



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR CHIEF, ESTATE AND GIFT TAX

FROM: John H. Imhoff, Jr */s/ John H. Imhoff, Jr.*
Director, Specialty Programs

SUBJECT: Interim Guidance On Return Preparer Penalty Procedures For Estate &
Gift Preparer Penalty Cases

The purpose of this memorandum is to provide interim guidance to all our estate tax attorneys about the procedures for the assertion of the IRC section 6694 and IRC section 6695 penalties. The following details the procedures for the consideration and assertion of these penalties. Please ensure that this information is distributed to all affected employees within your organization.

Interim Guidance Memorandum SBSE-04-0509-009 will be incorporated into Internal Revenue Manual 4.25.1 to reflect the above procedures by 05-08-2010.

If you have any questions, please contact Estate & Gift Tax, Attorney-Advisor, Virginia Adams.

Attachment

cc: www.irs.gov

RETURN PREPARER PENALTY PROGRAM PROCEDURES FOR ESTATE & GIFT PREPARER PENALTY CASES

The purpose of proposing and assessing penalties on return preparers is to encourage accountability, affect behavior, and increase voluntary compliance. When examining a return prepared by a tax return preparer, it is an estate tax attorney's responsibility to ensure that sections 6694 and 6695 of the Code were followed. If the provisions are not followed, it is the estate tax attorney's responsibility to assert the penalties in appropriate instances. During every examination, estate tax attorneys should determine if further consideration of return preparer penalties is necessary. This determination will be made based on oral testimony and/or written evidence during the examination process.

A. Estate and Gift Tax Audit: Statute Of Limitations

1. The statute of limitations on assessment for IRC sections 6694(a) and 6695 expires three years from the date the related return or claim for refund was filed.

2. There is no statute of limitations on assessment for IRC sections 6694(b), 6700, and 6701 penalties.

3. There is no statute of limitations on actions to enjoin preparers or promoters under IRC section 7407 or 7408.

CAUTION: Extending the statute on a 'taxpayer's return' with a Form 872 does not extend the statute for the return preparer penalty case. See Form 872-D, (*Consent to Extend the Time on Assessment of Tax Return Preparer Penalty*).

B. Complete Estate & Gift Tax Audit

Generally, no return preparer penalty will be proposed until the estate or gift tax examination is completed at the group level. If the estate or gift tax case is unagreed, the estate tax attorney may pursue the preparer penalty after the unagreed estate & gift tax case is submitted at the group level. The determination and settlement of the estate or gift tax examination will at all times proceed without regard to the return preparer penalty issue.

CAUTION: The requirement that the underlying estate or gift case be closed may affect the decision whether to initiate a return preparer investigation. Also, note that IRC section 6694(d) provides that the IRC section 6694 penalty must be abated where there is a final administrative determination or final judicial determination that there was no understatement of liability.

C. When A Return Preparer Problem Is Not Identified

When facts and circumstances in the examination do not give rise to the development of a penalty issue, it should be noted on the Examination Planning and Work Paper Index and/or the Penalty Lead Sheet. Both of these forms are found in the Primary Case Folder of the October 17, 2008 version of the Examination Process and Documentation package.

D. When A Return Preparer Problem Is Identified

1. Gather Pertinent Information From Original Taxpayer Audit

Each estate or gift tax examination is **separate and distinct from the return preparer penalty case** relating to the estate & gift tax examination. Estate tax attorneys must not propose or discuss preparer conduct penalties in the presence of the taxpayer.

2. Conduct Comprehensive Interview

(a) A comprehensive interview is the method used to identify misconduct by a tax return preparer. During the interview process, the estate tax attorney should pose questions to the executor or donor regarding the return preparation. For example:

- Did you meet with the preparer?
- Did you complete a questionnaire and/or have a face to face meeting with the preparer?
- What documentation was provided to the preparer?
- Did you receive a copy of the return?
- Was the preparer compensated?

(b) Remember to ask follow-up questions. While we are required to ask basic interview questions, crucial information may be provided in the responses to the follow-up questions.

(c) The questions asked of the preparer are important to determine if any misconduct transpired during the return preparation. If the preparer is also the representative, you may want to ask:

- About the “interview” with the taxpayer.
- What documentation was provided to prepare the return?
- What authorities did you rely upon?
- Was a copy of the return provided to the taxpayer?

