

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also: Part 1, §§ 6011, 6111, 6662A, 6707, 6707A.)

Rev. Proc. [XXXX-XX]

SECTION 1. PURPOSE

This revenue procedure establishes the Accelerated Appeals Procedure for taxpayers who are issued a proposed assessment of penalty under section 6707 or 6707A of the Internal Revenue Code. Under the Accelerated Appeals Procedure, a taxpayer who is issued a proposed penalty under either section 6707 or 6707A may request that the Office of Appeals review and consider resolution of the proposed assessment. This revenue procedure describes how a taxpayer requests Appeals consideration under the Accelerated Appeals Procedure, including the deadline by which a taxpayer must request consideration and the information the taxpayer must provide in the request. This revenue procedure also describes the Appeals process for considering a proposed penalty under section 6707 or section 6707A.

A taxpayer who is issued a proposed penalty under section 6707 or 6707A may

request Appeals consideration of the proposed penalty only under the Accelerated Appeals Procedure provided in this revenue procedure and as incorporated in the Internal Revenue Manual. A taxpayer who is issued a proposed penalty under section 6707 or 6707A is not entitled to Appeals consideration of the proposed penalty pursuant to the Fast Track Appeals procedures described in Rev. Proc. 2003-40, 2003-1 C.B. 1044, or the Early Referral Appeals process of Rev. Proc. 99-28, 1999-2 C.B. 109. Similarly, a taxpayer who is issued a proposed penalty under section 6707 or 6707A is not entitled to consideration of the proposed penalty under the general Appeals procedures described in section 601.106 of the Statement of Procedural Rules.

SECTION 2. BACKGROUND

.01 Section 6011 and the regulations thereunder require a taxpayer who has participated in a reportable transaction to disclose certain information with respect to the reportable transaction with the taxpayer's tax return. Section 1.6011- 4(b) of the Income Tax Regulations enumerates and describes the categories of reportable transactions. One category of reportable transactions is a transaction that is the same as, or substantially similar to, one of the types of transactions that the Internal Revenue Service has determined to be a tax avoidance transaction and has identified by notice, regulation, or other form of published guidance as a "listed transaction." Treas. Reg. § 1.6011- 4(b)(2).

.02 The American Jobs Creation Act of 2004(the Act), Pub. L. No. 108-357, 118

Stat. 1418, was enacted on October 22, 2004. Section 811 of the Act added section 6707A to the Code to provide a monetary penalty for the failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction. Section 6707A(b)(1) provides that the penalty for failure to include information with respect to a reportable transaction, other than a listed transaction, is \$10,000 in the case of a taxpayer who is a natural person, and \$50,000 in any other case. Section 6707A(b)(2) provides that for a listed transaction, the penalty is increased to \$100,000 in the case of a taxpayer who is a natural person, and \$200,000 in any other case.

.03 Section 816 of the Act amended section 6707 to provide for the imposition of a penalty on a material advisor who is required to file a return under section 6111(a) with respect to any reportable transaction and fails to file a timely return or files a false or incomplete return with respect to the reportable transaction. Section 6707(b)(1) provides that the penalty for failing to file a timely return or filing a false or incomplete return with respect to any reportable transaction other than a listed transaction is \$50,000. Section 6707(b)(2) provides that the penalty with respect to any listed transaction equals the greater of (1) \$200,000 or (2) 50 percent of the gross income derived by the material advisor with respect to the aid, assistance, or advice that is furnished concerning the listed transaction before the date the return is filed under section 6111. If the penalty is with respect to a listed transaction and the failure or action subject to the penalty was intentional, the penalty is the greater of (1) \$200,000

or (2) 75 percent of the gross income derived by the material advisor with respect to the aid, assistance, or advice given.

.04 Section 6707A(d)(1) grants the Commissioner non-reviewable authority to rescind all or a portion of any penalty imposed under section 6707A if (1) the violation relates to a reportable transaction that is not a listed transaction and (2) rescission of the penalty would promote compliance with the requirements of the Code and effective tax administration. Section 6707(c) provides that the rescission provisions of section 6707A(d) shall also apply to any penalty imposed on a material advisor under section 6707. Revenue Procedure 2007-21, 2007-9 I.R.B., provides guidance on requesting rescission.

.05 Section 6707A(e) requires a person who is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934, or is required to be consolidated with another person for purposes of those reports, to disclose in those reports for the periods specified by the Secretary, the requirement to pay the penalties set forth in section 6707A(e)(2) (i.e., certain penalties under section 6662(h) and penalties under section 6662A(c), section 6707A(b)(2), or section 6707A(e)). If the person fails to disclose the requirement to pay the penalties, then section 6707A(e) requires that the failure be treated as a failure to disclose a listed transaction for which an additional section 6707A penalty applies.

SECTION 3. SCOPE

This revenue procedure applies to any taxpayer issued a notice of proposed

assessment under section 6707 or 6707A and who requests that Appeals consider the proposed assessment. A taxpayer (or an authorized representative on behalf of a taxpayer) may request Appeals consideration of a proposed assessment of the section 6707 or 6707A penalty. The examination of a taxpayer's return(s) and development of issues other than the proposed assessment of the section 6707 or 6707A penalty will continue during consideration by Appeals of a proposed assessment of either penalty..

