return in question. If the four digit zip code extension is missing, the envelope is considered addressed correctly if the five digit zip code is correct. If the mailing address cannot be verified because the envelope is not attached to the return, the received date stamp on the return should indicate where the return was first received. This information can be used to determine if the return was mailed to the correct office.

- e. 26 CFR 301.7502-1(d) provides IRC 7502 also applies to timely electronic postmarks for e-filed returns, and all conditions above are considered met if the return was transmitted via an authorized electronic return transmitter and received by IRS in processable form. If e-filed returns with a timely electronic postmark are rejected by IRS's e-file system, the returns are considered timely if they are mailed (or re-transmitted) within 10 days of initial notification of rejection.



- c.

If there is no open AIMS, use TC 560 to correct the ASED if it is incorrect. See the pertinent subsection of IRM 21 for TC 560 input instructions.
- d.

If there is an open AIMS, use command code AMSTU to correct the ASED if it is incorrect.

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for “date stamping” returns are required to check the postmark date of returns before applying the date stamp: If the postmark date is after the return due date (taking into consideration Saturday, Sunday, and legal holidays), the return received date is stamped on the return, and the envelope is retained as evidence of late filing. If the postmark date is on or before the return due date, the return due date is stamped on the return. The employees performing this task do not have access to extension information; therefore, the postmark check is conducted without regard to any extension of time to file.

- (7)

IRC 7502 also applies with respect to any payment due date stated in a notice and demand for payment. Penalty or interest does not accrue beyond the notice date on amounts paid (mailed) by the date stated in the notice.

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The date for payment stated in a notice is one of the following:

- a.

10 calendar days after the date of the notice for any notice dated 12/31/1996 or earlier.
- b.

21 calendar days after the date of the notice for any notice dated after 12/31/1996, **if** the amount in the notice is less than \$100,000.00.
- c.

10 business days after the date of the notice for any notice dated after 12/31/1996, **if** the amount in the notice is \$100,000.00 or more.
- (8)

National print sites that print IRS letters and notices were closed for several weeks in 2020. As a result, some notice and demand notices (such as CP14, CP161, CP21, CP210, and so on) were not printed and mailed on the date

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20.1.2.2.1.1  
(04-19-2011)  
**Unsigned Returns**

- (1) IRC 6061 through IRC 6065 requires any return made under the provisions of the internal revenue laws must be signed by the taxpayer (or other such authorized individual) under penalties of perjury. A return not signed by the taxpayer (or an authorized individual) fails to meet the filing requirement , and may

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- (2) If it is determined the failure to sign a return was an intentional attempt to avoid civil or criminal penalties associated with signing a false return (see IRC 7206), then the penalty for failure to file should be duly explored to the fullest extent of the law. See IRM 20.1.2.3.7.5, Fraudulent Failure to File.
- (3) Also see IRM 20.1.2.2.9, Frivolous Returns.

20.1.2.2.1.2  
(03-09-2022)  
**Timely Filing  
Consideration for  
Electronic returns**

- (1) 26 CFR 301.7502(d) provides IRC 7502 also applies to timely electronic postmarks for e-filed returns. All timely conditions are considered met if the return:
  1. Was transmitted via an authorized Electronic Return Transmitter
  2. Includes a timely electronic postmark and
  3. Received by IRS in processable form.
- (2) An authorized Electronic Return Transmitter (ERT) transmits return information from the return originator to the IRS as defined in Rev. Proc. 2000-31. Generally, an electronic return is prepared with preparation software and then converted to processable format by another entity that originates the return and transmits to the IRS. The following entities may transmit returns to the IRS:
  - a. An Electronic Return Transmitter (ERT). These are the entities providing or transmitting the electronic return information directly to the IRS.
  - b. An Electronic Return Originator (ERO) originates or creates the electronic submission of returns it either prepares or collects from taxpayers who want to e-file their returns. An ERO originates the electronic submission of a return after the taxpayer authorizes the filing of the return via IRS e file. The ERO must have either prepared the return or collected it from a taxpayer. An ERO originates the electronic submission by electronically sending the return to a Transmitter who transmits the return to the IRS; directly transmitting the return to the IRS (this would make the ERO an ERT as well) or providing a return to an Intermediate Service Provider for processing prior to transmission to the IRS.
  - c. An Intermediate Service Provider (ISP) receives tax information from an Electronic Return Originator (ERO) (or from a taxpayer who files electronically using a personal computer and commercial tax preparation software), processes the tax return information and either forwards the information to a Transmitter or sends the information back to the ERO or taxpayer (for On-line Filing).

**Note:** The categories above represent examples of authorized IRS e-file providers and are not mutually exclusive. For example, an ERO can, at the same time, be an ERT or ISP depending on the functions performed.

- (3) Electronic postmark is a record of the date and time an authorized ERT receives the transmission of a taxpayer's electronically filed return on its host system in the ERT's time zone.
- a. A return filed electronically with an ERT is deemed to be filed with the IRS on the date of the electronic postmark.
  - b. If the electronically filed return is rejected by the IRS's e-file system, but the electronic postmark is timely, the return will be considered timely if received by the IRS after the due date as long as the return is either (1) timely re-transmitted electronically, or (2) physically mailed to the IRS in complete, processable form, after initial notification of rejections.

**Note:** Please see Publication 1345 for more information regarding electronic return rejection and procedure for resubmission of a rejected return.

**Exception:** If the return as originally received was invalid, the electronic postmark is irrelevant if the return was rejected for any reason that would have also made a paper return unprocessable. The requirement for filing the return in question, penalties for filing late, and the ASER update need not be determined based on an assumption of timely filing

- (4) For purposes of IRC 7502, the postmark of an electronic return is only valid if the postmark represents when the return is sent to an ERT, (or ERO/ISP when they are acting as an ERT). Because an electronic postmark is only created when an ERT receives an electronic return; any postmark relating to the time an ERO/ISP receives tax information, or originates a return, alone will not meet the electronic postmark requirements under IRC 7502.

**Note:** Authorized e-file providers are issued an Electronic Filing Identification Number (EFIN). Official communication between the taxpayer and the authorized e-file provider should include the EFIN under which the return was received. (Some e-file providers are issued more than one EFIN, depending on the number of returns transmitted annually.)

**Note:** Documentation, such as printed e-mails or other official communications from the authorized e-file provider, should be validated to the greatest extent possible on IRS systems using the EFIN, ECN, or any other identifying information provided in the documentation.

**Example:** Taxpayer prepared a processable return and submitted it to an authorized ERT on July 14, 2020 (due date extended due to COVID-19), and an electronic receipt (generally received by e-mail) is provided from the ERT to the taxpayer verifying receipt. Subsequently the ERT experiences problems preventing the transmission of the return to the IRS until August 1, 2020, which results in taxpayer receiving a Failure to File (FTF) penalty. The return is to be considered timely if the taxpayer provides a receipt from the ERT verifying the timely receipt of the return



and if there is no record the return was rejected because it was incomplete or not processable as submitted. Any assessed FTF penalty should be removed.

**Example:** Taxpayer prepared and submitted a processable return to an authorized ERT on April 14, 2019 and an electronic receipt is provided to the taxpayer. The return is rejected because the SSN of the dependent was incorrect. The taxpayer decides to print the return and mail it in. The return is received May 1, 2019, which results in taxpayer receiving a FTF penalty. The taxpayer provides a receipt from an authorized ERT showing the return was originally submitted on April 14, 2019. The return is considered timely. Any erroneously assessed FTF penalty should be removed.

**Example:** Taxpayer had their tax return prepared by commercial preparation software on April 13, 2019 for a Form 1040 with a return due date of April 15, 2019. The software uses an ERO to originate the return information, but the ERO uses a separate ERT afterwards to transmit the return to the IRS. The commercial software transmits the tax return information to the ERO on April 14, 2019 with receipt the software made the transmission. However, the ERO identifies errors and sends the return to the commercial software for correction. The taxpayer does not make the correction and does not submit the information until April 23, 2019, at which time the ERO then originates and sends the return to the ERT. The return is not considered timely because the electronic postmark is only for the date the ERO transmits to the final ERT, which in this case is April 23, 2019, after the return due date.

20.1.2.2.2  
(04-19-2011)  
**Disregarded Periods**

- (1) IRC 7508 and IRC 7508A provide certain periods are to be disregarded in determining whether a taxpayer has complied in a timely manner with the requirement to perform certain acts.

20.1.2.2.2.1  
(07-02-2013)  
**Combat Zone - IRC 7508**

- (1) IRC 7508 provides a certain period relating to duty in a combat zone as designated by the President by executive order (or in a contingency operation designated by the Secretary of Defense) is to be disregarded in determining whether a taxpayer has complied with statutory requirements to perform certain acts by a given date.
- (2) With respect to the time available (after the end of a tax year) to prepare and file a return, and to pay the tax, the period to be disregarded in determining any penalty for filing late or paying late is as follows:
  - a. The period of service in the combat zone or in the contingency operation, plus
  - b. Any period of continued hospitalization attributable to service in the combat zone or in the contingency operation, plus
  - c. 180 days following the exit date or end of hospitalization, plus
  - d. The number of days remaining in the filing season on the date the taxpayer entered the combat zone. If the taxpayer entered the combat zone prior to the beginning of the filing season, the entire length of the filing season is added.

**Example:** A member of the Armed Forces serves in a combat zone from February 20, 2014, until August 30, 2014. Because the taxpayer entered the combat zone 54 days before the end of the tax year 2013 filing season, he has 180 days plus 54 days to file and pay his 2013 tax return following the exit date from the combat zone. Because the taxpayer entered the combat zone before the beginning of the 2014 filing season, he has until at least 180 days plus 105 days to file and pay his 2014 tax return following the exit date from the combat zone. In other words, the taxpayer's 2013 return will be on time if filed by 4/21/2015, and his 2014 return will be on time if filed by 6/11/2015.

- (3) The period to be disregarded applies to individuals serving in the Armed Forces of the United States and to those serving in support of those Armed Forces.
- (4) The period to be disregarded also applies to the spouses of those serving in the combat zone. However, the period to be disregarded does not apply to the spouses for any taxable year beginning more than two years after the date of termination of combat activities in the combat zone.

20.1.2.2.2.2  
(02-27-2024)

**Federal Disaster Area -  
IRC 7508A**

- (1) IRC 7508A provides the Secretary of the Treasury may specify a period of up to one year to be disregarded with respect to acts required to be performed by taxpayers determined by the Secretary to have been affected by a federally declared disaster, a terroristic action, or military action.

**Note:** For a rare but possible impact of IRC 7508A on the 10-year collection period, see IRM 25.6.1.12.2.1.

- (2) In order for the period to be disregarded to impact either the penalty for filing late or the penalty for paying late, the due date for filing or paying must fall within the disaster period as determined by the Secretary. If the normal due date for filing or paying falls within the disaster period, the taxpayer's return or payment will be considered on time if it is mailed by the date published by IRS for timely filing or paying for the covered disaster area.
- (3) IRS identifies taxpayers qualifying for disaster relief based on their zip code. Qualifying taxpayers receive a Transaction Code (TC) 971 with Action Code 086, 087, or 688 posted in the entity module of their account. Disaster TC 971 transactions contain a transaction date and a secondary date. The transaction date is the beginning date of the disaster period, and the secondary date is the ending date. The ending date corresponds with the date published by IRS for timely filing or paying.
- (4) Unlike periods disregarded due to time spent in a combat zone, disaster periods beginning after the end of the taxable year, and ending on or before the return due date, do not extend the time for filing and paying.

**Example:** Taxpayer B, a partnership, is identified by the Secretary as being affected by the severe winter storm in New Jersey (FEMA 1897), and TC 971 AC 688 is posted in the entity with transaction date 03122010, and secondary date 04152010. B's penalty for filing or paying late for Form 1065, U.S. Return of Partnership Income, is not impacted because the Form 1065 due date (04/15/2010) does not fall within the disaster period.

- (5) Any penalties for filing or paying late of affected taxpayers are computed using the disaster end date as the new “disaster due date” for determining the correct penalty.

**Example:** Taxpayer C, a corporation, is identified by the Secretary as being affected by the severe winter storm in New Jersey (FEMA 1897), and TC 971 AC 688 is posted in the entity with transaction date 03122010, and secondary date 04152010. C’s Form 1120, U.S. Corporation Income Tax Return, is normally due 3/15/2010. However, under section 7508A, C’s penalty for filing or paying late is computed using the disaster due date (04/15/2010) as the penalty start date for any penalty for filing or paying late, because the normal due date falls within the disaster period.

- (6) Before 2015, IRS did not charge a penalty for paying late during disaster periods even in cases where the payment due date was prior to the start of the disaster period, as long as the extended return due date fell within the disaster period.

**Example:** Taxpayer D, an individual, filed his 2007 return without payment on 1/5/2009. The return reflected tax of \$32,000 with a balance due of \$16,000. D had an extension of time to file until 10/15/2008, but was identified by the Secretary as being affected by Hurricane Ike (FEMA 1791) from 9/7/2008 until 1/5/2009. Because D had an extension of time to file until 10/15/2008, the return due date fell within the disaster period. Since D filed by the end of the disaster period, there is no penalty for filing late. An extension of time to file does not, however, extend the time to pay. Therefore, D was charged a penalty for paying late. However, the penalty was computed only for each penalty month beginning after the original return due date but prior to 9/7/2008, and for each penalty month beginning after 1/5/2009, until the tax was paid. (For rules on how to determine when a penalty month begins and ends, see IRM 20.1.2.3.8.4.2 and IRM 20.1.2.3.8.5.2.)

- (7) For disaster periods beginning after 12/31/2014, IRS will no longer suspend accrual of the penalty for paying late for any tax due prior to the start of the disaster period. See 26 CFR 301.7508A-1(f), Example 6. The penalty will continue to accrue during the disaster period, and will only be removed if the taxpayer is able to show reasonable cause for failure to pay at the time payment was due, or if the taxpayer qualifies for the first time abatement (FTA) administrative waiver. See IRM 20.1.1.3.3.2.1, First Time Abate (FTA).

**Example:** (i) A is an unmarried, calendar year taxpayer whose principal residence is located in County W in State Q. A intends to file a Form 1040 for the 2014 taxable year. The return is due on April 15, 2015. A timely files Form 4868, “Application for Automatic Extension of Time to File U.S. Individual Income Tax Return.” Due to A’s timely filing of Form 4868, the extended filing deadline for A’s 2014 tax return is October 15, 2015. Because A timely requested an extension of time to file, A will not be subject to the failure to file penalty under section 6651(a)(1), if A files the 2014 Form 1040 on or before October 15, 2015. However, A failed to pay the tax due on the return by April 15, 2015 and did not receive an extension of time to pay under section 6161. Absent reasonable cause, A is subject to the failure to pay penalty under section 6651(a)(2) and accrual of interest.

(ii) On September 30, 2015, a blizzard strikes County W. On October 5, 2015, certain counties in State Q (including County W) are determined to be disaster areas within the meaning of section 1033(h)(3) and are eligible for assistance by the Federal government under the Stafford Act. Also on October 5, 2015, the IRS determines County W in State Q is a covered disaster area and announces the time period for affected taxpayers to file returns, pay taxes, and perform other time-sensitive acts falling on or after September 30, 2015, and on or before December 2, 2015, has been postponed to December 2, 2015.

(iii) Because A's principal residence is in County W, A is an affected taxpayer. Because October 15, 2015, the extended due date to file A's 2014 Form 1040, falls within the postponement period described in the IRS's published guidance, A's return is timely if filed on or before December 2, 2015. However, the payment due date, April 15, 2015, preceded the postponement period. Thus, A will continue to be subject to failure to pay penalties and accrual of interest during the postponement period.

- (8) The following taxpayers also qualify for relief under IRC 7508A; however, they generally must call the IRS disaster hotline at 866-562-5227 to request relief.
- a. Taxpayers who are unable to meet a filing or payment deadline either because their books or other necessary records are located within a disaster area, or because their tax professional who maintains their books or records is located within a disaster area. This applies even if the taxpayer's business (or residence in the case of individuals) is not located in the disaster area.
  - b. Relief workers affiliated with a recognized government or charitable organization assisting in the relief activities in a covered disaster area.

See 26 CFR 301.7508A-1(d)(1).

- (9) Taxpayers (or their authorized representatives) may call or write to self-identify if they qualify for disaster relief even though their address is outside the covered disaster area. Employees should research their functional IRM for instructions with respect to the input of TC 971 with Action Code 688 when taxpayers self-identify themselves as affected by the disaster. TC 971 with Action Code 688 should only be input after the specific disaster provisions for which the taxpayer qualifies have been verified.
- (10) Employees who do not have the ability to manually input the TC 971 for disaster relief should refer callers to the Disaster Special Services toll-free line at 1-866-562-5227.
- (11) IRS employees should not abate or adjust any penalties because of a federally declared disaster unless the appropriate TC 971 with AC 086, 087 or 688 is already posted in the entity, and the penalty is restricted from automatic computation by a restricting penalty transaction code or by other systemic limitations.

**Reminder:** Even though a taxpayer may not be considered to be affected by a federally declared disaster, a penalty for failure to file or pay still may not apply if the failure was due to reasonable cause and not due to willful neglect. See IRM 20.1.2.2.4.1, Penalty Abatements and Re-assessments.

- (12) Some taxpayers may have been affected by multiple disaster declarations with respect to a single tax period.
- (13) When two or more disaster declaration periods overlap, they are treated as a single period beginning on the earliest disaster start date of the overlapping disaster periods and ends on the latest end date of the overlapping disaster periods.
- (14) When the original return due date falls within one disaster period, **and** the extended return due date falls within another non-overlapping disaster period, the earlier disaster period is ignored in computer programming in effect prior to 01/01/2022. The programming updates should compute the penalty correctly. If programming ignores an earlier disaster period, manual intervention is necessary to ensure the taxpayer receives the disaster relief provided by law. The following table provides instructions for resolving penalty issues in tax modules impacted by non-overlapping disasters.

IF	THEN
The taxpayer does not have a valid extension of time to file.	There is no impact. Allow the computer to calculate penalties normally. The computer will automatically take disaster periods into account as required by law.
The taxpayer has a valid extension of time to file, and all of the following conditions apply: (1) The extended return due date falls within a disaster period. (2) The original return due date falls within a different disaster period. (3) The two disaster periods do not overlap. (4) The return was  date without regard to the disaster period.	In the entity, reverse the disaster period includes the extended return due date. Use TC 972 with the applicable matching transaction date and action code for the disaster period TC 971 including the extended return due date. This will allow the computer to take into account the disaster period including the original return due date. The disaster period including the extended return due date need not be taken into account, because the taxpayer's return was filed on time without regard to the disaster period.
Same as above, but the return  date without regard to the disaster period.	Same as above, but input TC 160 for zero amount first to prevent the FTF penalty from being re-computed (assessed) when the disaster period reversal posts. (The computer will have taken the disaster period into account including the extended return due date, giving disaster relief with respect to filing late. TC 160 will prevent relief from being taken away when the disaster period is reversed.

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IF	THEN
The taxpayer has a valid extension of time to file, and either or both of the following conditions apply: (1) The extended return due date does not fall within a disaster period. (2) The original return due date does not fall within a disaster period.	There is no impact. Allow the computer to calculate penalties normally. The computer will automatically take disaster periods into account as required by law.

**Note:** A request has been submitted to correct the programming so manual intervention will no longer be required. This IRM was updated before the program has been corrected. At the time this IRM was updated, the programming should be implemented 01/01/2022.

- (15) IRS employees can research disaster areas by going to <http://www.icce.irs.gov/fema/>, or to *SERP - Disaster Assistance Information (irs.gov)*. Information on tax relief in disaster situations is available to the general public at [www.irs.gov](http://www.irs.gov).

#### 20.1.2.2.3 (02-27-2024)

##### Extensions of Time to File and Pay

- (1) IRC 6081 provides the Secretary of the Treasury may grant a reasonable extension of time for filing any return, declaration, statement, or other document. Additionally, except for taxpayers who are abroad, no such extension shall be for more than 6 months. See IRM 20.1.2.2.3.1, Extensions of Time to File.
- (2) IRC 6161 provides the Secretary of the Treasury may extend the time to pay certain tax for a reasonable period, generally not to exceed 6 months from the date fixed for payment. See IRM 20.1.2.2.3.2, Extensions of Time to Pay.
- (3) 26 CFR 1.6081-5 provides for an automatic extension of time to file and pay for certain individuals, partnerships and corporations abroad. See IRM 20.1.2.2.3.3, Taxpayers Abroad.
- (4) The specifics regarding the following extensions of time to pay are not covered under this subsection of the IRM:
  - a. IRC 6163, Extension of Time for Payment of Estate Tax on Value of Reversionary or Remainder Interest in Property. See 26 CFR 20.6163-1. If the time to pay is extended, the penalty for paying late must be restricted, or manually computed and adjusted. Also see IRM 4.25.2.8.2.6, Estate Tax Extension of Time to Pay under IRC 6163.
  - b. IRC 6164, Extension of Time for Payment of Taxes by Corporations Expecting Carrybacks. See Form 1138, Extension of Time for Payment of Taxes by a Corporation Expecting a Net Operating Loss Carryback, instructions for the year under consideration. If the time to pay is extended, the penalty for paying late must be restricted, or manually computed and adjusted. Also see IRM 21.5.9.5.10.7, Form 1138, Extension of Time for Payment of Taxes by a Corporation Expecting a NOL Carryback.
  - c. IRC 6166, Extension of Time for Payment of Estate Tax Where Estate Consists Largely of Interest in Closely Held Business. See 26 CFR 20.6166-1 and 26 CFR 20.6166A-1 through 26 CFR 6166A-4. If the time



to pay is extended, the penalty for paying late must be restricted, or manually computed and adjusted. Also see IRM 4.25.2.1.6, Estate Installment Privileges under IRC 6166 .

- d. IRC 6167, Extension of Time for Payment of Tax Attributable to Recovery of Foreign Expropriation Losses. This extension becomes operative by taxpayer electing to spread attributable tax out over a period of 10 years, reporting  $\frac{1}{10}$ th of the tax each year. With respect to the penalty for paying late, no special processing is required.

20.1.2.2.3.1  
(02-27-2024)

**Extensions of Time to File**

- (1) In order to qualify for an extension of time to file, all taxpayers must estimate the amount of their tax for the year. When a specific form is designated for requesting an extension of time to file, the request for the extension should be filed on that form. However, if a specific form has not been designated, an extension may be requested by mailing a letter to the IRS office where the return is required to be filed. Such letter must include the following information:
  - a. The form for which the extension is requested, including the taxable year.
  - b. The reason why the extension should be granted.
  - c. In most cases the letter requesting the extension must also include an estimate of the tax due and payment of tax.
- (2) Qualified taxpayers may request an **automatic** extension of time to file by filing the appropriate form, depending on the type of tax return. For a list of forms provided to request an extension of time to file, see Document 6209. Section 2, Part 4, Extension Forms.
- (3) In order to obtain an automatic extension of time to file, corporations are required to pay the amount properly estimated as the tax for the year covered by the extension request.
  - a. The payment must be made on or before the due date for payment.
  - b. The payment should accompany Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns.
- (4) For taxable years ending 12/31/1993 and later, individuals are no longer required to pay the amount they estimate they will owe when they file Form 4868 in order to obtain the automatic extension of time to file; however, they are still required to enter their estimate of their tax liability on the applicable line of the form.
- (5) An extension of time to file does not extend the time to pay. However, 26 CFR 301.6651-1(c)(3) and 26 CFR 301.6651-1(c)(4) provides reasonable cause will be presumed **for the period of the extension** in the case of failure to pay income tax if the following criteria are met:
  - a. In the case of an individual, at least 90 percent of the amount of tax shown on the return must have been paid on or before the due date for payment, and the remainder must be paid with the return.
  - b. In the case of a corporation, at least 90 percent of the amount of tax shown on the return must have been paid on or before the due date for payment, and the remainder must be paid by the extended return due date.
- (6) IRS computers are programmed to automatically apply this waiver of the late payment penalty for reasonable cause if the taxpayer qualifies.

**Note:** In the case of an individual, if tax shown on the return is paid after the extended return due date (for example, with a late filed return), reasonable cause must be shown for the period after the extended due date. If the taxpayer is unable to show the late payment was due to reasonable cause, the penalty for paying late must be computed from the original return due date, even if 90 percent of the tax was paid on time and the balance was paid with the late filed return.

- (7) Joint extension requests apply equally to each spouse, even if they subsequently file separate returns.
- (8) There are no regulations covering an extension of time to file employment tax returns. Therefore, these returns do not qualify for an extension of time to file. However, no penalty for filing late is asserted if the taxpayer paid (For example, via Federal tax deposits, and so on) 100 percent of the tax required to be paid on or before the due date for payment.
- (9) Partnerships and S corporations electing to have a taxable year other than a required taxable year (in other words, their taxable year does not end on December 31st), are required under IRC 7519 to file Form 8752, Required Payment of Refund Under Section 7519, and pay the amount shown on the return. The due date for the return is May 15th of the calendar year following the calendar year in which the fiscal year begins. For example, if the fiscal year began on November 1, 2015, then the return and payment are due May 15, 2016. Taxpayers may request an extension of time to file Form 8752 by writing a letter to the service center or director where they are required to file, on or before the May 15 due date. The director may approve an extension of time to file for up to 90 days (up to 6 months, if the taxpayer is abroad), or the request may be denied. The extension will be denied if the request was late, or if payment of the estimate has not been made. The extension request letter must include the following:
  - A detailed explanation why the extension is needed.
  - The amount of additional time needed (not to exceed 90 days, unless the taxpayer is abroad, in which case it's not to exceed 6 months).
  - An estimate of the amount due.
  - Payment of the estimated amount due.
- (10) Extensions of time to file are recorded in the applicable tax module with Transaction Code (TC) 460 carrying the extended due date.
- (11) The computer generally will not allow the input of an extension beyond 6 months after the normal return due date. However, for IMF returns, when a longer extension is allowed by law, the extension may be input by using a "foreign" universal location code (ULC) on the TC 460 input screen. The foreign location codes available are:
  - Philadelphia — 98 (IMF)
  - Austin — 20 (IMF)
- (12) Service centers not listed in (11) are not able to process an extension in excess of 6 months. The ULC used with this extension request does NOT extend the time to pay. If the taxpayer qualifies for an automatic extension of time to pay under 26 CFR 1.6081-5, the taxpayer's return will need to be processed with the proper file location code or computer condition code as applicable. See IRM 20.1.2.2.3.3, Taxpayers Abroad.



20.1.2.2.3.1.1  
(02-27-2024)

## Extension of Time to File Not Found

- (1) Occasionally taxpayers respond to a notice of assessment of a penalty for filing late with a claim approval or an automatic extension of time to file had been obtained.

IF	AND	THEN
<ul style="list-style-type: none"> <li>The taxpayer provides evidence of an approved extension of time to file, or</li> <li>The facts of the case support the conclusion that it is more likely than not that a valid, timely request for an automatic extension of time to file was filed. (See IRM 20.1.2.2.3.1.1 below)</li> <li>In the case of a corporation, the corporation has paid the estimated amount due shown on a copy of the extension, AND the estimated tax due shown on the extension is a reasonable estimate given the amount shown on the posted return. (Failure to pay the amount shown due on a corporate extension request renders the request invalid. See IRM 20.1.2.2.3.1.2 (4) .</li> </ul>	TC 460 is not posted in the module in question.	<p>Input TC 460 to record the extension on the appropriate tax module unless the extension is for a corporation.</p> <ul style="list-style-type: none"> <li>If there is no prior extension posted in the module, use the original due date as the TC 460 transaction date.</li> <li>If the missing extension is not the first extension posted in the module, use the previous extended due date of the earlier extension.</li> </ul> <p>Research IDRS to determine if the extension was erroneously posted on another account. If found on another account other than a spouse's account, input TC 462 to reverse any incorrectly posted extension. (TC 460 posted on the spouse's account is not erroneous if a joint extension request was filed and the taxpayers subsequently filed separately.)</p>
The taxpayer is unable to provide evidence of an approved extension of time to file, and the known facts do not support the conclusion that it is more likely than not a timely extension request was filed.	TC 460 is not posted in the module in question.	<p>Research IDRS to determine if the extension was erroneously posted on another account.</p> <ul style="list-style-type: none"> <li>If found on another account, input TC 460 to record the extension on the correct tax module. Input TC 462 to reverse any incorrectly posted extension.</li> <li>If not found, go to next row.</li> </ul>

IF	AND	THEN
The taxpayer is unable to provide evidence of an approved extension of time to file, and the known facts do not support the conclusion that it is more likely than not that a timely extension request was filed.	TC 460 is not found anywhere.	Determine if the taxpayer qualifies for “first time abate” penalty abatement. If the taxpayer does not qualify, determine if the taxpayer qualifies for abatement of the late filing penalty for reasonable cause. See IRM 20.1.1.3.2, Reasonable Cause.

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**Note:** Refer to *SERP - REQ77 Input Screen - Job Aids (irs.gov)* for proper TC 460 input.

- (2) With respect to the table above, if all the known facts would lead a reasonable person to presume it is more likely than not, that a valid, and timely, extension request was submitted, then the **more likely than not** criteria has been met. Examples would include a certified mail receipt along with a copy of the extension; or a list of extensions filed by a tax professional where most extensions on the list have been received and posted; or a payment posted to the account that was mailed with the extension request. (This list is not all-inclusive.)
- (3) A history of approved extensions alone, a mere statement that an extension request was filed, or even a copy of the extension request that was allegedly filed, are not in and of themselves evidence of filing an extension for the current year. However, collectively with other facts, such as the reason the taxpayer would have had for filing an extension, the earlier mentioned facts could be sufficient to meet the more likely than not criteria. Additionally, facts can be used collectively to show it was reasonable for the taxpayer to believe an extension had been requested and approved. For example, a list of extensions allegedly filed by a tax professional, where most extensions on the list have not been received and processed, still may be used to show it was reasonable for the taxpayer to believe an extension of time to file had been requested and approved.
- (4) If the criteria for input of TC 460, or for abatement of the penalty, have not been met, notify the taxpayer of your determination and of any appeal rights.
- (5) Retain the source document (correspondence, write-up of call, and so on) in the taxpayer’s file using established procedures (For example, attach to the return, or send to Files as adjustment source document, including TC 290 .00). If reasonable cause was considered, an adjustment transaction is required as follows:

- a. If the penalty is abated, use Reason Code 062 with the appropriate Penalty Reason Code. See IRM 20.1.1-2, Penalty Reason Code Chart.
  - b. If the penalty is not abated, input TC 290 for zero amount with Reason Code 062 and the appropriate blocking series. See IRM 20.1.1.3.5.3, Taxpayer Not Entitled to Relief.
- (6) The input of TC 460 will cause the computer to recompute related late filing penalties. Manual penalty abatement should not be used in that case, since it will restrict the module from systemic penalty corrections. Exceptions to this general rule will be listed with the given penalty for filing late. A generated penalty abatement will generate a notice of abatement that will be sent to the taxpayer. If it is desirable to include the taxpayer correspondence received date in the notice, TC 290 for zero can be input with the date entered in the appropriate field on the same date as TC 460 in order to include the information in the generated notice.

20.1.2.2.3.1.2  
(04-19-2011)

**Extension of Time to  
File Voided**

- (1) An extension of time to file is initially approved or denied based on the taxpayer's statements presented at the time the extension is requested.
- (2) IRS may void an approved extension of time to file if it is later determined the extension request was invalid, or if upon examination of the facts it is determined the extension of time to file was obtained using false pretenses.
- (3) An extension request is invalid if it does not contain information required by law, or if the information entered is false or fraudulent. For example, taxpayers applying for an automatic extension of time to file are required to estimate their projected tax liability, and to enter the amount on the appropriate line of the extension request. If a taxpayer's estimate grossly understates the actual liability, and there is no reasonable explanation for the difference, then the extension request may be declared invalid and the extension voided.
- (4) If an extension is allowable only if it is accompanied by payment of the estimated tax liability, and the taxpayer (subsequent to having the extension approved) claims the payment with the extension should be applied against another liability, then the extension should be voided.
- (5) Approved extensions of time to file are voided using TC 462 with a transaction date matching the transaction date of the TC 460 being reversed. When an extension of time to file is voided, and the action will result in a penalty for filing late, the taxpayer must be informed of the reason for the action. If the action is not part of an examination of the taxpayer's return, also inform the taxpayer we will include information about appeal rights with the notice of penalty assessment.

**Caution:** If voiding an extension request will result in the assessment of a late filing penalty based on tax shown on the original return, that assessment is not subject to deficiency procedures, and it must be made within the normal 3 year period of limitations. If the assessment statute expiration date (ASED) is imminent (within 90 days of the projected 23C date of the assessment), contact your statute coordinator for guidance to assure timely assessment of the penalty. The period of limitations for assessment of any late filing penalty attributable to a deficiency is suspended during the period the IRS is prohibited from assessing the deficiency.

20.1.2.2.3.1.3  
(07-02-2013)  
**Disposition of 2010  
Decedent Property**

- (1) Section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L 111-312, allows the executor of the estate of any decedent who died in 2010 to elect not to have the estate tax rules apply and instead to have a modified basis carryover regime apply. This election can effect the tax basis of property received and disposed of by a beneficiary of a 2010 decedent’s estate.
- (2) Because the election to forego filing an estate tax return could be made after April 18, 2011, taxpayers who received property from a decedent who died in 2010, and who disposed of the property in 2010, may have requested an extension of time to file while waiting for the estate’s executor to determine whether to file an estate tax return, or to elect out.
- (3) Taxpayers who filed an extension request for this reason may not have been able to properly estimate the tax due when their return is finally filed. Therefore, failure to pay sufficient tax by the original return due date will be deemed to be due to reasonable cause if **all** of the following are met:
  - a. The taxpayer timely paid the amount he estimated would be due.
  - b. The taxpayer paid the remaining tax with the return.
  - c. The taxpayer can show the estimate was based on a reasonable interpretation of the law.
  - d. The taxpayer filed the return by the extended due date (or as soon as possible, if the taxpayer had reasonable cause for filing late).

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20.1.2.2.3.2  
(02-27-2024)  
**Extensions of Time to  
Pay - IRC 6161**

- (1) Taxpayers may use Form 1127, Application for Extension of Time for Payment of Tax Due to Undue Hardship, to apply for an extension of time to pay tax shown on their return. The IRS will grant the extension provided the taxpayer is able to show undue hardship will be suffered if payment is made on the payment due date. See IRC 6161(a) and regulations relating thereto. If granted, the extension generally may not exceed 6 months (12 months in the case of estate tax).