- Are you aware of any errors, omissions or mistakes on the return under examination?
- Were you compensated?

(d) More often than not, representatives will review the return and the taxpayer client's records prior to your scheduled initial interview. If there is an error they will probably know in advance. While representatives are not required to disclose the error, they may reveal the information to establish their credibility. As you continue to work your case, the extent of the representative's knowledge will become apparent.

(e) When interviewing the taxpayer or preparer ask if any other services have been provided by the preparer's firm and how long the preparer has been preparing returns for the taxpayer. For example, did they prepare previous gift tax returns, or did they prepare the Form 706 for the predeceased spouse. These simple questions will give you an idea of the extent of the preparer's knowledge regarding the taxpayer's financial situation/status and alert you as to the applicability of penalties. A tax return preparer who has been providing estate planning services may be more knowledgeable than a preparer who has not been providing any other services.

3. Documentation of the Facts

The estate tax attorney should document the case file following the conversation with the taxpayer and/or POA. While each estate tax attorney has their own interview style, estate tax attorneys should be consistent in the documentation of the facts. Use of the examination lead sheets, work papers and case history should ensure consistency in documentation.

CAUTION: All information on the return preparer's activities and the applicability of any penalties relating to the return preparer should be separated from the taxpayer's case file. A Return Preparer Penalty Case File should be created and the taxpayer's answers to these inquiries as well as a separate Form 9984 should be included in this case file and should not be included in the taxpayer's case file. The Examination Planning and Work Paper Index and the Penalty Lead Sheet contained in the taxpayer's case file should only reflect the fact that the required inquiries on the return preparer issues were completed.

E. Disclosure Issues in Return Preparer Penalty Cases

A preparer penalty determination action is an individual Federal tax matter of the preparer. As with any individual tax matter, an estate tax attorney may disclose Federal tax information to that individual (the preparer in this instance), in accordance with Internal Revenue Code Section 6103(e)(1)(A)(i) or to the preparer's attorney in fact, or duly authorized power of attorney, as permitted by IRC section 6103(e)(6).

Return Preparer Penalty Case Files may include copies of tax returns or portions of tax returns prepared by the preparer who is being considered for the penalty. The case files may also include other information taken from examination administrative files, including workpapers and transcripts of account of the taxpayers whose returns were prepared by the preparer, as well as information received directly from the preparer.

Information taken from the returns or copies of returns prepared by the preparer and information from the examination files related to such returns may be incorporated into the Return Preparer Penalty Case File. Such information may be disclosed to the preparer or authorized power of attorney if the information relates to the resolution of the penalty issue (IRC section 6103(h)(4)). These disclosures may be made by the estate tax attorney during the course of the penalty determination or subsequent tax administration activity.

Remember that an estate tax attorney may disclose information about the prepared returns because that information relates to the penalty determination, not because the preparer prepared the return or may have had a power of attorney to represent the taxpayer. If there is any information in the Return Preparer Penalty Case File that does not relate to the penalty determination, such as the taxpayer's current address or current employer, that information may not be disclosed to the preparer or the preparer's authorized power of attorney.

If the Return Preparer Penalty Case File includes information that would seriously impair Federal tax administration if disclosed, that information must be withheld by the estate tax attorney's manager in accordance with the manager's authority to withhold information in accordance with IRC section 6103(e)(7). Delegation Order 11-2 contains the specific delegation of authority.

F. Obtain Group Manager Approval

1. Prepare **Form 6459, (Return Preparers Checklist)**.
(See E&G website under RPP page for preparation information.)
2. Form 6459 must remain in the Return Preparer Penalty Case File.
3. If the manager does not approve, return to Section "C" of this memorandum: "When A Preparer Problem Is Not Identified?".

G. Estate & Gift Return Preparer Coordinator (RPC) - Approval & Coordination

NOTE: The current RPC is listed in the E&G website in the program section
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1. E&G Group Manager must obtain additional approval of the RPC.

2. Forward the Penalty Lead Sheet to the RPC electronically or by Fax. The RPC shall approve or disapprove, within thirty days of the date of transmission of the Penalty Lead Sheet.

3. The RPC will advise the group manager if the return preparer is under investigation by the Criminal Investigation Division.

4. The RPC will provide assistance as needed to estate tax attorneys at the start of a return preparer investigation regarding audit techniques, and is available to assist with questions that may arise in the course of the investigation.

