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MANAGERIAL APPROVAL: Amend IRC § 6751(b) to Require IRS Employees to Seek Managerial Approval Before Assessing the Accuracy-Related Penalty Attributable to Negligence under IRC § 6662(b)(1)

PROBLEM

The IRS can assess penalties against a taxpayer either after an independent review by an IRS employee or automatically with the use of a computer program. An employee who makes an independent determination regarding a penalty assessment must receive written managerial approval before the penalty can be assessed, subject to several exceptions.¹ Penalties that are “automatically calculated through electronic means” do not require managerial approval.² This exception makes sense in the context of the failure to pay and failure to file penalties, which require a relatively straightforward mathematical calculation and involve no exercise of judgment and discretion.³

However, the exception poses a problem, particularly for accuracy-related penalties imposed on the portion of underpayment attributable to negligence or disregard of rules or regulations pursuant to IRC § 6662(b)(1) (hereinafter “negligence penalty”).⁴ “Negligence” includes “any failure to make a reasonable attempt to comply with the provisions of this title, and the term “disregard” includes any careless, reckless, or intentional disregard.”⁵ The IRS can consider various factors in deciding if the taxpayer’s actions were negligent, including actions taken by the taxpayer to ensure the tax was correct.⁶ However, the negligence penalty does not apply to any portion of an underpayment if it is shown that there was reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.⁷ A reasonable

1 See IRC § 6751(b)(1). IRC § 6751(b)(2)(A) provides that managerial approval is not required for additions to tax pursuant to IRC §§ 6651, 6654, and 6655.

2 See IRC § 6751(b)(2)(B).

3 IRC § 6651(a)(1) imposes a penalty for failure to file a required return by the date prescribed (including extensions). The penalty is generally five percent of the amount of tax if the failure to file is not more than one month. There is an additional five percent penalty for each additional month or fraction of a month. The penalty generally cannot exceed 25 percent in the aggregate. The penalty increases to 15 percent per month or fraction of a month for a maximum of 75 percent if the failure to file the return is fraudulent. IRC § 6651(f). See also IRM 20.1.2.2.7, *Failure to File a Tax Return – IRC 6651*, (Apr. 19, 2011). IRC § 6651(a)(2) imposes a penalty for failure to pay the tax shown on the return referenced in IRC § 6651(a)(1) on or before the due date. The penalty is 0.5 percent of the amount of tax if the failure to pay is not more than one month. There is an additional penalty of 0.5 percent for each additional month or fraction of a month. The penalty cannot exceed 25 percent in the aggregate. See also IRM 20.1.2.2.8.4, *Failure to Pay Tax Shown on Return – IRC 6651(a)(2)*, (Apr. 19, 2011). When both penalties are assessed on the same return, the failure to file penalty is reduced by the amount of the failure to pay penalty. See IRC § 6651(c)(1).

4 “Underpayment” is defined as “the amount by which any tax imposed by this title exceeds the excess of (1) the sum of (A) the amount shown as the tax by the taxpayer on his return, plus (B) amounts not so shown previously assessed (or collected without assessment), over (2) the amount of rebates made. IRC § 6664(a).

5 IRC § 6662(c). See also IRM 4.19.3.16.6, *Accuracy-Related Penalty Due to Negligence or Disregard of Rules or Regulations (Negligence Disregard Penalty)*, (Sept. 30, 2014) (IMF AUR); IRM 20.1.5.7.1(5)(a), *Negligence*, (Jan. 24, 2012) (indicating that exam may assert negligence based on a mismatch of interest income in a single year if the taxpayer does not appear for an examination).

6 IRM 4.10.6.2.1, *Negligence*, (May 14, 1999). Other factors include the taxpayer’s history of noncompliance; the taxpayer’s failure to maintain adequate books and records; and whether the taxpayer had a reasonable explanation for unreported or understated income.