**Note:** The extension may exceed 6 months in the case of a taxpayer who is abroad.

- (2) Taxpayers may also use Form 1127 to request an extension of time to pay certain taxes determined as a deficiency, providing the deficiency is **not** the result of negligence, intentional disregard of rules and regulations, or fraud with the intent to evade tax. The Secretary must be satisfied that payment of the deficiency upon the date fixed for the payment thereof would result in undue hardship to the taxpayer. If granted, the extension may not exceed 18 months; and in exceptional cases, an additional 12 months.
- (3) If an extension of time to pay is granted, the failure to pay (FTP) penalty for the underlying tax will not begin to accrue until after the expiration of the extension period.

**Note:** Deferred payment arrangements (i.e., when the IRS grants additional time to pay before initiating enforced collection action) are *not* extensions of time to pay under IRC 6161. The penalty for failure to pay does accrue during any deferral period.

- (4) For extensions of time to pay estate and gift taxes, see IRM 4.25.2.8.2.4, Extension of Time to File and IRC 6161 Extension of Time to Pay through IRM 4.25.2.8.2.6 , Estate Tax Extension of Time to Pay Under IRC 6163 and IRM 1.2.2.5.3, Delegation Order 4-3 (formerly DO-20, Rev. 3).
- (5) Except in the case of an extension to pay gift tax, IRS currently is not able to compute the FTP penalty systemically if an extension of time to pay was granted under IRC 6161 and the tax is not paid in full by the extended due date. In all such cases the FTP penalty must be manually computed and assessed. For specific processing instructions, see IRM 5.1.12.1, Overview—Cases Requiring Special Handling.
- (6) Extensions of time to pay are disregarded in determining the date prescribed for payment for the purpose of computing interest or the penalty for filing late. See IRC 6601(b)(1).

20.1.2.2.3.2.1  
(02-27-2024)

**Extension Under Fresh  
Start Initiative**

- (1) In order to provide relief to taxpayers who were significantly impacted by the economic downturn in 2011, IRS initiated Fresh Start. As part of this initiative, Form 1127–A, historical as of 08/23/2012, was created to allow for a streamlined process for obtaining and processing an extension of time to pay for qualifying taxpayers.
- (2) The streamlined extension of time to pay is limited to Form 1040, U.S. Individual Income Tax Return, filers who meet the following requirements:
  - a. 2011 AGI must be less than \$100,000 (\$200,000 if married filing jointly).
  - b. “Amount you owe” shown on the return must be less than \$50,000.
  - c. The taxpayer (or the spouse if filing jointly) must have been unemployed for at least 30 consecutive days between 1/1/2011 and 4/15/2012, OR the taxpayer is self-employed and experienced a reduction in business income of at least 25 percent relative to 2010.
  - d. The taxpayer must file their return on or before the due date for filing, including any extension of time to file.
  - e. The taxpayer must fully pay the amount owed by the extended payment due date, including interest and any penalty assessed and payable prior to the extended payment due date.
- (3) Taxpayers must file Form 1127–A, historical as of 08/23/2012, by the return due date of their 2011 return, determined without regard to extensions of time to file.
- (4) Form 1127–A, historical as of 08/23/2012, filed within a time period to be disregarded under IRC 7508 (related to service in a combat zone) or IRC 7508A (related to federally declared disaster areas), are to be treated as though filed by the return due date. See IRM 20.1.2.2.2.1, Combat Zone-IRC 7508 and IRM 20.1.2.2.2.2.
- (5) When Form 1127–A, historical as of 08/23/2012, is approved, TC 971 with Action Code 468 is input on the module with a transaction date equal to the extended payment due date.
- (6) When Form 1127–A, historical as of 08/23/2012, is denied (For example because it is not signed, postmarked after the due date, and so on), TC 971 with Action Code 468 is input on the module with a transaction date equal to the original return due date.
- (7) TC 972 with Action Code 468 will reverse TC 971 with Action Code 468 with a matching transaction date. TC 972 should only be used if a denied extension is superseded by an approved extension, or if a payment extension request was posted to the module in error.
- (8) The extension of time to pay will be disregarded by Master File if the taxpayer fails to fully pay his tax by the extended payment due date.

**Note:** Master File uses the lesser of TC 150 amount and “tax per taxpayer” when determining whether or not the taxpayer paid in full by the extended payment due date. If the taxpayer requested the extension of time to pay *after* receiving a math error notice increasing the amount owed, the extension of time to pay may need to be manually reversed if the amount shown in the notice is not paid by the extended payment due date. Reverse the extension with TC 972 with Action Code 468.

20.1.2.2.3.2.2  
(04-19-2011)  
**Extension of Time to  
Pay Voided**

- (1) If, subsequent to approving an extension of time to pay, it is determined the extension of time to pay was obtained using false pretenses, the extension may be voided. Such a decision must be based on evidence and not conjecture. Evidence of “false pretenses” includes the following:
  - a. The omission of relevant facts in the application, which, had they been included, would have resulted in a denial of the application.
  - b. Misrepresentation of facts, or falsified information, without which the application would have been denied.
- (2) The extension of time to pay may also be voided or revised if the taxpayer’s actions show that the failure to pay is due to willful neglect, and not solely due to the circumstances set out in the application for an extension of time to pay.

**Example:** A taxpayer requests a 6 month extension of time to pay in order to liquidate assets at fair value. He sells the assets in question after 3 months, but fails to pay the tax within a reasonable amount of time after receiving the proceeds from the sale. This failure to act may be evidence the failure to pay is due to willful neglect, and not undue hardship. Accordingly, the extension of time to pay may be voided, or revised to reflect a reasonable period based on the date of the sale.

20.1.2.2.3.3  
(07-18-2016)  
**Taxpayers Abroad**

- (1) 26 CFR 1.6081-5 provides for an automatic extension of time to **file and pay** for certain partnerships, corporations, and U.S. citizens and residents. The extended due date is the 15th day of the 6th month following the close of the taxable year. The extension applies to the following:
  - a. Partnerships whose records and books of account are kept outside the United States and Puerto Rico;
  - b. Domestic corporations transacting their business and keeping their records and books of account outside the United States and Puerto Rico;
  - c. Foreign corporations that maintain an office or place of business within the United States;
  - d. Domestic corporations whose principal income is from sources within the possessions of the United States;
  - e. United States citizens or residents whose tax homes and abodes, in a real and substantial sense, are outside the United States and Puerto Rico; and
  - f. United States citizens and residents in military or naval service on duty, including non-permanent or short term duty, outside the United States and Puerto Rico, if the period of the tour of duty includes the entire due date of the return.
- (2) With respect to item e) above, an individual’s tax home **and** abode must **both** be outside the United States and Puerto Rico.
- (3) A taxpayer’s tax home is outside the United States and Puerto Rico if either of the following two conditions apply:
  - a. The taxpayer’s principle place of business (or official duty station) is (or was on the return due date) outside the United States or Puerto Rico for a continuous period reasonably expected to last at least 12 months, or
  - b. The taxpayer has no principle place of business or official duty station and the taxpayer’s abode, in a real and substantial sense, is outside the United States and Puerto Rico.



**Example:** (1) “A” maintains a home in the United States where his spouse and children live. “A” works under a 15 month contract with employer “B” that requires him to live and work in France for the period of the contract. “A’s” official duty station is in France during the 15 month period of the contract; therefore, “A’s” tax home is outside the United States and Puerto Rico during the 15 month period of the contract.

**Example:** (2) “C” maintains a home in Canada. Her employer assigns her to work in Detroit for 18 months. “C” commutes between her home in Canada and her duty station in Detroit each business day. “C’s” tax home is in Detroit because her official duty station is in Detroit.

- (4) A taxpayer’s abode is outside the United States and Puerto Rico, in a real and substantial sense, if the taxpayer’s principle residence is (or was on the return due date) outside the United States and Puerto Rico.
- (5) A tax payer may have multiple residences; however, the taxpayer’s principle residence is where the taxpayer spends the majority of time. If the taxpayer does not spend more than half of their time at one residence, then the taxpayer’s principle residence is determined based on all pertinent evidence. Pertinent evidence includes, but is not limited to, where the taxpayer lists their address for legal documents, where the taxpayer’s family resides (for instance children attend school), where mail is received, and so on.

**Example:** A taxpayer accepts a job in France and rents an apartment in France to facilitate his employment there. He spends the majority of the tax year living at the apartment in France and has his mail forwarded to the apartment. This is the taxpayer’s principle residence for the tax year.

- (6) In order to qualify for this automatic extension of time to file and pay, the taxpayer must attach a statement to their return stating the taxpayer qualifies for this extension of time to file. Please note the attachment of the required statement does not guarantee the taxpayer will be identified as qualifying for this extension.

**Reminder:** An extension of time to file or pay does not change the date prescribed for payment for the purpose of computing interest or for computing the amount subject to the penalty for filing late: Interest is charged from the original return due date without regard to any extension of time to file or pay. The extended due date is used to determine the number of months (if any) the return and payment are late for the purpose of computing the penalties for filing and paying late. However, the original return due date is used to determine the amount subject to the late filing penalty if the return is not filed by the extended due date. See IRM 20.1.2.3.7.2.

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because the extension was not given, even though the required statement was attached to the return, review the taxpayer’s address history.

- a. If the taxpayer’s address was not outside the US and Puerto Rico prior to filing the most recent return, ask the taxpayer to provide documentary evidence to show the requirements in paragraph (2) were met.



- b. If the taxpayer is unable to provide the necessary evidence, explain why the taxpayer does not qualify for the extension. Determine if the taxpayer qualifies for other penalty relief.
  - c. If the taxpayer provides the necessary evidence (copy of rental agreement or utility bills received at foreign address, or similar evidence), abate any erroneous penalties assessed as a result of the missing extension. Use penalty reason code (PRC) 045.
  - d. If the taxpayer's address was outside the US and Puerto Rico, and the taxpayer states they qualified for the waiver, abate any erroneous penalties assessed as a result of the missing extension. Use penalty reason code (PRC) 045.
- (8) Forms 1040 identified during pipeline processing as qualifying for this automatic extension of time to file are coded with a special file location code in the DLN, or with a special computer condition code:
- a. The File Location Codes 20 and 98 are used for U.S. citizens and residents residing outside the U.S. and Puerto Rico.
  - b. Computer condition code "N" is used for military personnel on permanent or temporary duty outside the U.S. and Puerto Rico.
  - c. Computer condition code "D" is used for an 8 month extension of time to file for qualifying individuals who requested an additional extension beyond the automatic two month extension.
- (9) Partnerships and corporations identified during pipeline processing as qualifying for this automatic extension are identified by computer condition codes "D" and "R". These codes prevent Master File from ever automatically assessing either the penalty for filing or for paying late for that year's return; therefore, if either penalty ever applies, it must be manually computed and assessed.
- (10) If one of the entities in paragraph (1) qualifies for this automatic extension but needs additional time to file, the taxpayer must file the appropriate application for an extension on or before the due date as extended under 26 CFR 1.6081-5. A statement must be attached to the extension request stating the taxpayer qualifies for the extension in 26 CFR 1.6081-5.

20.1.2.2.3.3.1  
(03-09-2022)  
**Relief for Certain  
Spouses of Military  
Personnel**

- (1) Notice 2010-30, IRB 2010-18, grants an extension of time to pay to 10/15/2010 to certain qualifying spouses of military personnel. The extension is with respect to tax shown or required to be shown on a return for any taxable year that includes 11/11/2009.
- (2) Notice 2011-16, IRB 2011-17, grants an extension of time to pay to 10/17/2011 to certain qualifying spouses of military personnel. The extension is with respect to tax shown or required to be shown on a return for the first taxable year beginning after 11/11/2009.
- (3) The purpose of the extension listed above is to mitigate any hardship a qualifying spouse may experience as a result of the Military Spouses Residency Relief Act of 2009 (MSRRA).
- (4) Under MSRRA, a taxpayer's income remains taxable in the US if the taxpayer is absent from the US solely to be with a service-member spouse serving in compliance with military orders at a military duty station in a US Territory. This situation can create a hardship if the civilian spouse made estimated tax payments to the US territory's taxing authority, or had income tax withheld by a payer paid over to the US territory's taxing authority.

- (5) A taxpayer is a qualifying spouse of military personnel if the taxpayer accompanied the military spouse to an assigned duty station in a US territory solely to be with the spouse, and does not fall into one of the two exceptions listed below:
  - a. The taxpayer is a federal employee in American Samoa, Guam, or the US Virgin Islands.
  - b. The taxpayer worked in Guam or the Northern Mariana Islands, and is able to claim credit for amounts paid to Guam or the Northern Mariana Islands on the taxpayer's U.S. individual income tax return pursuant to 26 CFR 1.935-1.
- (6) IRM 21.8.1.5.7, Military Spouses Residency Relief Act, contains procedural instructions for granting relief pursuant to the extensions of time to pay granted under either Notice 2010–30, Notice 2011–16, and Notice 2012–41.

20.1.2.2.4  
(07-18-2016)  
**Appeal of Penalties in  
IRM 20.1.2**

- (1) The penalties referenced in this IRM subsection generally may be appealed after assessment, regardless of whether the penalty has been paid. However, there is an exception to this general rule: If the penalty was proposed during the examination of a return, and it is part of a deficiency, then it must be appealed subject to the same rules as the deficiency giving rise to the penalty. For more information see Publication 1, Your Rights as a Taxpayer.
- (2) Appealing a penalty assessment does not stop the accrual of interest for the penalty.
  - a. Interest on the failure to file (FTF) penalty assessed under IRC 6651(a)(1) begins to accrue on the return due date (including extensions).
  - b. Interest on the other penalties referenced in this IRM subsection begins to accrue on the date of notice and demand for payment of that penalty.
- (3) Only payment of the penalty prevents continued accrual of interest during the appeals process. However, if the taxpayer prevails in his appeal, and the penalty is abated, all interest charged on the penalty is abated as well.
- (4) A claim for refund of a penalty paid generally must be filed within three years after the return was filed or within two years after the penalty was paid, whichever is later. If the claim is filed within three years after the return was filed, only so much of the penalty may be refunded as was paid during the three year period. If the claim is filed within two years after the penalty was paid, only so much of the penalty may be refunded as was paid during the two year period.

20.1.2.2.4.1  
(07-18-2016)  
**Penalty Abatements and  
Re-assessments**

- (1) IRM 20.1.1.3, Criteria for Relief From Penalties, provides guidance for determining if the taxpayer meets the criteria for penalty relief. See IRM 20.1.1-2, Penalty Reason Code Chart, in IRM 20.1.1, Introduction and Penalty Relief, for a complete list of penalty reason codes.
- (2) The IRS will abate the penalty for failure to file or pay when the taxpayer shows that the failure to comply was due to reasonable cause and not due to willful neglect.
  - a. Reasonable cause determinations must be based on the individual facts and circumstances of each case.

- b. The reasonable cause exception under IRC 6651(a) requires the taxpayer to show to the satisfaction of the Secretary that the failure to file or pay was due to reasonable cause and not due to willful neglect. Reasonable cause requires the taxpayer to demonstrate they exercised ordinary business care and prudence but was nevertheless unable to file/pay within the prescribed time. Willful neglect involves a conscious, intentional failure or reckless indifference. See *United States v. Boyle*, 469 U.S. 241, 245 (1985), *E. Wind Indus., Inc. v. United States*, 196 F.3d 499, 504 (3d Cir. 1999), and *Higbee v. Commissioner*, 116 T.C. 438, 446-447 (2001).
  - c. Continued failure to file or pay (beyond the effect of the “reasonable cause”) may be evidence that the underlying reason for the failure to file or pay is willful neglect and not the “reasonable cause” claimed by the taxpayer.
  - d. Insufficient funds generally is not reasonable cause for failure to pay unless the funds were depleted due to unusual or unforeseen circumstances. For example, a taxpayer who incurs lavish or extravagant living expenses to the extent the remainder of their assets and anticipated income is insufficient to pay their tax, has not exercised ordinary business care and prudence in providing for the payment of tax liability.
  - e. Reasonable cause for failure to pay exists if payment of the tax would result in a significant hardship for the taxpayer. For example, a taxpayer who was able to pay, but who needed the money to pay for necessary medical expenses, may be able to demonstrate paying of the tax (in lieu of paying for the medical expense) would have resulted in a significant hardship. Similarly, significant hardship also exists if the taxpayer would only have been able to pay by liquidating assets well below fair market value.
  - f. Generally, the penalty for failure to pay should not be abated until the underlying tax has been paid in full. Abatement for reasonable cause may not be denied merely because the underlying tax has not yet been paid. Therefore, remove the penalty if the taxpayer has reasonable cause for the failure to pay, **and** there is **no** evidence of willful neglect. However, if the FTP penalty was abated for reasonable cause, and a subsequent review of the account shows the taxpayer willfully continued in the failure to pay, then the penalty may be reasserted in full, computed from the original penalty start date.
  - g. The penalty for failure to file can be abated for reasonable cause regardless of payment of tax, because a continued failure to pay would not constitute evidence that the failure to file was due to willful neglect. However, a prolonged failure to file beyond the effect of the “reasonable cause”, or the failure to file other required returns, may be evidence that the underlying reason for the failure to file is willful neglect, and not the reasonable cause claimed by the taxpayer.
- (3) Reasonable cause determinations for failure to pay must be made separately for each assessment (i.e., tax shown on the return, math error assessment, amended return, or deficiency). For example, a taxpayer may not have had reasonable cause for his failure to pay the tax shown on his return, while he may have had reasonable cause for his failure to pay additional tax assessed as a result of a math error correction.
- (4) When the failure to pay (FTP) penalty is abated for reasonable cause (Reason Code 062), the abatement should include the entire related penalty computed on the underlying tax liability, even if the penalty has not yet been assessed.

**Example:** A taxpayer files his return and pays the tax he believes is due by the return due date. IRS processes the return and finds an incorrect amount of estimated tax payments was claimed on the return. Accordingly, IRS bills the taxpayer for unpaid tax, plus penalty and interest. A couple of months pass before the cause for the discrepancy is found, and the taxpayer agrees the tax is, indeed, underpaid. The taxpayer pays the tax and requests abatement of the penalty for paying late. If the taxpayer's penalty is abated for reasonable cause, the abatement must also include any penalty accrued since the notice of the original penalty assessment.

If the tax in the module is paid in full, total FTP penalty (including un-assessed accruals) can be determined using CFOL command codes BMFOLT (the amount to the right of the literal "FTP TT:") and IMFOLT (the amount to the right of the literal "FTP TOTAL:").

If the tax in the module is not paid in full, the penalty should be computed from the penalty start date to the date of payment to determine the amount to abate.

- (5) Examiners should address the reason for any failure to file or failure to pay when securing or examining returns where the penalty appears to apply. Making this initial determination will prevent the need for subsequent abatements.
- (6) Reasonable cause abatement requests must be documented via an adjustment with a source document.
  - a. If the taxpayer qualifies for relief, abate the applicable penalty amount with the appropriate transaction code. Enter Reason Code (RC) 062 in any of the first three reason code fields, and the applicable Penalty Reason Code (PRC) in the fourth reason code field.
  - b. If the taxpayer does not qualify for relief, notify the taxpayer of his appeal rights (following your functional area's guidelines), and document the abatement request with Transaction Code (TC) 290 for zero amount, with Blocking Series 98 or 99, and with RC 062 in any of the first three reason code fields.
- (7) When penalties for failure to pay are abated for reasonable cause using TC 271 with RC 062, Master File will not restrict future computer computations of the penalty (provided it was not previously restricted). The computer continues to compute the penalty for failure to pay, but will waive the amount associated with RC 062. Use TC 271 with RC 062 only if the underlying tax has been paid in full, and always abate the entire penalty related to the tax in question, including accruals.
- (8) A TC 271 input without RC 062 restricts subsequent computation of the penalty. Input TC 272 with a zero amount to remove the manual restriction on the FTP penalty when a module has been restricted in error.
- (9) A TC 271 without RC 062 (or a TC 270 for zero amount) should only be used to abate the FTP penalty for reasonable cause (and/or to prevent additional accrual of the penalty when the failure to pay is due to reasonable cause) under the following circumstances:

IF the taxpayer qualifies for reasonable cause abatement AND the following applies:	THEN
<ul style="list-style-type: none"><li>• The underlying tax has not been paid, and</li><li>• There is no reasonable expectation that it will be paid anytime soon, and</li><li>• The circumstances preventing payment of the tax are expected to persist.</li></ul>	Abate FTP penalty without using RC 062. Use PRC 029.
The taxpayer has agreed to pay the balance owed immediately upon receipt of notice of abatement of the penalty.	Abate FTP penalty without using RC 062. Use PRC 043. <b>Note:</b> If the taxpayer fails to pay as agreed, the penalty restriction imposed by the TC 270 or 271 without RC 062 may (and should) be removed via TC 272 after the taxpayer is notified we have determined (based on the failure to pay as agreed) the failure to pay is due to willful neglect, and the penalty, therefore, does not qualify for abatement for reasonable cause.

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20.1.1.3.2, Reasonable Cause, and IRM 20.1.1.3.3.2.1, First Time Abate (FTA).

- (14) Also see IRM 20.1.1.3.3.2.1, First Time Abate (FTA), for first-time-abate/clean-compliance-history provisions.

**Note:** The first-time-abate provisions do not apply to returns with an event-based filing requirement, such as Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return.

20.1.2.2.4.2  
(07-02-2013)  
**Notice 2013-24 Penalty Relief**

- (1) A taxpayer may write in to request a waiver of FTP penalties based on relief granted under *Notice 2013-24*. The relief applies only to returns for tax periods ended 12/31/2012 or later, with a return due date before June 2013, without regard to extensions. This relief should be applied before applying “first time abate” (FTA) provisions.

- (2) Before granting the relief, verify the taxpayer has met all of the requirements for relief:

- a. The taxpayer’s return included one of the forms listed in the table at the end of this IRM subsection.
- b. The amount of tax paid by the return due date (without regard to extensions) is a reasonable estimate of the amount due, considering the impact of the form(s) referenced above that are included in the return.
- c. The taxpayer paid the balance of the tax shown on the return no later than the extended return due date, and any additional amount (math error assessment) no later than the 21st day following notice and

been paid within 10 business days of notice and demand for payment

**Note:** If the taxpayer paid the amount shown on the return by the extended return due date, but failed to pay any additional amount as required, abate only so much of the FTP penalty as is attributable to the tax shown on the return.

- (3) If the taxpayer qualifies for relief under this provision, abate the FTP penalty with TC 271, Reason Code 062, Penalty Reason Code 030. Include un-assessed FTP penalty accruals in the abatement.

Form	Title
Form 3800	General Business Credit



<b>Form</b>	<b>Title</b>
Form 4136	Credit for Federal Tax Paid on Fuels
Form 4562	Depreciation and Amortization (Including Information on Listed Property)
Form 5074	Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands
Form 5471	Information Return of U.S. Persons With Respect to Certain Foreign Corporations
Form 5695	Residential Energy Credits
Form 5735	American Samoa Economic Development Credit
Form 5884	Work Opportunity Credit
Form 6478	Biofuel Producer Credit
Form 6765	Credit for Increasing Research Activities
Form 8396	Mortgage Interest Credit
Form 8582	Passive Activity Loss Limitations
Form 8820	Orphan Drug Credit
Form 8834	Qualified Electric Vehicle Credit
Form 8839	Qualified Adoption Expenses
Form 8844	Empowerment Zone Employment Credit
Form 8845	Indian Employment Credit
Form 8859	Carryforward of the District of Columbia First-Time Homebuyer Credit
Form 8863	Education Credits (American Opportunity and Lifetime Learning Credits)
Form 8864	Biodiesel, Renewable Diesel, or Sustainable Aviation Fuels Credit
Form 8874	New Markets Credits
Form 8900	Qualified Railroad Track Maintenance Credit
Form 8903	Domestic Production Activities Deduction
Form 8908	Energy Efficient Home Credit
Form 8909	Energy Efficient Appliance Credit
Form 8910	Alternative Motor Vehicle Credit
Form 8911	Alternative Fuel Vehicle Refueling Property Credit
Form 8912	Credit to Holders of Tax Credit Bonds
Form 8923	Mine Rescue Team Training Credit
Form 8932	Credit for Employer Differential Wage Payments
Form 8936	Qualified Plug-in Electric Drive Motor Vehicle Credit



20.1.2.2.4.3  
(07-18-2016)  
**Notice 2015-09 Penalty  
Relief**

- (1) Notice 2015-09 provides penalty relief for qualifying taxpayers with respect to the penalty for failure to pay tax shown on their 2014 return. It also provides for relief with respect to the penalty for underpayment of estimated tax for 2014. (See IRM 20.1.3, Estimated Tax Penalties, for estimated tax waiver information.) Qualifying taxpayers requesting relief under Notice 2015-09 should be provided this relief before applying relief provided for in IRM 20.1.1.3.3.2.1, First Time Abate (FTA).
- (2) To qualify for the relief from the penalty for failure to pay, all of the following criteria must be met:
  - a. A portion of the unpaid balance is attributable to the reconciliation of the Repayment of the Excess Advance Payment of the Premium Tax Credit (Form 8962 line 29, Form 1040 line 46, or Form 1040A line 29).
  - b. All returns required to be filed have been filed or the taxpayer has obtained an extension of time to file.
  - c. All other taxes required to be paid have been paid, are in the process of being paid under a valid installment agreement (which is not in default), or the taxpayer has entered into an offer in compromise. (Exclude unpaid taxes which have not been paid due to a genuine dispute as to whether they are owed.)
  - d. The 2014 return was filed timely (including extensions) and reported the amounts due as a result of the reconciliation of the Excess Advance Payment of the Premium Tax Credit (Form 8962 line 29, Form 1040 line 46, or Form 1040A line 29).
  - e. If the return was filed after April 15, 2015, but by an extended due date, the taxpayer has fully paid the balance of their 2014 tax by April 15, 2016. This deadline is not applicable for taxpayers filing 2014 returns before or on April 15, 2015.
- (3) If any portion of the unpaid balance qualifies for relief under Notice 2015-09, the entire failure-to-pay penalty should be abated, even the portion that is unrelated to the repayment of the excess advance payment of the Premium Tax Credit.
- (4) If the taxpayer qualifies for the penalty relief and the tax has already been paid in full, abate the penalty as described in IRM 20.1.2.2.4.1 (4) with reason code 062 and penalty reason code 022.
- (5) If the taxpayer qualifies for the penalty relief and the tax has **not** yet been paid, abate the **assessed** penalty with TC 271, reason code 065, and penalty reason code 029.

**Reminder:** If the taxpayer filed the return after April 15, 2015, any installment agreement or other payment arrangement **must** be set up so as to fully pay the tax no later than April 15, 2016!

If the taxpayer who did not file by April 15, 2015, fails to pay in full by April 15, 2016, reassess the abated penalty via input of TC 272 for zero amount. Notify the taxpayer that the penalty waiver has been rescinded because the taxpayer failed to pay the tax by April 15, 2016, as required by the penalty waiver provisions in Notice 2015-09.

20.1.2.2.4.4  
(07-18-2016)

**Notice 2015-30 Penalty Relief**

- (1) Notice 2015-30 provides penalty relief for qualifying taxpayers with respect to the penalty for failure to pay tax under IRC 6651(a)(2) and IRC 6651(a)(3) on their 2014 return. It also provides for relief with respect to the penalty for underpayment of estimated tax under IRC 6654, and the accuracy-related penalty under IRC 6662 for 2014. (See IRM 20.1.3, Estimated Tax Penalties, for estimated tax waiver information, and IRM 20.1.5.7, Penalty Relief, for information on accuracy-related penalty relief.) Qualifying taxpayers requesting relief under Notice 2015-30 should be provided this relief before applying relief provided in IRM 20.1.1.3.3.2.1, First Time Abate (FTA).
- (2) To qualify for the relief from the penalty for failure to pay, all of the following criteria must be met:
  - a. The taxpayer received a delayed Form 1095-A or a Form 1095-A the taxpayer believes to be incorrect.
  - b. The taxpayer timely filed their 2014 federal income tax return, including extensions.

**Note:** If a taxpayer was not enrolled in a qualifying plan during 2014, and erroneously received a Form 1095-A and used it to file the return, in order to be eligible for the relief, the taxpayer must have amended the 2014 income tax return by April 15, 2016 to reflect the taxpayer was not eligible to claim the premium tax credit, and pay any additional tax liability due.
- (3) If any portion of the unpaid balance qualifies for relief under Notice 2015-30, the entire failure-to-pay penalty should be abated, even the portion that is unrelated to the late receipt or incorrect Form 1095-A.
- (4) If the taxpayer qualifies for the penalty relief, abate the penalty as described in IRM 20.1.2.2.4.1 (4) with reason code 062 and penalty reason code 022.

20.1.2.2.5  
(02-27-2024)

**Manual Penalty Adjustments**

- (1) In most conditions, IRS's computer systems are able to accurately compute and assert the correct penalty for the penalties for failure to file (FTF) and/or failure to pay (FTP). Therefore, it is important that taxpayer accounts are not unnecessarily restricted from systemic penalty computation. The following transaction codes reflect systemic assessment or abatement of the penalties in this IRM subsection:
  - a. TC 166/167—systemic assessment/abatement of the penalty for failure to file.
  - b. TC 246/247 (with penalty reference number 722)--systemic assessment/abatement of the penalty for failure to file (Form 1065 , U.S. Return of Partnership Income and Form 1120-S, U.S. Income Tax Return for an S Corporation).
  - c. TC 246/247 (with penalty reference number 723)—systemic assessment/abatement of the incomplete return penalty (Form 1065, U.S. Return of Partnership Income, and Form 1120-S, U.S. Income Tax Return for an S Corporation).
  - d. TC 276/277—systemic assessment/abatement of the penalty for failure to pay.
- (2) Manual penalty adjustments are required under the following circumstances:
  - a. When IRS's computer systems are unable to compute a penalty correctly, or when the computer is restricted from computing the penalty.

- b. To the extent the FTF penalty is attributable to a deficiency, IRC 6665(b) requires it to be included in the notice of deficiency and to be assessed as part of the deficiency. IRC 6751 requires a computation of the penalty to be included in the notice of deficiency. To meet these requirements, the FTF penalty attributable to the deficiency must be computed and assessed manually instead of allowing it to be generated systemically.

**Note:** IDRS command code AMCLS (used for closing Exam cases) requires the use of TC 160, 161, or 162 if the return was filed late, and the tax adjustment amount is not zero. TC 162 for zero amount may be used to allow systemic computation of the FTF penalty if the net change (tax and credits) is a decrease in the taxpayer's liability. Do **not** use TC 160 for zero when TC 16X is required, except if no FTF penalty was previously charged and FTF penalty was not included in the exam report.

- c. When adjusting tax or any refundable credits for a late filed return via a prompt or quick assessment (Form 2859), the FTF penalty **MUST** be manually adjusted to avoid a barred statute, and to ensure an accurate assessment notice.
- d. When adjusting any type of withholding credit or Regulated Investment Company Credit (Form 2439) via a prompt or quick assessment, the FTP penalty must be manually recomputed and adjusted to ensure an accurate notice of the adjustment.
- e. IDRS CC **COMPAF** is available for computing the FTP penalty. The **COMPAF** print may be used to document a manual adjustment.
- f. When there is a difference between computer generated and manual computations, manual computations take precedence after the accuracy of the manual computation has been verified.
- g. The FTF penalty must be manually computed and assessed if the wrong return created the TC 150 in the module, and the correct return was filed late. (Mixed period, mixed entity, and identity theft cases.) Determine if the system is showing the correct information and correct number of months late. If it is not correct, compute manually.

**Note:** Situations where the wrong return posted first no longer require manual FTP penalty computation IF the procedures in IRM 20.1.2.2.6.3 are followed.

- (3) When manual adjustments of the penalty are required, IRS personnel are responsible for determining the correct penalty amount.
  - a. When the penalties for paying late have to be manually computed, they should be computed to the 23C date of the input adjustment. Care must be taken to ensure that the 25 percent maximum aggregate is not exceeded.
  - b. When the penalty is being increased, the law requires a copy of the penalty computation be sent to the taxpayer with the penalty notice. See IRC 6751.
- (4) The following transaction codes are used to manually assess or abate the FTF and FTP penalties:
  - a. TC 160/161—manual assessment/abatement of the penalty for failure to file.
  - b. TC 162—removal of computation restriction of the penalty for failure to file.

- c. TC 240/241 (with penalty reference number 722)—manual assessment/abatement of the failure to file penalty (Form 1065 and Form 1120-S).
- d. TC 240/241 (with penalty reference number 723)—manual assessment/abatement of the incomplete return penalty (Form 1065 and Form 1120-S).

**Note:** This applies only to MFT 06 and 07, and to MFT 02 with return Doc Code 16.

- e. TC 270/271—manual assessment/abatement of the penalty for failure to pay.
  - f. TC 272—removal of computation restriction of the penalty for failure to pay.
- (5) The following blocking series should be used when adjusting penalties with command code ADJ54:
- a. If you have the original return, use a refile blocking series.
  - b. If you don't have the original return, use any appropriate non-refile blocking series.

**Note:** Blocking Series 18 is a refile blocking series. Due to a heavy workload in files, use Blocking Series 18 only when you don't have the original return, and it is absolutely necessary to attach your adjustment to the original return.

- (6) Before adjusting restricted penalties, the restricting adjustment documents may need to be obtained to check the penalty computation and rationale for restricting the penalty.

20.1.2.2.6  
(04-19-2011)  
**Correcting Incorrect  
Assessments**

- (1) IRS employees have a responsibility to correct incorrect penalty assessments when they are identified and the statutory period for making the correction has not expired.
- (2) IRC 6404(a) provides authority for IRS to abate at any time the unpaid portion of any excessive, erroneous, or illegally assessed liability amount. A liability is excessive to the extent that it exceeds the amount provided for by law.
- (3) The "paid" portion of any excessive or erroneously assessed penalty may be abated as follows:
  - Without a claim—only if refund or credit for that portion can be made within the period of limitations for refunds; or
  - With a claim—only if the claim was filed within the period of limitations for refunds. Consider an inquiry questioning the computation of a penalty as an informal claim if you find the assessed penalty is excessive.
- (4) Generally, the period of limitations for refunds is three years after the return is filed, or two years after the penalty was paid, whichever is later. For exceptions see IRM 25.6.1.10.2.7, Claims for Credit or Refund – General Time Period for Submitting a Claim.
- (5) Insufficient failure to file (FTF) penalty assessments may only be corrected within the period of limitations for assessment, including any extensions provided by law. Additionally, if the additional FTF penalty is calculated based

on a deficiency, the penalty may not be assessed without following deficiency procedures. For more information about the statutory period for assessments, see IRM 25.6.1.9, Assessments.