5. In addition, the RPC will provide coordination if more than one investigation of the same preparer, by different estate tax attorneys, is ongoing or is contemplated.

H. Open A Return Preparer Penalty Case File.

1. Prepare Form 5809, (*Preparer Penalty Case Control Card*) to Establish on ERCS – Not AIMS

<p>NOTE: Form 5345-D, Examination Request Master File, (“Blue Card”) is <u>NOT USED</u> to establish a preparer penalty on ERCS.</p>

(a) The estate tax attorney establishes ERCS control using Form 5809 as the ERCS Input Document. These cases are not controlled on AIMS. In addition to the information concerning the preparer, record on Form 5809 the relevant information from the taxpayer’s tax return. Use of this document allows the establishment of the non-AIMS case on ERCS for purposes of time application and is a means of keeping a manual record of penalty action on the Preparer. Creating a separate card for each penalty allows the RPC to track data on a preparer to determine when and if a Program Action Case (PAC) case may be necessary.

(b) Use the Return Preparer’s TIN and Name to prepare the Form 5809.

(c) Most of these penalty cases will derive from a Form 706 or Form 709 selected for audit. However, some cases may come from the Cincinnati campus because the cases involve a questionable tax practitioner. If cases are sent from the Campus in this manner, source code 49 should be used only for the primary return (estate or gift tax return) selected as part of the Program Action Case (PAC) client sample originating from the Cincinnati campus. If multi-year cases are developed in the Cincinnati campus for delivery to the groups, **only** the primary return should reflect source code 49.

(d) Aging reason code 49 should be added to **all return preparer program returns including the primary and multiple-year returns.**

2. Establish a separate ERCS record for each client/year/proposed penalty combination (if you are establishing a separate case, with one or more penalties against the same preparer, establish a different ERCS record) using one of the following guidelines:

For cases:

- ⇒ In the TIN field, record the SSN or EIN of the Preparer.
- ⇒ In the Name field, record the "Preparer's Name"
- ⇒ In the Tax Period field, record the tax period of the client's return
- ⇒ In the Statute field, record the statute of the client's return – P2 penalties should be assigned an alpha statute of "XX".
- ⇒ In the Activity Code (ActCd) field, record one of the following codes –

ActCd	501	Section 6694(a) penalty	MFT	P1
ActCd	502	Section 6694(b) penalty	MFT	P2
ActCd	503	Section 6695(f) penalty	MFT	P3
ActCd	504	Section 6695(a), (b), (c), (d), or (e)	MFT	P4
ActCd	505	Section 7407 injunctions	MFT	P5

ActCd 828 Indirect Exam Time – Code 828 is used for closing the Return Preparer Penalty Case File when the only time charged is for unsuccessful attempts to locate the preparer.

3. Place a copy of the signed Penalty Lead Sheet in Return Preparer Penalty Case File.

I. Determine Statute

Is the Statute of Limitations greater or less than 180 days?

1. If **Greater**, proceed to Section J of this memorandum.
2. If **Less**, proceed to the steps immediately below.

(a) If the preparer agrees to extend the statute:

The statute on a return preparer penalty case under IRC sections 6694(a) and 6695 can be extended using **Form 872-D**, (*Consent to Extend the Time on Assessment of a Tax Return Preparer Penalty*). (See Rev. Rul. 78-245) A transcript of the return on which the preparer penalty is based should be included in the Return Preparer Penalty Case File for accurate monitoring of the expiration date.

(b) If the preparer does not agree to extend the statute, proceed to Section T of this memorandum.

J. Charging Time to Preparer Penalty Case

Use one of the following codes:

ActCd	501	Section 6694(a) penalty	MFT	P1
ActCd	502	Section 6694(b) penalty	MFT	P2
ActCd	503	Section 6695(f) penalty	MFT	P3
ActCd	504	Section 6695(a), (b), (c), (d), (e) penalty	MFT	P4
ActCd	505	Section 7407 injunctions	MFT	P5

ActCd 828 Indirect Exam Time - AC 828 is used for closing the investigation file when the only time charged was for attempting, unsuccessfully, to locate the preparer.

K. Forward a copy of the completed Form 5809 (Copy B) to the Return Preparer Coordinator at the start of the penalty investigation.

L. Contact Preparer and Conduct Interview

Refer to Section D included above.

