



SMALL BUSINESS/SELF-EMPLOYED DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

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MEMORANDUM FOR AREA DIRECTORS, SB/SE FIELD EXAMINATION

FROM: Heather J. Yocum /s/ *Heather J. Yocum*
Director, Examination Field and Campus Policy

SUBJECT: Temporary Interim Guidance for Timing of Supervisory
Approval of Penalties Subject to IRC 6751(b)

This memorandum issues temporary guidance clarifying the timing of written supervisory approval of penalties subject to IRC 6751(b), *Approval of assessment*. It supersedes IGM SBSE-04-1223-0062, *Interim Guidance (IG) for Timing of Supervisory Approval of Penalties Subject to IRC 6751(b)*, dated 12/15/2023. Additionally, it removes the requirement for an image of the signer's handwritten signature on a digitally signed penalty approval form. Please ensure this information is distributed to all affected employees within your organization.

Procedural Change: Updated procedures are found on Attachment – Interim Guidance SBSE-04-1024-0053.

Effect on Other Documents: This guidance will be incorporated into IRM 4.10.6 by a date not to exceed two years from the date of this memorandum.

Contact: Cathy Demetra, Program Manager, Examination Field and Campus Policy, Field Examination General Processes.

Attachment

Distribution: www.irs.gov

Attachment 1 – Interim Guidance: SBSE-04-1024-0053

The following temporary changes impact IRM 4.10.6 and are hereby effective 10/22/2024.

IRM 4.10.6.X

Written Supervisory Approval of Penalties Under IRC 6751(b)

- (1) Penalties requiring supervisory approval under IRC 6751(b), *Approval of assessment*, must be personally approved (in writing) by the immediate supervisor of the individual making the initial determination.

Note: An acting supervisor with an approved designation to act (e.g., Form 10247, *Designation to Act*) is considered an immediate supervisor for the purpose of IRC 6751(b)(1) (see IRM 20.1.1.2.3, *Approval Prerequisite to Penalty Assessments*).

- (2) When an acting supervisor approves a penalty on behalf of the supervisor (e.g., signs the Civil Penalty Approval Form), the actor must sign their name (manually or digitally) “acting for” the supervisor, whose name is listed on the form. See Signature Guidance for Acting Group Managers for examples.

- (3) Written supervisory approval required under IRC 6751(b)(1) must be obtained prior to issuing any written communication of penalties that offers the taxpayer an opportunity to:

- **Sign an agreement or consent to assessment of a penalty:** A form soliciting a signature, which the IRS relies upon to make an assessment.

Examples: Form 870, *Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment*; Form 4549, *Report of Income Tax Examination Changes*; Form 5816, *Report of Tax Return Preparer Penalty Case*; Form 14792, *Partnership Examination Changes, Imputed Underpayment Computation and Partnership Level Determinations as to Penalties, Additions to Tax and Additional Amounts*; or Form 14792-A, *Agreement as to Partnership-Related Items and Partnership-Level Determinations as to Penalties, Additions to Tax, and Additional Amounts*.

- **Sign a consent to proposal of a penalty:** A taxpayer may be provided an opportunity to consent to proposal of a penalty by signing an IRS form even though the IRS does not rely on the form to make the assessment.

Example: The taxpayer has the opportunity to sign Form 5701, *Notice of Proposed Adjustment*, even though the IRS does not rely upon Form 5701 to make an assessment.

For penalties not meeting the criteria above, written supervisory approval must be obtained before the case is closed from the group.

Example: The taxpayer is not provided an opportunity to sign an agreement, sign a consent to assessment, or consent to proposal of an IRC 6721, *Failure to file correct information returns*, and/or IRC 6722, *Failure to furnish correct payee statements*, penalty case. Therefore, approval must be obtained before the IRC 6721/IRC 6722 penalty case is closed from the group.

(4) Supervisory approval is not required for:

- Failure to file or pay penalties under IRC 6651,
- Estimated tax penalty under IRC 6654 or IRC 6655,
- Any overstatement of the deduction provided in IRC 170(p) under IRC 6662(b)(9),
- Any disallowance of a deduction by reason of IRC 170(h)(7) under IRC 6662(b)(10),
- Any other penalty automatically calculated through electronic means. See IRC 6751(b)(2).

Reminder: As an administrative matter, supervisory approval of the fraudulent failure to file penalty under IRC 6651(f) is required (see IRM 20.1.2.3.7.5.1(8), *FFTF Penalty Assessment–Procedural Requirements*).

(5) Prior to obtaining supervisory approval, written communication (e.g., list or Form 5278, *Statement – Income Tax Changes*, etc.) reflecting proposed adjustments (including penalties) can be shared with the taxpayer to facilitate discussion during a face-to-face appointment if:

- The written communication does not include language offering the taxpayer an opportunity to sign an agreement, sign a consent to assessment, or sign a consent to the proposal of a penalty,
- A letter offering the taxpayer an opportunity to sign an agreement or file a protest requesting a conference with Independent Office of Appeals (Appeals) does not accompany the written communication, and
- The activity record is documented to indicate the date and circumstances under which the written communication was provided.

Example: At the conclusion of the fact-finding phase of the examination (during a face-to-face appointment), the examiner determines an accuracy-

related penalty applies. Since supervisory approval of the penalty has not yet been obtained, the examiner prepares Form 5278 and shares it with the taxpayer to facilitate discussion of the proposed adjustments and penalty.

Reminder: A report should not be mailed to the taxpayer prior to discussing findings and proposed issues (see IRM 4.10.7.5.1(3), *Closing Phase of the Examination*).

(6) Generally, written supervisory approval is documented on the Civil Penalty Approval Form (Tab 2 within Lead Sheet 300-01 in Report Generation Software (RGS)), Form 8278, *Assessment and Abatement of Miscellaneous Civil Penalties*, or other method which complies with IRM 20.1.5.2.3.1, *Documenting Supervisory Approval of Penalties*.

(7) When using a digital signature, it preferably should reflect an image of the signer's handwritten signature or at a minimum, the digital signature must reflect the first and last name of the approving official. Under no circumstances should the form reflect the Standard Employee Identifier (SEID) as the signature. See IRM 4.10.1.4.4, *Digital Signatures*, and Adobe Acrobat - Digital Signature with Image of Handwritten Signature (Job Aid), for additional guidance.

Reminder: When documenting supervisory approval on the Civil Penalty Approval Form, an alternative penalty position, if applicable and subject to supervisory approval, must be identified along with the primary penalty position.

(8) The signed Civil Penalty Approval Form must be saved in the RGS case file.

Caution: If the Civil Penalty Approval Form is digitally signed, the original signed document must be preserved in Case File Documents to maintain the signer's underlying certificates. Do not flatten (i.e., print to PDF) the signed form, as doing so invalidates the certificates associated with the digital signature.

Reminder: Form 8278 must not be provided to the taxpayer (see IRM 20.1.7.5.1(6), *Field Examination Delinquent Information Return Procedures*).