7 IRC § 6664(c)(1).

cause determination takes into account all of the pertinent facts and circumstances, and requires the IRS employee to exercise judgment and discretion.⁸

Assessing penalties electronically involves an automated process that does not consider the facts and circumstances of a case until the taxpayer contacts the IRS in response to the proposed penalty, thus burdening the taxpayer to prove the penalty does not apply. For the negligence penalty in particular, automatic assessments do not allow for a consideration of the taxpayer's specific facts and circumstances. Under the automatic assessment regime, a taxpayer who did make a reasonable attempt to comply and acted in good faith must take extra, burdensome steps to rid him or herself of an arbitrary penalty assessment. Not only does this approach undermine voluntary compliance, but it affects a taxpayer's *right to quality service, right to pay no more than the correct amount of tax, and the right to a fair and just tax system.*⁹

EXAMPLE

The IRS audited Taxpayer A's return because of an inaccuracy in the income reported. This is the second year that the discrepancy has occurred. The IRS proposed an assessment based on the difference in wages between what she and her employer reported. The notice mentioned that penalties could apply, but no penalty is calculated on the notice.¹⁰ The taxpayer agrees to this assessment and does not respond. As a result, the IRS also automatically imposes a negligence penalty based on IRC § 6662(b)(1) and issues a statutory notice of deficiency (SNOD). The taxpayer does not closely review the SNOD because the taxpayer agrees with the assessment and is unaware that the IRS automatically assesses the penalty when there is no response from the taxpayer.

RECOMMENDATION

To address the lack of managerial review of IRC § 6662(b)(1) penalties automatically calculated through electronic means, the National Taxpayer Advocate recommends that Congress:

- Amend IRC § 6751(b)(2)(B) to require written managerial approval prior to assessment of the accuracy-related penalty imposed on the portion of underpayment attributable to negligence or disregard of rules or regulations under IRC § 6662(b)(1), and specify which penalties and facts or circumstances result in penalties “automatically calculated through electronic means.”

8 Treas. Reg. § 1.6664-4(b)(1).

9 See IRS, *Taxpayer Bill of Rights*, available at <http://www.irs.gov/Taxpayer-Bill-of-Rights>. For information on how accuracy-related penalties may impact future compliance among Schedule C taxpayers (i.e., sole proprietors), see National Taxpayer Advocate 2013 Annual Report to Congress, vol. 2 1-12 (Research Study: *Do Accuracy-Related Penalties Improve Future Reporting Compliance by Schedule C Filers?*).

10 Notice CP 2501 is sent to the taxpayer to obtain additional information prior to issuing a CP 2000. The CP 2000 is sent to the taxpayer to propose a change to his or her tax liability because of income not identified or not fully reported on the taxpayer's tax return. Accordingly, the CP 2501 will not contain a penalty computation. It will state that “An accuracy-related penalty is charged if there is any underpayment of tax on your return due to negligence. This penalty is 20 percent of the net tax increase on the portion due to negligence.” IRM Exhibit 4.19.3-7(86) (Sept. 30, 2014). While the CP 2000 may include a penalty notice, the IRS is not required to include a penalty calculation. See IRM 4.19.3.20.1.4, *Accuracy Related Penalties*, (Sept. 1, 2012) (“The AUR system electronically calculates the Accuracy Related penalties; therefore, a penalty notice may be issued in the initial letter to the taxpayer proposing a deficiency...”). In fact, the CP 2000 template includes this information about penalties: “If this penalty applies, we will bill you for this amount at a later date. The bill may reflect the amount as unpaid interest.” This is in contrast to the statutory notice of deficiency, which includes either Form 4549-A, *Income Tax Examination Changes (Unagreed and Excepted Agreed)* or Form 5278, *Statement – Income Tax Changes*, both of which include a section for the calculation of penalties. See IRS, Letter 531 (Aug. 2012).

PRESENT LAW

Presently, a taxpayer who submits a return that is not accurate (*i.e.*, reflects an “underpayment”) may be subject to an accuracy-related penalty under IRC § 6662.