M. Preparer Penalties warranted?

1. If **No**, follow procedures in Section N immediately below.
2. If **Yes**, follow procedures in Section O below.

N. Group Closes Case No Change

1. The Group Manager will review the Return Preparer Penalty Case File and document concurrence.
2. The estate tax attorney will prepare **Letter 1120**, (*No-Change Letter- Preparer Penalty*), mail the original to the preparer and include a copy in the case file. Show only the last four digits of the taxpayer's identification number.
3. The estate tax attorney will complete **Form 5809**.
4. The estate tax attorney will note the Penalty Lead Sheet "No Change".
5. The group will update ERCS to status 90 and forward the case, closed NO CHANGE, to the Return Preparer Coordinator for review.
6. The Return Preparer Coordinator will extract pertinent information from the file, to be retained for not less than one year. The balance of the no-change case file will not be retained.

O. Prepare Form 5816, (*Report of Income Tax Return Preparer Penalty Case*)

1. The preparer should be afforded an opportunity to meet with the Group Manager to resolve the issues.
2. Document the actions taken on **Form 4665**, (*Report Transmittal*) if the preparer is not going to agree.
3. If penalties are being proposed in conference with the preparer, the estate tax attorney provides the preparer with **Form 5816, (*Report of Income Tax Return Preparer Penalty Case*) and Form 886-A, (*Explanation of Items*)**.
4. When penalties are based on many different prepared returns, attach a list of client names, SSNs / EINs and tax periods. Use a separate form for each year / return combination.
5. If penalties are being proposed via mail, send **Letter 1125**, Preparer Penalty 30-Day Letter, along with the Form 5816 and Form 886-A.

P. Is this an Agreed Case?

1. If **Yes**, proceed to Section Q immediately below.
2. If **No**, proceed to Section S below.

Q. Process as Agreed Case

1. Preparer signs **Form 5816**. Solicit payment from preparer and if the preparer pays, prepare **Form 3244-A**.
2. Also secure **Form 5838, (*Waiver of Restrictions on Assessment and Collection of Tax Return Preparer Penalty*)**.
3. Complete **Form 8278, (*Assessment and Abatement of Miscellaneous Civil Penalties*)**.
4. When more than one penalty under different IRC sections will be assessed against the same preparer for the same period, complete a separate **Form 8278** for each penalty.
5. Prepare **Letter 1195, (*Acceptance Letter - Agreed Preparer Penalty Case*)** and addressed envelope and include in the case file. Attach **Form 3198, (*Special Handling Notice*)**, to each case file, identifying it as a return preparer penalty case in the "Other" section and referencing the applicable IRC section.
6. On Form 3198, if the preparer filed a joint income tax return, annotate with either "Assess on Primary SSN" or "Assess on Secondary SSN" in the 'Other' Section to identify the individual against whom the penalty is to be asserted. Annotate to

forward case file to the Return Preparer Coordinator. Annotate to indicate Letter 1195 and addressed envelope is enclosed in the case file.

R. Close Case from Group

1. The group secretary will update the return preparer case on ERCS to status 41 and use Form 3210 to mail the case for normal closing.
2. Notify the Return Preparer Coordinator of the final results.

S. UNAGREED CASES

Is the Statute of Limitations greater or less than 180 days?

1. If **Greater**, proceed to Section U below.
2. If **Less** than 180 days, follow the procedures immediately below:

(a) Request the extension of the statute from the preparer.

i. Preparer Agrees to extend

- The statute on a return preparer penalty case under IRC sections 6694(a) and 6695 can be extended using **Form 872-D**, (*Consent to Extend the Time on Assessment of Tax Return Preparer Penalty*). (See Rev. Rul. 78-245.)
- Use **Letter 907P**, (*Return Preparer Penalty Statute Extension Request*) to send Form 872-D to the preparer.
- A transcript of the return on which the preparer penalty is based should be included in the case file for accurate monitoring of the expiration date.
- Since the case is unagreed, regular unagreed case closing procedures should be followed.
- Proceed to Section U below.

ii. Preparer does not agree to extend

- **Proceed to Section T below.**

T. Prompt Assessment Procedures

1. Send the preparer a **Form 5816**, (*Report of Tax Return Preparer Penalty Case*) **with the bottom part of the report removed** along with an explanation of the reason for the quick assessment and a discussion of the preparer's Appeals rights.
2. **Letter 1125**, Preparer Penalty 30-Day Letter, is **NOT** sent to the preparer.