- (6) The penalty for paying late becomes due and payable as it accrues. "Assessment" of the penalty is merely a record-keeping tool to record the date of notice and demand for payment of the penalty, and the penalty amount in the notice. Therefore, notice and demand for payment of any unbilled FTP penalty may be given (via manual penalty assessment) at any time within the period of limitations for collection of the tax to which the penalty relates.
- (7) The rules for disregarded periods (see IRM 20.1.2.2.2.1 and IRM 20.1.2.2.2.2) also apply in determining the period during which a penalty may be assessed or abated.
  - a. If "X" number of days are disregarded under IRC 7508 in determining timely filing and paying, then the same number of days are disregarded in determining whether an assessment or claim is timely.

**Reminder:** A return filed or payment made within the disregarded period after the due date is considered filed or made on the due date. Returns filed or payments made after the disregarded period are considered late only to the extent the period between the due date and the received date exceeds the disregarded period.

- b. If the assessment or refund statute expiration date (ASED or RSED) falls within a period to be disregarded under IRC 7508 (see IRM 20.1.2.2.2.1 (2)), the assessment or claim is timely if it is made or filed within the disregarded period.

**Example:** Taxpayer A enters a combat zone on 6/15/2010, and exits on 12/20/2010. A filed his 2007 return on 4/15/2008. The normal period for making an assessment or filing a claim for the 2007 return is three years from the date the return was filed. However, in determining the three year period, the period from 6/15/2010 to 12/20/2010, plus 180 days, is disregarded under IRC 7508. Therefore, an assessment or claim is timely if made or filed on or before 4/17/2012.

- c. If the RSED falls within a period to be disregarded under IRC 7508A, the claim is timely if it is made or filed on or before the last day published for that action by IRS memo on behalf of the Secretary of the Treasury.

**Note:** It is generally not possible to ascertain the period during which taxpayers were "affected" until after the fact. Therefore, the last day for timely performance of a time sensitive act may be published after the last day.

- d. For Federally declared disasters declared after January 15, 2009, 26 CFR 301.7508A-1(b) clarified IRC 7508A does *not* extend the due date, but merely allows IRS to disregard a certain period in determining whether a given act was timely.

20.1.2.2.6.1  
(02-27-2024)  
**Identifying Incorrect  
Assessments**

- (1) IRS employees are not required to "second-guess" every penalty assessment encountered. However, in order to preserve the trust of taxpayers, it is expected IRS employees will review penalty computations when penalties are questioned by taxpayers, and errors will be corrected when they are identified.

- (2) Below are some examples of errors identified and corrected by diligent employees. It is expected IRS employees identify these errors. Please note this list is not all-inclusive:
  - a. A late filing penalty has been assessed based on the received date of a return, and the postmark date of the return shows the return was mailed on time.
  - b. An employee has reason to review a penalty computation (for instance, the taxpayer has contacted the IRS with questions in respect to the penalty), and the review of IRS’s penalty computation reflects an error. (Examples of errors are a missing payment or credit, incorrect penalty start date, a missing installment agreement indicator for a timely filed return, or any other error that should be discovered by an IRS employee trained in the manual computation of the penalty in question.)
  - c. The assessed (billed) penalty amount is excessive based on the underlying tax liability or for the period of non-compliance. (For example, a FTP penalty exceeds 25 percent of the net tax assessment or a FTF penalty was charged for 5 months even though the return was only 2 months late)
- (3) Beginning in July 2014, IDRS command code INTST began using the same programming as master file for nearly all failure to pay penalty and interest computations. The total penalty and interest reflected on corporate files on-line (CFOL) (IDRS command code IMFOLT or BMFOLT) for a specific tax module should therefore match the total penalty and interest computed by INTST when computed to the interest date shown on CFOL. If there is a discrepancy in the interest and/or penalty between INTST and CFOL, and the discrepancy cannot be traced to a pending transaction, then the discrepancy must be reported to the responsible analyst in the Office of Servicewide Penalties or in the Office of Servicewide Interest. Penalties analyst assignments can be found on the irweb on the Knowledge Management Penalties’ News and Contacts page at *Penalties Knowledge Base - PenaltyNewsAndAlertsAndContacts - GrpByChap (sharepoint.com)*.

20.1.2.2.6.1.1  
(04-19-2011)  
**System Errors**

- (1) Prompt action is needed to correct penalties erroneously assessed or accrued due to system errors. When a system error is reported, the Office of Servicewide Penalties issues case specific instructions to the reporting employee, identifying the problem and the steps needed to correct the individual situation. Usually, these system errors are quickly resolved.
- (2) When a system error on an account is identified and cannot be resolved quickly, a manual (restricting) adjustment of the penalty may be needed.

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20.1.2.2.6.1.3  
(07-18-2016)  
**Problems Involving  
Refundable  
Credits/Payments**

- (1) IRS computer systems occasionally are unable to compute the penalty for paying late correctly when timely payments or refundable credits are decreased after a refund was issued, or after an overpayment of tax was offset. See IRM 20.1.2.3.2, Erroneous Refunds and Offsets, for conditions that may require corrective actions.
- (2) IRS has implemented new programming to correct most issues involving the computation of penalties when refundable credits are reduced or disallowed. The correction will automatically correct the failure to pay penalty computation for returns where IRS charged an incorrect penalty because the refundable tax credit was reduced or disallowed after the return was processed.

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20.1.2.2.6.1.3.1  
(02-27-2024)  
**Adjusting Refundable  
Credits Without a CRN  
and With CRN 334**

- (1) Prior to 2016, certain refundable tax credits and prepayment credits were combined during return processing in a single TC 766 transaction without a CRN. Which credits were combined depended on MFT and tax period. Check IDRS command code TRDBV, or the taxpayer's return, to determine which credits were combined for an account with a TC 766 without a CRN posted with the TC 150 DLN.
- (2) Beginning in 2016, only a refundable prepayment credit from Form 2439, or a credit under claim of right (see IRM 21.6.6.2.10.2, Claim of Right- IRC 1341, Repayment of More Than \$3,000), should be combined during return processing in a single TC 766 transaction without a CRN. The other credits previously combined without a CRN will be posted as follows:
  - The combined credit from Form 4136 will be posted with TC 766 with CRN 450. (BMF & IMF)
  - The credit from Form 8827 line 8c will be posted with TC 766 with CRN 793. (BMF only)

**Note:** The credit from Form 8827 line 8c was also posted with CRN 334 for returns processed during processing years 2013 - 2014. As part of processing, the credit may have been combined with other credits on the return. See IRM 21.7.4.4.9.3.1, Original Return Processing Submission Processing (SP) Procedures - December 31, 2014 and Prior.



- (3) Fuel tax credits adjustments input via the applicable fuel tax credit CRN will post in the module without a CRN (or with CRN 000) when posted before 2018, and input of TC 270 for zero was required if ALL of the following conditions applied.
- You are decreasing the credit.
  - The net change (tax and credit combined) is an increase in the taxpayer's liability.
  - The tax shown on the original return was not zero.
- (4) Beginning in 2018, fuel tax credit adjustments have posted with CRN 450, and input of TC 270 .00 is no longer required.
- (5) The refundable tax credit from Form 8827 line 8c, and the refundable tax credit from Form 3800 line 19c (2008 - 2010), or line 17c (2011) must be **decreased** using TC 767 without a CRN **if** the original credit was posted in the module without a CRN.
- (6) If the refundable tax credit from Form 8827 line 8c was posted in the module via TC 766 with CRN 334, then the credit must be decreased using CRN 334.
- (7) When decreasing the Form 8827 line 8c credit, or the Form 3800 refundable credit, with TC 767 without a CRN, or with CRN 334, continue to follow the applicable IRM 21, Customer Account Services, instructions for adjusting these credits. Also, input TC 270 for zero if ALL of the conditions in the bullets in paragraph (3) above apply. If ANY of those conditions does NOT apply, then do NOT input TC 270 for zero.
- (8) TC 766 without a CRN (or with CRN 000), and TC 766 with CRN 334 are treated by the computer as prepayment credits. If these credits are posted in the module for the fuel tax credit, the refundable credit from Form 3800, or the refundable credit from Form 8827 line 8c, the reversal of the credit should be treated like a tax assessment, and not like a payment reversal. If FTP penalty is not restricted by a TC 270 for zero, a payment reversal causes the computer to assert FTP penalty on any unpaid tax shown on the return as a result of the reversal. For this reason, TC 270 for zero must be input when decreasing these credits either without a CRN, or with CRN 334, when ALL of the conditions in the bullets in paragraph (3) apply.
- (9) The refundable credit from Form 8827 line 8c can be decreased using CRN 793 for a negative amount **if** the credit was posted in the module with CRN 793 after 2015. The credit can always be increased using CRN 793. No special action is required if you are adjusting the credit using CRN 793.
- (10) Refundable credits posted in a tax module without a CRN, or with CRN 334, other than fuel tax credits, the refundable credit from Form 3800, and the refundable credit from Form 8827 line 8c, are correctly treated as prepayment credits. When adjusting those credits a TC 270 for zero is not necessary.

**Reminder:** Credits posted with a CRN other than 450 must be adjusted using the applicable CRN.

20.1.2.2.6.2  
(03-09-2022)  
**Incorrect Tax Shown  
Recorded**

- (1) The penalty for failure to pay is asserted beginning with the return due date with respect to “tax shown” on the taxpayer’s return. This amount is **not** synonymous with “total tax per taxpayer.” “Tax shown” on a taxpayer’s return must take into account certain refundable credits claimed by the taxpayer, even if
- (2) When tax or certain refundable credits reported or claimed by the taxpayer are either not recorded or recorded incorrectly, the result is an incorrect penalty calculation for failure to pay tax shown on the return, because “tax shown” will not have been computed correctly during return processing.
- (3) “Tax shown on the return” is defined as total tax per taxpayer minus certain credits claimed by the taxpayer on his return. IRM 20.1.2.3.8.4.1 lists the credits taken into consideration in the computation of “tax shown on the return.”
- (4) We can record the correct “tax shown on the return” amount via IDRS command code ADJ54 using item reference number 871 whenever necessary. The following are some circumstances where the recorded “tax shown” may require correction:
  - Tax or refundable credits per taxpayer were either not recorded, or recorded incorrectly, resulting in an incorrect amount to be computed and recorded as “tax shown” on the return.
  - The taxpayer filed a superseding original return after the original return posted.
  - When an incorrect amount was recorded because of a mixed period or mixed entity condition, or as a result of preparer misconduct.
  - When no amount was recorded because a substitute for a return (SFR) was posted, and the assessed tax (or the tax that will be assessed after the adjustment) is greater than the “tax shown” on the taxpayer’s own return.
- (5) “Amount” in the bullets above refers to the amount of “tax shown” recorded for the return. (See IMFOLR and BMFOLR.) “Tax shown” is corrected or recorded in the account via ADJ54 by including item reference number 871 with the correct “tax shown” amount in the adjustment. Use appropriate Hold Code and Priority Code. See IRM 20.1.2.2.6.3 for additional information. “Tax shown” is corrected or recorded in the account via AMCLS by including IRN 871 with the correct “tax shown” as an item 15 in the closing transaction. Use appropriate Hold and Priority Codes.

**Caution:** When a transaction posts with IRN 871, the entered IRN 871 amount will **replace** any existing “tax shown” amount. “Tax shown” cannot be less than zero.

**Example:** A 2013 return processed in 2014 reflected \$5,000 total tax per taxpayer (without IRA tax), and a total of \$4,500 in refundable tax credits (for instance, earned income credit and additional child tax credit). During return processing the amount of the refundable tax credit was reduced to \$3,000 as a result of a math error correction. Because the return was processed prior to 2016, the “tax shown” recorded for the return will be

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$\$5,000 - \$3,000 = \$2,000$ . The correct “tax shown” is  $\$5,000 - \$4,500 = \$500$ . To correct the “tax shown” in the account, IRN 871 needs to be input with the correct “tax shown” amount of \$500. When IRN 871 posts, “tax shown” will change from \$2,000 to \$500.

- (6) IMF returns pose a special challenge when computing “tax shown on the return” because not all of the tax shown on Form 1040 is necessarily assessed on MFT 30. Therefore, amounts assessed on MFT 29 (excise taxes from Form 5329) and on MFT 35 (shared responsibility payments) must be excluded when computing “tax shown on the return” for MFT 30 and MFT 31. The following table was designed to assist in the computation. Not all rows in this table will apply to all years. An IAT tool (or something similar) will be provided to aid in this computation.

Line	Instruction to follow, or item to enter	Amount
1	Total tax per return (for example 2015 Form 1040 line 63)	blank
2	Tax on excess contributions to traditional IRA (for example 2015 Form 5329 line 17)	blank
3	Tax on excess contributions to a Roth IRA (for example 2015 Form 5329 line 25)	blank
4	Tax on excess contributions to an education savings account (for example 2015 Form 5329 line 33)	blank
5	Tax on excess contributions to an Archer MSA (for example 2015 Form 5329 line 41)	blank
6	Tax on excess contributions to a health savings account (for example 2015 Form 5329 line 49)	blank
7	Tax on excess contributions to an ABLE account (for example 2015 Form 5329 line 51)	blank
8	Tax on excess accumulations in a qualified retirement account (for example 2015 Form 5329 line 55)	blank
9	Individual Shared Responsibility Payment (SRP) (for example 2015 Form 1040 line 61)	blank
10	Earned income credit (as a positive amount)	blank
11	Additional child tax credit (as a positive amount)	blank
12	Fuel tax credit from Form 4136 (as a positive amount)	blank
13	Refundable credit for prior year alternative minimum tax (as a positive amount)	blank
14	American opportunity credit or refundable education credit (as a positive amount)	blank
15	Health coverage tax credit (as a positive amount)	blank
16	First time homebuyer credit (as a positive amount)	blank
17	Making work pay credit (as a positive amount)	blank

Line	Instruction to follow, or item to enter	Amount
18	2008, 2020, 2021 Recovery rebate credit, but only if claimed on the respective return (as a positive amount)	blank
19	Refundable adoption credit (as a positive amount)	blank
20	Health insurance premium tax credit (as a positive amount)	blank
21	Add lines 2 through 20	blank
22	Subtract line 21 from line 1. If less than zero, enter zero.	blank

- (7) Computing “tax shown on the return” is simpler for forms other than Form 1040.
- For employment tax returns (Forms 940, 941, 943, 944, and 945), “tax shown on the return” is simply total tax per taxpayer. Refundable credits on employment tax returns are treatable as payments for FTP penalty purposes. This includes the credit for advance EIC paid by the employer (TC 766 with credit reference number (CRN) 000), the VOW credit (TC 766 with CRN 290), the HIRE credit (TC 766 with CRN 296), and the COBRA credit (TC 766 with CRN 299).
  - For all other returns, “tax shown on the return” is total tax per taxpayer less claimed refundable credits other than withholding and regulated investment company credit (Form 2439). Withholding is reported on Form 8805, Form W-2, Form 1042-S, or Form 1099; however, it may be reported in other ways as well, such as on Schedule K-1. It is posted on the account as TC 806 or as TC 766 with CRN 330 - 333, or as TC 766 without a CRN. (For Form 1040 and Form 1041, “withholding” also includes excess social security tax or railroad retirement tax withheld posted to the account with TC 766 with CRN 252.)

**Caution:** Prior to 2016 IRS posted the combined fuel tax credit from Form 4136 and the regulated investment credit from Form 2439 with TC 766 without a credit reference number. This will be the greatest single reason for incorrect “tax shown on the return” being recorded for returns processed prior to 2016 for all returns, including Form 1040.

20.1.2.2.6.3  
(02-27-2024)  
**Wrong Return Posted  
First**

- (1) Prior to 2016, the computer was not able to accurately compute the FTP penalty on tax shown on a taxpayer’s return if FTP penalty was due in any of the following conditions:
- The taxpayer filed a superseding return with tax shown greater than on the return creating the transaction code (TC) 150 transaction.
  - The return creating the TC 150 transaction was intended for a different tax period (mixed period case).
  - The return creating the TC 150 transaction belonged to a different taxpayer (mixed entity case).
  - The return that created the TC 150 transaction was filed by an identity thief.
  - The return that created the TC 150 transaction was filed by a return preparer without the taxpayer’s informed consent (preparer misconduct).

**Caution:** The above list pertains only to “wrong return posted first” situations, and may not be all-inclusive.

- (2) Since the computer was unable to compute the FTP penalty for these cases prior to 2016, FTP penalty had to be manually computed and assessed when applicable. See IRM 20.1.2.2.5, Manual Penalty Adjustment, paragraph 2(a).
- (3) Programming implemented in January 2016 allows for systemic computation of the FTP penalty for superseding returns and in cases where the wrong return posted first and created the posted TC 150 transaction. The following steps **must** be followed if the correction will result in a balance due, or if any of the tax due on the correct return was paid after the original return due date without regard to extensions:
  - a. Use command code ADJ54 to back out the tax, refundable credits, and prepayment credits (for example withholding) posted with the TC 150 return. Also reverse any penalties in the module other than the bad check penalty and the FTP penalty. Use Hold Code 4 to prevent any notice or refund from being issued for this action. (Any FTP penalty in the module will automatically reverse when the tax is backed out. Any bad check penalty should also be reversed if the dishonored payment was not tendered by the “good” taxpayer, or if the penalty does not apply due to reasonable cause.)

**Exception:** If the ASER has expired for the return that posted as the TC 150, do NOT abate the tax unless it is a duplicate assessment (for example, the tax is also already assessed in the module where the return should have posted). Instead, follow the procedures in IRM 25.6.1.9.9.3, Correct Records On Expired Statute Periods.

- b. If the return that posted first resulted in an erroneous offset to another liability, reverse the erroneous portion of the offset. Do not use TC 570 on the debit side of the reversal to suppress CP 60 or CP 260 from being generated unless a letter explaining the reversal is being sent to the taxpayer. The erroneous portion of an offset is the amount (if any) that would not have offset if the correct return had posted first.
- c. If the return that posted first resulted in an erroneous refund, follow erroneous refund procedures to recover the erroneous portion of the refund, and/or to credit the tax module. See IRM 21.4.5, Erroneous Refunds.
- d. Compute the tax shown on the correct return for the tax period. This is the net of the total tax per taxpayer minus the “per taxpayer” amounts of the credits listed in IRM 20.1.2.3.8.4.1 (2).
- e. Determine the correct tax, refundable tax credits, prepayment credits and other relevant reference amounts (correct AGI, TXI, and others).
- f. Determine if any ES tax penalty, FTF penalty, or other penalty needs to be manually computed and assessed. **Do not compute the FTP penalty as it will be systemically computed.**
- g. Use command code ADJ54 to enter the correct tax, credits, any penalties, and item reference amounts, including the new IRN 871 amount if required, (see IRM 20.1.2.2.6.2). Also use item reference number 871 to enter the tax shown on the correct return computed in step (d) above. With ADJ54 use Priority Code 2. Use Hold Code 0 so an assessment notice will be issued. Command code AMCLS cannot be used to enter the correct tax, credits, etc., unless the TC 150 is an SFR

return, or if no FTP penalty is due with respect to tax shown on the taxpayer's return. If FTP penalty should be charged with respect to tax shown on the taxpayer's original return, Forms 3870 should be prepared to back out the module, and to enter the correct amounts via TC 290 using command code ADJ54.

**Note:** Use a posting delay if necessary to ensure the assessment posts after all other actions have posted. If the module balance was debit prior to backing out the tax, the module balance should be zero before the correct tax, etc. is posted. If the module balance is not zero (For example, due to un-reversed offset or refund issued to the taxpayer), the "prior balance" shown in the notice must be explained to the taxpayer so the taxpayer will understand the notice.

**Example:** Based on information provided by a taxpayer, it is determined the return that posted first was altered by the preparer. (Alleged preparer misconduct.) The return reflects a direct-deposit refund of \$5,000. The taxpayer's correct return reflects a refund of \$250. The taxpayer indicates he received \$250 from the preparer. After backing out the erroneous tax, credits, and \$4,750 of the refund, the module will reflect a debit balance of \$250. Explain to the taxpayer the "prior balance" being shown in the notice represents the amount claimed as a refund which was previously paid to the taxpayer in the form of cash (or check) and services.

**Reminder:** Use Form 2859 to make the assessment if the ASER for correct return will expire within 60 days. See IRM 25.6.1.9.9.1, Procedures for Expeditious Assessments.

- h. In the case of a mixed period case where the refund was received by the correct taxpayer, the refund should be moved to the period for the return causing the refund, to the extent it was comprised of payments and refundable credits for that period.

**Example:** A taxpayer's late-filed 2012 return posted to the 2013 tax module. The return reflected an overpayment of \$500 comprised of withholding and earned income credit claimed on the return in excess of total tax. The refund issued by IRS also include \$1,200 in estimated tax payments, for a total refund of \$1,700. Of the refund, \$500 should be transferred to the 2012 tax module, and the remaining \$1,200 should be treated as an erroneous refund to the extent the amount exceeds the refund (if any) claimed on the 2013 return.

**Note:** If Tax Shown on the Return is not entered via IRN 871 when using Priority Code 2, the programming will use the net tax assessed with that transaction (the net of TC 290 or TC 300, TC 764, and TC 766 refundable tax credits) in lieu of the Tax Shown on the Return amount. This means the input of IRN 871 is only required with Priority Code 2 if there is a math error on the return. It is never required for SFR assessments where the taxpayer has not filed a return.



- (4) Following the above procedures will ensure the FTP penalty will be computed correctly and systemically as applicable for the taxpayer's correct return, and for any future adjustments. While the above procedures are only required for certain situations, they are encouraged to be used in any situation where the wrong return posted first.

**Caution:** A return already erroneously posted in a module will have prevented any filed extension from being posted to the account if the extension was not input via IDRS command code FRM77! Employees MUST research cc TRDBV to determine if the taxpayer filed an extension of time to file for the period where the wrong return posted first. If evidence of a timely extension request is found, input TC 460 to allow the extension. Do **not** assess any late filing penalty without first performing this research!

20.1.2.2.6.4  
(07-18-2016)  
**PINEX**

- (1) The IRS provides explanations of all penalty and interest charges to the taxpayer when a Master File assessment notice is issued. Penalties and interest may also be explained to taxpayers "on request" using the Penalty and Interest Notice Explanation (PINEX) system.
- (2) Upon request, command code PINEX generates a notice of explanation to the taxpayer. The specific tax module requested must be on the Taxpayer Information File (TIF) data base and at least one unreversed penalty or interest transaction must be posted.
- (3) The PINEX notice includes a computation and explanation of selected computer generated penalty and interest charges.
- (4) PINEX notices **must** be reviewed for accuracy by the tax examiner requesting the notice. If the notice is correct it may be mailed to the taxpayer. The review should include comparison with penalty and interest on Master File. See IRM 20.1.2.2.6.1 (3), Identifying Incorrect Assessments, paragraph (3).
- (5) PINEX also provides screen displays of penalty and interest computations for an immediate response to telephone inquiries or requests at taxpayer assistance centers and field offices. IRS personnel may find the screen displays helpful in analyzing penalty and interest transactions in general. Available screen display command codes are:
  - INTST with definer "D" for Failure to Pay penalties and interest. (INTST with definer "D" has replaced FTPIN.)
  - PIFTF for systemic Failure to File penalties, including failure to file via the correct media, and failure to file partnership or S corporation returns.
  - PIEST for systemic estimated tax penalty assessments.
  - PIVAR for various other penalties that are systemically assessed.
  - FTDPN for systemic Failure to Deposit penalties.
  - PICRD for systemic credit interest computations.
- (6) See the applicable subsection of IRM 20.2.1 for more information about command codes listed above related to interest.
- (7) If a PINEX notice or screen display referenced above does not match the Master File computation, and the discrepancy cannot be traced to a pending



transaction, then the penalty may need to be manually computed and adjusted, with a manually prepared explanation of the penalty computation provided to the taxpayer. See IRM 20.1.2.2.6.1 , Identifying Incorrect Assessments for additional instructions.

- (8) Prior to processing cycle 201603 for BMF tax modules, and 201604 for IMF tax modules, command code INTST with definer "D", and PINEX FTP penalty computations, will display tax changes and credit changes separately in the FTP penalty computation table. After those cycles tax changes will be netted with changes in refundable tax credits to determine if the net amount is an increase or a decrease. A net increase will be depicted as a tax increase, and a net decrease will be depicted as a tax decrease. For example:
- A posted TC 301 for \$-500.00 with a secondary TC 765 for \$800.00 will be depicted as TC 300 for \$300.00.
  - A posted TC 290 for \$600 with a secondary TC 766 with CRN 336 for \$-1,000.00 will be depicted as TC 291 for \$-400.00.
  - A posted TC 300 for \$1,000.00 with a secondary TC 767 with CRN 260 for \$500.00 will be depicted as TC 300 for \$1,500.00.
  - A posted TC 295 for \$-600.00 with a secondary TC 764 for \$-200.00 will be depicted as TC 295 for \$-800.00.
  - A posted TC 298 for \$300.00 with a secondary TC 765 for \$200.00 will be depicted as TC 298 for \$500.00.
- (9) Carryback tax transactions will only be netted with those refundable tax credits affected by carryback adjustments.
- If a carryback transaction carries one or more secondary refundable tax credit transactions that are not affected by carryback adjustments, those refundable tax credit transactions will be taken into account separately as a tax increase or tax decrease, depending on the net amount of the transactions.
  - If a carryback tax transaction is secondary to a non-carryback tax transaction (other than TC 290 or TC 300 for zero amount), the refundable tax credits will be netted with the non-carryback tax transaction.

**Note:** The interest effective date of a refundable tax credit transaction will be the same as the interest effective date of the carryback transaction if the tax credit transaction is netted with the carryback transaction for FTP penalty purposes.

20.1.2.2.7  
(03-19-2019)  
**Short Years**

- (1) Generally, a new corporation filing a short-period return must file and pay by the date that would be the return due date if the taxable year had covered a full 12 months that ended when the short period ended. Failure to file and pay by the applicable due date (including any extensions) will subject the corporation to the applicable penalty for filing and/or paying late.
- (2) A corporation that has dissolved and files a "final" return generally also has to file by the date that would be the return due date if the taxable year had covered a full 12 months that ended when the short period ended. However, any penalty for filing late (IRC 6651(a)(1) or IRC 6699) should be suppressed if the "Final" return is filed and tax paid after the short period return due date but on or before the normal return due date as determined if the corporation's tax year had not ended early. See IRM 20.1.2.2.3 for rules covering the time to file or pay. These rules should be applied with respect to the normal return due

date, both for the purpose of determining the penalty for filing late, and the penalty for paying late.

**Note:** With respect to the effect of public law 114-41 (which changed the due date for C corporations), the begin date of the short taxable year (and not the begin date if the year had covered a full 12 months) is the determining factor in determining the date for filing and paying in paragraphs (1) and (2) above.

- (3) A corporation filing a return for a short period ending because the corporation becomes a member of an affiliated group has the same return due date as the consolidated return of the parent, or the due date it would have had (if its year had not ended early), whichever is earlier. See 26 CFR 1.1502-76 and IRM 3.11.16.7.4.1, Short Period Returns – 26 CFR 1.1502–76.

**Example:** Corporation “A” has a taxable year that began 1/1/2016 and that would have ended 12/31/2016. “A” became a member of an affiliated group in June 2016. If the taxable year of the affiliated group including the date of acquisition ends before 12/31/2016, then “A’s” short period (as defined in IRC 443) return is due on the 15th day of the 4th month following the end of the taxable year of the consolidated group. However, if the taxable year ends after 12/31/2016, then “A’s” short period return is due on 4/15/2017, the 15th day of the 4th month following 12/31/2016.

- (4) When the return due date computed by master file is incorrect, the instructions in IRM 21.7.4.4.4.2.1.2, Correcting the Form 1120 Return Due Date, may be followed to correct the return due date.
- (5) The final return of a decedent generally must be filed by the 15th day of the 4th month after the end of the year in which the taxpayer died. However, the personal representative of the decedent’s estate may choose to file the return early, prior to the end of the year of death. According to the subsection titled Early Filed Decedent Returns in IRM 3.12.3, Individual Income Tax Returns, the month of the date of death is entered as the month ending the “short” taxable year for the decedent’s final return. This causes IRS’s computers to calculate an artificial return and payment due date earlier than the legal return and payment due date, and will require manual interest and penalty computations for ANY balance due related to that return. To avoid unnecessary penalty and interest restrictions, only refund and zero balance returns should be processed as “early filed decedent returns.” In the case of a deficiency found on an early filed decedent return, serious consideration should be given to “re-processing” the early filed return as a calendar year return prior to assessment of the deficiency. See IRM 21.5.2.4.23, Reprocessing Returns/Documents, for specific instructions.
- (6) 26 CFR 1.6071-1(b) provides the Service Center Director may prescribe a return due date other than the **normal** return due date **for a short period return** if the taxpayer is able to show that unusual circumstances warrant such a change. This does not apply to a Domestic International Sales Corporation (DISC).
- (7) In general, any taxpayer required to file a return for a short period (other than due to the exceptions listed above) must file and pay by the due date determined with regard to the last month of the short year. Failure to file and pay by the applicable due date (including any extensions) will subject the taxpayer to the applicable penalty for filing and/or paying late.

20.1.2.2.8  
(02-27-2024)  
**Restrictions on  
Assertions**

- (1) According to IRM 1.2.1.12.2, Penalties and interest not asserted against Federal agencies, the IRS does not assert penalties against federal agencies. Also see IRM 21.7.1.4.5.2, Abatement of Penalty and Interest Involving Federal Agencies.
- (2) Generally the statute of limitations for assessing the penalty for filing late on a filed return is three years from either the due date or the date the return was filed, whichever is later.
- (3) Similar to interest, the penalties for failure to pay under IRC 6651 (a)(2) and (3) may be assessed at any time while it may be collected. See *United States v. Krasnow*, 548 F. Supp. 686 (S.D.N.Y. 1982).
- (4) There is no statute of limitations for assessing any penalty for filing late or paying late when a return has not been filed by the taxpayer.
- (5) An active criminal investigation (identified by Transaction Code (TC) 914) stops reminder notices from being issued, but it does not stop the penalty for paying late from accruing.

20.1.2.2.9  
(04-19-2011)  
**Frivolous Returns**

- (1) A frivolous return, subject to the penalty under IRC 6702, does not constitute a return for the purpose of the penalties for failure to file a return, or for failure to pay the tax shown on a return. See Rev. Rul. 2007-19, IRB 2007-14.

20.1.2.2.10  
(07-18-2016)  
**Hold Codes and Notices**

- (1) IRC 6651(a)(3) provides the penalty for failure to pay an assessment begins to accrue a given number of days following the date of the “notice and demand therefor.”
- (2) IRC 6601(e)(2)(A) provides interest on most penalties “shall be imposed only for the period from the date of the notice and demand to the date of payment.”
- (3) IRC 6303 requires IRS to give notice “as soon as practicable, and within 60 days, after the making of an assessment” stating the amount of the assessment, and demanding payment thereof.

**Exception:** IRS may assess tax, penalty, and interest without a notice IF the taxpayer computed **and paid** the amount due, and the amount assessed matches the amount computed by the taxpayer.

- (4) The use of Hold Codes 2, 3, or 4 with an assessment prevents IRS’s computers from generating an assessment notice meeting the requirements referenced above. Therefore, Hold Codes 2, 3, or 4 should NOT be used unless either the exception in paragraph (3) above applies, or a manual notice of assessment and demand for payment is made (for example a “C” letter) that meets all of the following requirements:
  - a. It must state the amount due and make demand for payment of the amount in the notice. A copy of the notice must be given to each person liable for payment; meaning, it must be left at the person’s residence or usual place of business. (See IRC 6303.)
  - b. It must give the name and Internal Revenue Code section of any penalty included in the notice and provide a computation of the penalty. (See IRC 6751.)

- c. It must give the Internal Revenue Code section under which any interest in the notice is assessed and provide a computation of the interest. (See IRC 6631.)
- (5) If a manual notice has been given to the taxpayer meeting the above criteria, the notice must be recorded in the module via IDRS command code FRM77 using transaction code 971 with action code 806:
- a. The date of the notice must be entered in the TRANS-DT field of IDRS command code FRM77.
  - b. The total balance due shown in the notice must be entered in the FREEZE-RELEASE-AMT field of FRM77.
  - c. The transaction date (23C date) of assessment must be entered in MMDDYYYY format in the MISC field of FRM77.
  - d. The remarks area should be used to identify where (for example DLN) a copy of the notice might be found if required in court.

**Note:** The requirements in paragraphs (4) and (5) above apply only to a notice and demand for payment. They do not apply to all correspondence, even if the correspondence informs the taxpayer about a balance due on his account. No additional interest or penalty may be charged beyond the date of a notice, if the amount shown due in the notice is paid within 21 days following the notice date (within 10 business days if the amount due in the notice is \$100,000 or more). A notice, therefore, would not contain penalty and interest computed to a future date, but only to the date of the notice.

20.1.2.3  
(02-27-2024)  
**Failure to File a Tax  
Return or to Pay  
Tax—IRC 6651**

- (1) IRC 6651 contains the following penalty provisions:
  - IRC 6651(a)(1), Failure to file any return required to be filed to report any tax.
  - IRC 6651(a)(2), Failure to pay tax shown on a return.
  - IRC 6651(a)(3), Failure to pay tax required to be shown on a return (but which is not so shown) upon notice and demand for payment thereof.
- (2) The following subsections provide additional guidance in the application of IRC 6651(a):
  - IRC 6651(b) prescribes how to determine the amount subject to this penalty.
  - IRC 6651(c) contains limitations when two penalties apply for the same month, and a special rule when tax required to be shown on the return is less than tax shown.
  - IRC 6651(d) provides for an increase in the failure to pay (FTP) penalty rate in certain cases.
  - IRC 6651(e) excepts estimated tax installments from the FTP penalty.
  - IRC 6651(f) provides for an increase in the failure to file (FTF) penalty when the failure to file is due to fraud.
  - IRC 6651(g) provides rules for the treatment of returns prepared under IRC 6020(b).
  - IRC 6651(h) provides for a decrease in the FTP penalty rate for qualifying taxpayers for any month during which an installment agreement is in effect for that specific tax.
  - IRC 6651(i) application to imputed underpayment failure to comply with IRC 6226(b)(4)(a)(ii) will be treated as a failure to pay.