The IRS Restructuring and Reform Act of 1998 (RRA 98) introduced the specific statutory requirement that the immediate supervisor of the individual making the initial determination of a penalty assessment must personally approve the initial determination, in writing, prior to assessment.¹¹ In explaining this legislative reform, the Chair of the Senate Finance Committee commented, “In order to prevent IRS employees from arbitrarily using penalties as leverage against taxpayers, this bill requires non-computer determined penalties to be approved by management.”¹²

Congress carved out the exception for penalties “automatically calculated through electronic means” but there is no legislative history to explain why these penalties should be excluded from managerial approval. However, by enacting IRC § 6751(b), the legislators intended to provide protections to taxpayers against the arbitrary use of penalties by the IRS.¹³ IRC § 6751(b)(2) also allows an exception to managerial approval for assessments related to:

- Failure to file a tax return or pay tax under IRC § 6651;
- Failure to pay estimated income tax under IRC § 6654; and
- Failure by a corporation to pay estimated tax under IRC § 6655.¹⁴

The exceptions under IRC § 6751(b)(2)(A) are based on relatively simple mathematical calculations involving “true/false” fact scenarios and do not require an inquiry into the taxpayer’s facts and circumstances. For example, the question of whether a taxpayer failed to file a required tax return can be answered with a simple “yes” or “no.”

The IRS has defined “automatically calculated through electronic means” to include more than “merely an electronic device to perform arithmetic functions to determine the amount of a penalty.”¹⁵ The exception includes situations where the penalty is assessed “**free** of any independent determination by an IRS employee as to whether the penalty should be imposed against a taxpayer.”¹⁶

The IRS Office of Chief Counsel has opined that the requirement for managerial approval does not apply to negligence penalties assessed under IRC § 6662(b)(1) pursuant to the Automated Underreporter

11 See Pub. L. No. 105-206, § 3306(a), 112 Stat. 685, 744 (1998) (codified in IRC § 6751(b)). The statutory language reads in relevant part: “(1) IN GENERAL — No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate. (2) EXCEPTIONS — Paragraph (1) shall not apply to — (A) any addition to tax under section 6651, 6654, or 6655; or (B) any other penalty automatically calculated through electronic means.”

12 See 144 CONG. REC. S7623-89 (statement of Senator Roth) (1998).

13 *Id.*

14 IRC § 6751(b)(2)(A).

15 IRM 20.1.1.2.3(5), *Managerial Approval for Penalty Assessments*, (Aug. 5, 2014). While there is no legislative history, this position is supported by the IRS Office of Chief Counsel. See SCA 200211040, Office of Chief Counsel, *Memorandum for Associate Area Counsel, Managerial Approval and Notice Requirements of Penalties – Section 6751(b)* (Jan. 30, 2002).

16 IRM 20.1.1.2.3(5), *Managerial Approval for Penalty Assessments*, (Aug. 5, 2014).

program.¹⁷ This is not a distinction that Congress addressed in the statutory provision. Unlike “true/false” penalties, the determination to assess a negligence penalty requires knowledge of what actions the taxpayer took to comply with the tax laws, as well as his or her motivations for those actions. As a result, the National Taxpayer Advocate is focusing her recommendation on automatically calculated negligence penalties under IRC § 6662(b)(1).

For the purpose of this penalty, “negligence” is defined to include “any failure to make a reasonable attempt to comply with the provisions of this title” and the term “disregard” includes any “careless, reckless, or intentional disregard.”¹⁸ The accuracy-related penalty does not apply to any portion of an underpayment where the taxpayer acted with reasonable cause and in good faith.¹⁹ A reasonable cause determination takes into account all of the pertinent facts and circumstances.²⁰ Generally, the most important factor is the extent to which the taxpayer made an effort to determine the proper tax liability.²¹

REASONS FOR CHANGE

The purpose of penalties is to encourage voluntary compliance and deter noncompliance.²² A recent TAS research study shows that the arbitrary application of penalties may undermine taxpayer compliance. In 2013, TAS conducted a study to estimate the effect of accuracy-related penalties on Schedule C filers whose examinations were closed in 2007.²³ The results identified matched pairs of taxpayers with similar situations that were different in only one respect: one was assessed a 20 percent accuracy-related penalty and the other was not. Among taxpayers who were subject to a default assessment or who appealed examination’s determination, those subject to penalties were no more compliant (than similarly situated taxpayers who were not penalized) immediately following the assessment.²⁴ In addition, five years later they were less compliant than those who were not penalized.²⁵