3. Forward to the Return Preparer Coordinator a copy of Form 5816 along with a completed **Form 8278**, (*Assessment and Abatement of Miscellaneous Civil Penalties*) and **Form 2859**, (*Request for Quick or Prompt Assessment*).
4. Annotate Form 3198 with “Quick Assessment” on the ‘Other’ line in the ‘Expedite’ section.
5. Centralized Case Processing (CCP) will direct immediate assessment of the penalty.
6. The Return Preparer Penalty Case File should be forwarded to the Return Preparer Coordinator when completed.
7. Upon request, the preparer will be provided the same Appeals rights post-assessment as would have been provided if the request for Appeals consideration was received before the assessment.

U. Unagreed Case Closing Procedure

1. The estate tax attorney provides the preparer with: **Letter 1125**, (*Preparer Penalty 30-Day Letter*), **Form 5816** (*Report of Tax Return Preparer Penalty Case*) with the bottom part of the form removed, **Form 886A**, (*Explanation of Items*) [equivalent form may be used]; **Form 5838**, (*Waiver of Restrictions on Assessment and Collection of Tax Return Preparer Penalty*) and Publication 3498.
2. The case then goes into suspense for 30 days, during which time the preparer may agree or protest. If response is agreed or there is no response, proceed to Section Q above.

Protest: If the preparer submits a pre-assessment protest (written) within 30 days, the case file will be reviewed for

- (1) adequacy of the protest,
- (2) development of the issue(s) and
- (3) managerial involvement.
- (4) The estate tax attorney will prepare an assessment document, **Form 8278**, (*Assessment and Abatement of Miscellaneous Civil Penalties*). When more than one penalty under different IRC sections will be assessed against the same preparer for the same period, complete a separate Form 8278 for each penalty.
- (5) The group will then update ERCS to Status 41 and forward the case, UNAGREED, to the Return Preparer Coordinator for review. After review, CCP then updates ERCS to Status 21 and forwards the case through Technical Services to Appeals (use **Form 3210**).

An unagreed preparer penalty case file cannot be submitted to Appeals for pre-assessment consideration if there is less than **180 days** remaining on the assessment statute of limitations. **Form 872-D** is used to extend the statute in a preparer penalty investigation (**See Statute Procedures Above**).

Appeals and Unagreed Closings: If the taxpayer tax examination case is unagreed, the unagreed preparer penalty case file cannot be submitted to Appeals before the tax examination case file.

When closing cases to appeals the following language must be included on Form 3198 and Form 4665.

Form 3198 or Form 3198-A for TE/GE (This only applies to a coordinated issue between E&G and TE/GE)

- Special action requirement for receiving Appeals Officer
- As of 7/23/2003, preparer and promoter penalties are coordinated as an Appeals Coordinated Issue.
- Under the provisions of IRM 8.7.3.11, the Appeals Officer is required to contact/make a referral to Technical Guidance.

For Form 4665 Appeals Coordinated Issue:

- Special action requirement for receiving Appeals Officer.
- As of 7/23/2003, preparer and promoter penalties are coordinated as an Appeals Coordinated Issue.
- Under the provisions of IRM 8.7.3.11, the Appeals Officer is required to contact/make a referral to Technical Guidance. Referral procedures and forms are located at on the Appeals website.

V. Referral to the Director of the Office of Professional Responsibility

The Office of Professional Responsibility (OPR) exercises jurisdiction over Attorneys, CPAs, Enrolled Agents, Enrolled Actuaries, Enrolled Retirement Plan Agents, and Appraisers. Examiners should exercise discretion in making referrals of asserted IRC section 6694(a) penalties to OPR for Attorneys, CPAs, Enrolled Agents, Enrolled Actuaries, Enrolled Retirement Plan Agents, and Appraisers. Referrals of asserted IRC section 6694(a) penalties to OPR should be based on a pattern of failing to meet the required penalty standards under IRC section 6694(a).

Asserted preparer penalties under IRC section 6694(b) and IRC section 6695(f) for Attorneys, CPAs, Enrolled Agents, Enrolled Actuaries, Enrolled Retirement Plan Agents, and Appraisers are mandatory referrals to OPR. For IRC section 6694(b),

these mandatory referrals are made to OPR in matters where preparer penalties are asserted when there is willful or reckless conduct.

