

IRM PROCEDURAL UPDATE

DATE: 08/02/2017

NUMBER: sbse-20-0817-1217

SUBJECT: Failure to Pay Penalty for Restitution-Based Assessments

AFFECTED IRM(S)/SUBSECTION(S): 20.1.2.2.8.9

CHANGE(S):

IRM 20.1.2.2.8.9 Revised at the request of Office of Chief Counsel.

1. An assessment of criminal restitution under section 6201(a)(4) has a distinct basis and is not the equivalent of an assessment under section 6201(a)(1). A restitution-based assessment thus does not constitute an assessment of an amount of tax required to be shown on a tax return specified in section 6651(a)(1) which is not so shown. 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 still applies to deficiency assessments and tax shown on a return even if they are assessed in the same module as a 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 assessments in that tax module.

2. In very rare circumstances, a district court ordering criminal restitution may include a FTP penalty or FTF penalty in the Judgment & Commitment Order or related plea agreement. If that is the case, a FTP penalty ordered as restitution must be assessed as shown in the order. 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. Including penalties and interest in the same transaction code as tax will result in the erroneous assessment of penalties and interest by the computer.

3. IRS may conduct a civil examination of the same tax liability for which restitution was ordered. Such an examination may result in the assessment of a deficiency based on that examination. Also, a taxpayer may file a delinquent return showing tax for which criminal restitution was ordered. In either case the criminal restitution based assessment and the other assessment will duplicate each other in whole or in part; however, they may be collected only once.

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 duplicate collection, any payments made against the restitution-based assessment will be cross-referenced to related duplicate assessments made in a different module using a TC 766 with credit reference number 337; and vice versa. (Criminal restitution payments cross-referenced 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 that the correct amount of penalty is collected.