20.1.2.3.1  
(04-19-2011)  
**Math Errors, Amended  
Returns and  
Deficiencies**

- (1) Tax in excess of tax shown on a return (or as previously adjusted) is essentially a deficiency as defined by IRC 6211. When the deficiency is determined by the IRS (except deficiencies determined as a result of correcting a math error or clerical error on the taxpayer's return), the deficiency procedures outlined in Subchapter B of Chapter 63 of the IRC must be followed.
- (2) Not all deficiencies require deficiency procedures be followed prior to assessment of the deficiency:
  - a. Taxpayers may waive the requirement for a notice of deficiency at any time a deficiency is determined. This includes when the taxpayer files and signs an amended return reporting additional tax. See IRC 6213(d).
  - b. Tax may be assessed without deficiency procedures if the tax has been paid. See IRC 6213(b)(4). Posting a bond to stop interest does not constitute payment of a proposed deficiency.
  - c. Tax may be assessed without deficiency procedures if the additional tax is determined as the result of correcting a mathematical or clerical error on the taxpayer's return. However, the taxpayer has the right to require the use of deficiency procedures by protesting the assessment within 60 days after the date of the assessment. If the taxpayer protests the math error assessment, the additional tax must be removed, and it can only be reassessed via normal deficiency procedures. See IRC 6213(b)(1) and (b)(2).
- (3) Deficiencies are assessed using Transaction Codes (TC) 29X or 30X, where the "X" represents the third digit of the transaction code as applicable. Deficiencies determined while correcting a mathematical or clerical error on the original return are assessed as part of the TC 150.
- (4) When any deficiency is assessed (regardless of source), IRS issues a notice of assessment and (if the deficiency has not been paid) demand for payment.
- (5) When the tax shown in the notice and demand for payment is not paid within 21 days after the date of the notice (10 business days if the total amount in the notice is \$100,000 or more), the assessment becomes subject to the penalty for failure to pay tax upon notice and demand under IRC 6651(a)(3).

20.1.2.3.1.1  
(07-02-2013)  
**Tax Decreases**

- (1) When the tax required to be shown on a return is less than the tax shown on the return (or less than the tax previously assessed), the FTP penalty is computed on the lesser amount. See IRC 6651(c)(2).
- (2) Net tax decreases are applied against tax increases, and against tax shown on the return, in *last in, first out* (LIFO) order, in determining the amounts subject to the FTP penalty under either IRC 6651(a) paragraph (2) or (3).
- (3) The examples in paragraphs (4) and (5) illustrate the mechanics of this process.
- (4) Taxpayer files an original return reflecting \$10,000 tax. IRS corrects a math error during processing of the return, and decreases tax to \$8,000. During a subsequent examination it is determined the correct tax is \$13,000, and the additional tax is assessed.

- At time of processing of the return, tax determined as required to be shown is less than tax shown. Therefore, amount subject to FTP penalty under IRC 6651(a)(2) is the lesser amount of \$8,000, and this amount becomes tax shown on the return.
  - After the examination the amount subject to FTP penalty under IRC 6651(a)(3) is the excess of \$13,000 over \$8,000.
- (5) Taxpayer files an original return reflecting \$8,000 tax. IRS corrects a math error during processing of the return, and increases tax to \$13,000. During a subsequent examination it is determined the correct tax is \$10,000, and the excess \$3,000 is abated.
- At the time of processing of the return, tax shown on the return is less than tax required to be shown as determined during processing. Therefore, the amount subject to the FTP penalty under IRC 6651(a)(2) is \$8,000.
  - After the math error assessment the amount subject to the FTP penalty under IRC 6651(a)(3) is the excess of amount ultimately determined to be the correct tax (\$10,000) over the amount shown on the original return (\$8,000).
- (6) Remember certain refundable credits must be taken into consideration when determining tax shown and required to be shown on a return. See IRM 20.1.2.3.8.4.1 (2) and IRM 20.1.2.3.8.5.1 (2).

20.1.2.3.2  
(07-18-2016)

**Erroneous Refunds and  
Offsets**

- (1) There is no provision in the IRC for charging any penalty for paying late when a payment of tax was refunded in error:
- a. If payment was remitted to pay tax shown on a return, that fact is not erased if the payment was refunded in error.
  - b. If a remitted payment was **clearly** intended to pay tax not yet assessed (i.e., an amended return, or a proposed deficiency), the fact is not erased if the payment was refunded in error. ("Clearly intended" means the payment was accompanied by clear written communication as to how the payment was to be applied.)
  - c. When a taxpayer fails to repay an erroneous refund upon notice and demand for payment, IRS still may not charge a failure to pay (FTP) penalty if the taxpayer fails to repay the erroneous refund. However, there is one exception to this rule: **If** the erroneous refund is the result of an erroneous abatement, **and** IRS determined a deficiency exists as a result of the erroneous abatement, **and** IRS assessed that deficiency following the deficiency procedures outlined in Subchapter B of Chapter 63 of the IRC, **then** that deficiency is subject to the FTP penalty under IRC 6651(a)(3) if the deficiency is not paid by the date stated in the notice and demand for payment.
- (2) IRS's computers generally cannot differentiate between a refund issued based on a taxpayer claim, and a refund issued in error. Refunds issued in error need to be properly identified with Transaction Code (TC) 844, regardless of who bears responsibility for causing the erroneous refund.
- (3) If the erroneous portion of the refund was less than \$50,000, and IRS caused the refund:
- TC 844 should reflect a demand date corresponding with the date IRS asked for voluntary repayment of the erroneous refund, and



- The amount of a refund erroneously due to IRS fault should be captured as the erroneous refund memo amount.

**Note:** In limited circumstances the IDRS penalty computation (INTST and PINEX) does not properly consider the TC 844 transaction in the FTP penalty computation. When this happens, FTP penalty must be manually computed and restricted. See IRM 20.1.2.2.6.1.

- (4) Voluntary repayment of an erroneous refund is identified by TC 720. In some tax modules a TC 700 “dummy” credit is used to prevent erroneous levy or lien actions for cases where the refund must be recovered either via suit or voluntary repayment. The dummy TC 700 credit must be reversed to the extent the refund has been repaid.
- (5) More information on erroneous refunds can be found in IRM 21.4.5.13, Interest and Penalty Consideration for Category D Erroneous Refunds, and in IRM 3.17.80, Working and Monitoring Category D, Erroneous Refund Cases in Accounting Operations.
- (6) IRS computers are currently not programmed to determine whether FTP penalty applies in an erroneous refund situation where the taxpayer pre-paid an assessment, and the payment was refunded before the tax was assessed. Therefore, the FTP penalty may need to be restricted if the computer is erroneously computing an FTP penalty in such an instance.
- (7) IRC 6402 gives IRS the authority to “make credits or refunds.” When an overpayment of tax is offset to pay another liability, IRS “made” the credit used in the offset.
- (8) When an erroneous credit is made to offset a non-tax obligation (aka an erroneous TOP offset), TOP offset reversal procedures should be used to recover the erroneous credit if possible. See IRM 21.4.6.4.2.9, TC 766 with OTN TOP Offset Reversal. If the credit cannot be recovered (see IRM 21.4.6.4.2.10, TC 899, Reversal or Agency Refund of TOP Offset), the same rules apply to the erroneous refunds in paragraphs (1) through (4) above.
- (9) When an erroneous credit is made to offset another IRS obligation (aka an erroneous TC 826/706 offset), the erroneous offset should be reversed using TC 821 and 701. Any credit interest allowed as a result of the offset must also be reversed with TC 772, and any offset of credit interest must be reversed with TC 851 and 731. Failure to reverse the erroneous credit (including credit interest) will result in incorrect penalties for paying late to be computed in all affected modules.

**Note:** If the erroneously credited module was paid in full prior to the reversal, and reflects a balance due after the reversal, IRS will generate a notice of the reversal for the taxpayer. If a notice will not be generated automatically, the taxpayer may need to be notified of the reversal action by other means such as via an IDRS letter.

(10) **In summary:**

- Erroneous refund procedures **MUST** be followed any time an erroneous refund is issued. Failure to follow erroneous refund procedures (even



when the erroneous refund was due to taxpayer error) will result in incorrect failure to pay (FTP) penalty computation in the affected module.

- All erroneous offsets MUST be reversed at the time any misapplied payment is corrected. This includes reversing any related credit interest allowed on the offset. Failure to reverse erroneous offsets (including TOP offsets) will result in incorrect FTP penalty computation on all affected modules.

#### 20.1.2.3.3 (04-19-2011)

##### **Credit for Withheld Income Tax and Excess FICA Tax**

- (1) For the purpose of the penalties for filing late or paying late, the credit for withheld income tax and the credit for excess withheld social security tax are considered “timely payments” rather than credits against tax, because they are specifically excluded from the definition of a deficiency under IRC 6211.
- (2) When an adjustment is made to a taxpayer’s timely payments, the penalty for failure to pay the tax shown on the return (under IRC 6651(a)(2)) only applies if the sum of the remaining timely payments is less than the total tax shown on the return.

**Example:** A taxpayer’s return showed total tax of \$1,000, credit for withheld tax of \$1,800. Based on the return as filed, the taxpayer was refunded \$800. If the credit for withheld tax is reduced from \$1,800 to \$1,100 (TC 807 for \$700), the penalty for failure to pay the tax shown on the return does not apply because the remaining credit (\$1,100) is greater than or equal to the total tax (\$1,000) shown on the return. If the credit for withheld tax is reduced from \$1,800 to \$600 (TC 807 for \$1,200), the penalty for failure to pay the tax shown on the return now does apply because the remaining credit (\$600) is less than the total tax (\$1,000) shown on the return. Unless the taxpayer shows the failure to pay was due to reasonable cause, IRS will, in this case, charge a penalty for failure to pay on \$400 of the tax shown on the return beginning with the payment due date, and ending on the date the tax is paid.

- (3) See IRM 20.1.2.3.8.4.1 for the definition of total tax shown on the return.

#### 20.1.2.3.4 (02-27-2024)

##### **Other Refundable Credits**

- (1) When certain refundable credits exceed total tax, the excess is treated as negative tax for the purpose of determining the excess of tax required to be shown on a return as compared to tax shown on a return. See IRC 6211(b)(4).

**Example:** A return reflecting zero income tax and \$3,000 earned income credit is examined. The result of the examination is that income tax remains zero, but earned income credit allowed is also zero. If the taxpayer previously received a refund of the earned income credit claimed on the return, IRS will issue a bill for \$3,000. If the bill is not paid within 21 days of notice and demand, the taxpayer will be liable for the penalty for failure to pay tax upon notice and demand. See IRM 20.1.2.3.8.5.1 (2). The amount considered *tax* in the notice is the excess of tax required to be shown on the return (\$0) over the amount of tax shown on the return (\$-3,000). (The amount you have to add to \$-3,000 in order to get to \$0 is \$3,000; and that is the excess of \$0 over \$-3,000.)

- (2) IRM 20.1.2.3.8.4.1 (2) and IRM 20.1.2.3.8.5.1 (2) list the refundable credits

considered “negative tax” (rather than payments) for the purpose of computing the penalties for filing and paying late.

**Reminder:** The “credit per taxpayer” amount is used for computing “tax shown on the return”. The “allowable credit” amount is used for computing “tax required to be shown on the return.”

- (3) When refundable credits referenced in IRM 20.1.2.3.8.4.1 (2) and IRM 20.1.2.3.8.5.1 (2) are adjusted, the adjustment in credit must be combined with any increase or decrease in tax.
  - If the result is a net increase, the FTP penalty under IRC 6651(a)(3) is computed on the net increase, and the computation starts 21 days following the notice date of the adjustment (10 business days following the notice date if the amount in the notice was \$100,000 or more).
  - If the result is a net decrease, the net decrease is applied to reduce the most recent net increase. See IRM 20.1.2.3.1.1, Tax Decreases, for more information.
- (4) For case-specific instructions covering failure to pay (FTP) penalty computations involving adjustments to the regulated investment credit from box 2 of Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains, contact the appropriate analyst in the Office of Servicewide Penalties. Contact information can be found on the Intranet at *Office of Servicewide Penalties (OSP) Staff List & Responsibilities (sharepoint.com)*.

20.1.2.3.5  
(07-18-2016)  
**Carrybacks and  
Carryovers**

- (1) Tax decreases resulting from any carryback do **not** affect the amount of tax required to be shown on the return as of the due date of that return. Therefore, these adjustments do **not** affect the penalty for failure to file.
- (2) IRC 6601(d) provides any tax decrease resulting from a carryback will not affect the balance of tax subject to interest prior to the filing date of the return causing the carryback. This means tax decreases resulting from any carryback are treated the same as credits offset against any unpaid tax effective with the due date of the return where the carryback originated; or, if earlier, on the date the carryback claim was processed.

**Example:** A 2015 Form 1120, U.S. Corporation Income Tax Return, was due March 15, 2016, but was filed four months late on June 27, 2016. The return reflected total tax of \$50,000, and estimated tax paid in the amount of \$43,000. The balance due of \$7,000 was paid in full with the return. IRS assessed a penalty for paying late of \$140, and a penalty for filing late of \$1,260 computed as follows:

**Amounts used in the computation:**

Computational lines	Amounts used in FTP penalty computation	Amounts used in FTF penalty computation
a) Tax shown on the original return, or tax required to be shown if less	50,000	blank
b) Tax required to be shown	blank	50,000

Computational lines	Amounts used in FTP penalty computation	Amounts used in FTF penalty computation
c) Tax paid on or before the due date	43,000	43,000
d) Unpaid tax on 3/15/2016	7,000	7,000
e) Monthly penalty rate	0.5%	5%
f) Months late	4	4
g) Penalty (d x e x f)	140	1,400
h) IRC 6651(c)(1) reduction	blank	-140
i) Net penalty	140	1,260

A carryback adjustment originating on the 2016 return subsequently decreased 2015 tax by \$12,000. The penalties for filing and paying late are not affected because for the purpose of computing interest and penalty, the \$12,000 tax decrease is treated the same as a \$12,000 payment or credit applied to the 2015 account on the due date of the 20016 return, which is 3/15/2017.

- (3) For rules and case law supporting this position, see Rev. Rul. 72-484, 1972-2 C.B. 638, and *Blanton Coal Co. v. Commissioner*, T.C. Memo 1984-397.
- (4) While a decrease in tax resulting from a carryback adjustment does not change the amount of tax required to be shown on a return as of the return due date, it does change the amount of tax *shown* on that return. Therefore if subsequent to a carryback adjustment it is determined the adjustment should not have been allowed, and all or part of the previously allowed decrease is reassessed, then the penalty for paying late will apply if the assessment is not paid within 21 days from the date of the notice (10 business days if the amount in the notice is \$100,000 or more). However, again because tax changes resulting from a carryback do not change the amount required to be shown on a return on the return due date, the penalty for filing late is not affected by the reassessment.

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(4) through (7).

- (5) When refundable credits listed in IRM 20.1.2.3.8.4.1 (2) and IRM 20.1.2.3.8.5.1 (2) are increased or decreased as a result of a carryback adjustment, that increase or decrease must be netted against any increase or decrease in net tax (TC 298, 299, 308 or 309) resulting from the carryback adjustment. The net result is the net increase or decrease for the purpose of computing any FTP penalty.

(6) Prior to 2016 the computer did not automatically net the refundable tax credit with the carryback transaction when computing FTP penalty. Beginning in 2016 the computer will automatically associate changes in refundable tax credits as follows for the purpose of computing the FTP penalty:

- Refundable tax credits changed as a direct result of the carryback will be netted with the carryback transaction as long as there is no non-carryback tax change present.
- A change in a refundable tax credit that would not change because of a carryback is treated as a non-carryback tax change.
- When a non-carryback tax change is part of an overall transaction, all refundable tax credit changes in the transaction are netted with the non-carryback tax change.

**Example:** If a TC 295 for (\$600) posts with a TC 764 for (\$300), then the net carryback decrease is (\$900). If a TC 291 for (\$200) posts with a TC 295 for (\$300) and a TC 765 for \$600, then the TC 291 amount would be netted with the TC 765 amount for a net tax increase of \$400, and a carryback decrease of (\$300).

**Caution:** Because of the way credits are associated under the above rule set, do NOT combine carryback transactions with non-carryback transactions unless any changes in refundable tax credits in the combined transaction are NOT the result of the carryback!

(7) Net operating losses and unused credits that are **carried forward** (meaning that the due date of the return that gives rise to the carryover is earlier than the date prescribed for payment for the tax year to which the loss or credit is carried) are used in computing the tax required to be shown on the due date of the return. Therefore, these amounts are used to determine the amounts subject to the penalty for failure to pay the tax shown on the return, and for failure to file.

**Example:** As in the previous example, a 2015 Form 1120 was due March 15, 2016, but was filed four months late on June 27, 2016. The return reflected total tax of \$50,000, and estimated tax paid in the amount of \$43,000. The balance due of \$7,000 was paid in full with the return. And, as in the previous example, IRS assessed a penalty for paying late of \$140, and a penalty for filing late. However, in this case the corporation's 2014 return is examined, and it is determined the corporation has unused credits in the amount of \$12,000 which can be carried forward to the late-filed 2015 return. Because the due date of the 2014 return is earlier than the due date of the 2015 return, tax required to be shown on the 2015 return is now less than the amount originally shown. Pursuant to IRC 6651(b)(1) and (c)(2), the revised penalties for filing late and paying late are now computed as follows:

**Amounts used in the computation:**

Computational lines	Amounts used in FTP penalty computation	Amounts used in FTF penalty computation
a) Tax shown on the original return, or tax required to be shown if less	38,000	blank
b) Tax required to be shown	blank	38,000
c) Tax paid on or before the due date	43,000	43,000
d) Unpaid tax on 3/15/2016	0	0
e) Monthly penalty rate	0.5%	5%
f) Months late	4	4
g) Penalty (d x e x f)	0	0
h) IRC 6651(c)(1) reduction	blank	0
i) Net penalty	0	0

- (8) Changes to refundable tax credits arising out of tentative carryback actions (TCs 294, 295, 304, and 305) follow the same rules of association as carryback adjustments of tax (TCs 298, 299, 308, and 309). See paragraphs (5) and (6) above.
- (9) For the purpose of computing the FTP penalty, after applying the netting in paragraphs (5) and (6), the following rules apply:
- A **net** carryback **decrease** (TCs 298, 299, 308, 309), or a **net** tentative carryback **decrease** (TCs 294, 295, 304, 305), are treated as a payment-equivalent credit against tax effective as of the interest computation date of the carryback (generally the return due date of the return where the carryback originated).
  - A **net** carryback **increase** (TCs 298, 299, 308, 309) is treated as a tax assessment. (See paragraph (4) above.)
  - A net tentative carryback **increase** is treated as a reversal of the payment-equivalent credit referenced in the first bullet above.
- (10) Also see IRM 21.5.9, Carrybacks, and IRM 20.2.9, Interest on Carryback of Net Operating Loss.

20.1.2.3.6  
(04-19-2011)

**Assessment/Abatement  
Procedures**

- (1) Examiners securing delinquent returns will solicit any explanation the taxpayer may provide to help determine if the penalty for failure to file and/or pay should be applied.

**Reminder:** The penalty does not apply if the failure to file or pay was due to reasonable cause, and not due to willful neglect.

- (2) When adjusting tax or credits on a late filed return, determine if a penalty for filing or paying late was previously assessed or abated, and consider any factors that would apply to these penalties on a proposed tax adjustment:

- a. If the examination of a return results in an overall decrease, any penalty for filing or paying late should be recomputed and reduced based on the revised lower tax liability.

**Note:** If the penalty for filing late or paying late is not restricted, the computer (Master File) will automatically recompute both the penalty for filing late and paying late when a tax decrease and/or credit increase is posted. The tax module should not be unnecessarily restricted with a manual penalty adjustment. (AMCLS will require manual input of penalty decrease if a delinquent return indicator is present on AMDIS. Do not enter TC 160 .00 to bypass requirement to address FTF penalty on a late filed return if the FTF penalty was previously assessed.)

- b. If the examination of a return results in a deficiency, any penalty for filing late attributable to the deficiency must be included in the notice of deficiency, and must be assessed as part of the deficiency. The penalty for paying late on tax assessed prior to the deficiency does not need to be addressed. The penalty for failure to pay the deficiency is automatically addressed by Master File, and does not need to be addressed as part of the deficiency.
  - c. Anytime that tax or timely credits are adjusted on a return with a restrictive failure to file (FTF) penalty assessment posted in the module (Transaction Code (TC) 160), the FTF penalty must either be manually recomputed and adjusted, or the penalty restriction must be removed with TC 162 for zero amount. (This does not apply to the FTF penalties under IRC 6698 or under IRC 6699.)
- (3) When a partnership audit results in an additional tax liability for a partner—whether or not it relates to a partner-level determination—and the partner’s return was delinquent, the penalty for filing late is recomputed based on the partner’s increased tax liability. The increase in tax attributable to the partnership audit, and any corresponding increase in penalty for filing late, does not follow deficiency procedures and is directly assessed. See IRC 6230(a), IRC 6665(a)(1) and 26 CFR 301.6231(a)(6)-1. To contest this assessment in court, the partner must first pay the full amount of the penalty and file a claim for refund of the penalty paid. See IRC 6230(a)(1), IRC 6230(c)(4), IRC 7422, and IRC 6532. However, this does not preclude the taxpayer from seeking administrative abatement of the penalty prior to payment based on reasonable cause for filing late.

**Note:** This provision only applies for partnership taxable years beginning prior to January 1, 2018 to which the partnership procedures of sections 6221-6234, as enacted by the Tax Equity and Fiscal Responsibility Act of 1982 (“TEFRA”), apply for the taxable year.

20.1.2.3.7  
(04-19-2011)  
**Failure to File a Tax  
Return—IRC 6651(a)(1)**

- (1) IRC 6651(a)(1) imposes a penalty for failure to file a tax return by the date prescribed for filing (including extensions), unless it is shown the failure is due to reasonable cause and not due to willful neglect. See IRM 20.1.1.3, Criteria for Relief From Penalties, for a discussion of penalty relief.
- (2) For each month or part of a month the return is late, the penalty is 5 percent of the amount subject to the penalty.
  - See IRM 20.1.2.3.7.1 for determining the months the return is late.



- See IRM 20.1.2.3.7.2 for determining the amount subject to the penalty.

(3) The maximum penalty is 25 percent of the unpaid tax on the payment due date, unless the minimum penalty applies. See IRM 20.1.2.3.7.4.

20.1.2.3.7.1  
(04-19-2011)

**Period Subject to IRC 6651(a)(1)**

(1) The period subject to the penalty for filing late under IRC 6651(a)(1) begins on the day following the latest of the following dates:

- The normal return due date.
- The extended return due date in the case of an approved extension of time to file under IRC 6081 or related regulations. See IRM 20.1.2.2.3.1 and IRM 20.1.2.2.3.3.
- The disaster due date after application of periods to be disregarded under IRC 7508A. See IRM 20.1.2.2.2.
- The combat zone due date after application of periods to be disregarded under IRC 7508. See IRM 20.1.2.2.2.1.

(2) Each month subject to the penalty ends on the day of the month corresponding with the day of the month of the latest return due date as determined above, and each new month subject to the penalty shall begin the next day, with the following exceptions:

- In the case where the day of the month of the due date is the last day of the month, each new month subject to penalty shall begin on the first day of the following month.
- In the case of February, if the day of the month of the due date does not exist in February (i.e., if the day of the month is the 29th or the 30th), the new month subject to penalty shall begin on the first day of March.

(3) Because the penalty cannot exceed 25 percent, it is not charged for more than 5 months.

20.1.2.3.7.2  
(04-19-2011)

**Amount Subject to IRC 6651(a)(1)**

(1) The amount subject to the penalty is the tax required to be shown on the return, reduced by the following:

- The amount paid on or before the date prescribed for payment of the tax without regard to any extensions of time to file or pay.
- The amount of any credit against the tax that may be claimed on the return. See IRC 6651(b)(1).

**Note:** When periods to be disregarded for filing are also disregarded for paying, the amount paid on or before the due date for filing is to include any amounts paid by the due date for payment as determined with regard to IRC 7508 or IRC 7508A. See IRM 20.1.2.2.2.

(2) The amount subject to penalty is not reduced by any payment made after the payment due date, unless paid during a period to be disregarded in determining if the payment is late. See IRM 20.1.2.2.2

**Reminder:** An extension of time to file or pay does not change the date prescribed for payment for the purpose of computing interest or for computing the penalty for filing late.



20.1.2.3.7.3  
(04-19-2011)  
**Limitation Under IRC 6651(c)(1)**

- (1) IRC 6651(c)(1) provides the penalty for filing late under IRC 6651(a)(1) is to be reduced by the amount of any penalty for paying late imposed under IRC 6651(a)(2) for any month during which both penalties apply.
- (2) The above reduction does not reduce the total penalty for filing late below the minimum penalty, if applicable. See IRM 20.1.2.3.7.4.

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20.1.2.3.7.4  
(02-27-2024)  
**Minimum Penalty**

- (1) If the return is more than 60 days late, and the normal computed penalty is less than the amount listed in the table below, then a minimum penalty applies:

Return Due Date (w/o extension)	Minimum Amount
On or before 12/31/2008	\$100.00
Between 01/01/2009 and 12/31/2015	\$135.00
Between 01/01/2016 and 12/31/2017	\$205.00
Between 01/01/2018 and 12/31/2019	\$210.00
Between 01/01/2020 and 12/31/2022	\$435.00
Between 01/01/2023 and 12/31/2023	\$450.00
After 12/31/2023	\$485.00

**Note:** The \$485 minimum in the table above is subject to inflation adjustments. Inflation adjustments are published at least annually via Revenue Procedures.

- (2) If the total unpaid tax on the return due date (amount subject to IRC 6651(a)(1) - see IRM 20.1.2.3.7.2) is less than the amount in the table above, then penalty is the lesser amount.
- (3) The minimum penalty applies only to income tax returns. It does not apply to employment tax, excise tax, gift tax, or estate tax returns. It also does not apply to individual income tax returns if the taxpayer was not required to file except to report the following:
  - Self-employment tax;
  - Uncollected social security tax;
  - Employment tax (Schedule H); or
  - Excise tax (Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts, other than the 10 percent tax on early distributions from Part I of the form.)

20.1.2.3.7.5  
(07-02-2013)

**Fraudulent Failure to  
File—IRC 6651(f)**

- (4) Abate any excessive minimum penalty amount using Transaction Code (TC) 161 with Penalty Reason Code (PRC) 045.
- (1) IRC 6651(f) provides for an increase in the penalty rate for failure to file if the failure to file is fraudulent. The penalty rate is increased from 5 percent per month to 15 percent for each month or part of a month the return is late, and the maximum penalty is increased from 25 percent of the amount subject to IRC 6651(a)(1) (see IRM 20.1.2.3.7.2) to 75 percent of that amount.
  - (2) The fraudulent failure to file (FFTF) penalty is a counterpart of the civil fraud penalty under IRC 6663 and should be investigated and asserted in the same manner.
    - a. The burden of proof is on the government to establish FFTF.
    - b. The fraud components of the FFTF penalty and the civil fraud penalties are generally similar. The civil fraud penalty requires an underpayment attributable to the willful and knowing intent to defraud. The FFTF penalty requires all or part of the tax required to be shown on the return was unpaid on the due date for payment.
    - c. The intent element of the civil fraud and the FFTF penalties are the same.
    - d. The FFTF penalty is asserted on a case-by-case basis after considering all the facts and circumstances surrounding the failure to file. There must be clear and convincing evidence the failure to file was done with the intent to evade taxes.
  - (3) The following factors should be considered when developing a FFTF case:
    - a. The taxpayer refuses to, or is unable to, explain the failure to file;
    - b. The taxpayer's statement does not agree with the facts of the case;
    - c. There is a history of failing to file or late filing, but an apparent ability to pay;
    - d. The taxpayer fails to reveal or tries to conceal assets;
    - e. The taxpayer pays personal and business expenses in cash when cash payments are not usual, or cashes rather than deposits business receipt checks and
    - f. The taxpayer is aware of the filing requirement.

**Reminder:** Factor *f* above should not be used as the sole factor for determining the penalty, but should be used in conjunction with the above factors *a* - *e*.

- (4) When a return was filed late due to fraud, and the return reflects a deficiency due to fraud, Area Counsel should be consulted in deciding whether to propose the civil fraud penalty under IRC 6663, or the fraudulent failure to file penalty under IRC 6651(f).

**Note:** The FFTF penalty generally should **not** be proposed if the late filed return reflected a refund as originally filed.

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- (6) A criminal conviction under IRC 7203 does not prevent the taxpayer from disputing the FFTF penalty under IRC 6651(f); however, the taxpayer is collaterally estopped from challenging the regular FTF penalty under IRC 6651(a). Only a criminal conviction under IRC 7201 collaterally estops the taxpayer from disputing fraud penalties. See IRM 4.8.9.18.4, Civil Fraud Penalty, and IRM 4.8.9.18.5, Alternative to Civil Fraud Penalty, for the parallel consideration with respect to the civil fraud penalty under IRC 6663 and the criminal sanction with respect to tax evasion under IRC 7201. See also IRM 25.1.7.7, Civil Closure, on the same issue.

20.1.2.3.7.5.1  
(07-02-2013)

**FFTF Penalty  
Assessment—Procedural  
Requirements**

- (1) The FFTF penalty is computed based on the entire tax required to be shown on the taxpayer's return. However, the penalty generally must be assessed in two parts:
- FFTF penalty attributable to tax shown on the return (or as previously corrected).
  - FFTF penalty attributable to any deficiency.
- (2) All FFTF penalty proposals must be approved by Area Counsel.
- (3) Unless the taxpayer signed a waiver and agreed to the assessment of FFTF penalty with respect to tax shown on his return, a 30 day letter package proposing the penalty based on tax shown on the return (or as previously adjusted) must generally be prepared, approved by Area Counsel, and sent to the taxpayer (for example, Letter 2777, Pre-Assessment appeals letter for the fraudulent failure to file penalty, Form 4549, Report of Income Tax Examination Changes, and Form 886-A, Explanation of Items.) Unless already assessed, the proposal should always include the regular FTF penalty as an alternative position in case the FFTF penalty is not sustained on appeal or in litigation.
- (4) If a deficiency is not being proposed, then deficiency procedures are not required for the assessment of the FFTF penalty, and the 30 day letter package will be the Examiner's Report referenced in the assessment notice. Therefore, the 30 day letter package must include information regarding the taxpayer's appeal rights with respect to the penalty determination:
- If the assessment statute is not in jeopardy (not within 6 months or less), the taxpayer may request a conference with Appeals prior to assessment of the penalty. If Appeals sustains the penalty, the penalty will be assessed, and the taxpayer will need to pay the penalty and then file a claim for refund in the U.S. Court of Claims in order to gain judicial review of the penalty.
  - If the assessment statute will expire within 6 months or less, the penalty will be assessed immediately (without waiting for a response to the 30 day letter), and the taxpayer can appeal the penalty by requesting a Collection Due Process hearing, and challenge the penalty at that time; or, the taxpayer can pay the penalty and then file a claim for refund in the U.S. Court of Claims.

**Note:** The taxpayer will be able to gain judicial review without first paying the penalty if an IRS official abused their discretion in applying or sustaining the penalty.

- (5) If a 6020(b) return has been prepared, and a subsequently valid return is filed, the period of limitations within which to assess the FTFF penalty is 3 years from the date the valid return is filed, regardless of any previous fraudulent failure to file.
- (6) If a deficiency is being proposed, and the FTFF penalty was proposed and sustained with respect to tax shown on the return, then the FTFF penalty with respect to the deficiency must be included in the 30 day letter proposing the deficiency, and in any notice of deficiency. The civil fraud penalty should **not** be proposed in lieu of the FTFF penalty in that case.
- (7) If Area Counsel reviewed and approved the FTFF penalty with respect to tax shown on the original return, further review and approval of the penalty with respect to any deficiency is still required.
- (8) IRC 6751(b)(2)(A) in general excludes IRC 6651 from the requirement of written approval by the immediate supervisor prior to assessment. However, the penalty for fraudulent failure to file under IRC 6651(f) should not be treated as included in this exception, and written managerial approval should be obtained on the current penalty approval form (for example, the lead sheet "Penalty Approval Form" in RGS).

20.1.2.3.7.5.1.1  
(07-02-2013)  
**FTFF Penalty  
Assessment — Joint  
Returns**

- (1) The FTFF penalty should be considered separately with respect to each spouse when a joint return was filed. The IRS's default position is both spouses are equally culpable in the case of a failure to file due to fraud involving a joint return. However, if one spouse is able to provide evidence, with respect to the spouse, the failure was not due to fraud, then the FTFF penalty should be proposed only with respect to the other spouse.
- (2) If the FTFF penalty is being proposed with respect to only one spouse on a joint return, the assessment should be treated as an innocent spouse case with respect to at least the FTFF penalty, and processed accordingly.
- (3) If the FTFF penalty is being assessed against only one spouse on a joint return, the regular FTF penalty should be assessed against the other spouse, unless that spouse can show that, with respect to that spouse, the failure to file was due to reasonable cause, and not due to willful neglect.

**Example:** H & W filed a joint return after being investigated by CI. After proposing the FTFF penalty, W provides a copy of a check register listing a check allegedly payable to IRS for the amount shown due on the return, as well as a bank statement showing the check as having cleared the bank. W states she prepared the return and check in good faith, and turned them over to her husband to sign and mail. She was not aware her husband had changed the payee on the check, and deposited it in another account, and the return had never been mailed. While IRS might propose the FTFF penalty against H in this case, W has demonstrated her failure to file was due to reasonable cause, and not willful neglect.

20.1.2.3.7.5.1.2  
(07-02-2013)  
**FTFF Penalty  
Assessment Process**

- (1) Do NOT use Form 8485, Assessment Adjustment Case Record, to abate any FTFF penalty (IRC 6651(a)(1)) previously assessed with Transaction Code 160 or 166. This practice is discontinued immediately.
- (2) IRC 6651(f) provides for an increase in the penalty rate at which the penalty under IRC 6651(a)(1) is assessed. So much of the FTFF penalty as exceeds

any FTF penalty previously assessed via TC 160 or TC 166 is to be assessed via penalty reference number (PRN) 686.

**Note:** If no FTF penalty was previously assessed, the regular FTF penalty should be computed and assessed via TC 160 when assessing the FFTF penalty. This protects the interest of the IRS in case the FFTF penalty is not sustained on appeal.