For IRC section 6695(a)-(e) and IRC section 6695(g), examiners should exercise discretion in making referrals to OPR. However, in matters where preparer penalties are asserted when there is willful neglect, examiners should consider making a referral to OPR.

When making a referral to OPR, examiners will:

- a. Prepare Form 8484, *Report of Suspected Practitioner Misconduct*, and obtain signature approval of their manager - per the guidance above
- b. Send the completed Form 8484 to the Return Preparer Coordinator (RPC) for routing to the Director, Office of Professional Responsibility.

The RPC's, based on asserted IRC section 6694(a) penalties, could note patterns that warrant a referral to OPR and initiate a referral to OPR.

Forms Preparation Information

Form 6459, (*Return Preparers Checklist (IRC 6694 and IRC 6695)*)

Note the entries that are required in Part II, specifically, the Name and Address of the Return Preparer along with the SSN/EIN. The Manager's signature is required to pursue the Return Preparer Penalty investigation. If the Manager signs the form, then the form must be included with the Return Preparer Penalty case.

Form 872-D, (*Consent to Extend the Time on Assessment of Tax Return Preparer Penalty*)

The statute of the Return Preparer Penalty case is the statute of the taxpayer's return. As noted previously the taxpayer is the estate or gift taxpayer that precipitated the preparer investigation.

Form 5838, (*Waiver of Restrictions on Assessment and Collection of Tax Return Preparer Penalty*)

The form number of the return for which the penalty is being charged relates to the taxpayer's tax return. The taxpayer's name as shown on the return is the original taxpayer's name. The taxpayer's identifying number is the original taxpayer. Tax Period relates to the tax period of the original return. The kind of penalty refers to the code section and the amount of penalty is self explanatory.

Form 5816, (*Report of Income Tax Return Preparer Penalty Case*)

Please note that this form is prepared somewhat differently than the Form 5809, (*Preparer Penalty Case Control Card*).

The information that is included in the top part of the form 5816 is that of the preparer including the Name and Address and SSN or EIN. The second part of the form that begins with 'The following information identifies the tax return....' Relates to the taxpayer tax return on which the penalty was based. When penalties are based on many different prepared returns, attach a list of client names, SSNs / EINs and tax periods. Use a separate form for each year / return combination.

If the case is agreed, then the preparer signs the Form at the bottom. If the case is going to go unagreed, then the bottom part of the form needs to be removed at the dotted line.

Form 8278, (*Assessment and Abatement of Miscellaneous Civil Penalties*)

A Form 8278 must be filled out for each calendar year warranting penalty assessments.

The information requested in Items 1, 2, and 7 (Name, Address and SSN or EIN) relate to the **Return Preparer**. The information requested in items 5 and 6 (Year and Statute Date) refer to the taxpayer return that was the impetus for the penalty.

In completing Form 8278 originators will enter in red and initial: (1)The applicable statute of limitations on assessment expiration date in Item 6 (or, if applicable, enter "No Statute" in Item 4). (2)The date the Form 8278 was completed by the originator in Item 9 or 11.

When the same penalties for the same period apply to a preparer for more than one return and the statute of limitations on the preparer penalty is determined by the statute of limitations for the return, complete Form 8278 using the earliest statute of limitations date. (See IRM 20.1.6.1.8. *Statute of Limitations*.) When more than one penalty under different IRC sections will be assessed against the same preparer for the same period, a separate Form 8278 has to be completed for each penalty.

Form 8484, (*Report of Suspected Practitioner Misconduct*)

(1) Once it has been determined that a referral is necessary, a referral package to the Office of Professional Responsibility must be prepared and closed separately from the related case. Include in the referral package:

- a. Completed Form 8484 to Office of Professional Responsibility, including status of the case (agreed, unagreed).
- b. A complete copy of the tax return.
- c. A complete copy of the estate tax or gift tax report (including explanation of items and workpapers).
- d. Letters, Memoranda, copies of Form 2311 (Affidavit) or similar attested document, and Form 2797, (*Referral Report for Potential Criminal Fraud Cases*), if applicable.
- e. Penalty summary from the report of estate examination or report of gift tax examination.
- f. Form 2848, (*Power of Attorney*), if available.
- g. Explanatory memorandum, which details all the pertinent facts. The actions of the return preparer must be described and documented in sufficient detail to develop a substantial position for disciplinary action. Include documentation and exhibits from the tax file. Include a statement regarding the preparer's appearance before the Service (a record of contacts and activity of the preparer).