SECTION 4. APPLICATION

.01 Issuance of a notice of proposed assessment. An Examination function for one of the Service's Operating Divisions will complete and send to a taxpayer a notice of proposed assessment for each proposed section 6707 or 6707A penalty. The notice informs the taxpayer that the taxpayer may agree to the assessment and collection of the penalty. The notice also informs the taxpayer that if the taxpayer does not agree to the assessment and collection of the penalty, the taxpayer can request that Appeals consider the proposed penalty.

.02 When a request for Appeals consideration must be made.

(1) A taxpayer must make a request for Appeals consideration under the Accelerated Appeals Procedure in writing within 30 calendar days from the date the Service issues a notice of proposed assessment to the taxpayer. During this period, a taxpayer may request an extension of up to 15 days; however, the Service will grant extensions only in exceptional circumstances and subject to its sole discretion. If the Service grants an extension, the request for Appeals consideration must be made

within the extended period. The Service will apply sections 7502 and 7503 to determine whether a request for Appeals consideration or a request for extension is timely.

(2) If a taxpayer does not timely request Appeals consideration of a proposed penalty under section 6707 or 6707A, the taxpayer will not be entitled to Appeals consideration of the proposed penalty and may not later request a rescission of the penalty. A taxpayer must request and await Appeals consideration of a section 6707 or 6707A penalty or must waive the opportunity to request consideration before requesting a rescission of the penalty by the Commissioner.

.03 Information required in a request for Appeals consideration. The written request for consideration under the Accelerated Appeals Procedure must include:

(1) a copy of the completed return or statement, as applicable, relating to the proposed assessment; (2) a copy of the notice of proposed assessment; (3) a statement of the facts and circumstances of the reportable transaction underlying the proposed assessment; (4) a statement explaining why the taxpayer disagrees with the proposed assessment; (5) the taxpayer's name, address, telephone number, and taxpayer identification number; and (6) the name, telephone number, and address of the revenue agent who conducted the examination resulting in the proposed penalty.

The taxpayer or authorized representative requesting Appeals consideration must sign the request under penalties of perjury.

.04 Sending the file to Appeals. Once the taxpayer has requested Appeals

consideration under the Accelerated Appeals Procedure, the Examination function that received the request will send the request and associated file to Appeals within 10 business days of receiving the request. The file should include the material identified in section 4.03 of this revenue procedure.

.05 The consideration process and the deadline for completion.

(1) As part of its consideration, Appeals has discretion to utilize mediation techniques similar to the Fast Track Appeals procedures described in Rev. Proc. 2003-40, 2003-1 C.B. 1044.

(2) Established Appeals procedures regularly used for consideration of any protest of a deficiency, penalty, addition to tax, or interest, including those procedures governing submissions and taxpayer conferences, apply to the Appeals consideration process.

(3) Generally within 45 calendar days after receiving the request for Appeals consideration and the case file, Appeals will conclude consideration of the proposed penalty.

.06 Appeals' decision.

(1) Basis for decision. For cases involving a proposed penalty under section 6707A, Appeals will review the proposed penalty and consider the taxpayer's facts and circumstances to determine (a) whether the taxpayer participated in a reportable transaction and (b) if so, whether the taxpayer properly disclosed the transaction. For cases involving a proposed penalty under section 6707, Appeals will review the

proposed penalty and consider the taxpayer's facts and circumstances to determine (a) whether a reportable transaction was involved and (b) if so, whether the taxpayer, as a material advisor, failed to file a timely return or filed a false or incomplete return with respect to the reportable transaction.

(2) Identifying the type of transaction. In reaching its decision, Appeals will consider and determine whether the transaction at issue was listed, otherwise reportable, or not reportable.

(3) Delivery of decision. Appeals will set forth its decision in a closing letter to the taxpayer. Appeals may initially give its decision to the taxpayer over the telephone, followed by a closing letter. If the decision is given over the telephone, Appeals will make every effort to mail the closing letter to the taxpayer within three business days after notification by telephone and may fax a copy of the letter, as well. The closing letter will state whether the proposed penalty is upheld and whether the transaction at issue was listed, otherwise reportable, or not reportable.

(4) Effect of the decision. Determinations by Appeals are binding on the taxpayer and the Service when the taxpayer and the Service enter into a closing agreement. If the penalty is upheld in whole or part against the taxpayer and the Service and the taxpayer do not enter into a closing agreement, the taxpayer is entitled to pay the penalty and institute a timely action for refund.

The Service will take the necessary steps to implement Appeals' determination, including making any assessments and closing the case. Where the taxpayer has

received a notice of a proposed assessment of the section 6707 or 6707A penalty that informs the taxpayer of the opportunity to request Appeals consideration, the taxpayer may not later dispute the existence or amount of the penalty in a Collection Due Process proceeding, regardless of whether the taxpayer actually requests consideration.

SECTION 5. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number [1545-].

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information requirements of this revenue procedure are in sections 4.02 and 4.03. This information is required to administer the provisions of sections 6707(c) and 6707A(d) and determine the applicability of penalties. The likely respondents are taxpayers subject to penalty under sections 6707 or 6707A.

The estimated total annual reporting or recordkeeping burden is [418.5] hours.

The estimated annual burden per respondent/recordkeeper varies from [3 to 6] hours, depending on individual circumstances, with an estimated average of [4.5] hours. The estimated number of respondents or recordkeepers is [859].

The estimated annual frequency of responses (used for reporting requirements

only) is [859].

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for any request for Appeals consideration that relates to a section 6707 or 6707A penalty for which a notice of proposed assessment is issued after XXXXXX XX, 2007 [publication date].

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Dillon Taylor of the Office of the Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Dillon Taylor at (202) 622-4940 (not a toll free call).