- (3) The FTF and FFTF penalties are assessed on the MFT where the taxpayer's return is posted, unless innocent spouse procedures apply with respect to the penalties, in which case they are assessed on MFT 31 as applicable.
- (4) With respect to tax shown on the return (or as previously corrected) assess the penalty using PRN 686 as a partial assessment. Remember: This amount must be assessed prior to the expiration of the normal assessment statute expiration date (ASED).
- (5) With respect to a deficiency, assess the FFTF penalty using PRN 686 as part of the deficiency assessment.
- (6) Assess the FFTF penalty on MFT 31 with respect to each spouse separately (as applicable), in the case of a joint return where —
  - Only one spouse agrees to the deficiency (or to the proposed FFTF penalty if there is no deficiency).
  - The penalty is proposed with respect to only one spouse.
  - Only one spouse files a petition in tax court, or each spouse files a separate petition in tax court.
  - One spouse files an innocent spouse claim.
- (7) See IRM 21.6.8, Split Spousal Assessments.
- (8) Do NOT assess the FFTF penalty on MFT 55 via PRN 635 using Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties. This practice is discontinued effective immediately.
- (9) For fraudulent failure to file Form 5329, Additional Tax on Qualified Plans, (other than 10 percent additional tax for premature distributions), assess the FFTF penalty on MFT 29 for the taxpayer required to file Form 5329.

20.1.2.3.7.5.1.3  
(07-02-2013)

#### **Abatement of the FFTF Penalty**

- (1) After the FFTF penalty has been assessed it may be determined (for example, on appeal) the penalty does not apply. Additionally, IRS employees may find cases where the amount of the FFTF penalty assessed was in excess of the amount allowed by law. Under either circumstance the FFTF penalty may need to be abated. The abatement process depends on the methodology used when the penalty was assessed. Follow the IF/Then chart below for listed scenarios. Contact the applicable analyst in the Office of Servicewide Penalties for case-specific instructions not covered in the chart below.

**Note:** Functional areas without a centralized case processing area do NOT need to prepare the Form 3870, Request for Adjustment, and/or Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, referenced in the table below. The adjustments can be made via direct IDRS input using command code ADJ54.

IF	THEN
<ul style="list-style-type: none"> <li>It is determined the FFTF penalty does not apply; and</li> <li>The FFTF penalty was assessed at least in part on MFT 55 under the old procedures; and</li> <li>The regular FTF penalty was previously abated on MFT 30 (or 31); and</li> <li>The period of limitations on assessments <b>has not</b> yet expired with respect to tax shown on the return.</li> </ul> <p><b>Note:</b> If the entire penalty was assessed on MFT 30 or 31 see “The entire penalty was assessed on MFT 30 ...” later in this table.</p>	<ul style="list-style-type: none"> <li>Prepare Form 8278 with penalty reference number (PRN) 635 for the amount to be abated on MFT 55. The amount to be entered on Form 8278 is the amount of TC 240 with PRN 635 posted on MFT 55.</li> <li>Prepare Form 3870, Request for Adjustment, to assess the total regular FTF penalty in the return module with TC 160.</li> <li>Include PRN 686 for a negative amount on Form 3870 for any unreversed FFTF penalty posted in the module with TC 240 with PRN 686.</li> </ul>
<ul style="list-style-type: none"> <li>It is determined the FFTF penalty does not apply; and</li> <li>The penalty was assessed in part on MFT 55 under the old procedures; and</li> <li>The regular FTF penalty was not previously abated on MFT 30 (or 31); and</li> <li>The statute of limitations on assessments <b>has not</b> yet expired.</li> </ul> <p><b>Note:</b> If the entire penalty was assessed on MFT 30 or 31 see “The entire penalty was assessed on MFT 30 ...” later in this table.</p>	<ul style="list-style-type: none"> <li>Prepare Form 8278 with penalty reference number (PRN) 635 for the amount to be abated on MFT 55. The amount to be entered on Form 8278 is the amount of TC 240 with PRN 635 posted on MFT 55.</li> <li>Prepare Form 3870 with PRN 686 for a negative amount to abate any unreversed FFTF penalty posted in the return module.</li> <li>Include on Form 3870 a TC 160 for any regular FTF due not previously assessed.</li> </ul>
<ul style="list-style-type: none"> <li>It is determined the FFTF penalty does not apply; and</li> <li>The penalty was assessed at least in part on MFT 55 under the old procedures; and</li> <li>The period of limitations on assessments <b>has</b> expired with respect to tax shown on the return.</li> </ul> <p><b>Note:</b> NOTE: If the entire penalty was assessed on MFT 30 or 31 see “The entire penalty was assessed on MFT 30 ...” later in this table.</p>	<ul style="list-style-type: none"> <li>Prepare Form 8278 with penalty reference number (PRN) 635 for the amount to be abated on MFT 55. The amount to be entered on Form 8278 is the amount of TC 240 with PRN 635 posted on MFT 55 in excess of the regular FTF penalty that is not attributable to a deficiency.</li> <li>Prepare Form 3870 with PRN 686 for a negative amount equal to any excess FFTF penalty posted in the return module. The excess FFTF penalty is the excess of the sum of the TC 240 with PRN 686 amount plus any regular FTF penalty assessed with TC 160 or TC 166, over the regular FTF penalty legally assessable for the module; but not more than the amount of the posted TC 240 with PRN 686.</li> <li>If the total regular FTF penalty assessed in the module also exceeds the legally assessable amount, include TC 161 on Form 3870 with a negative amount equal to the excess.</li> </ul>



IF	THEN
<ul style="list-style-type: none"> <li>It is determined the FTFF penalty does not apply, and</li> <li>No part of the penalty was assessed on MFT 55; and</li> <li>The period of limitations on assessment with respect to tax shown on the return <b>has</b> expired.</li> </ul>	<ul style="list-style-type: none"> <li>Prepare Form 3870 with PRN 686 for a negative amount to abate the excess FTFF penalty posted in the module, but not more than posted with TC 240 with PRN 686.</li> <li>If the excess FTFF penalty exceeds the amount assessed with TC 240 with PRN 686, abate the additional excess using TC 161.</li> <li>The excess FTFF penalty in this case is the amount of the TC 240 with PRN 686, plus any regular FTF penalty posted in the module with TC 160 or TC 166, minus the FTF penalty legally assessable.</li> </ul>
<ul style="list-style-type: none"> <li>It is determined the FTFF penalty does not apply; and</li> <li>No part of the penalty was assessed on MFT 55; and</li> <li>The period of limitations on assessment with respect to tax shown on the return <b>has not</b> expired.</li> </ul>	<ul style="list-style-type: none"> <li>Prepare Form 3870 with PRN 686 for a negative amount to abate the entire FTFF penalty posted in the module with TC 240 with PRN 686.</li> <li>Include on Form 3870 a TC 160 for so much of the legally assessable regular FTF penalty as is not already posted in the module as a TC 160 or TC 166.</li> </ul>
<ul style="list-style-type: none"> <li>It is determined the FTFF penalty applies; but</li> <li>The sum of the FTFF penalty assessed on MFT 55 as TC 240 with PRN 635, plus the FTFF penalty assessed on MFT 30 (or 31) as TC 240 with PRN 686, plus the regular FTF penalty assessed on MFT 30 (or 31) as TC 160 or TC 166, exceeds the legally assessable amount.</li> </ul>	<ul style="list-style-type: none"> <li>Prepare Form 8278 with PRN 635 for a negative amount. Use the lesser of the amount of the TC 240 with PRN 635 posted on MFT 55, and the computed excess FTFF penalty.</li> <li>If the excess FTFF penalty has not been eliminated by the step above, prepare Form 3870 with TC 161 for a negative amount. Use the lesser of the net regular FTF penalty assessed in the return module with TC 160 or TC 166, or any remaining excess FTFF penalty.</li> <li>If the excess FTFF penalty has not been eliminated by the step above, include on Form 3870 PRN 686 for a negative amount equal to any remaining excess FTFF penalty.</li> </ul>

20.1.2.3.7.6  
(02-27-2024)

**Cross-references**

- (1) For periods disregarded in determining the due date used for computing the penalty, see IRM 20.1.2.2.2, Disregarded Periods.
- (2) For individuals and entities outside the United States, see IRM 20.1.2.2.3.3, Taxpayers Abroad.
- (3) For return due dates (without regard to extensions), see Document 6209, Section 2, Part 3, Due Date of Returns.
- (4) For explanatory language regarding the failure to file (FTF) penalty on a notice of deficiency, see IRM 4.8.9.18.2.4, Penalty Explanations.



20.1.2.3.8  
(04-19-2011)  
**Failure to Pay Tax—RC  
6651(a)(2) and (3)**

- (1) Taxpayers are required to pay the tax shown on their returns without assessment or notice and demand for payment. The due date for payment of tax shown on the return is the due date for filing, without regard to any extension of time to file. See IRC 6151(a). However, see IRM 20.1.2.2.2 for periods that are disregarded in determining whether a taxpayer paid on time, and see IRM 20.1.2.2.3.2 for extensions of time to pay.
- (2) Some taxpayers may elect under IRC 6014 to have IRS compute the tax shown on their return. In the case of a taxpayer who has made this election, the due date for tax shown on the return is 30 days after the date of notice and demand stating the amount of tax due. See IRC 6151(b).
- (3) When the tax shown on a return is less than the tax required to be shown, the taxpayer is required to pay the additional amount by the date stated in the notice and demand for payment issued by the IRS. See IRC 6155. However, see IRM 20.1.2.2.2 for periods disregarded in determining whether a taxpayer paid on time, and IRM 20.1.2.2.3.2 for extensions of time to pay.
- (4) In the case of any failure to pay on or before the date fixed for payment, a penalty is assessed for failure to pay unless the failure is due to reasonable cause and not due to willful neglect.
- (5) See IRM 20.1.2.3.8.4 for failure to pay tax shown on the return, and see IRM 20.1.2.3.8.5 for failure to pay tax upon notice and demand for payment.
- (6) See IRM 20.1.1.3, Criteria for Relief From Penalties, for a discussion of penalty relief. Also see IRM 20.1.2.2.4.1, Penalty Abatements and Re-assessments, for an in-depth discussion of reasonable cause considerations relating to the failure to pay tax.

20.1.2.3.8.1  
(04-19-2011)  
**Computing the Penalty**

- (1) For each month of the period during which each failure to pay (FTP) penalty applies, the penalty is computed by multiplying the amount subject to the penalty by the penalty rate. The total penalty is the sum of the penalties for all months to which a failure to pay penalty applies.

**Note:** When the penalty rate and the underpayment amount remain the same over several months, the computation can be simplified by multiplying months X unpaid tax X penalty rate.

- (2) The basic penalty rate is generally  $\frac{1}{2}$  percent.
- (3) For conditions under which the basic penalty rate is increased to 1 percent, see IRM 20.1.2.3.8.1.1.
- (4) For conditions under which the basic penalty rate is decreased to  $\frac{1}{4}$  percent, see IRM 20.1.2.3.8.1.2.
- (5) The penalty for each underlying tax assessment may not exceed 25 percent in the aggregate. Meaning each month the penalty rate is added to the sum of the penalty rates for all preceding months subject to that penalty. The penalty rate for any month cannot be greater than the rate needed for the aggregate rate to reach 25 percent.

**Example:** Presuming the aggregate penalty applied under IRC 6651(a)(2) at the end of the last penalty month was  $24\frac{1}{4}$  percent, and the current base penalty rate is 1 percent per month. Notwithstanding the base penalty

rate of 1 percent, the maximum penalty rate applied to the current month would be  $\frac{3}{4}$  percent, since it is the amount needed to bring the aggregate rate to the 25 percent maximum.

- (6) A separate penalty computation applies to tax shown on the return, and to each notice reflecting additional tax required to be shown on the return that was not included in a prior notice. This means the 25 percent aggregate maximum may be reached for tax shown on the return while the FTP penalty is still accruing for additional tax billed in a subsequent notice.
- (7) When the 25 percent aggregate maximum has been reached for ALL tax assessed in a module, Master File generates Transaction Code (TC) 971 with Action Code (AC) 262. If the penalty is being manually computed and assessed, TC 971 with AC 262 may need to be manually input if the aggregate maximum has been reached for all assessed tax.

## 20.1.2.3.8.1.1 (04-19-2011) 1 Percent Penalty Rate—IRC 6651(d)

- (1) IRC 6651(d) provides the basic failure to pay (FTP) penalty rate increases to 1 percent for any month following:
  - a. 10 days after IRS gives notice of intent to levy under IRC 6331(d); or
  - b. The day IRS makes demand for immediate payment of a jeopardy assessment under IRC 6331(a).
- (2) A notice of intent to levy may consist of (and may be identified by) any of the following:
  - a. CP 504 — Final Notice, Notice of Intent to Levy Certain Assets (identified by Master File status 58).
  - b. Collection Due Process notification (identified by Transaction Code (TC) 971 with Action Code (AC) 069).
  - c. ACS letter LT11, Final Demand Notice, or Field Collection Letter 1058, Final Notice Reply Within 30 Days, (either identified by TC 971 with AC 035).
  - d. Assessments by Service Center Collection Branch that incorporate a notice of intent to levy if a liability is not paid by the date shown in the notice (identified by assessment Doc Code 51 with Blocking Series 140–149).
- (3) A jeopardy assessment accompanied by a demand for immediate payment is identified by assessment Doc Code 51 with Blocking Series 100–119.
- (4) The 1 percent penalty rate applies to all late payment penalties for all months subject to a penalty for paying late beginning **after** the date of the penalty rate increase. The 1 percent rate does not apply to new assessments after the module balance (including accruals) is zero, unless the penalty rate for the new assessment is increased again as described above.

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**Example:** The tax module for a 2009 calendar year return reflecting \$10,000 tax and no payments reflects Master File status 58 dated July 10, 2010. The date prescribed for payment of the tax is April 15, 2010. The first penalty month begins on April 16, 2010, and ends on May 15, 2010. Each subsequent penalty month also begins on the 16th and ends on the 15th of the following month. The 1 percent rate applies to any penalty month beginning after the 10th day following the status 58 date, meaning after July 20, 2010. This means the 1 percent rate applies to any penalty month beginning August 16, 2010 and later, except during months where the taxpayer qualifies for the  $\frac{1}{4}$  percent rate. See IRM 20.1.2.3.8.1.2.

20.1.2.3.8.1.2  
(02-27-2024)  
**1/4 Percent Penalty  
Rate—IRC 6651(h)**

- (1) For penalty months beginning after 12/31/1999, IRC 6651(h) provides for a reduced penalty rate for taxpayers who meet the following criteria:
  - The taxpayer is an individual (a taxpayer that is not a corporation, a partnership, a trust, or an exempt organization).
  - The taxpayer filed their return for the tax in question on or before the due date for filing (including extensions).
- (2) For taxpayers who meet the above qualifications the basic penalty rate decreases to  $\frac{1}{4}$  percent for any month during which an installment agreement under IRC 6159 is in effect for the tax in question.
- (3) When inputting an installment agreement on a BMF module, you need to determine if the taxpayer is an individual. Prior to 2024, Masterfile looked at the Filing Requirement Code (FRC) for Form 1065 and Form 1120. This caused an issue when the BMF entity ceases to exist or files its final return, and the filing requirement is deleted. Starting in cycle 202401, if the taxpayer is an individual, you need to ensure the Individual/Estate Indicator on BMFOLE is turned on. The indicator 1 is turned on. The indicator 0 is turned off. A TC 971 AC 849 is used to identify the BMF entity as a qualifying “individual” and turns the indicator to 1, and a TC 972 AC 849 turns it to 0, via FRM77.
- (4) The date an installment agreement goes into effect is identified by the date of Transaction Code (TC) 971 with Action Code (AC) 063.

**Reminder:** The mere presence of TC 971 with AC 063 does not mean the  $\frac{1}{4}$  percent rate applies. Both of the requirements under paragraph (1) above must be met.

**Note:** Enter TC 971 with AC 063 on any module with a mirrored assessment for joint and several liability if any of the jointly liable parties has an installment agreement and the liability consists of individual income tax or other tax owed by an individual.

- (5) The  $\frac{1}{4}$  percent rate ends following the month during which the installment agreement is terminated.
- (6) The installment agreement is considered terminated on any of the following:
  - The date of TC 971 with AC 163 (installment agreement terminated due to default or full payment).
  - 10 days after IRS gives notice of intent to levy (see IRM 20.1.2.3.8.1.1).
  - The day IRS makes demand for immediate payment of a jeopardy assessment. See IRM 20.1.2.3.8.1.1.

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- (7) When applicable, the penalty rate decrease may apply to all tax liabilities qualifying for the reduction: Individual income tax, employment tax, and excise tax.
- (8) Estate tax returns (in the case of a decedent's estate) and generation skipping tax returns also qualify for the  $\frac{1}{4}$  percent rate because these returns are generally filed by or on behalf of an individual.
- (9) When an installment agreement is terminated, the basic penalty rate reverts to the rate in effect prior to the installment agreement beginning with the first penalty month beginning after the installment agreement is terminated.
- (10) The following conditions cause an installment agreement to be terminated:
  - a. The taxpayer fails to make payments in accordance with the agreement.
  - b. Additional tax is assessed that was not included in the installment agreement.
  - c. The liability becomes uncollectible (TC 530 posts in the account).
  - d. The taxpayer files for bankruptcy protection. See IRM 20.1.2.3.8.6.
- (11) When a taxpayer sets up an installment agreement and expects to owe additional tax that has not yet been assessed (but which is to be included in the agreement), the IRS turns "on" the assessment indicator in the taxpayer's installment agreement history. This allows the agreement to continue when an additional assessment is posted to the taxpayer's account, including in the same tax module.
- (12) If the assessment indicator is "off" when an additional assessment posts, the installment agreement defaults and is terminated. The  $\frac{1}{4}$  percent rate will cease to apply to any existing liability, nor will it apply to the new liability, unless the installment agreement is reinstated with the new liability included.

20.1.2.3.8.2  
(04-19-2011)

#### Application of Payments

- (1) IRS's computers determine "unpaid tax" by applying specific rules in the application of payments to unpaid liabilities. Manual penalty computations should follow the same rules.
- (2) For the purpose of computing the penalties for failure to pay tax, payments credited against a tax return liability are applied as of their effective date.
- (3) The following are considered payments for the purpose of this subsection:
  - Estimated tax payments.
  - Credit for withheld income tax.
  - Credit for excess withheld social security tax.

- Regulated investment credit from Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains.
  - Overpayments of other taxes or from other periods credited against this tax.
  - Any other payments made by, or on behalf of, the taxpayer via cash, check, or money order.
- (4) Each payment is applied individually to individual assessments that make up the overall liability until that payment is used up, or until the overall liability is paid. Payments are applied to assessments until the assessment is paid, in the following order of priority:

Priority	Order
A	All payments are applied in effective date order as follows: <ol style="list-style-type: none"> <li>1. First to tax shown on the return, and</li> <li>2. Then to additional tax assessed as a math error assessment.</li> </ol>
B	Each payment made on an existing liability is applied in effective date order as follows: <ol style="list-style-type: none"> <li>1. First to the earliest unpaid tax.</li> <li>2. Next to any penalty (other than the penalty for paying late), fees, charges, or other additions to tax assessed prior to the next unpaid tax assessment.</li> </ol> Repeat 1) and 2) for any unused portion of each payment until the payment is used up, or until all tax, penalty (other than the penalty for paying late), fees, charges, or other additions to tax are paid. <b>Note:</b> If all are paid, any unused remainder is applied in accordance with priority C below
C	Payments made in excess of existing assessments (described under priorities A and B above) are applied in effective date order as follows: <ol style="list-style-type: none"> <li>1. First to any penalty (other than the penalty for paying late), fee, charge, or other addition to tax, assessed prior to the assessment of any additional tax;</li> <li>2. Next to any additional tax assessed (in assessment date order);</li> <li>3. Next to any penalty (other than the penalty for paying late), fee, charge, or other addition to tax, assessed after the assessment of any additional tax;</li> <li>4. Next to any penalty for paying late; and</li> <li>5. Finally to any interest.</li> </ol>

**Example:** The account for a return reflects the following:

Item	Date	Amount
Tax shown on the return	04/15/2015	500.00
Math error assessment	07/13/2015	100.00

Item	Date	Amount
Penalty for filing late	07/13/2015	120.00
(1) Credit for withheld tax	04/15/2015	-480.00
(2) Payment with return	06/18/2015	-20.00
(3) Subsequent payment	08/05/2015	-80.00
Additional Assessment	09/07/2015	150.00
(4) Subsequent payment	09/14/2015	-80.00
(5) Subsequent payment	10/13/2015	-80.00
(6) Subsequent payment	11/11/2015	-80.00

Payment (1) [withholding] is applied against tax shown on the return, leaving \$20 of that amount unpaid (priority A1).

Payment (2) is applied against tax shown on the return (priority A1), paying it in full.

Payment (3) is applied against math error assessment (priority A2), leaving \$20 of that amount unpaid.

Payment (4) is applied against math error assessment (priority A2 or B1), with \$60 unused. The unused \$60 portion of payment (4) is applied against the penalty for filing late (priority B2).

Payment (5) is applied against the additional tax assessment (priority B1).

Payment (6) is applied against the additional tax assessment (priority B1), with \$10 unused. The unused \$10 portion of payment (6) is applied against the penalty for filing late (priority B2), leaving \$50 of that amount unpaid.

Any future payments will be applied first to the remaining penalty for filing late (priority B2), then to late payment penalty (priority C4), and finally to interest (priority C5).

- (5) The effect of refunds and offsets out of the module is to
- Reduce any unused portion of any payment made before the date of the refund (but not below zero), or to
  - Reduce the amount of any payment made *after* the date of the refund (but not below zero). This applies only if the amount of the refund exceeded the available overpayment at the time of the refund, and if there is no intervening tax assessment.

**Note:** In other words, payments that have been refunded or offset are not available for payment of subsequent tax assessments. Payments received after a refund or offset, but prior to a new tax assessment, repay any excessive portion of the refund or offset before any unused portion of the payment can be applied against a subsequent tax assessment.

**Example:** The account for a return reflects the following:

Item	T/C	Date	Amount
Tax shown on the return	150	04/15/2015	500.00

Item	T/C	Date	Amount
(1) Credit for withheld tax	806	04/15/2015	−580.00
Refund issued or offset	846	05/25/2015	80.00
(2) Prepayment of deficiency	640	06/18/2015	−200.00
Additional Assessment	300	09/07/2015	150.00
(1) Withholding reduced	807	04/15/2015	50.00

Payment (1) [withholding] was reduced by \$50 from \$580 to \$530. Payment (1) is applied against tax shown on the return (priority A1), with \$30 unused. The refund reduces the unused portion of payment (1) by \$80, but not below zero. \$50 of the refund is “excessive.” Payment (2) is reduced by the \$50 “excessive” portion of the refund, with \$150 of payment (2) remaining. The remaining \$150 of payment (2) are applied against the additional tax assessment.

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- (6) IRC 6601(e)(3) provides no additional interest is to be imposed beyond the date of any notice and demand for payment to the extent the amount shown in the notice is paid within 21 days after the date of the notice (10 business days, if the amount in the notice is \$100,000 or more). Although there is no similar provision in the law governing the penalty for paying late, IRS also will not impose additional late payment penalty computed beyond the date of notice and demand to the extent the tax shown in the notice is paid within the given time frame. To accomplish this, IRS treats payments mailed within the given time frame as made on the date of the notice. See IRM 20.1.2.2.1, When Timely Mailing Equals Timely Filing or Paying.

20.1.2.3.8.3  
(04-19-2011)  
**Application of Tax Abatements**

- (1) For the purpose of determining tax shown in a notice and demand for payment, tax abatements are applied to preceding tax assessments in “first in, first out” (FIFO) order.
- (2) After all preceding assessments have been set to zero, any remaining abatement is applied to “tax shown on the return,” which may end up being less than zero.

20.1.2.3.8.4  
(02-27-2024)  
**Failure to Pay Tax Shown on the Return—IRC 6651(a)(2)**

- (1) IRC 6651(a)(2) provides for a penalty if the tax shown on any return is not paid by the due date for payment, unless the failure to pay is due to reasonable cause and not due to willful neglect.
- Note:** An extension of time to file does not extend the time to pay.
- (2) Reasonable cause is presumed for certain taxpayers with an extension of time to file if specific criteria are met. See IRM 20.1.2.2.3.1 (5). Also see IRM 20.1.1.3, Criteria for Relief From Penalties, for a discussion of penalty relief, and IRM 20.1.2.2.4.1, Penalty Abatements and Re-assessments, for an in-



depth discussion of reasonable cause considerations relating to the failure to pay tax.

(3) This penalty applies to the following returns:

- Income tax returns
- Employment tax returns and other returns of withheld income tax
- Excise tax returns
- Gift tax returns
- Estate tax returns
- Partnership returns

(4) This penalty does not apply to the following:

- Information returns required under Chapter 61, Subchapter A, Part III
- Payments of estimated tax

(5) For each month or part of a month the tax remains unpaid, the penalty is generally  $\frac{1}{2}$  percent of the unpaid tax. However, the penalty rate may increase to 1 percent per month, or decrease to  $\frac{1}{4}$  percent per month. See IRM 20.1.2.3.8.1.1 and IRM 20.1.2.3.8.1.2.

(6) The penalty generally does not apply for any month during which a bankruptcy proceeding is pending against the taxpayer. See IRM 20.1.2.3.8.6.

20.1.2.3.8.4.1  
(03-19-2019)

## Amount Subject to IRC 6651(a)(2)

- (1) For each month, the amount subject to this penalty is the portion of the amount shown as tax on the return that is not paid before the beginning of that month, either by payment, or by credit against the tax that may be claimed on the return.
- (2) “Amount shown as tax” as “total tax per taxpayer” reduced by the following credits per taxpayer (if applicable):

Credit Name	Transaction Codes	Credit Reference Numbers (CRN)
Earned Income Credit	768, 764, 765	None
Additional Child Tax Credit	766, 767	336
Fuel Tax Credit	766, 767	000, 450 (see note 1)
PY AMT Credit (Form 8801)	766, 767	255
Form 8827 line 8c	766, 767	334, 793 (see note 2)
Refundable Education Credit (Form 8863)	766, 767	260
Health Coverage Tax Credit (Form 8885)	766, 767	250
Premium Tax Credit (Form 8962)	766, 767	262
First Time Homebuyer Credit (Form 5405)	766, 767	258
Making Work Pay Credit	766, 767	259
Refundable Adoption Credit (Form 8839)	766, 767	261
Recovery Rebate Credit	766, 767	256, 257 (see note 3)

**Note:** 1 - Prior to processing year 2016 the total fuel tax credit amount was combined with certain other refundable credits and posted in the module without a CRN. Beginning in 2016 the credit will be posted in the module with CRN 450. Adjustments to the credit will be input with the appropriate CRN (see IRM 21.7.8.4.5, Form 8849, Claim for Refund of Excise Taxes, IRM 21.7.4.4.9.1, Form 4136, Credit for Federal Tax Paid on Fuels, and IRM 21.6.3.4.2.6.2, Form 4136, Adjustment Action, as applicable). Even though the credit adjustment is input with a CRN, that CRN will not post with the TC 766 credit increase or TC 767 credit decrease. Please refer to IRM 20.1.2.2.6.1.3.1, Adjusting Refundable Credits Without a CRN and With CRN 334, for more information.

**Note:** 2 - The credit from Form 8827 line 8c is posted either without a CRN, with CRN 334, or with CRN 793. If the credit posted with the original return, use the same CRN as posted to adjust the credit. If not posted with the original return, follow IRM 21.7.4.4.17.10 , The Housing and Economic Recovery Act of 2008 P.L. 110-289, Election to Accelerate Research Credit and Alternative Minimum Tax Credit in Lieu of Bonus Depreciation. If applicable, also refer to IRM 20.1.2.2.6.1.3.1, Adjusting Refundable Credits without a CRN and with CRN 334.

**Note:** 3 - The recovery rebate credit should only be adjusted for tax year 2008, 2020, 2021. See IRM 21.6.3.4.2.14.1, Recovery Rebate Credit -Adjusting the Credit.

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(3) See IRC 6651(b)(2) and (3).

20.1.2.3.8.4.1.1  
(04-19-2011)  
**Special Rule - IRC 6651(c)(2)**

(1) If the amount required to be shown as tax on the return is less than the amount shown, then the amount subject to the penalty under IRC 6651(a)(2) is computed by using such lesser amount.

20.1.2.3.8.4.2  
(04-19-2011)  
**Months Subject to IRC 6651(a)(2)**

- (1) Provided there is an amount subject to this penalty, the first month subject to the penalty for paying late under IRC 6651(a)(2) begins on the day following the latest of the following dates:
- The due date for payment. See IRM 20.1.2.3.8 (1) and (2).
  - The extended payment due date in the case of an approved extension of time to pay under IRC 6161 through IRC 6167, or under 26 CFR 1.6081-5 . See IRM 20.1.2.2.3.2 and IRM 20.1.2.2.3.3.
  - The disaster due date after application of periods to be disregarded under IRC 7508A. See IRM 20.1.2.2.2.2.
  - The combat zone due date after application of periods to be disregarded under IRC 7508. See IRM 20.1.2.2.2.1.
- (2) The penalty applies for each month or part of a month during which the failure to pay continues. However, see IRM 20.1.2.3.8.6, Bankruptcy, for an exception.

- (3) Each month subject to the penalty ends on the day of the month corresponding with the day of the month of the latest payment due date as determined above, and each new month subject to the penalty shall begin on the following day, with the following exceptions:
  - a. In the case where the day of the month of the due date is the last day of the month, each new month subject to penalty shall begin on the first day of the following month.
  - b. In the case of February, if the day of the month of the due date does not exist in February, the new month subject to penalty shall begin on the first day of March.
- (4) The penalty continues until it has reached 25 percent in the aggregate.

20.1.2.3.8.4.3  
(02-27-2024)

**Special Considerations**

- (1) Occasionally special circumstances exist prompting the IRS to issue a notice of relief from the FTP penalty with respect to a specific group or class of taxpayer in order to promote fairness and voluntary compliance with United States tax laws. See IRM 1.2.1.12.1, Policy Statement 20-1, paragraph 7. This subsection will provide policy and instruction with respect to these notices while they are in effect.

20.1.2.3.8.5  
(04-19-2011)

**Failure to Pay Tax Upon Notice and Demand—IRC 6651(a)(3)**

- (1) IRC 6651(a)(3) provides for a penalty if tax required to be shown on a return, but which was not shown, is not paid by the date stated in the notice and demand for payment. The penalty does not apply if the failure to pay is due to reasonable cause, and not due to willful neglect. See IRM 20.1.1.3, Criteria for Relief From Penalties, for a discussion of penalty relief. Also see IRM 20.1.2.2.4.1, Penalty Abatements and Re-assessments, for an in-depth discussion of reasonable cause considerations relating to the failure to pay tax.
- (2) This section applies to additional amounts assessed as follows:
  - A deficiency,
  - An amendment to the original return, and
  - A result of a correction of a mathematical error as defined under IRC 6213(b)(1).
- (3) The date for payment stated in the notice is 21 calendar days following the date of the notice if the amount in the notice is less than \$100,000. Otherwise the date is 10 business days after the date of the notice.

**Note:** See IRM 20.1.2.2.1 (7) with regard to timely mailing equals timely paying.

- (4) The penalty does not apply if the failure to pay is due to reasonable cause and not due to willful neglect.
- (5) For each month or part of a month during which the underlying tax remains unpaid, the penalty generally is  $\frac{1}{2}$  percent of the unpaid tax. However, the penalty rate may increase to 1 percent per month, or decrease to  $\frac{1}{4}$  percent per month. See IRM 20.1.2.3.8.1.1 and IRM 20.1.2.3.8.1.2.
- (6) The penalty generally does not apply for any month during which a bankruptcy proceeding is pending against the taxpayer. See IRM 20.1.2.3.8.6.

20.1.2.3.8.5.1  
(07-18-2016)

**Amount Subject to IRC  
6651(a)(3)**

- (1) For each month following the date for payment stated in the notice, the amount subject to the penalty under IRC 6651(a)(3) is the portion of the net additional tax shown in the notice and demand for payment that is not paid before the beginning of the month. The term “additional tax shown in the notice and demand” refers to tax:
  - Not shown on the return, and
  - Not shown in a prior notice and demand for payment.
- (2) “Net additional tax” exists if the sum total of all tax increases or decreases, plus all increases and decreases in refundable credits deemed tax, is greater than zero. Refundable credits deemed to be tax for this purpose are the following:
  - Earned Income Credit
  - Additional Child Tax Credit
  - Fuel Tax Credit
  - Credit for Prior Year Alternative Minimum tax
  - Refundable Education Credit
  - Health Coverage Tax Credit
  - Premium Tax Credit
  - First Time Homebuyer Credit
  - Making Work Pay Credit
  - 2008, 2020, 2021 Recovery Rebate Credit for Individuals
  - American Opportunity Credit
  - Adoption Credit

**Example:** Taxpayer A receives notice and demand for payment from the IRS. The notice reflects a decrease in tax of \$200 and a decrease in earned income credit of \$300. The sum of the \$200 decrease in tax (-200), and the \$300 decrease in earned income credit (+300), is a net change of +100. Therefore, the notice reflects “net additional tax.”

**Note:** Some credits post without a credit reference number (CRN). See table in IRM 20.1.2.3.8.4.1. When adjusting these credits please follow IRM 20.1.2.2.6.1.3.1, Adjusting Refundable Credits Without a CRN.

20.1.2.3.8.5.2  
(04-19-2011)

**Months Subject to IRC  
6651(a)(3)**

- (1) Provided there is an amount subject to this penalty, the first month subject to the penalty for paying late under IRC 6651(a)(3) begins the day after the date for payment stated in the notice and demand for payment:
  - a. For notice and demand given before January 1, 1997, the date stated in the notice was 10 calendar days following the date of the notice.
  - b. For notice and demand given after December 31, 1996, if the amount shown due in the notice is less than \$100,000, the date stated in the notice is 21 calendar days following the date of the notice.
  - c. For notice and demand given after December 31, 1996, if the amount shown due in the notice is \$100,000 or more, the date stated in the notice is 10 business days following the date of the notice.
  - d. See IRM 20.1.2.2.2, Disregarded Periods, for situations where the date stated in the notice falls within a disaster period, or within a period to be disregarded because of service in a combat zone.

- (2) Each additional month subject to the penalty ends on the day of the month corresponding with the day of the month of the date for payment stated in the notice, and each new month subject to the penalty shall begin on the following day, with the following exceptions:
  - a. In the case where the day of the month of the due date is the last day of the month, each new month subject to penalty shall begin on the first day of the following month.
  - b. In the case of February, if the day of the month of the due date does not exist in February, the new month subject to penalty shall begin on the first day of March.