- h. Document the preparer's position, whether an appeal will be made, and the extent the preparer practices before the Service.
- i. The name and TIN of the related case(s) should be noted in the referral package.

(2) The Penalty Lead Sheet for the related estate or gift tax case should note the referral was prepared and forwarded to the Office of Professional Responsibility.

(3) In cases in which a referral is not prepared but was considered, a comment should be made on the Examination Planning and Work Paper Index and/or the Penalty Lead Sheet explaining why the referral was not made.

Form 4665, (*Report Transmittal*)

This form is used to summarize unagreed issues and present information of a confidential nature for Appeals. The information should supplement, not duplicate or replace information in the case file. On field cases, this form is used in conjunction with Form 9984 to document managerial involvement.

Confidential information included on the report transmittal includes:

- a. Statements and facts involving allegations of fraud;
- b. Remarks regarding the integrity, motives, or abilities of the taxpayer;
- c. Ability to pay;
- d. Potentially dangerous taxpayers;
- e. Procrastination by the taxpayer or representative;
- f. Other confidential information which should not be made available to the taxpayer.

PLEASE INCLUDE THE FOLLOWING LANGUAGE ON THE FORM:

Special action requirement for receiving Appeals Officer:

Preparer and Promoter Penalties are coordinated as Appeals Coordinated Issues. Under the provisions of IRM 8.7.3.4.2, the Appeals Officer is required to contact/make a referral to Technical Guidance and secure review and concurrence before finalizing any settlement. Referral procedures and forms are located on the Appeals website.

Form 3244, (*A Payment Posting Voucher-Examination*)

Upon acceptance of an advance payment (tendered before or after a deficiency has been determined and an agreement has been secured from the taxpayer), the responsible estate tax attorney will complete a separate Form 3244-A, Payment Posting Voucher -- Examination, for each tax period and class of tax involved, as follows:

- a. SSN/EIN -- Enter the preparer's identification number
- b. Form No./MFT -- Form numbers and MFT codes can be found in the ADP and IDRS Information Handbook, Document 6209. This handbook is updated annually.
- c. Tax Period -- Enter "YYYYMM", e.g., -- quarterly return ending June 30, 2002 will be shown as "200206". The tax period corresponds to the tax period of the client's income tax return.
- d. Transaction/Received Date -- Enter the date the remittance was received by the responsible estate tax attorney, e.g., June 30, 2002 will be shown 06-30-2002.
- e. Taxpayer -- Enter the preparer's full name, address, and ZIP code.
- f. Transaction Data -- Enter the total amount of the payment opposite the transaction Code (any breakdown is entered in Remarks).

In the Remarks Section:

Indicate the pertinent information regarding the transaction such as:

- a. The amount of payment allocated for the penalty and interest as well as any special instructions.
- b. Where date of an agreement precedes the date of the advance payment by more than 30 days, enter the agreement date.
- c. Where first payment is not for full amount of deficiency enter "Part Payment"; or if part payment is other than the first payment, designate the payment, e.g., "2nd Payment".
- d. If a payment is received that will be applied to more than one period, indicate "split remittance" in the remarks section of Form 3244-A.
- e. Prepared By -- Enter the two-digit area office code, the preparer's office symbol, name and telephone number (including area code) so that the preparer of Form 3244-A may be contacted if necessary.

Forwarding Form 3244-A

1. Part 1 of Form 3244-A, together with the taxpayer's remittance, will be forwarded to the Cincinnati Campus on the same day, or following day, of receipt. Use Form 3210, (*Document Transmittal*), to transmit the form and payment.
2. Parts 1 and 3 of Form 3210 will be forwarded to the Cincinnati Campus with the Form 3244-A. Part 4 of Form 3210 will be retained by the originator for control purposes; part 2 may be discarded.
3. Part 2 of Form 3244-A will be attached to the face of the appropriate tax return or IDRS print, so that it will remain in a prominent spot as processing continues on the case.