The automatic application of negligence penalties is a significant component of the IRS’s Automated Underreporter (AUR) program. AUR is an automated program that identifies discrepancies between the amounts that taxpayers reported on their returns and what payors reported via Form W-2, Form 1099, and other information returns.²⁶ In general, penalties assessed under the AUR program are automatically computed pursuant to a computer program when a discrepancy is detected in the document matching

17 See SCA 200211040, Office of Chief Counsel, *Memorandum for Associate Area Counsel, Managerial Approval and Notice Requirements of Penalties – Section 6751(b) 3* (Jan. 30, 2002) (“The circumstances in which the Automated Underreporter program calls for assessment of a negligence penalty, however, does not require an independent determination by a Service employee.”). For general information about the AUR program, see IRM 4.19.3, *Overview of IMF Automated Underreporter*, (Sept. 30, 2014).

18 IRC § 6662(c).

19 IRC § 6664(c)(1).

20 Treas. Reg. § 1.6664-4(b)(1).

21 *Id.*

22 See Policy Statement 20-1, IRM 1.2.20.1.1 (June 29, 2004).

23 See National Taxpayer Advocate 2013 Annual Report to Congress, vol. 2 1-12 (Research Study: *Do Accuracy-Related Penalties Improve Future Reporting Compliance by Schedule C Filers?*). TAS used Discriminant Function (or “DIF”) scores—an IRS estimate of the likelihood that an audit of the taxpayer’s return would produce an adjustment—as a proxy for a taxpayer’s subsequent compliance. See National Taxpayer Advocate 2013 Annual Report to Congress, vol. 2 3.

24 National Taxpayer Advocate 2013 Annual Report to Congress, vol. 2 11.

25 *Id.* The difference is statistically significant at 95 percent level of confidence.

26 See IRM 4.19.3.1, *Overview of IMF Automated Underreporter* (Sept. 30, 2014). The AUR program relies on two sources: the Individual Master File (IMF), which contains information reported to the IRS by taxpayers (such as when taxpayers file Form 1040, U.S. Individual Income Tax Return), and the Information Returns Master File (IRMF), which includes information submitted by payors, such as on Form W-2, *Wage and Tax Statement*. Underreporter cases result when computer analysis detects a discrepancy between the two data sources. IRM 1.4.19.1, *Overview*, (Nov. 1, 2012).

program.²⁷ If the negligence penalty is assessed in AUR, without an employee independently determining its appropriateness, there is no requirement for managerial approval.²⁸

Specifically, when the AUR program detects a discrepancy on a tax return, the IRS sends the taxpayer a letter asking for an explanation and a notice proposing an assessment.²⁹ If the taxpayer does not respond to those inquiries, AUR will issue a notice of deficiency, which proposes a liability assessment and includes calculation of applicable penalties.³⁰ If the taxpayer responds to the initial inquiry or the notice of deficiency, the IRS employee must consider the response, and any resulting IRC § 6662(b)(1) penalty assessment must receive prior managerial approval.³¹

The AUR program can also assess the negligence penalty under IRC § 6662(b)(1) automatically.³² The IRS system has “uniform factual criteria” programming that automatically proposes the negligence penalty when a taxpayer fails to report income reported on third-party information returns for a second year.³³ The programmed determination, in this instance, is that the taxpayer fits into a category of taxpayers who the IRS believes are “negligent” because failing to include third-party information returns for two consecutive years does not constitute the use of ordinary and reasonable care in the preparation of a tax return.³⁴

The IRS clearly uses different levels of effort to communicate with taxpayers and ascertain the reason for an apparent discrepancy before proposing a penalty, depending on the type of examination or matching program. Taxpayers receiving notices from the AUR program appear to receive the least communication prior to penalty assessment.³⁵ This procedure differs from those in field and office audits, where

27 SCA 200211040, Office of Chief Counsel, *Memorandum for Associate Area Counsel, Managerial Approval and Notice Requirements of Penalties – Section 6751(b) 2* (Jan. 30, 2002).