**Example:** If the date for payment as stated in a notice is December 30th, the first month subject to the penalty begins on December 31st and ends on January 30th. The second month begins on January 31st and ends on February 28th or 29th (depending on leap year). The third month begins on March 1st and ends on March 30th. The fourth month begins on March 31st and ends on April 30th, and so forth.

- (3) The penalty applies for each month or part of a month during which the failure to pay continues. However, see IRM 20.1.2.3.8.6, Bankruptcy, for an exception.
- (4) The penalty continues until it has reached 25 percent in the aggregate, or until the underlying tax is paid.

20.1.2.3.8.6  
(04-19-2011)  
**Bankruptcy**

- (1) IRC 6658(a) prohibits the assertion of the late payment penalties while a bankruptcy proceeding is pending against the taxpayer if either of the following applies:
  - a. The tax was incurred by the bankruptcy estate and the failure to pay occurred pursuant to an order of the court finding probable lack of funds of the estate to pay administrative expenses; or
  - b. The tax was incurred by the debtor before the earlier of the order for relief, or (in the case of an involuntary bankruptcy) the appointment of a trustee, and either the bankruptcy petition was filed before the return due date (including extensions), or the penalty is for a penalty month that begins on or after the day on which the petition was filed.
- (2) The prohibition in IRC 6658(a) shall not apply to any liability for an addition to the tax which arises for failure to pay or deposit a tax withheld or collected from others and required to be paid to the United States.
- (3) In the case of tax incurred before the start of a bankruptcy proceeding, a penalty for failure to pay will not be asserted for any penalty month beginning during the period during which the bankruptcy proceeding is pending. See Rev. Rul. 2005-9, 2005-1 C.B. 470 for an explanation of when a bankruptcy case is considered "pending." IRS records the period during which a bankruptcy proceeding is pending through the use of Transactions Codes (TC) 520, 521, and 522:
  - a. TC 520 with Closing Codes 60 through 67, 83, and 85 through 89 indicate the date the bankruptcy court was petitioned.
  - b. TC 521 with the appropriate matching closing code indicates the date the bankruptcy was terminated.

- c. The period between TC 520 and the matching TC 521 is recognized by IRS's computers as the period during which the bankruptcy was pending. When a matching TC 521 or TC 522 is not present, IRS's computers presume the bankruptcy is still pending.
- d. TC 522 with the appropriate matching closing code indicates the bankruptcy was dismissed by the court. For the purpose of the penalty for filing late, the bankruptcy filing is disregarded if it was dismissed by the court. Therefore, IRS's computers disregard TC 520 when a matching TC 522 is posted in the module.

**Note:** Although Transaction Code 520 with a bankruptcy closing code changes the collection status to "72" until Transaction Code 521 posts to mark the termination of the bankruptcy, status 72 does not necessarily mean a bankruptcy proceeding is pending in court for the taxpayer.

20.1.2.3.8.7  
(07-02-2013)

**IRC 6651 Penalty  
Computation Examples**

- (1) The following four subsections demonstrate how the penalties under IRC 6651 are to be computed.
- (2) IRM 20.1.2.3.8.7.1 shows how the penalty for failure to pay tax shown on the return is coordinated with the penalty for failure to file.
- (3) IRM 20.1.2.3.8.7.2 shows how the penalty for failure to file attributable to a deficiency is computed for inclusion on the notice of deficiency.
- (4) IRM 20.1.2.3.8.7.3 shows how the penalty for failure to pay tax upon notice and demand is computed. It also demonstrates how the increase in the penalty rate affects the penalty after issuance of a notice of intent to levy.
- (5) IRM 20.1.2.3.8.7.4 shows when and how the minimum penalty for failure to file is computed.

20.1.2.3.8.7.1  
(02-27-2024)

**Example of Failure to  
File Penalty with Failure  
to Pay Tax Shown on  
Return**

- (1) The computation of the penalties under IRC 6651(a)(1) [failure to file (FTF)] and under IRC 6651(a)(2) [failure to pay tax shown on the return (FTP)] is demonstrated in this example. The facts of the case are as follows:
  - a. Taxpayer *P* filed a return showing \$5,000 tax on 7/13/2022.
  - b. The return due date (without regard to extensions) was 4/15/2022.
  - c. The taxpayer did not have an extension of time to file. See IRM 20.1.2.2.3.1.
  - d. The taxpayer was not in a combat zone, nor was he affected by a federally declared disaster. See IRM 20.1.2.2.2.1 and IRM 20.1.2.2.2.2.
  - e. The taxpayer paid \$2,000 on 6/1/2022, and \$3,000 at the time the return was filed.
  - f. The taxpayer has not received a notice of intent to levy nor a notice and demand for immediate payment. See IRM 20.1.2.3.8.1.1.
- (2) **Step 1: Failure to pay tax shown on the return.** For each month subject to the penalty, the penalty is the amount of the unpaid tax before the beginning of that month times the applicable penalty rate. The following is based on the facts listed above:
  - a. The months subject to this FTP penalty are the months beginning 4/16/2022, 5/16/2022, and 6/16/2022. See IRM 20.1.2.3.8.4.2.
  - b. The unpaid tax is \$5,000 on 4/16/2022 and 5/16/2022, and \$3,000 on 6/16/2022. See IRM 20.1.2.3.8.4.1.



- c. The penalty rate is  $\frac{1}{2}$  percent for each month. See IRM 20.1.2.3.8.1.
  - (3) Based on the above, the FTP penalty computation is as follows:
    - a. 2 months X \$5,000 X  $\frac{1}{2}$  percent, plus
    - b. 1 month X \$3,000 X  $\frac{1}{2}$  percent.
    - c. Therefore, the FTP penalty is \$50 + \$15 = \$65.
  - (4) **Step 2: Failure to file.** For each month or part of a month the failure to file continued, the penalty is 5 percent of the tax required to be shown on the return that was not paid on the date prescribed for payment of the tax. See IRM 20.1.2.3.7. However, the penalty for failure to file is reduced by the amount of the penalty for failure to pay the tax shown on the return for each month during which both penalties apply. The following is based on the facts listed in IRM 20.1.2.3.8.7.1 (1) above:
    - a. The return was not filed by 4/15/2022, 5/15/2022, or 6/15/2022. Therefore, the return was 3 months late.
    - b. The tax required to be shown on the return that was unpaid on the date prescribed for payment (4/15/2022) was \$5,000.
  - (5) Based on the above, the FTF penalty computation is as follows:
    - 3 months X 5 percent X \$5,000, minus
    - The penalty for paying late (\$65) for this period.
    - Therefore, the FTF penalty is \$750 - \$65 = \$685.
- Reminder:** When decreasing tax with TC 301, the FTF penalty must be manually computed following the steps above, and the difference between the computed penalty and the assessed penalty must be abated with TC 161. Do **not** determine the penalty decrease by merely multiplying the tax decrease by 5 percent times the months the return was late.
- (6) **Summary:** For this example the correct FTF penalty is \$685.00, and the correct total FTP penalty is \$65.00.

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20.1.2.3.8.7.2  
(02-27-2024)  
**Example of Failure to  
File Penalty for  
Deficiency**

- (1) The computation of the penalty under IRC 6651(a)(1) (FTF) in the case of a deficiency is demonstrated by the example outlined below. The facts of the case are as follows:
  - a. Taxpayer P filed a return showing \$5,000 tax on 7/13/2022.
  - b. The return due date (without regard to extensions) was 4/15/2022.
  - c. The taxpayer did not have an extension of time to file. See IRM 20.1.2.2.3.1.
  - d. The taxpayer was not in a combat zone, nor was he affected by a federally declared disaster. See IRM 20.1.2.2.2.1 and IRM 20.1.2.2.2.2.



- e. The taxpayer paid \$2,000 on 6/1/2022, and \$3,000 at the time the return was filed.
  - f. The taxpayer has not received a notice of intent to levy nor a notice and demand for immediate payment. See IRM 20.1.2.3.8.1.1.
  - g. Master File computed and assessed the FTP penalty of \$65, plus \$45 in interest.
  - h. Master File computed and assessed the FTF penalty at \$675 instead of at the correct \$685 amount.
  - i. The taxpayer paid the \$740 in assessed penalties, plus \$45 in interest, within 21 days following notice and demand for payment.
  - j. Upon examination of the return, IRS determined there was a deficiency of \$1,000.
- (2) Because the tax required to be shown is greater than the tax shown, the FTF penalty must be recomputed. Any additional FTF penalty determined to be due must be included in the notice of deficiency. The basic FTF penalty computation is the same as in IRM 20.1.2.3.8.7.1 (4), except the tax required to be shown on the return that was not paid on the return due date is increased by the \$1,000 deficiency from \$5,000 to \$6,000.
- (3) The penalty computation is as follows:
- a. 3 months X 5 percent X \$6,000, minus
  - b. The penalty for paying late (\$65) for this period. (See IRM 20.1.2.3.8.7.1 (2) for the FTP penalty computation.)
  - c. Therefore, the penalty is  $\$900 - \$65 = \$835$ . The \$160 increase in the FTF penalty over the penalty originally assessed ( $\$835 - \$675 = \$160$ ) must be included in the notice of deficiency along with an explanation of the penalty computation.

**Caution:** When the taxpayer made payments after the original return due date, but before the return was filed, examiners must resist the temptation to use RGS to compute the additional FTF penalty, because RGS simply multiplies the deficiency by 5 percent times the number of months the return was late! For this example  $\$1,000 \times 5 \text{ percent} \times 3 \text{ months} = \$150$ , which is not correct.

20.1.2.3.8.7.3  
(02-27-2024)

**Example of Failure to  
Pay Tax Upon Notice  
and Demand**

- (1) The computation of the penalty under IRC 6651(a)(3) [failure to pay tax upon notice and demand (FTP)] in the case of a deficiency is demonstrated by this example. The facts of the case are shown in this table:

Case Facts
Taxpayer P filed a return showing \$5,000 tax on 07/13/2022.
The return due date (without regard to extensions) was 04/15/2022.
The taxpayer did not have an extension of time to file. See IRM 20.1.2.2.3.1, Extensions of Time to File.
The taxpayer was not in a combat zone, nor was he affected by a federally declared disaster. See IRM 20.1.2.2.2.1, Combat Zone - IRC 7508 and IRM 20.1.2.2.2.2, Federal Disaster Area - IRC 7508A.

<b>Case Facts</b>
The taxpayer paid \$2,000 on 06/01/2022 and \$3,000 at the time the return was filed.
The taxpayer has not received a notice of intent to levy nor a notice and demand for immediate payment. See IRM 20.1.2.3.8.1.1, 1 Percent Penalty Rate - IRC 6651(d).
Master File computed and assessed the FTP penalty of \$65, plus \$45 in interest when the original return was processed.
Master File computed and assessed the FTF penalty at \$675 instead of the correct \$685 amount.
The taxpayer paid the \$740 in assessed penalties, plus \$45 in interest, within 21 days following notice and demand for payment.
Upon examination of the return, IRS determined there was a deficiency of \$1,000 and issued the notice of deficiency for \$1,000 tax plus \$160 FTF penalty on 01/20/2023.
IRS received the taxpayer's consent to assess and collect the liability on 02/15/2023 and issued a notice of assessment and demand for payment dated 03/15/2023.
After the amount remained unpaid for 9 weeks, IRS issued a notice of intent to levy on 05/17/2023.
The taxpayer failed to respond to the notice of intent to levy, and on 07/19/2023 IRS prepares a notice of levy to be delivered to the taxpayer's bank. Interest and penalty for the notice are to be computed to 07/26/2023.

- (2) To compute the FTP penalty in the notice we have to identify the following: The months subject to the penalty, the amount of unpaid tax for each month, and the penalty rate applicable to each month.
- The deficiency was not paid within 21 days after notice and demand. Therefore, the first penalty month begins on 4/6/2023 (the 22nd day following notice and demand), and each subsequent penalty month begins on the 6th of that month. See IRM 20.1.2.3.8.5.2, Months Subject to IRC 6651(a)(3). So, as of the date of the notice of levy, the months subject to penalty are the months beginning 4/6/2023, 5/6/2023, and 7/6/2023.
  - The unpaid tax for the first penalty month is determined by reducing the additional tax by the amount paid on or before the 21st day following the notice and demand for payment. The unpaid tax for each additional month is determined by reducing the unpaid tax from the previous month by any tax paid on or before the last day of the previous month. See IRM 20.1.2.3.8.5.1, Amount Subject to IRC 6651(a)(3). Although the taxpayer did not submit any payments to pay this additional assessment, part of the payments submitted to pay the original assessments are allocable to this additional tax: Payments are applied to FTP penalty and interest only after ALL other amounts are paid. See IRM 20.1.2.3.8.2, Application of Payments). Since the taxpayer paid \$740 in penalties (\$675 FTF and \$65 FTP) plus \$45 interest prior to the deficiency assessment, \$110 of those

payments is allocable to the deficiency assessment. Therefore the unpaid tax for each penalty month is  $\$1,000 - \$110 = \$890$ .

- c. The penalty rate is  $\frac{1}{2}$  percent for the penalty months beginning 4/6/2023 and 5/6/2023. The penalty rate increases to 1 percent for each penalty month that begins on or after the 11th day following a notice of intent to levy. See IRM 20.1.2.3.8.1, Computing the Penalty. Therefore, the penalty rate is 1 percent for the penalty months beginning 6/6/2023 and 7/6/2023.

(3) The penalty computation is as follows:

- 2 months X  $\$890 \times \frac{1}{2}$  percent, plus
- 2 months X  $\$890 \times 1$  percent.
- Therefore, the additional FTP penalty computed to 7/26/2023 is  $\$8.90 + \$17.80 = \$26.70$ .

#### 20.1.2.3.8.7.4 (02-27-2024)

#### Example of Minimum Failure to File Penalty

(1) The computation of the minimum penalty under IRC 6651(a)(1) (FTF) plus the penalty under IRC 6651(a)(2) [failure to pay tax shown on the return (FTP)] is demonstrated by this example. The facts of this case are as follows:

- a. Taxpayer J's 2021 Form 1040, U.S. Individual Income Tax Return, was received by IRS on 6/15/2022. It is postmarked 6/13/2022.
- b. J has not requested an extension of time to file, and there are no periods to be disregarded under IRC 7508 or IRC 7508A.
- c. J does not qualify for an extension under 26 CFR 1.6081-5. See IRM 20.1.2.2.3.3, Taxpayers Abroad.
- d. The return reflects \$148 tax due and is accompanied by a payment for the amount.

(2) **Step 1: Failure to pay tax shown on the return.** For each month subject to the penalty, the penalty is the amount of the unpaid tax before the beginning of that month times the applicable penalty rate.

- a. The months subject to this FTP penalty are the months beginning 4/16/2022, 5/16/2022, and 6/16/2022. See IRM 20.1.2.3.8.4.2, Months Subject to IRC 6651(a)(2).
- b. The unpaid tax is \$148 on 4/16/2022 and 5/16/2022. See IRM 20.1.2.3.8.4.1, Amount Subject to IRC 6651(a)(2).
- c. The penalty rate is  $\frac{1}{2}$  percent for each month. See IRM 20.1.2.3.8.1, Computing the Penalty.
- d. The penalty is 2 months X  $\$148 \times \frac{1}{2}$  percent. Therefore, the FTP penalty is \$1.48.

(3) **Step 2: Failure to file.** For each month or part of a month the failure to file continued, the penalty is 5 percent of the tax required to be shown on the return that was not paid on the date prescribed for payment of the tax. See IRM 20.1.2.3.7, Failure to File a Tax Return - IRC 6651(a)(1). However, the penalty for failure to file is reduced by the amount of the penalty for failure to pay the tax shown on the return for each month during which both penalties apply. When a return is more than 60 days late, the penalty cannot be less than the minimum penalty. See IRM 20.1.2.3.7.4, Minimum Penalty. The minimum penalty for this 2021 return is the lesser of \$435 or the \$148 unpaid tax shown on this return.

(4) The penalty computation is as follows:

- a. 2 months X 5 percent X \$148, minus

- b. The penalty for paying late (\$1.48) for this period.
- c. If the minimum FTF penalty did not apply, the FTF penalty would be  $\$14.80 - \$1.48 = \$13.32$ . However, since the return was more than 60 days late, the \$148 minimum FTF penalty applies.

**Reminder:** A return mailed after the return due date (or after the first business day following the return due date, if the return due date falls on a Saturday, Sunday, or legal Federal holiday, including a holiday in the District of Columbia) is not considered filed until it is received at the IRS office where it is required to be filed. See IRM 20.1.2.2.1, When Timely Mailing Equals Timely Filing or Paying (Received Date vs. Filing/Payment Date). The date this return was received, 6/15/2022, is 61 days after 4/15/2022. Even though the return was mailed on the 59th day following 4/15/2022, and even if 4/15/2022 was a Saturday, the return is still 61 days late.

20.1.2.3.8.8  
(04-19-2011)  
**IDRS Command Code  
COMPA**

- (1) IDRS command code (CC) "COMPA" with definer "F" is available to compute the penalty for paying late.
- (2) The penalties under IRC 6651(a)(2) and IRC 6651(a)(3) must be computed separately when both penalties apply.
- (3) The following information must be gathered for input on IDRS:
  - a. In the case of failure to pay tax shown on the return, the payment due date.
  - b. In the case of failure to pay tax upon notice and demand, the date for payment stated in the notice.
  - c. The amount of unpaid tax on the applicable date above.
  - d. The dates of all payments against tax.
  - e. The unpaid tax balance after each payment.
  - f. The date(s) the penalty rate changed to 1 percent, if applicable. See IRM 20.1.2.3.8.1.1, 1 Percent Penalty Rate - IRC 6651(d).
  - g. The date(s) the penalty rate changed to  $\frac{1}{4}$  percent, if applicable. See IRM 20.1.2.3.8.1.2,  $\frac{1}{4}$  Percent Penalty Rate - IRC 6651(h).
  - h. The date(s) any installment agreement was terminated.
- (4) On line one of the IDRS screen enter CC "COMPA" with definer "F" [COMPAF].
  - If applicable, enter the date in f) or g) above (as applicable) beginning in position 14 of line one in MMDDYYYY format. If the date is from g) above, also enter a "&" in position 23 of line 1. The computer will use the  $\frac{1}{2}$  percent rate for computational lines prior to this date, and the applicable rate ( $\frac{1}{4}$  percent or 1 percent) after this date.
  - If the computation is a continuation of a previous "COMPAF" input screen, enter "CONT" in positions 8 through 11 of line 1. This will cause the computer to retain the aggregate percentage from the previous screen in its computation so the 25 percent aggregate maximum is not exceeded.
- (5) On lines 2 through 22, enter the "from" date, a space, the "to" date, a space, and the unpaid tax on the "from" date.

- The first “from” date is the payment due date or the date for payment stated in the notice, which ever is applicable.
  - The first “to” date is the first payment date after the due date or date for payment stated in the notice. In determining payment dates, consider the “timely mailing” rules. See IRM 20.1.2.2.1, When Timely Mailing Equals Timely Filing or Paying.
  - The unpaid tax amount on each line is the amount of tax that remains unpaid as of the “from” date.
  - Each subsequent “from” date is the “to” date from the previous line.
  - Each subsequent “to” date is the effective date of the next payment, again taking the “timely mailing” rules into consideration with respect to any notice mailed prior to the date of payment.
- (6) See IRM 2.3.29, Command Codes INTST, ICOMP, and COMPA, for more information about CC COMPA with definer “F.”
- (7) Also see ELMS Learning courses 17293 and 25232 for BMF, and 17206 and 11442 for IMF. (The first listed course is the prerequisite for the second listed course respectively for BMF and IMF.)

20.1.2.3.8.9  
(03-19-2019)

**Failure to Pay Penalty  
for Restitution-Based  
Assessments**

- (1) An assessment of criminal restitution under IRC 6201(a)(4) does not constitute an assessment of an amount of tax required to be shown on a tax return specified in IRC 6651(a)(1). Therefore, the FTP penalty cannot be imposed on restitution-based assessments unless the Judgment & Commitment Order or related plea agreement specifically includes a FTP penalty. Restitution-based assessments against individuals are made on MFT 31. They are identified by Transaction Code (TC) 971 with action code 102 in the module. The assessment itself will have an adjustment reason code in the range of 141 through 146. The account or module to which the restitution-based assessment relates will be cross-referenced by a TC 971 with an action code in the range of 180 through 189. The FTP penalty can be imposed on the account or module to which the restitution-based assessment relates, if applicable, but even if it is, it cannot be imposed on the restitution-based assessment itself unless the Judgment & Commitment Order or related plea agreement specifically includes a FTP penalty.

**Caution:** The FTP penalty may still apply to the deficiency assessment and tax shown on a return for the same period where a restitution-based assessment has been made, even if they are assessed in the same module as the restitution-based assessment. The presence of a restitution-based assessment in a tax module for a given tax period does not alter the character of other tax module assessments.

- (2) It is important to note again a district court may include a FTP penalty in the amount of restitution ordered. When the FTP penalty is included in the amount of restitution ordered, it should be assessed on the same tax module as the restitution-based assessment. It is important that penalties and interest included in the restitution order are assessed as such, and not included with the same transaction code as tax.
- (3) The IRS may conduct a civil examination for the same tax period that has a restitution-based assessment or the taxpayer may file a delinquent return showing a tax liability for the same tax period a restitution-based assessment exists. This may result in an assessment of a civil tax liability in a different module or in the same module as the restitution-based assessment.

**Note:** When tax shown on a delinquent return, or a deficiency, is assessed in the same tax module as a restitution-based assessment, the total amount assessed is limited to avoid duplicate collection. Follow local procedures to obtain Counsel guidance in determining how the FTP penalty is to be applied to tax shown on the taxpayer's delinquent return, or to the deficiency in these situations.

- (4) To prevent double collection when the restitution-based assessment is **not** assessed in the same module as a related civil liability, any payment credited towards the restitution-based assessment module will be cross-referenced in the related civil tax liability module using a TC 766 with a credit reference number 337; and vice versa. (Cross-referenced restitution-based assessment payments on IMF will also carry adjustment reason code 150).
  - a. Payments and credits are only cross-referenced until the duplicative assessment and related penalties and interest are paid.
  - b. Cross-referencing of penalty payments assures the correct amount of penalty is collected.

20.1.2.3.8.10  
(07-02-2013)  
**Quick and Prompt Assessments**

- (1) When additional amounts are assessed via a quick or prompt assessment, any accrued FTP penalty must be included. The accrued FTP penalty is entered on the applicable line of Form 2859, Request for Quick or Prompt Assessment, and is assessed with TC 270.
- (2) Interest on the FTP penalty accrues beginning with notice and demand for payment of the penalty. Therefore, when demand for payment of the FTP penalty is made via the Form 3552, Prompt Assessment Billing Assembly, the amount and date of the demand must be recorded by assessing the penalty.
- (3) If the FTP penalty is not to remain restricted after the assessment, the requestor (preparer of Form 2859, or other designee) must input TC 272 for zero amount after the assessment has posted.

20.1.2.3.9  
(04-19-2011)  
**Excise and Employment Tax Returns**

- (1) Employment tax returns and excise tax returns, both annual and quarterly, are subject to the penalties under IRC 6651, except they are not subject to the minimum penalty for filing late. See IRM 20.1.2.3.7.4, Minimum Penalty.
- (2) Taxpayers are required to file adjusted employment tax returns on or before the return due date for the taxable year or quarter during which an error was discovered, in order to receive interest-free adjustment benefits provided by IRC 6205. Additional tax shown on the adjusted employment tax return is required to be paid with the return. If the taxpayer fails to pay additional tax shown due on the adjusted return when the return is filed, the taxpayer is subject to the penalty for paying late under IRC 6651(a)(2). The following are adjusted employment tax returns covered by this rule:
  - Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund
  - Form 943-X, Adjusted Employer's Annual Federal Tax Return for Agricultural Employees or Claim for Refund
  - Form 944-X, Adjusted Employer's ANNUAL Federal Tax Return or Claim for Refund
  - Form 945-X, Adjusted ANNUAL Return of Withheld Federal Income Tax or Claim for Refund



- Form CT-1X, Adjusted Employer's Annual Railroad Retirement Tax Return or Claim for Refund
  - Form 1040-X, Amended U.S. Individual Income Tax Return, but only to the extent additional tax reported on the return is from Part I of a corrected Schedule H (Form 1040), Household Employment Taxes.
- (3) Since the above returns are not "required" to be filed by a specific due date (except to qualify for an interest-free adjustment), the penalty for filing late does not apply to these returns.
- (4) Form 720-X, Amended Quarterly Federal Excise Tax Return (IRM 21.7.8.4.1.7, Form 720X, Amended Quarterly Federal Excise Tax Return), and Form 8849, Claim for Refund of Excise Taxes are treated like other amended returns with either overpayments or underpayments. See IRM 21.7.8.4.5, Form 8849, Claim For Refund Of Excise Taxes.

20.1.2.3.10  
(03-19-2019)  
**Substitute for  
Return—IRC 6651(g)**

- (1) Pursuant to IRC 6020(b), a "substitute for return" (SFR) is prepared by the IRS when it is determined a taxpayer is liable for filing the tax return, but failed to do so even after notification from the IRS.
- (2) IRC 6651(g)(1) provides a return prepared under IRC 6020(b) does not constitute the taxpayer's return for determining whether or when the taxpayer filed a return for the purpose of computing the penalty for filing late under IRC 6651(a)(1). This does **not** mean the penalty should not be part of an assessment under IRC 6020(b). It means the penalty is computed beyond the date of the SFR return to the date when the taxpayer has satisfied the requirement to file, or for the maximum amount if the requirement to file has not been satisfied.
- (3) IRC 6651(g)(2) provides for returns due after July 30, 1996 (determined without regard to extensions), the tax assessed under IRC 6020(b) constitutes the tax shown on the taxpayer's return for the purpose of determining the penalty for paying late under IRC 6651(a)(2).
- (4) IRC 6501(b)(3) provides a return prepared under IRC 6020(b) does not start the running of the statute of limitations for assessment or collection.
- (5) Assessment of tax related to a return filed under IRC 6020(b) may or may not require that deficiency procedures be followed. See IRC 6213(a).

- a. When deficiency procedures apply, the penalties for filing late and paying late must be included in the notice of deficiency.

**Note:** If the maximum penalty for paying late has not yet been reached, and the tax shown in the notice has not yet been paid, the notice should state the penalty will continue to accrue until it has reached 25 percent in the aggregate, or until the tax is paid, whichever occurs earlier. The standard penalty explanation language in IRM 4.8.9.18.2.4, Penalty Explanations, paragraph (6) meets this requirement.

- b. When deficiency procedures do not apply, the penalties for filing late and paying late are generally computed and assessed automatically by IRS's computers when the tax determined under IRC 6020(b) is assessed.

**Note:** Employment tax returns and most excise tax returns do not follow statutory notice of deficiency procedures. Tax increases resulting



from worker classification issues follow procedures under IRC 7436 similar to statutory notice of deficiency procedures.

- (6) The penalties for filing and paying late are computed normally on an IRC 6020(b) assessment after applying the rules above. However, please note the special processing instructions in IRM 20.1.2.3.10.1, Processing When Deficiency Procedures Apply, and IRM 20.1.2.3.10.2, Processing When Deficiency Procedures Do Not Apply.
- (7) If the taxpayer files his own return in response to the IRC 6020(b) assessment, the IRS is not obligated to consider such a return for the purpose of computing the penalties for filing and paying late unless tax required to be shown on the return is found to be less than tax assessed under the IRC 6020(b) return.
  - a. If the taxpayer's own return is accepted as filed, and tax is decreased as a result, IRS's computers will automatically adjust the penalties for filing and paying late if they are not restricted.
  - b. If the taxpayer's own return represents a tax increase over the existing assessment, IRS's computers will automatically adjust the penalties for filing and paying late provided the penalties are not restricted, AND Priority Code 2 is input with TC 290, or Priority Code 3 or 9 is input with TC 300. (If both of these conditions are not met, the penalties will have to be manually computed and adjusted from that point forward.)

**Note:** For IMF, TC 300 with Priority Code 9 will unpost if the module contains a "duplicate return" (-A) freeze. Priority Code 3 should be used when the duplicate return freeze is present; otherwise, Priority Code 9 should be used with TC 300.

**Reminder:** FTF penalty must always be computed and assessed manually when additional tax is assessed with TC 300.

- c. If the return is *not* accepted as filed, do not adjust the penalties for filing or paying late based on the tax shown on the taxpayer's return. IRS's computers will automatically adjust the penalties if tax is decreased, unless the penalties are restricted.

**Note:** When FTP penalty is recomputed based on the taxpayer's own return after an SFR or 6020(b) assessment, the penalty will be computed using the same monthly penalty rates as were used to compute the penalty prior to the recomputation. Receipt of the taxpayer's own return does not negate any notice of intent to levy or demand for immediate payment issued by IRS previously with respect to that liability.

## 20.1.2.3.10.1 (04-19-2011) Processing When Deficiency Procedures Apply

- (1) When deficiency procedures apply, IRS posts a "substitute for return" (SFR) Transaction Code (TC) 150 on the taxpayer's account to facilitate assessment of the deficiency.
  - a. For business returns (BMF) an SFR return can be identified by the presence of Computer Condition Code (CCC) 4 and zero tax with the TC 150.
  - b. For individual returns (IMF) an SFR return can be identified by zero tax posting with TC 150 with Doc Code 10 in the DLN.

- (2) For business returns (BMF), for tax modules containing an SFR TC 150, IRS's computers are programmed to compute the penalty for failure to pay tax shown on a return (IRC 6651(a)(2)) using the sum of the first assessment in the module, plus any tax assessed subsequently with TC 290 with Priority Code 2, or with TC 300 with Priority Code 9.
- (3) For individual returns (IMF), for tax modules containing an SFR TC 150, IRS's computers are programmed to compute the penalty for failure to pay tax shown on a return (IRC 6651(a)(2)) using the sum of all tax assessed with TC 290 with Priority Code 2, or with TC 300 with Priority Code 3 or 9.

**Caution:** Do not forget to use the appropriate Priority Code with SFR assessments on IMF. When the TC 150 on IMF is an SFR return, failure to use the appropriate Priority Code with the first assessment of tax will render the computer unable to accurately compute any failure to pay (FTP) penalty for that tax period, and the penalty will have to be manually computed and adjusted.

- (4) Also see IRM 20.1.2.3.8.3, Application of Tax Abatements.
- (5) In two Tax Court cases in 2003, *Cabirac v. Commissioner*, 120 T.C. 63 (2003) and *Spurlock v. Commissioner*, T.C. Memo. 2003-124, the judge denied the IRS the assessment of the penalty under IRC 6651(a)(2), failure to pay tax shown on a return, because the requirements for a valid IRC 6020(b) return were not met. In conjunction with Chief Counsel, Form 13496, IRC 6020(b) Certification, was conceived to ensure the penalty under IRC 6651(a)(2) will be sustained in future court cases.
- (6) Specific procedures must be followed when deficiency procedures apply for the assessment of tax under IRC 6020(b). The procedures must be followed to assure the assessment of the penalty under IRC 6651(a)(2) will be sustained in court if the assessment is challenged.
  - a. Complete Form 13496 with a live signature or a computer facsimile signature. Prepare and date the certification after the 30 day letter (or revised 30 day letter) so the date of the certification is identical to, or later than, the 30 day letter.
  - b. Attach the certification to Form 4549, Report of Income Tax Examination Changes. The date on the certification should be the same as, or later than, the date on the Form 4549. Also attach Form 886-A, Explanation of Items, as applicable.
  - c. Anyone authorized to prepare and issue reports of proposed tax adjustments is authorized to sign the certification. See Delegation Order. 5-2, IRM 1.2.44.3, Execute Returns.
  - d. Whenever the examiner (or a subsequent reviewer) revises a report of proposed adjustments (without regard to whether or not the revised report is re-issued to the taxpayer), a re-certification is required on a new Form 13496 dated on (or after) the same day as the revised report.
  - e. Form 13496 may not be prepared or dated after the date of the 90 day letter. Form 13496 is available on-line, in fillable format.
  - f. When the report of proposed adjustments involves more than one tax year, create a separate Form 13496 for each year and attach each one to a photocopy of the report for each year.

20.1.2.3.10.2  
(04-19-2011)

## **Processing When Deficiency Procedures Do Not Apply**

- (1) When deficiency procedures do not apply, tax determined under IRC 6020(b) can be assessed in two ways:
  - a. An authorized IRS employee may execute (fill out and sign) the actual tax form and send it through pipeline processing for assessment (following their specific IRM instructions). The employee's signature on the return must be followed by the following statement: "This return was prepared and signed under authority of IRC 6020(b)."
  - b. Alternately, in lieu of signing the return with the accompanying statement, the agent may opt to complete and attach Form 13496 to the source document for assessment of tax under IRC 6020(b). In this case, all of the items described on Form 13496 under items 1 and 2 must be present as part of the source document.

20.1.2.3.11  
(04-19-2011)

## **Failure to Pay Transferee Assessment**

- (1) If a transferee is liable for the indebtedness of a transferor under state law, the existing tax liability of the transferor can be assessed against the transferee under the collection procedures provided in IRC 6901. This includes any additions to tax, including the penalties for failure to file and/or pay under IRC 6651 that have been (or may be) asserted against the transferor. However, the transferee is only liable to the extent of the value of the assets transferred.
- (2) The assessment of the transferred liability against the transferee does not constitute a new assessment against which the penalty for failure to pay may begin to accrue anew. IRC 6901 neither creates nor defines a substantive liability but provides merely an alternate procedure by which the government may collect taxes when collection from the transferor has failed.