Form 2859, (*Request for Quick or Prompt Assessment*)

- (1) Requests for quick assessments will be made to the campus Accounting Branch, Accounting and Control Section, Journal and Ledger Unit on Form 2859. Instructions for completing Form 2859 are on the back of Part 4 of the form. In addition:
 - a. Indicate in "Remarks" if billing needs to be withheld.
 - b. Enter the 23C Date and the DLN assigned.
 - c. Enter an agreement date only if the taxpayer signed an agreement and interest is being assessed with TC 190.
 - d. Do NOT compute interest on civil penalty assessments.

Transmitting Quick Assessments to the Campus

Fax quick assessments to the campus Accounting Branch using the following procedures.

1. Prepare Form 2859 following procedures as described.
2. Assign a control number for each Form 2859 that is faxed, i.e., FAX 59-055-1. The 1st and 2nd digits are the area office code; the 3rd, 4th and 5th digits are the Julian date that the Form 2859 is actually faxed; the last digit(s) is the number of the Form 2859. The control number will continue sequentially throughout the calendar year and will start over each January 1st. The control number should be entered in bold print on the top of each Form 2859.

Form 3210 for Quick Assessment to Campus

(1) Prepare Form 3210 for each type of tax return. List the following:

- a. Name Control
- b. MFT
- c. TIN
- d. Tax Period
- e. In the remarks area, the 23C date and the note "FAX QUICK ASSESSMENT"

(2) Address the Form 3210 to the appropriate function. Include the originator's complete address, mail stop and FAX number in the "From" section for faxing back the receipted Form 3210.

Faxing Assessment Forms to the Campus

(1) FAX assessment forms in the following order:

- a. Form 3210
- b. Form 2859
- c. Form(s) 5344 or 5403 or 8278 pertaining to Form 2859 in 2.

(2) Fax only once each day, if possible, and prior to 2:00 P.M.

Form 5809, (*Preparer Penalty Case Control Card*)

- Original - remains in Preparer Penalty case file
- Copy A – Group control card
- Copy B – To return to RPC at start

Establish ERCS Controls using Form 5809, (*Preparer Penalty Case Control Card*), as the ERCS input document. Preparer penalty investigations are **NOT** controlled on AIMS.

NOTE: Form 5345, (*Examination Request Master File*), (“Blue Card”) is **NOT USED** to establish a preparer penalty on ERCS.

Establish a separate ERCS record for each client / year / proposed penalty combination using the following guidelines:

- ⇒ In the TIN field, record the SSN or EIN of the Preparer or Client (See Section G).
- ⇒ In the Name field, record the “Preparer’s Name”
- ⇒ In the Tax Period field, record the tax period of the client’s return.
- ⇒ In the Statute field, record the statute of the client’s return – P2 penalties should be assigned an alpha statute of “OO”.
- ⇒ In the Activity Code (ActCd) field, record one of the following codes:

ActCd 501	Section 6694(a) penalty	MFT	P1
ActCd 502	Section 6694(b) penalty	MFT	P2
ActCd 503	Section 6695(f) penalty	MFT	P3
ActCd 504	Section 6695(a), (b), (c), (d), (e) penalty	MFT	P4
ActCd 505	Section 7407 injunctions	MFT	P5

ActCd 828 Indirect Exam Time, Code 828 is used for closing the investigation file when the only time charged was for attempting, unsuccessfully, to locate the preparer.

Forward a copy of the completed Form 5809 (Part B) to the Return Preparer Coordinator at the start of the penalty investigation.

Form 3198, (*Special Handling Notice*)

In all cases, notate that the case should be forwarded to the RPC for review

- Estate tax attorneys will attach Form 3198, (*Special Handling Notice*), to each preparer penalty case file, identifying it as a return preparer penalty case and referencing the applicable IRC section. Annotate with “Return Preparer Penalty Case” in the ‘Other’ section and reference the applicable IRC Section(s).
- If the preparer filed a joint income tax return, annotate with either “Assess on Primary SSN” or “Assess on Secondary SSN” in the ‘Other’ Section to identify the individual against whom the penalty is to be asserted.
- Annotate **Form 3198** with “Quick Assessment” on the ‘Other’ line in the ‘Expedite’ section if the case is being closed expedited.
- If applicable, annotate the Form 3198 to indicate Letter 1195, (*Acceptance Letter - Agreed Preparer Penalty Case*) and addressed envelope is enclosed in the case file.

Letters Preparation Information

Letter 1120, (*Preparer Penalty No-Change Case Letter*)

After review by the Group Manager, mail the original to the preparer and include a copy in the case file.