Department of the Treasury	Internal Revenue Service	Office of Chief Counsel	Notice

CC-2014-004

May 20, 2014

Subject:	Written Supervisory Approval Not Required to Assess Certain Section 6702 Penalties	**Cancel Date**:	Upon incorporation into the CCDM

Purpose

This Notice alerts Chief Counsel attorneys that, when the proposal and assessment of a section 6702 penalty is fully automated, preassessment written supervisory approval of the penalty under section 6751(b)(1) is not required. This Notice reaffirms the position that preassessment written supervisory approval is required when a Service employee makes an independent determination that the penalty should apply.

Background

CC Notice CC-2011-004 instructed attorneys not to argue that section 6702 penalties satisfy the exception to preassessment written supervisory approval under section 6751(b)(2)(B). That Notice concluded that such penalties could not be automatically calculated through electronic means because a Service employee had to make an independent determination that the penalty should apply prior to assessment. CC Notice CC-2011-004 distinguished section 6702 penalties from additions to tax under sections 6651, 6654, and 6655, which could be assessed automatically in the course of return processing according to objective data.

Change in the Service's Practices

The identification of frivolous filings can be made in any Service office by any employee.[1] Recently, computer models were created to systematically identify potential frivolous filings. These computer models, through the Electronic Fraud Detection System (EFDS), analyze both paper and electronic returns to determine whether proposal and assessment of a section 6702 penalty is warranted. The models use objective data, such as the amount of income tax and withholding reported on a return and the type of Forms used to make certain claims, to determine whether the imposition of a section 6702 penalty is warranted. If so, a pre-notification letter is automatically generated and sent to the taxpayer. The pre-notification letter advises the taxpayer that an assessment of the penalty is being proposed, and gives the taxpayer a fixed period of time to contest the assessment. If no response is received within the fixed period after the pre-

[1] IRM 4.10.12.1.3.1(1).

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		All Personnel	X	Electronic Reading Room
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notification letter is sent, the penalty is systematically assessed. If a response is received, then a Service employee from the Frivolous Return Program works the case.

If the computer models through EFDS propose a penalty and the taxpayer does not reply to the automatically generated pre-notification letter, then an assessment of the section 6702 penalty is made without any Service employee exercising independent judgment with respect to the applicability of the penalty. In these situations, the section 6702 penalty is automatically calculated through electronic means, and qualifies as an exception to the general rule requiring written supervisory approval of assessment.

If a Service employee makes an independent determination regarding whether to propose assessment of the penalty, then the penalty is not automatically calculated through electronic means. In such situations, section 6702 penalties may only be assessed after written supervisory approval, as outlined in CC Notice CC-2011-004.

Instructions

Chief Counsel attorneys should determine, on a case-by-case basis, whether the proposal and assessment of the section 6702 penalty at issue was fully automated. To do so, for assessments made after April 1, 2014, attorneys should check IDRS and look for a notation of “EFDS/CV/PN” in the MFT55. Such a notation will indicate that the proposal and assessment of the section 6702 penalty at issue was fully automated. If there is no such notation, and for assessments made before April 1, 2014, attorneys should contact the Frivolous Return Program Analyst at the Frivolous Return Program Campus to determine whether the proposal and assessment of the penalty was fully automated.

If the proposal and assessment of the section 6702 penalty at issue was fully automated, Chief Counsel attorneys should argue that the penalty was automatically calculated through electronic means and qualifies as an exception to the general rule requiring written supervisory approval of assessment.

If the proposal and assessment of the section 6702 penalty at issue was not fully automated, Chief Counsel attorneys should confirm that the initial determination to assess the penalty was personally approved in writing by the immediate supervisor of the individual making the initial determination prior to assessment.

Any questions regarding the preassessment procedures applicable to, or the assessment of, the section 6702 penalty should be directed to Procedure and Administration, Branch 1 at (202) 317-5398, or Branch 2 at (202) 317-5143.

/s/
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