20.1.2.3.12  
(02-27-2024)

## **Imputed Underpayments**

- (1) Effective for taxable years beginning after 12/31/2017, partnerships are generally subject to a Centralized Partnership Audit Regime. See IRM 4.31.9, Centralized Partnership Audit Regime (BBA) Field Examination Procedures for more information.
- (2) Partnerships can make an election on a timely filed, including extensions, original return to opt out of the Centralized Partnership Audit Regime. To qualify for this election the partnership must not have more than 100 partners, and each partner must be an individual; a corporation (C or S; or a foreign entity that would be treated as a C corporation if it were domestic); or an estate of a deceased partner. This subsection does NOT deal with partnerships who have made a timely election out of the Centralized Partnership Audit Regime. In the case of an S corporation partner, each Schedule K-1 required to be filed by the S corporation or its shareholders is treated as a separate partner for the purpose of determining whether the partnership meets the 100 partner maximum.
- (3) This subsection will deal with the penalty for failure to pay as it may apply with respect to an imputed underpayment arising out of a partnership audit, or it may relate to a failure for the partnership to comply with IRC 6226(b)(4)(A)(ii). The following terms will be used as defined here:

Terms	Definitions
Adjustment year of BBA audited partnership	Audited partnership's adjustment year is the year that includes the date the court decision became final, if the partnership filed a petition under IRC 6234 . Otherwise, it is the year that includes the date the final partnership adjustment (FPA) letter was mailed, or the FPA waiver was executed by the IRS.
Adjustment year of BBA AAR partnership	AAR partnership's adjustment year is the partnership tax year that includes the date the AAR was filed with the IRS.
Administrative adjustment request (AAR)	A subsequent filing which changes any PRI and correct errors on a previously filed partnership return. The partnership must determine whether the adjustments requested in the AAR result in an imputed underpayment. If so, the partnership must take the adjustments into account and make payment unless the partnership makes a valid election for the adjustments to be taken into account by the reviewed year partners. If the adjustments requested in the AAR result in an IU calculation amount that is zero or less than zero or the adjustments don't result in an IU, then all adjustments must be taken into account by the reviewed year partners.
Affected partner	Relates to partner of a pass-through entity. Each partner that held an interest in the pass-through partner at any time during the taxable year of the pass-through partner to which the adjustments in the statement furnished to the pass-through partner relate (affected partner).
Audited partnership	The partnership under audit (not a pass-through partnership affected by the audit), or that filed an AAR.
Form 8985	The push-out statements are filed on Form 8985 and must be filed with the IRS no later than 60 days after the date that the partnership adjustments have been finally determined. The partnership adjustments are finally determined upon the later of the expiration of the time to file a petition under IRC 6234; or if a petition under IRC 6234 is filed, the date when the court's decision becomes final.

Terms	Definitions
Form 8986	Push-out statements. An audited partnership that has made an election under IRC 6226 must furnish Forms 8986 to its partners and submit them to the IRS, along with Form 8985, no later than 60 days after the date on which the partnership adjustments are finally determined: The partnership adjustments are finally determined upon the later of the expiration of the time to file a petition under IRC 6234; or if a petition under IRC 6234 is filed, the date when the court's decision becomes final.
Form 8988	The push-out election must be filed within 45 days of the date the FPA is mailed by the IRS. The time for filing such an election may not be extended.
Imputed underpayment	The tax determined to be due at the partnership level based on the result of the audit. The imputed underpayment is payable by a partnership that has not made a timely push-out election.
Reviewed year	The taxable year under audit or the taxable year for which an AAR was filed..
Reviewed year partner	Is any person who held an interest in a partnership at any time during the reviewed year.
Pass-through partner	Is a pass-through entity that holds an interest in a partnership. A pass-through entity is a partnership required to file a return under IRC 6031(a), an S Corporation, a trust (other than a wholly-owned trust disregarded as separate from its owner for federal income tax purposes), and a decedent's estate. A pass-through entity is not a wholly-owned entity disregarded as separate from its owner for federal income tax purposes.
Push-out election	The election made under IRC 6226 to push the partnership adjustments out to the review year partners. The election must be made by partnership within 45 days of the date the FPA is mailed.

Terms	Definitions
Final determination date	The date partnership adjustments become finally determined. This date will be after the expiration of the time to file a petition under IRC 6234, or if a petition is filed under IRC 6234, the date when the court's decision becomes final. Otherwise, it is the year that includes the date the final partnership adjustment (FPA) letter was mailed, or the FPA waiver was executed by the IRS.

20.1.2.3.12.1  
(02-27-2024)

#### Audited Partnerships

- (1) An audited partnership that fails to make a timely push-out election with respect to a final partnership adjustment will be assessed an imputed underpayment. Unless the partnership waives the restriction, the assessment may be made no earlier than 90 days after the date of Letter 5933, Letter 5933-A; or, if a petition is filed in court with respect to the final partnership adjustment, no earlier than the date on which the court's decision becomes final.
- (2) The imputed underpayment is assessed in the adjustment year.
- (3) Under IRC 6233, if a partnership fails to pay an imputed underpayment by the date prescribed for payment, the partnership becomes subject to the penalty for failure to pay tax shown on a return IRC 6651(a)(2). For the purpose of computing this penalty the following rules apply:
  - a. The imputed underpayment is treated as an underpayment of tax for purposes of Part II of Subchapter A of Chapter 68 on the tax return of the partnership.
  - b. In the case of an imputed underpayment determined in an examination, the due date for payment is 21 calendar days following the date of the notice if the amount in the notice is less than \$100,000. Otherwise the date is 10 business days after the date of the notice. This type of imputed underpayment assessment can be identified by reason code 187 #
  - c. In the case of an imputed underpayment determined in an administrative adjustment request, the due date for payment is the received date of the administrative adjustment request. This type of imputed underpayment assessment can be identified by reason code 185 posted with the as- #
  - d. If a partnership is assessed an imputed underpayment and does not pay within 10 days of notice, the partners can be assessed directly under IRC 6232(f). In that case, each reporting year partner is liable for payment of that partner's share of the partnership's imputed liability, including tax, penalties, and interest. A partner's share or each portion of the unpaid liability is determined by the partner's share in the partnership. Penalties and interest are computed at the partnership level and assessed against each partner in accordance with their share in the partnership.

**Example:** Granite and Sandstone are 50/50 partners in partnership Rock, which is assessed an imputed underpayment of \$20,000 plus \$2,000 in interest. Rock does not pay within 10 days of notice, and the partners are assessed under IRC 6232(f). Granite im-



mediately pays his share of \$11,000 (tax and interest). Sandstone pays nothing. 45 days after notice and demand \$200 FTP penalty and \$180 additional interest has accrued. Granite and Sandstone are each assessed \$100 FTP penalty and \$90 additional interest based on each partner's share in the partnership, even though Granite had fully paid his original share of the liability.

- e. Failure to pay an imputed underpayment.
- f. Each partner's share of a partnership's unpaid liability must be computed and assessed manually. This cannot be automated.
- g. FTP penalty is assessed manually with TC 270. Erroneous or excessive assessments are abated with TC 271.

20.1.2.3.12.2  
(02-27-2024)

## Pass-Through Partners

- (1) The following entities can be pass-through entities that are partners in a partnership
  - An estate or trust (Form 1041) (other than a wholly-owned trust disregarded as separate from its owner for federal income tax purposes).
  - A partnership (Form 1065).
  - A subchapter S corporation (Form 1120S).
  - A decedent's estate
- (2) When a pass-through partner entity receives a push-out statement (Form 8986) from an audited partnership, it is required to file Form 8985, Pass-Through Statement-Transmittal/Partnership Adjustment Tracking Report (Required Under Sections 6226 and 6227). It is also required to either calculate and pay an imputed underpayment based on the statement it received, OR it must issue push-out statements (Form 8986) to all its partners, beneficiaries, or shareholders.
- (3) The due date for filing Form 8985 and issuing Form 8986 is the extended return due date of the audited partnership's adjustment year return. The extended return due date for this purpose is determined without regard to the audited partnership's filing requirement for the adjustment year, and without regard to the actual filing of an application for an extension of time to file by the audited partnership. See 26 CFR 301.6226-3(e)(3)(ii). Currently this means the due date for filing Form 8985 and for furnishing Forms 8986 is the 15th day of the 9th month following the end of the audited partnerships adjustment year.

20.1.2.3.12.2.1  
(03-09-2022)

## Failure to File Tracking Report

- (1) If a pass-through partner in an audited partnership fails to file Form 8985 in a timely manner, then it becomes subject to a penalty under IRC 6698 for failure to file a report required under IRC 6226(b)(4)(A). The penalty is the base penalty amount, multiplied by the number of beneficiaries, partners, or shareholders in the adjustment year. It is charged for each month or part of a month the tracking report is late, but not for more than 12 months. See IRM 20.1.2.4.2 for penalty computation and see IRM 20.1.2.4.4.1 for assessment procedures.
- (2) Rev. Proc. 84-35 relief does not apply to this penalty. However, reasonable cause relief can be granted if applicable.



20.1.2.3.12.2.2  
(03-09-2022)  
**Failure to Issue  
Statements**

- (1) If a pass-through partner fails to timely issue Form 9886, then IRC 6651(i) provides such failure is to be treated as a failure to pay tax shown on the pass-through partner's return. The amount of tax subject to the IRC 6651(a)(2) failure to pay penalty is the unpaid imputed underpayment as calculated using the Form 9886 information received directly or indirectly from the audited partnership. The date prescribed for payment for the purpose of IRC 6651(a)(2) is the audited partnership's extended return due date for the adjustment year return.
- (2) If the pass-through partner has paid the imputed underpayment by the extended due date of the audited partnership, then there is no underpayment with respect to which the penalty can be charged.
- (3) In order for the penalty to be calculated and assessed automatically, the extended return due date of the audited partnership must be entered in the amended claims date field of the ADJ54 adjustment screen at the time of the assessment of the imputed underpayment. The amended claims date field is identified by the literal "AMD-CLMS-DT" on the right side of line 14 of the adjustment screen.

20.1.2.4  
(03-09-2022)  
**Failure to File a  
Partnership Return—IRC  
6698**

- (1) For taxable years beginning after December 31, 1978, IRC 6698 imposes a penalty on a partnership that fails to file a timely or complete return (Form 1065, U.S. Return of Partnership Income as required by IRC 6031. The penalty does not apply if the failure to file was due to reasonable cause. See IRM 20.1.1.3, Criteria for Relief From Penalties, for a discussion of penalty relief. Also see IRM 20.1.2.4.3, Penalty Relief, for available relief specific to this penalty.
- (2) IRC 860F(e) provides for the purpose of determining filing requirements, interest, and penalties, a Real Estate Mortgage Investment Conduit (REMIC) shall be treated as a partnership. Therefore, the penalty for failure to file a timely and/or complete return can apply to any REMIC return (Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return) that is late and/or incomplete. However, see IRM 20.1.2.4.3.4, REMIC Special Considerations.
- (3) Although the penalty is assessed against the partnership or REMIC, for the purpose of enforced collection action the partners or investors are held individually liable for the penalty to the extent of their liability for debts of the partnership or REMIC.

20.1.2.4.1  
(03-09-2022)  
**Assertion Criteria**

- (1) Generally, this penalty is imposed on a partnership that failed to file timely, or failed to provide information required on Form 1065, U.S. Return of Partnership Income, or on Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return. The penalty does not apply if the partnership (or any of its partners) can show the failure was due to reasonable cause.
- (2) If a partnership return is both late **and** incomplete, do not assess two penalties. The incomplete return penalty takes precedence unless the return is 12 months or more late.
- (3) See IRM 20.1.2.4.3 for a complete list of conditions under which the penalty should not be imposed

- (4) Prior to processing year 2022, the penalty was assessed systemically with Transaction Code (TC) 166 for filing late, or with TC 246 without penalty reference number (PRN) if required information was missing. The penalty was abated systemically with TC 167 or TC 247 if changes post to the partnership's account causing IRS's computers to compute a lower penalty or no penalty.
- (5) Beginning processing year 2022, if the return is complete but received late, the penalty is assessed systemically with TC 246 PRN 722. If the return is incomplete, the penalty will be assessed with a TC 246 PRN 723.
- (6) The penalty is assessed "manually" with TC 240 and corresponding PRN. See IRM 20.1.2.4.4.1 for specific procedures to assess the penalty manually.
- (7) Prior to 2022, if the assessed penalty amount was excessive, the penalty was abated manually using TC 161 if assessed as TC 16X or TC 241 without PRN if assessed as TC 24X.
- (8) Beginning with assessments made after 2022, the penalty is abated manually with TC 241 and corresponding PRN.
- (9) Manual adjustment (assessment or abatement) of the penalty is required if the partnership files an amended return reporting a different number of partners than reported on the original return, and a penalty was charged when the original return was processed.
- (10) Systemic assessment of the penalty is preferred. Do not assess the penalty manually if a return has not posted, and the taxpayer's return can be processed through the submission processing center.

20.1.2.4.1.1  
(07-18-2016)  
**Partnership Detailed  
Reporting Requirements**

- (1) IRC 6031 requires a partnership to include in its return all of the information which "the Secretary may by forms and regulations prescribe." The penalty under IRC 6698 may be applied if any required information is missing.

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- (3) A penalty cannot be asserted under IRC 6698 for failure to attach required statements to Schedules K-1 sent to partners.

20.1.2.4.2  
(02-27-2024)  
**Penalty Computation**

- (1) The penalty for the failure to file a Form 1065, U.S. Return of Partnership Income, or Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return, (or the failure to file a complete return with all the information required under IRC 6031) is charged for each month (or part of a month) the failure continues.
  - a. For returns due before December 21, 2007, the penalty can be charged for up to 5 months.
  - b. For returns due after December 20, 2007, the penalty can be charged for up to 12 months.

- (2) The penalty for each month is calculated by multiplying the applicable base penalty rate by the number of persons who were a partner in the partnership at any time during the taxable year.

Case Facts	
For returns due before December 21, 2007, the base penalty rate is \$50.	
For returns due after December 20, 2007, but before January 1, 2009, the base penalty rate is \$85. <b>Note:</b> For taxable years beginning in 2008, section 2 of the Hokie Act (Public Law 110-141) increased the base penalty rate to \$86.	# # # #
For returns due after December 31, 2008, the base penalty rate is \$89 if the taxable year does <b>not</b> begin in 2008, and the taxable year does not begin after December 31, 2009.	
For returns due after December 31, 2008, the base penalty rate is \$90 if the taxable year <b>begins</b> in 2008.	# # # #
For taxable years beginning after December 31, 2009 or returns due on or before December 31, 2017, the base penalty rate is \$195.	# # #
For returns due between January 1, 2018 and December 31, 2019 (without regard to extensions) the base penalty rate is \$200.	
For returns due between January 1, 2020 and December 31, 2020 (without regard to extensions) the base penalty rate is \$205.	
For returns due between January 1, 2021 and December 31, 2022 (without regard to extensions) the base penalty rate is \$210.	
For returns due between January 1, 2023 and December 31, 2023 (without regard to extensions) the base penalty rate is \$220.	
For returns due after January 1, 2024 the base penalty rate is \$235.	

- (3) Penalty rates as adjusted for inflation are published at least annually via Internal Revenue Bulletin and in return instructions before they take effect.
- (4) For the purpose of computing this penalty, the definition of “month” is the same

as it is for computing the penalty for filing late under IRC 6651(a)(1). See IRM 20.1.2.3.7.1, Period Subject to IRC 6651(a)(1).

## 20.1.2.4.3 (02-27-2024) Penalty Relief

- (1) If the taxpayer provides information allowing penalty relief for failure to file a complete or timely return, abate the penalty (as applicable) using Transaction Code (TC) 161 or TC 241 without penalty reference number (PRN) for years assessed prior to 2022. For years assessed after 2022, abate the penalty as applicable using TC 241 and corresponding PRN. Use the appropriate Penalty Reason Code (PRC) with the abatement. See IRM 20.1.1.3, Criteria for Relief From Penalties, for a discussion of penalty relief, and IRM 20.1.1-2, Penalty Reason Code Chart, for the appropriate PRC. See IRM 20.1.2.4.4.1, Procedures for Assessment and Abatement, for additional instructions.

**Note:** Reasonable cause is not demonstrated, and cannot be presumed, as long as the failure continues for which the partnership is being penalized.

- (2) First Time Abate does not apply to IRC 6698(a)(2) penalties. Refer to IRM 20.1.1.3.3.2.1, First Time Abate (FTA).
- (3) If it can be demonstrated the taxpayer is not required to file a particular schedule for which the penalty was charged, abate the penalty with PRC 045, IRS error.

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- (7) If the partnership return was both late **and** incomplete, and the incomplete return penalty is being abated (assessed prior to 2022, TC 241 with no PRN or assessed after 2022, TC 241 with PRN 723), assess the penalty using TC 240 PRN 722 and corresponding IRNs. Unless the partnership had reasonable cause for filing late. See IRM 20.1.2.4.4.1 for specific instructions for assessment of the penalty for filing late.

(8) If a taxpayer challenges the penalty amount because an incorrect number of partners was used in the computation, verify the number of partners claimed and adjust the penalty accordingly. Use PRC 010 if the penalty is decreased due to a change in number of partners. See IRM 20.1.2.4.4 for adjustment procedures if the result is an increase in the penalty.

- (1) IRC 6231(a)(1)(B) exempts certain small partnerships from the unified audit procedures contained in subchapter C of chapter 63 of the IRC. However, an exemption from the unified audit procedures is not an exemption from the requirement to file a timely and complete partnership return.
- (2) Rev. Proc. 84-35 provides reasonable cause for filing a late or incomplete return will be presumed for certain small partnerships if certain criteria are met:
  - a. The partnership must consist of 10 or fewer partners. For the purpose of this requirement, a husband and wife (or their estate) filing a joint return is considered one partner.
  - b. Each partner is either an individual (excluding nonresident aliens), or the estate of a deceased partner.
  - c. Each partner's items of income, deductions, and credits are allocated in the same proportion as all other items of income, deductions, and credits.
  - d. Each partner reported the partner's share of partnership income on the partner's **timely filed** income tax return.

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- (7) When abating the penalty under the provisions of Rev. Proc. 84-35, advise the taxpayer the penalty **will be reassessed** if it is later determined any of the criteria outlined in Rev. Proc. 84-35 have not been met: Specifically, if it is found any partner was not a qualifying partner; or, if any partner filed late; or, if any partner failed to report their share of partnership income on their return, then the penalty will be reassessed.
- (8) A request for penalty abatement under Rev. Proc. 84-35 must initially be denied **if** it appears the partnership is under an election to be subject to the unified audit procedures. See IRM 20.1.2.4.3.1.1, Form 8893 and 8894. A response to such a denial should not be treated as an appeal if the taxpayer provides additional information with respect to the election:
  - a. If the account reflects a processed election (Form 8893, Election of Partnership Level Tax Treatment, or similar statement) that has not been revoked, and the taxpayer claims the election was revoked, then the taxpayer must provide a copy of the IRS letter approving the revocation of the election.

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**Note:** Do not reject a penalty abatement request to obtain additional information if the partnership qualifies for “first time” abatement of the penalty. See IRM 20.1.1.3.3.2.1, First Time Abate (FTA).

- (9) Partnerships that do not qualify for abatement of the penalty under Rev. Proc. 84-35 may still qualify for abatement of the penalty under normal reasonable cause criteria.

20.1.2.4.3.1.1  
(07-02-2013)  
**Form 8893 and Form 8894**

- (1) The partnership is subject to the unified audit and litigation procedures (prior to amendment by the Bipartisan Budget Act of 2015) if the partnership filed Form 8893, Election of Partnership Level Tax Treatment, (or a similar statement) in effect for the tax year in question. See Form 1065 Schedule B, line 5 (line 4 prior to 2008). If the partnership filed Form 8893 (or a similar statement) to elect to be subject to the audit procedures, the election may have been recorded on IRS’s computer system, and the election can be researched with command code BMFOLE. The election may have been recorded in one of two ways:
  - a. The BMFOLE screen may display the literal “TEFRA” followed by “06” and the earliest tax period to which the election applies. This indicator is

set when the first Form 1065 is filed where Schedule B question 5 (on 2010 Form 1065; or equivalent question for other years) was answered “yes.”

- b. Transaction Code (TC) 971 with Action Code (AC) 334 was input in the entity when Form 8893 was received.
- (2) TC 971 AC 335 is input when the partnership revokes its election to be subject to the unified audit procedures, and IRS has approved the revocation. Form 8894, Request to Revoke Partnership Level Tax Treatment Election, is filed by the partnership to revoke a prior election.
  - (3) The TC 971 action codes related to the unified audit procedures election are as follows:

AC	Description
334	The partnership filed Form 8893 to elect to be subject to the unified audit procedures, and IRS approved the election.
335	The partnership filed Form 8894 to revoke the election to be subject to the unified audit procedures, and IRS approved the revocation.
336	TC 971 AC 334 was input in error. The partnership did not make a valid election to be subject to the unified audit procedures.
337	An election to be subject to the unified audit procedures was denied, e.g., because the election was not signed by all partners, or for another reason.
338	The partnership filed Form 8894 to revoke its election to be subject to the unified audit procedures, and the revocation was denied by IRS.

- (4) The absence of either the literal “TEFRA” or TC 971 AC 334, does not mean the election was not made. In other words, presume the election was made if Schedule B, line 5, was answered “Yes,” unless the partnership indicates line 5 was answered “Yes” in error.
- (5) If BMFOLE indicates an election via either of the two indicators, notify the taxpayer the partnership does not qualify for a waiver under Rev. Proc. 84–35 because our records indicate the partnership elected to be subject to the unified audit procedures in IRC 6221 through IRC 6234.

**Note:** IRS’s records are presumed to be correct, unless the taxpayer can produce documentary evidence to the contrary. If the partnership provides evidence IRS’s records reflect an election in error, follow local procedures for having the election indicator corrected. Acceptable evidence includes a statement signed by all partners the election was never made, or a copy of a letter from IRS indicating the partnership’s revocation of a prior election was approved.

- (6) If a partnership wishes to revoke the election, advise them to file Form 8894, Request to Revoke Partnership Level Tax Treatment Election. Also advise the partnership that filing Form 8894 does not guarantee the revocation will be



accepted: Under IRC 6231(a)(1)(B)(ii), the election cannot be revoked without the consent of the Secretary. The Secretary will not consent to such a revocation once an examination has started under the unified audit procedures for a year covered by the revocation. The Secretary also may reject a revocation filed solely to avoid the penalty under IRC 6698.

- (7) These provisions only apply for partnership taxable years beginning prior to January 1, 2018 to which the partnership procedures of sections 6221-6234, as enacted by the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), apply for the taxable year.

20.1.2.4.3.2  
(03-09-2022)  
**Revenue Procedure  
2003-84**

- (1) Rev. Proc. 2003-84 allows certain partnerships investing in tax-exempt obligations to make an election that enables the partners to take into account monthly inclusions required under IRC 702 and IRC 707. Rev. Proc. 2003-84 also provides rules for partnership income tax reporting. Thus, a partnership having a monthly closing election in effect for the entire taxable year and meets the other requirements in section 8 of this revenue procedure, is not required to file a Form 1065 or issue Schedules K-1 (Form 1065).
- (2) An eligible partnership makes a monthly closing election effective as provided under section 4.02 of this revenue procedure, and all partners must consent to this election.
- (3) The monthly closing election is effective on the later of the following:
- The start-up date of the partnership (as defined by section 4.05(1) of this revenue procedure), or
  - The first day of the month in which the provisions described in section 5.01 of this revenue procedure is first included in the entity's governing documents.
- (4) A partnership must file an abbreviated return (considered abbreviated because only certain information is required to be completed on the form) for the first taxable year during which the monthly closing election was in effect. The abbreviated return must be filed by the date the partnership's return would ordinarily be due. The words "Filed in Accordance with Rev. Proc. 2003-84" must be typed or written across the top of the form. See Rev. Proc. 2003-84 for the specific information that must be supplied on the abbreviated return.
- (5) If a late filing penalty was assessed because the required abbreviated return was late, and the partnership does not otherwise qualify for relief under any of the criteria in IRM 20.1.2.4.3, Penalty Relief, do not abate the penalty.
- (6) If a missing information penalty was assessed, and the missing information was not required under Rev. Proc. 2003-84, abate the penalty.
- (7) If a penalty for filing a late or incomplete return was assessed for any year following the first year, abate the penalty provided the taxpayer still qualifies for the elimination of the Form 1065 filing requirement under section 8.02 of Rev. Proc. 2003-84.
- (8) A partnership that fails to satisfy all of the requirements of section 8.02 (1) of Rev. Proc. 2003-84 is required to file a complete (not abbreviated) Form 1065 and to issue Schedules K-1 (Form 1065) to its partners as required by IRC 6031(a). A partnership that fails to file a Form 1065 or to issue Schedules K-1 as required is subject to the applicable penalties under IRC 6698 and IRC

6722 for failure to file a partnership return and to furnish payee statements, as well as any other applicable penalties. Moreover, if a partnership is required to file a return under IRC 6031(a) but fails to do so, the period of limitations on assessment of tax attributable to partnership items remains open indefinitely under IRC 6229(a).

- (9) See Rev. Proc. 2003-84, 2003-2 C.B. 1159 and IRM 21.7.4.4.2.12, Form 1065 Filed under Revenue Procedure 2003-84, for more information.

20.1.2.4.3.3  
(03-09-2022)

**Common Trust Fund  
Filers Under IRC 6032**

- (1) IRC 6032 requires banks maintain a common trust fund (see IRC 584) to file annual information returns by April 15 following the end of the calendar year. No particular form is prescribed for making this return, but if Form 1065, U.S. Return of Partnership Income, is used, it should reflect all items of gross income and deductions of the fund, and identify all participants and their proportionate share.
- (2) The penalty under IRC 6698 does not apply to returns required to be filed under IRC 6032. Therefore, filers who use Form 1065 to meet their filing requirement under IRC 6032 are not subject to the penalty for filing a late or incomplete return under IRC 6698.
- (3) Forms 1065 submitted by common trust fund filers, and received after April 15, should have the failure to file (FTF) penalty suppressed by applying computer condition code (CCC) "R" during processing. If information or attachments to affected returns are missing, processing functions should not apply missing schedule codes to the return.
- (4) When a Form 1065 filer requests abatement of either the penalty for filing late, or the missing information penalty, review the taxpayer's correspondence and case file for evidence the taxpayer filed Form 1065 to meet their filing requirement under IRC 6032. Check for the following:
  - a. A statement the taxpayer is a common trust fund under IRC 584.
  - b. A statement the taxpayer files Form 1065 to meet filing requirements under IRC 6032.
  - c. The entity portion of Form 1065 indicating the filer is a bank (or a group of two or more banks from the same affiliated group) acting as trustee, executor, administrator, guardian or custodian of accounts maintained on behalf of "fund participants."
- (5) If the evidence shows Form 1065 was filed under IRC 6032, take the following actions as applicable:
  - a. Abate any late filing penalty using Penalty Reason Code (PRC) 045.
  - b. Abate any missing information penalty with PRC 045.

20.1.2.4.3.4  
(04-19-2011)

**REMIC Special  
Considerations**

- (1) Although a real estate mortgage investment conduit (REMIC) is treated as a partnership for the purpose of penalties related to filing, the return (Form 1066) can include tax imposed under Chapter 1 of Subtitle A. If tax is reported on Form 1066, U.S. Real Estate Investment Conduit (REMIC) Income Tax Return, the return is required to be filed both under IRC 6031 (relating to information returns required to be filed by partnerships), and under IRC 6012 (relating to income tax returns required to be filed by persons with income taxes under

subtitle A). Therefore, when tax is reported on a late Form 1066, the return may be subject to both the penalty under IRC 6651(a)(1), and to the penalty under IRC 6698.

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- (4) Any TC 160 or TC 166 assessed against Form 1066 represents the failure-to-file penalty under IRC 6651. This penalty should be removed if the penalty under IRC 6698 is being imposed.

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- (6) Interest programming for Form 1066 (MFT 07) assumes any TC 16X on MFT 07 is a penalty assessed under IRC 6651(a)(1). Accordingly, it charges interest on TC 16X assessments beginning with the return due date on MFT 07. However, interest on the penalty under IRC 6698 does not begin until the date of notice and demand for payment of the penalty. Therefore, the TC 160 should **not** be used to assess the penalty under IRC 6698 against Form 1066 (MFT 07). See IRC 6601(e)(2)(A).

20.1.2.4.3.5  
(04-19-2011)  
**Electing Large  
Partnership Special  
Considerations**

- (1) The return of an electing large partnership (Form 1065-B, U.S. Return of Income for Electing Large Partnerships) can include tax imposed under Chapter 1 of Subtitle A. If tax is reported on Form 1065-B, the return is required to be filed both under IRC 6031 (relating to information returns required to be filed by partnerships), and under IRC 6012 (relating to income tax returns required to be filed by persons with income taxes under subtitle A). Therefore, when tax is reported on a late Form 1065-B, the return may be subject to both the penalty under IRC 6651(a)(1), and to the penalty under IRC 6698.

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- (4) These provisions only apply for partnership taxable years beginning prior to January 1, 2018 to which the partnership procedures of sections 6221-6234, as enacted by the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), apply for the taxable year.

20.1.2.4.4  
(02-27-2024)

**Procedures for  
Assessment or  
Abatement Prior to  
01/01/2022**

- (1) IRC 6751(a) requires IRS to include the following information with each notice of penalty:
- The name of the penalty.
  - The section of the IRC under which the penalty is being imposed.
  - A computation of the penalty.
- (2) Prior to 2022, IRS's notice programming was unable to accommodate these requirements unless the penalty was computed and assessed automatically during original return processing. Special procedures were followed when a penalty for failure to file a timely or complete partnership return was assessed under IRC 6698.
- (3) Assessment of the penalty under IRC 6698 does not follow deficiency procedures, and the taxpayer does not have any pre-assessment appeal rights. However, examiners must make every effort to obtain sufficient information to determine if the penalty applies, or if the taxpayer's failure to comply was due to reasonable cause.

- (4) To meet the requirements of IRC 6751(a), special procedures were developed by the Office of Servicewide Penalties in cooperation with Exam's Centralized Case Processing and Accounting. These procedures **must** be followed by any IRS employee imposing the penalty under IRC 6698 prior to 2022.
- a. Compute the penalty and print three copies of the penalty computation and explanation including appeal rights. A tool has been created to automatically compute the correct penalty, and can be used to print the computation along with the penalty explanation and appeal rights. A link to the tool will be placed on your desktop via a small program's accessed by clicking the "IRC 6698 & 6699 Penalty Computation Tool" link found on either web page referenced below.
  - b. Complete Form 2859, Request for Quick or Prompt Assessment, and follow your functional area's procedures to forward three copies to Revenue Accounting via Servicewide Penalties. Send three copies of the penalty computation and explanation printed in step (a) above. A job aid for correctly completing Form 2859 for these cases is found on the web page referenced below.

**Note:** If you are a revenue agent in the field, your functional areas procedures will be saved to your desktop when you use the penalty computation tool.

- c. Revenue Accounting will assess the penalty. The assessment process will generate Form 3552, Prompt Assessment Billing Assembly which will be mailed to the taxpayer along with one copy of the penalty computation and explanation.
- d. The assessment should be monitored until it posts (following your functional area's procedures) before the case file is sent to the Files function (again following your functional area's procedures) along with the copy of Form 3552 Part 5, and Form 2859 Part 2, which will have been returned by Revenue Accounting.

**Note:** Form 3552 Part 5 can be used as the cover for the case file as it contains the DLN under which the assessment is filed.

- (5) Penalty assessment information and the penalty computation tool can be found via the Penalties Knowledge Base Home at *Penalties Knowledge Base - Home (sharepoint.com)*.
- (6) Abatement of either penalty in part or in whole does not have the same notification requirement of tax assessments. However, any adjustment notice allowed to be generated by abating the penalty via use of IDRS command code (CC) ADJ54 would reflect incorrect penalty information. Therefore, Hold Code 3 must be used when the TC 160 penalty is abated using CC ADJ54, and the taxpayer must be notified of the abatement via another means.
- (7) Any questions by IRS employees regarding these procedures should be directed to the analyst in Office of Servicewide Penalties assigned to IRM 20.1.2, Failure to File/Failure to Pay Penalties. Analyst assignments can be

viewed on the IRWEB via the Knowledge Management Penalties' News and Contacts page at *Penalties Knowledge Base - PenaltyNewsAndAlertsAndContacts - GrpByChap (sharepoint.com)*.

20.1.2.4.4.1  
(02-27-2024)

**Procedures for  
Assessment or  
Abatement After  
01/01/2022**

- (1) IRS programming was changed through a Unified Work Request to meet the requirements of IRC 6751(a)(1).
- (2) Penalties will now be assessed with a PRN and IRN. When the adjustment posts, it will show as a TC 240 based on the PRN used. The PRN and IRN are input so penalty information will pass to the notices.
- (3) Assessment of the penalty under IRC 6698 does not follow deficiency procedures, and the taxpayer does not have any pre-assessment appeal rights. However, examiners must make every effort to obtain sufficient information to determine if the penalty applies, or if the taxpayer's failure to comply was due to reasonable cause.
- (4) Compute the penalty using the *IRC6698and6699PenaltyComputationTool.xlsm (sharepoint.com)*
- (5) Once the penalty amount is figured, follow local procedures.

<b>Input transaction or complete form with the following:</b>
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<p>Failure to File Form 1065, 1066</p> <ul style="list-style-type: none"> <li>• Use PRN 722 - list amount of penalty             <ul style="list-style-type: none"> <li>• IRN 851 - number of partners in two decimal format 2.00 or higher</li> <li>• IRN 852 - how many months late in two decimal format up to 12.00</li> </ul> </li> </ul>
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**Input transaction or complete form with the following:**

## Failure to File a Complete Return Form 1065, 1066

- Use PRN 723 - list amount of penalty
  - IRN 851 - number of partners in two decimal format, 2.00 or higher
  - IRN 852 - how many months late in two decimal format, up to 12.00
  - IRN 853 - Missing Schedule Code in two decimal format:
    - 33.00 = Missing schedules K-1's
    - 34.00 = Missing Balance Sheet (Schedule L)
    - 35.00 = Missing K-1 TINs (5 or more)
    - 36.00 = Missing schedules K-1s and Balance Sheet
    - 37.00 = Missing schedules K-1s and K-1 TINs
    - 38.00 = Missing Balance Sheet and K-1 TINs
    - 39.00 = Missing K-1s, Balance Sheet, and K-1 TINs
    - 45.00 = Missing schedules K
    - 46.00 = Missing schedules K and K-1s
    - 47.00 = Missing schedules K and Balance Sheet
    - 48.00 = Missing schedules K and K-1s TINs (5 or more).
    - 49.00 = Missing schedules K, K-1s and Balance Sheet
    - 50.00 = Missing schedules K, K-1 and K-1 TINs
    - 51.00 = Missing schedules K, Balance Sheet, and K-1 TINs (5 or more)
    - 52.00 = Missing schedules K, K-1, Balance Sheet, and K-1 TINs (5 or more)

## Failure to File Tracking Report Form 8985

- Use PRN 724 - list amount of penalty
  - IRN 851 - number of partners in two decimal format 2.00 or higher
  - IRN 852 - how many months late in two decimal format up to 12.00

**Note:** To meet requirements of IRC 6751, LB&I will send a custom notice when penalty is assessed.

(6) PRNs 722 and 723 can only be assessed when TC 290 or TC 300 is \$0.00.

**Note:** Only one penalty under PRN 722/723 can be a net positive amount on a module. Both PRNs cannot be net positives to avoid stacking of penalties.

(7) If removing a penalty and assessing another penalty, two separate adjustments need to be done. Input the penalty being removed first, then input the penalty being assessed with a cycle delay of one cycle.

20.1.2.4.5  
(02-27-2024)

**Cross-references**

- (1) For extensions of time to file, see IRM 20.1.2.2.3.1.
- (2) For periods disregarded in computing the penalty, see IRM 20.1.2.2.2.
- (3) For foreign partnerships and domestic partnerships whose books and records are kept abroad, see IRM 20.1.2.2.3.3
- (4) For First Time Abate (FTA), see IRM 20.1.1.3.3.2.1.

20.1.2.5  
(02-27-2024)

**Failure to File  
Partnership Return  
Using Electronic Media**

- (1) IRC 6011(e)(2) requires a partnership with over 100 partners to file their return electronically (including Schedules K-1). IRC 6721(a)(2)(A) provides for a penalty when a return is required to be filed electronically, and the partnership fails to use the electronic method of filing the partnership return. The penalty is assessed for each partner over the 100 partner threshold. See IRC 6724(c). The penalty does not apply if the partnership applied for and obtained a waiver from the electronic media filing requirement. The waiver is posted in the tax module as Transaction Code (TC) 971 with Action Code (AC) 320. TC 971 with AC 321 indicating the waiver was denied.
- (2) For returns due before 1/1/2011, the penalty is \$50 per partner over 100, with a maximum penalty of \$250,000.
- (3) For returns due on or after 1/1/2011, but before 1/1/2016, the penalty is \$100 per partner over 100, with a maximum penalty of \$1,500,000.
- (4) For returns due on or after 1/1/2016, the penalty increased to \$250 per partner over 100, with a maximum penalty of \$3,000,000, all adjustable for inflation. The inflation adjustment is based on the increase in the CPI since 2011.
- (5) Partnerships with average gross receipts of \$5,000,000 or less in the three most recent taxable years qualify for a lower maximum penalty; however, the penalty per partner over 100 remains the same.
  - For returns due before 1/1/2011 the lower maximum penalty is \$100,000.
  - For returns due on or after 1/1/2011, but before 1/1/2016, the lower maximum penalty is \$500,000.
  - For returns due on or after 1/1/2016 the lower maximum penalty is \$1,000,000. However, this amount is adjustable for inflation per CPI increase since 2011. As a result, the actual lower maximum amount for returns due in 2016 is \$1,059,500.
- (6) If a partnership was assessed a penalty in excess of the lower maximum penalty, and it is able to show its average gross receipts for the previous three years was \$5,000,000 or less, then abate the excess penalty with TC 241 using penalty reason code (PRC) 045.
- (7) For returns due in 2016 and subsequent years, the table below reflects the inflation adjusted penalty per partner over 100, the lower maximum penalty amount, and the higher maximum penalty amount. Subject to yearly inflation rates.

For returns due in	The penalty per partner in excess of 100 is	With a lower maximum penalty of	With an upper maximum penalty of
2016	\$260	\$1,059,500	\$3,178,500
2017	\$260	\$1,064,000	\$3,193,000
2018	\$260	\$1,072,500	\$3,218,500
2019	\$270	\$1,091,500	\$3,275,500
2020	\$270	\$1,113,000	\$3,339,000
2021	\$280	\$1,130,500	\$3,392,000
2022	\$280	\$1,142,000	\$3,426,000
2023	\$290	\$1,777,500	\$3,523,500
2024	\$310	\$1,261,000	\$3,783,000

- (8) The penalty is assessed automatically by the computer using TC 246 with penalty reference number (PRN) 688. See IRM 21.7.4.4.2.8.1, Partnerships with More Than 100 Partners, for more information regarding the administration of this penalty.

20.1.2.5.1  
(07-02-2013)  
**Penalty Relief**

- (1) IRC 6724(a) provides the penalty for failure to file a partnership return on electronic media does not apply if the failure is due to reasonable cause, and not due to willful neglect. The specific criteria for reasonable cause applicable to this penalty, and as outlined in 26 CFR 301.6724-1, are outlined in this subsection.
- (2) To qualify for a waiver due to reasonable cause, the partnership must show it acted in a responsible manner with respect to the e-file requirement, both before and after filing. This means the partnership made a reasonable effort to meet the e-file requirement prior to filing its return on paper. It also means the partnership has taken reasonable steps to prevent a recurrence of the failure to file electronically in future years.
- (3) **In addition** to the requirements in paragraph (2) above, the following also apply:
- There must be **mitigating factors** present persuading the IRS the failure was due to reasonable cause, and not due to willful neglect. OR
  - The failure must have been due to an **“impediment”** beyond the partnership’s control.
- (4) With respect to mitigating factors, the requirement is considered met if the partnership is a new partnership (first-time filer), or the partnership has a history of complying with the e-file requirement. A history of complying means the partnership was required to e-file in the past, and e-filed as required.

**Note:** These criteria are NOT the same as the First Time Abate criteria in IRM 20.1.1.3.3.2.1, First Time Abate (FTA).

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- (6) With respect to an impediment, the following impediments are acceptable as reasonable cause for failure to file using electronic media:
- (7) **Undue Economic Hardship.** This criteria is considered met if the partnership determined at least 90 days before the due date of the return (without regard to extensions) the cost of filing via electronic media was prohibitive. The cost must be supported by a minimum of two cost estimates from unrelated parties, and the partnership must have filed a timely return on paper.
- (8) **Actions of the Internal Revenue Service.** This criteria is considered met if the partnership acted on specific written advice from an agent of the IRS, if the advice was unsolicited, or if it was provided in response to a specific written request. If the advice was in response to a specific written request, the request must have been complete and accurate in every material aspect that would effect the advice given by the IRS. When requesting a waiver based on written IRS advice, the partnership must provide copies of the written advice and written request, if applicable.
- Note:** We will also waive the penalty if the partnership attempted to e-file the return, but the IRS could not (or would not) accept the return due to no fault of the partnership or its agent. This also means the IRS will waive the penalty if the partnership had reasonable cause for filing late, and the IRS could not (or would not) accept the e-filed return because it was filed late.
- (9) **Actions of Agent-Imputed Reasonable Cause.** This criteria is considered met if the partnership exercised reasonable business judgement in contracting with an agent to prepare and e-file the partnership return, and the agent failed to deliver on its contract. The partnership must have contracted with a qualified agent, and provided the agent with all documentation required in order for the agent to be able to prepare and e-file the return in a timely manner. Reasonable business judgement rises above ordinary business care and prudence, as it requires research on the part of the partnership in the process of selecting a reliable agent with whom to contract, and who is able to provide the required service.
- (10) TC 971 with Action Code 320 is used to waive the penalty prior to assessment.
- (11) TC 971 with Action Code 321 is used to deny a penalty waiver request prior to assessment.

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- (6) The penalty is assessed “manually” with TC 240 with PRN 722 for filing late and TC 240 with PRN 723 if required information was missing. See IRM 20.1.2.6.4 for specific procedures required to be followed for manual assessments of the penalty.
- (7) Assessment made prior to 2022, the penalty is abated manually with TC 161 or TC 241 without PRN if the assessed penalty amount is excessive.
- (8) Assessment made after 2022, the penalty is abated manually with TC241 and corresponding PRN.
- (9) Manual adjustment (assessment or abatement) of the penalty is required if the S corporation files an amended return reporting a different number of shareholders than reported on the original return, and a penalty was charged when the original return was processed.
- (10) Systemic assessment of the penalty is preferred. Do not assess the penalty manually if a return has not posted, and the taxpayer’s return can be processed through the submission processing center.

20.1.2.6.1.1  
(07-18-2016)  
**S Corporation Detailed  
Reporting Requirements**

- (1) IRC 6037 requires a S corporation to include in its return all of the information which “the Secretary may by forms and regulations prescribe.” The penalty under IRC 6699 may be applied if any required information is missing.

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- (3) A penalty cannot be asserted under IRC 6699 for failure to attach required statements to Schedules K-1 sent to shareholders.

20.1.2.6.2  
(02-27-2024)  
**Penalty Computation**

- (1) The penalty for the failure to file Form 1120-S (or for failure to file a complete return with all the information required under IRC 6037) is charged for each month (or part of a month) the failure continues, for up to 12 months.
- (2) The penalty for each month is calculated by multiplying the applicable base penalty rate by the number of persons who were a shareholder in the S corporation at any time during the taxable year.
  - a. For returns due before December 21, 2007, there is no penalty.
  - b. For returns due after December 21, 2007, but before January 1, 2009, the base penalty rate is \$85.
  - c. For returns due after December 31, 2008, the base penalty rate is \$89, if the taxable year does not begin after December 31, 2009.
  - d. For taxable years beginning after December 31, 2009, the base penalty rate is \$195.

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- e. The amount in (d) above is subject to inflation adjustment for returns due after 2014, but remains at \$195 for returns due on or before December 31, 2017.
  - f. For returns due between January 1, 2018 and December 31, 2019 (without regard to extensions) the base penalty rate is \$200.
  - g. For returns due between January 1, 2020 and December 31, 2020 (without regard to extensions) the base penalty rate is \$205.
  - h. For returns due between January 1, 2021 and December 31, 2022 (without regard to extensions) the base penalty rate is \$210.
  - i. For returns due between January 1, 2023 and December 31, 2023 (without regard to extensions) the base penalty rate is \$220.
  - j. For returns due after January 1, 2024, the base penalty rate is \$235.
  - k. Penalty rates as adjusted for inflation are published at least annually via Internal Revenue Bulletin and in return instructions before they take effect.
- (3) For the purpose of computing this penalty, the definition of “month” is the same as it is for computing the penalty for filing late under IRC 6651(a)(1). See IRM 20.1.2.3.7.1, Period Subject to IRC 6651(a)(1).

20.1.2.6.3  
(02-27-2024)  
**Penalty Relief**

- (1) If the taxpayer provides information allowing penalty relief for failure to file a complete or timely return, abate the penalty (as applicable) using Transaction Code (TC) 161 or TC 241 without penalty reference number (PRN) for years assessed prior to 2022. For years assessed after 2022, abate the penalty as applicable using TC 241 and corresponding PRN. Use the appropriate Penalty Reason Code (PRC) with the abatement. See IRM 20.1.1.3, Criteria for Relief From Penalties, for a discussion of penalty relief.
- (2) First Time Abate (FTA) does not apply to IRC 6699(a)(2) penalties. See IRM 20.1.1.3.3.2.1, First Time Abate (FTA).
- (3) If it can be demonstrated the taxpayer is not required to file a particular schedule for which the penalty was charged, abate the penalty with TC 241 with PRN, and with PRC 045, IRS Error.

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- (6) If the S corporation return was both late **and** incomplete, and the incomplete return penalty is being abated (TC 241 PRN 723), assess the penalty for filing late using TC 240 PRN 722 and corresponding IRNs, see IRM 20.1.2.6.4.1 unless the S corporation had reasonable cause for filing late, or qualifies for first time abatement of the penalty (FTA - see IRM 20.1.1.3.3.2.1, First Time Abate (FTA), paragraph 9). See IRM 20.1.2.6.4, Procedures for Assessment or Abatement, for specific instructions for assessment of the penalty for filing late.
- (7) IRM 21.7.4.4.4.11.1.9, Failure to File S Corporation Return Penalty, contains instructions to follow if the taxpayer challenges the penalty amount because IRS used an incorrect number of shareholders to compute the penalty. If the penalty is reduced because an incorrect number of shareholders was reported on the original return, use Penalty Reason Code 010 for the abatement.

**Note:** If the result is an increase in the penalty, the procedures in IRM 20.1.2.6.4 (5) must be followed.

- (8) Penalty relief under Rev. Proc. 84–35 does NOT apply to S corporations.

20.1.2.6.3.1  
(07-02-2013)  
**Short Termination Year  
Special Consideration**

- (1) When a corporation ceases to be a small business corporation because it no longer qualifies, the “S” corporation election is terminated, and the corporation is required to file two short year returns for the termination year:
- a. The portion of the year ending before the effective date of the termination is treated as a short taxable year of a S corporation.
  - b. The portion of the year beginning on the effective date of the termination is treated as a short taxable year of a C corporation.
  - c. For the termination year, the due date of the return for the short taxable year of the S corporation is the same as the due date of the return for the short taxable year of the C corporation, including extensions. See IRC 1362(e)(6)(B).

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- (3) Follow the instructions in the table below for ALL short termination year S corporation returns:

IF	THEN
IRS assessed a late filing penalty, TC 166 for years prior to 2022. TC246 PRN 722 for processing years after 2022.	Recompute the penalty based on the correct return due date. Abate the erroneous or excess late filing penalty following the procedures in IRM 20.1.2.6.4. If the penalty was not abated in full, send the taxpayer a copy of the computation for the revised penalty.
IRS assessed a missing information penalty, TC 246.	Recompute the penalty based on the correct return due date. Abate the erroneous or excess missing information penalty following the procedures in IRM 20.1.2.6.4. If the penalty was not abated in full, send the taxpayer a copy of the computation for the revised penalty.
The return was filed on time, but without required information, and IRS did not assess a missing information penalty.	Determine the correct missing information penalty amount as outlined in IRM 20.1.2.6.2. Assess the penalty following the procedures in IRM 20.1.2.6.4.
The return was filed after the proper due date (including extensions), and IRS did not assess a late filing penalty or missing information penalty.	Determine the correct type and amount of penalty as outlined in IRM 20.1.2.6.1 and IRM 20.1.2.6.2. Assess the penalty following the procedures in IRM 20.1.2.6.4.1.

**Caution:** Do not assess or maintain a penalty if the corporation qualifies for relief as outlined in IRM 20.1.2.6.3.

20.1.2.6.4  
(02-27-2024)  
**Procedures for  
Assessment or  
Abatement Prior to  
01/01/2022**

(1) IRC 6751(a) requires IRS to include the following information with each notice of penalty:

- The name of the penalty.
- The section of the IRC under which the penalty is being imposed.
- A computation of the penalty.

(3) Assessment of the penalty under IRC 6699 does not follow deficiency procedures, and the taxpayer does not have any pre-assessment appeal rights. However, examiners must make every effort to obtain sufficient information to determine if the penalty applies, or if the taxpayer's failure to comply was due to reasonable cause.

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- (4) In order to meet the requirements of IRC 6751(a), special procedures have been developed by the Office of Servicewide Penalties in cooperation with Exam's Centralized Case Processing and Accounting. These procedures **must** be followed by any IRS employee imposing the penalty under IRC 6699.
- a. Compute the penalty and print three copies of the penalty computation and explanation including appeal rights. A tool has been created to automatically compute the correct penalty, and can be used to print the computation along with the penalty explanation and appeal rights. A link to the tool will be placed on your desktop via a small program accessed by clicking the "IRC 6698 & 6699 Penalty Computation Tool" link found on either web page referenced below.
  - b. Complete Form 2859, Request for Quick or Prompt Assessment Billing Assembly, and follow your functional area's procedures to forward two copies to Revenue Accounting along with two copies of the penalty computation and explanation printed in step (a) above. A job aid for correctly completing Form 2859 for these cases is found on the web page referenced below.

**Note:** If you are a revenue agent in the field, your functional areas procedures will be saved to your desktop when you use the penalty computation tool.

**Caution:** For corporate (MFT 02) returns, IRS interest programming uses the return (TC 150) DLN to differentiate between late filing penalties under IRC 6651 and IRC 6699. Interest on a late filing penalty under IRC 6651 begins on the return due date (including extensions). Interest on a late filing penalty under IRC 6699 begins on the notice date (see Form 3552 for the notice date). If the TC 150 DLN does not contain doc code 16, the interest programming will assume the late filing penalty is under IRC 6651. If the penalty is being assessed under IRC 6699 it is important to include TC 340 for zero on Form 2859 to prevent interest from erroneously being added to the penalty. A non-restricting TC 340 should be input subsequent to the assessment to set the interest start date. See IRM 20.2.5.6.3, Non-Restricting Transaction Code (TC) 340, and IRM 20.2.5-4, Input Screen for Non-Restricting TC 340 using ADJ54.

- c. Revenue Accounting will assess the penalty. The assessment process will generate Form 3552, Prompt Assessment Billing Assembly which will be mailed to the taxpayer along with one copy of the penalty computation and explanation.
- d. The assessment should be monitored until it posts (following your functional area's procedures) before the case file is sent to the Files function (again following your functional area's procedures) along with the copy of Form 3552 Part 5, and Form 2859 Part 2, which will have been returned by Revenue Accounting .

**Note:** Form 3552 Part 5 can be used as the cover for the case file as it contains the DLN under which the assessment is filed.

- (5) Penalty assessment information and the penalty computation tool can be found via the following links beginning on the IRS employee home page:
  - a. Hover the cursor over “People & Offices” and then click on “Business Units” in the resulting drop-down menu.
  - b. Under the heading of “Services and Enforcement Organizations” click on the link titled “Small Business/Self-Employed (SB/SE).”
  - c. On the “MySB/SE” page, under the header “Servicewide Operations” in the left margin click on the link titled “Penalties.”
  - d. On the “Penalties Knowledge Base Homepage” click on the “Failure to File” book under the “Common Tax Return Penalties” bookshelf.
  - e. Click on the appropriate link for the type of penalty you are assessing.
- (6) Abatement of either penalty in part or in whole does not have the same notification requirement of tax assessments. However, any adjustment notice that is allowed to be generated by abating the penalty via use of IDRS command code (CC) ADJ54 would reflect incorrect penalty information. Therefore, Hold Code 3 must be used when the TC 160 penalty is abated using CC ADJ54, and the taxpayer must be notified of the abatement via another means.
- (7) Any questions by IRS employees regarding these procedures should be directed to the analyst in Office of Servicewide Penalties assigned to IRM 20.1.2, Failure to File/Failure to Pay Penalties. Analyst assignments can be found in the Knowledge Management Penalty News and Alerts and Contacts book under the Penalty Research and Other Guidance bookshelf on the Penalties Knowledge Base Homepage in a document titled Office of Servicewide Penalties (OSP) Staff List and Responsibilities. *Penalties Knowledge Base - PenaltyNewsndAlertsAndContacts - GrpByChap (sharepoint.com)*.

20.1.2.6.4.1  
(02-27-2024)  
**Procedures for  
Assessment or  
Abatement After  
01/01/2022**

- (1) IRS programming was changed through a Unified Work Request to meet the requirements of IRC 6751(a)(1).
- (2) Penalties will now be assessed with a PRN and IRN. When the adjustment posts, it will show as a TC 240 based on the PRN used. The PRN and IRN are input so penalty information will pass to the notices.
- (3) Assessment of the penalty under IRC 6699 does not follow deficiency procedures, and the taxpayer does not have any pre-assessment appeal rights. However, examiners must make every effort to obtain sufficient information to determine if the penalty applies, or if the taxpayer’s failure to comply was due to reasonable cause.
- (4) Compute the penalty using the *Penalty Computation Tool*.
- (5) Once the penalty amount is figured, follow local procedures.

**Input transaction or complete form with the following:**

Failure to File Form 1120S

- Use PRN 722- list amount of penalty
  - IRN 851 - number of shareholders in two decimal format 1.00 or higher
  - IRN 852 - how many months late in two decimal format up to 12.00

**Input transaction or complete form with the following:****Failure to File a Complete Return Form 1120-S**

- Use PRN 723 - list amount of penalty
  - IRN 851 - number of shareholders in two decimal format, 1.00 or higher
  - IRN 852 - how many months late in two decimal format, up to 12.00
  - IRN 853 - Missing Schedule code in two decimal format:
    - 33.00 = Missing schedules K-1's
    - 34.00 = Missing Balance Sheet (Schedule L)
    - 36.00 = Missing schedules K-1s and Balance Sheet
    - 45.00 = Missing schedules K
    - 46.00 = Missing schedules K and K-1s
    - 47.00 = Missing schedules K and Balance Sheet
    - 49.00 = Missing schedules K, K-1s and Balance Sheet

(6) PRNs 722 and 723 can only be assessed when TC 290 or TC 300 is \$0.00.

**Note:** Only one penalty under PRN 722/723 can be a net positive amount on a module. Both PRNs cannot be net positives to avoid stacking of penalties.

(7) If removing a penalty and assessing another penalty, two separate adjustments need to be done. Input the penalty being removed first, then input the penalty being assessed with a cycle delay of one cycle.

20.1.2.6.5  
(02-27-2024)

**Cross-references**

- (1) See IRM 20.1.2.2.3.3, Taxpayers Abroad, for the following:
  - a. Domestic corporations which transact their business and keep their records and books of account outside the United States and Puerto Rico.
  - b. Foreign corporations which maintain an office or place of business within the United States.
  - c. Domestic corporations whose principal income is from sources within the possessions of the United States.
- (2) See IRM 20.1.2.2.3.1 for extensions of time to file.
- (3) For periods disregarded in computing the penalty see IRM 20.1.2.2.2.
- (4) For First Time Abate (FTA) see IRM 20.1.1.3.3.2.1, First Time Abate (FTA).

**Exhibit 20.1.2-1 (07-02-2013)**  
**Revenue Procedure 84-35****APPLICABLE SECTIONS:**

26 CFR 601.602: Forms and instructions. (Also Part I, Sections 6031, 6231, 6698; 1.6031-1.)

**TEXT:****SECTION 1. PURPOSE**

The purpose of this revenue procedure is to update Rev. Proc. 81-11, 1981-1 C.B. 651, to conform to the small partnership provisions of section 6231 (a) (1) (B) of the IRC. Rev. Proc. 81-11 sets forth the procedures under which partnerships with 10 or fewer partners will not be subject to the penalty imposed by section 6698 for failure to file a partnership return.

**SECTION 2. BACKGROUND**

.01 Section 6031 (a) of the Code provides that every partnership must make a return for each taxable year including all information that the Secretary may by forms and regulations prescribe.

.02 Section 402 of the Tax Equity and Fiscal Responsibility Act of 1982, 1982-2 C.B. 462, 585, added sections 6221 through 6232 to the Code to provide that the tax treatment of partnership items must be determined at the partnership level. For purposes of these sections, section 6231 (a) (1) (A) defines “partnership” to mean any partnership required to file a return under section 6031 (a) except as provided in section 6231 (a) (1) (B).

.03 Section 6231 (a) (1) (B) of the Code provides an exception to the definition of “partnership” for small partnerships. In general, the term “partnership” does not include a partnership if the partnership has 10 or fewer partners, each of whom is a natural person (other than a nonresident alien) or an estate, and each partner’s share of each partnership item is the same as such partner’s share of every other item. A husband and wife, and their estates, are treated as one partner for this purpose.

.04 Section 6698 of the Code imposes a penalty if any partnership required to file a return under section 6031 fails to file a timely return, or files a return that fails to show the information required by that section, unless the failure is due to reasonable cause.

.05 The Conference Committee Report concerning section 6698 of the Code states:

The penalty will not be imposed if the partnership can show reasonable cause for failure to file a complete or timely return. Smaller partnerships (those with 10 or fewer partners) will not be subject to the penalty under this reasonable cause test so long as each partner fully reports his share of the income, deductions, and credits of the partnership...

H.R. Rep. No. 95-1800 (Conf. Report), 95th Cong., 2d Sess. 221 (1978), 1978-3 C.B. (Vol. 1) 521, 555. See also H.R. Rep. No. 95-1445, 95th Cong., 2d Sess. 75 (1978), 1978-3 C.B. (Vol. 1) 181, 249, and S. Rep. No. 95-1263, 95th Cong., 2d Sess. 106 (1978), 1978-3 C.B. (Vol. 1) 315, 403, which contain similar statements.

**SECTION 3. REQUIRED PROCEDURES**

.01 A domestic partnership composed of 10 or fewer partners and coming within the exceptions outlined in section 6231 (a) (1) (B) of the Code will be considered to have met the reasonable cause test and will not be subject to the penalty imposed by section 6698 for the failure to file a complete or timely partnership return, provided that the partnership, or any of the partners, establishes, if so requested by the Internal Revenue Service, that all partners have fully reported their shares of the income, deductions, and credits of the partnership on their timely filed income tax returns.

**Exhibit 20.1.2-1 (Cont. 1) (07-02-2013)**  
**Revenue Procedure 84-35**

.02 Partnerships having a trust or corporation as a partner, tier partnerships, and partnerships where each partner's interest in the capital and profits are not owned in the same proportion, or where all items of income, deductions, and credits are not allocated in proportion to the prorata interests, do not come within the exception provisions of section 6231 (a) (1) (B) of the Code and, are subject to the penalty imposed by section 6698.

.03 Although a partnership of 10 or fewer partners may not be automatically excepted from the penalty imposed by section 6698 of the Code under section 3.01, the partnership may show other reasonable cause for failure to file a complete or timely partnership return.

.04 In determining whether a partner has fully reported the partner's share of the income, deductions, and credits of the partnership, for purposes of section 3.01, all the relevant facts and circumstances will be taken into account. In making this determination, the nature and materiality of any error or omission will be considered. For example, although an isolated clerical error normally reflects no more than mere inadvertence, such an error may be of such magnitude that the partner will not be considered to have fully reported. If the error or omission results in a de minimis understatement of the net amount payable with respect to any income tax, the penalty will not be asserted. However, if the error or omission results in a material understatement of the net amount payable with respect to any income tax, the partner generally will not be considered to have fully reported and the penalty will be applied.

**SECTION 4. EFFECT ON OTHER REVENUE PROCEDURES**

Rev. Proc. 81-11 is modified and superseded.

**SECTION 5. EFFECTIVE DATE**

This revenue procedure is effective for returns required to be filed after June 22, 1984.



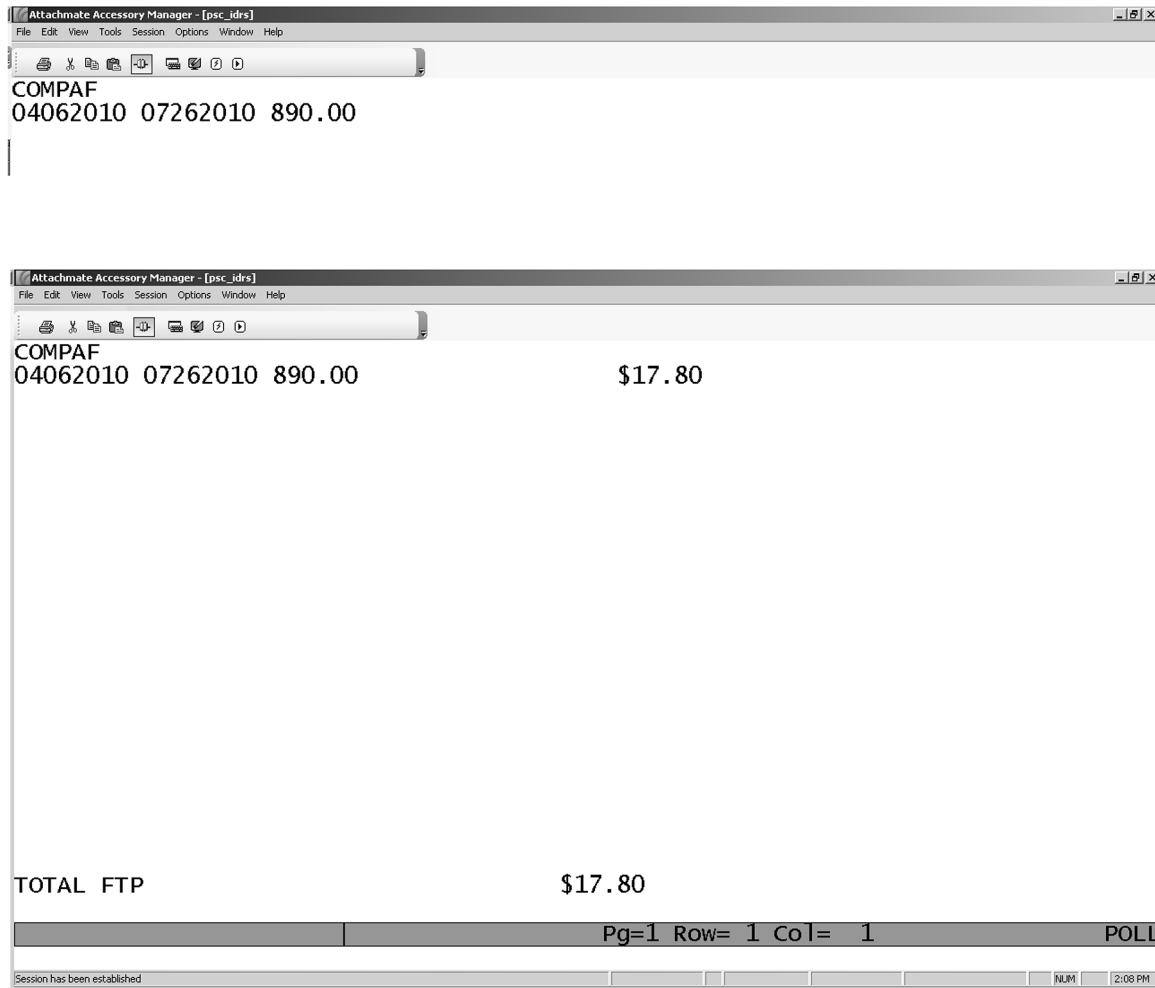
**Exhibit 20.1.2-2 (02-27-2024)****References**

The following are found on-line at [www.irs.gov](http://www.irs.gov):

- Rev. Proc. 2003-84
- Rev. Proc. 2005-9
- Rev. Proc. 2007-19

**Exhibit 20.1.2-3 (04-19-2011)**  
**COMPAF Examples**

(1) The 1st image below represents an input screen print for computing FTP penalty at  $\frac{1}{2}$  percent per month on \$890 from 4/6/2010 to 7/26/2010. The 2nd image below represents the terminal response.



(2) The 1st image below represents an input screen print for computing FTP penalty at  $\frac{1}{2}$  percent per month on \$890 from 4/6/2010 to 5/27/2010, and at 1 percent from 5/27/2010 to 7/26/2010. Note the 1 percent start date entered beginning in the 14th position of the first line. The 2nd image below represents the terminal response.



## Exhibit 20.1.2-3 (Cont. 1) (04-19-2011)

## COMPAF Examples

The screenshot shows a terminal window titled "Attachmate Accessory Manager - [psc\_idrs]". The terminal displays a COMPAF example calculation. The first line is "COMPAF 05272010 # DENOTES 1% RATE". The second line shows "04062010 05272010 890.00" with a corresponding rate of "\$8.90". The third line shows "05272010 07262010 890.00" with a corresponding rate of "\$17.80#". At the bottom, the "TOTAL FTP" is calculated as "\$26.70". The status bar at the bottom indicates "Pg=1 Row= 1 Col= 1" and "POLL".

Line	Field 1	Field 2	Field 3	Field 4
1	COMPAF	05272010	# DENOTES	1% RATE
2	04062010	05272010	890.00	\$8.90
3	05272010	07262010	890.00	\$17.80#
TOTAL FTP				\$26.70

(3) The 1st image below represents an input screen print for computing FTP penalty at  $\frac{1}{2}$  percent per month from 4/15/2010 to 4/20/2010, and at  $\frac{1}{4}$  percent from 4/20/2010 to 12/13/2010. Note the  $\frac{1}{4}$  percent start date in beginning in the 14th position of line 1, and the "&" in the 23rd line position. The 2nd image below represents the terminal response. Note the "&" has moved to the 25th position in the terminal response.

The screenshot shows a terminal window titled "Attachmate Accessory Manager - [psc\_idrs]". The terminal displays a COMPAF example calculation. The first line is "COMPAF 04202010 &". The second line shows "04152010 05012010 1,200.00". The third line shows "05012010 06012010 1,100.00". The fourth line shows "06012010 07012010 1,000.00". The fifth line shows "07012010 08012010 900.00". The sixth line shows "08012010 09012010 800.00". The seventh line shows "09012010 10012010 700.00". The eighth line shows "10012010 12132010 600.00".

Line	Field 1	Field 2	Field 3	Field 4
1	COMPAF	04202010	&	
2	04152010	05012010	1,200.00	
3	05012010	06012010	1,100.00	
4	06012010	07012010	1,000.00	
5	07012010	08012010	900.00	
6	08012010	09012010	800.00	
7	09012010	10012010	700.00	
8	10012010	12132010	600.00	

**Exhibit 20.1.2-3 (Cont. 2) (04-19-2011)****COMPAF Examples**

Attachmate Accessory Manager - [psc\_idrs]

File Edit View Tools Session Options Window Help

COMPAF 04202010 & DENOTES 1/4% RATE

04152010	04202010	1,200.00	\$6.00
04202010	05012010	1,200.00	\$ .00&
05012010	06012010	1,100.00	\$2.75&
06012010	07012010	1,000.00	\$2.50&
07012010	08012010	900.00	\$2.25&
08012010	09012010	800.00	\$2.00&
09012010	10012010	700.00	\$1.75&
10012010	12132010	600.00	\$3.00&

TOTAL FTP \$20.25

Pg=1 Row= 1 Col= 1 POLL

Session has been established

NUM 2:17 PM

(4) The first image below represents the input screen for continuing the computation from paragraph (3) above at 1 percent beginning 12/13/2010, through 2/22/2011. Note the "CONT" entered beginning in the 8th position of the first line, and the 1 percent start date entered beginning in the 14th position of the first line. The second image below represents the response screen. Note the "TOTAL FTP" amount on the response screen is the sum of the individual amount from this screen, plus the "TOTAL FTP" amount from the response screen from paragraph (3) above. An FTP computation can be continued over multiple screens if needed to account for multiple underpayment amounts or penalty rates. Continuing a computation over multiple screens (rather than performing a new computation each time) prevent the operator from exceeding the 25 percent aggregate maximum statutory limit.

Attachmate Accessory Manager - [psc\_idrs]

File Edit View Tools Session Options Window Help

COMPAF CONT 12132010

12132010 02222011 600.00

## COMPAF Examples

The image is a screenshot of a computer screen displaying a terminal window titled "Attachmate Accessory Manager - [psc\_idrs]". The window has a menu bar with "File", "Edit", "View", "Tools", "Session", "Options", "Window", and "Help". Below the menu bar is a toolbar with icons for file operations (copy, paste, print, etc.) and a scroll bar. The main area of the window shows a text-based data entry form. The form has several fields: "COMPACT CONT" with value "12132010", "# DENOTES" with value "1%", "RATE" with value "\$18.00#", and "TOTAL FTP" with value "\$38.25". At the bottom of the window, there is a status bar with the text "Session has been established" and a footer area showing "Pg=1 Row= 1 Col= 1" and "POLL".