28 IRM 20.1.1.2.3.2, *Automated Underreporter Program*, (Aug. 5, 2014). See also IRM 20.1.5.1.6, *Managerial Approval of Penalties*, (Jan. 24, 2012).

29 SCA 200211040, Office of Chief Counsel, *Memorandum for Associate Area Counsel, Managerial Approval and Notice Requirements of Penalties – Section 6751(b) 2* (Jan. 30, 2002). As mentioned above, the initial notices may not include a penalty calculation. See footnote 10, *supra*.

30 SCA 200211040, Office of Chief Counsel, *Memorandum for Associate Area Counsel, Managerial Approval and Notice Requirements of Penalties – Section 6751(b) 2* (Jan. 30, 2002). For information on the notice of deficiency, see IRC § 6212 and IRM 4.8.9.8.3, *Criteria for Issuance*, (July 9, 2013).

31 *Id.* at 4. The IRS has implemented Counsel’s advice. When a taxpayer responds to either the initial contact letter or the notice of deficiency, the IRS must consider the response. See IRM 20.1.1.2.3.2(2), *Automated Underreporter Program*, (Aug. 5, 2014). This consideration requires an independent determination and therefore is not automatically calculated through electronic means and requires managerial approval. See IRM 20.1.1.2.3.2(3), *Automated Underreporter Program*, (Aug. 5, 2014). Managerial approval is not required when an employee uses command code FTDPN when working a case involving the failure to deposit penalty under IRC § 6656. IRM 20.1.1.2.3.3, *IDRS Command Code FTDPN*, (Dec. 11, 2009). Employees use command codes while working in the Integrated Data Retrieval System (IDRS), a database of taxpayer information. For more information on IDRS, see IRM 2.9.1.1, *Overview of Integrated Data Retrieval System*, (Jan. 1, 2000).

32 “Negligence” includes any failure to make a reasonable attempt to comply with the provisions of the tax law. IRC § 6662(c). The negligence penalty includes instances where the taxpayer shows a disregard for the tax rules. IRC § 6662(b)(1). “Disregard for the tax rules” includes any careless, reckless, or intentional disregard.” IRC § 6662(c). However, a position that has a reasonable basis is not attributable to negligence. Treas. Reg. § 1.6662-3(b)(1).

33 SCA 200211040, Office of Chief Counsel, *Memorandum for Associate Area Counsel, Managerial Approval and Notice Requirements of Penalties – Section 6751(b) 3* (Jan. 30, 2002).

34 SCA 200211040, Office of Chief Counsel, *Memorandum for Associate Area Counsel, Managerial Approval and Notice Requirements of Penalties – Section 6751(b) 3* (Jan. 30, 2002). Counsel believes that this is a correct interpretation of IRC § 6751(b)(2)(B). *Id.*

35 See National Taxpayer Advocate 2013 Annual Report to Congress 185. For a discussion on the shortcomings of customer service and data systems within the AUR program, see National Taxpayer Advocate 2007 Annual Report to Congress 259-74 (Most Serious Problem: *Automated Underreporter*).

the IRS employee is encouraged to solicit explanations regarding adjustments from the taxpayer prior to assessment.³⁶

Automatically calculated penalties are a significant problem for taxpayers. In FY 2013, the IRS conducted over 75 percent of all individual audits by Correspondence Examination and issued over 4.12 million Notices CP 2000 (AUR notices) in FY 2013.³⁷ Moreover, in FY 2014, more than 71,000 of these letters proposed over \$71 million in accuracy-related penalties *before* the IRS ever inquired about the discrepancy or called the taxpayer.³⁸ This leaves the burden on the taxpayer to prove that the penalty does not apply.

As discussed above, if a taxpayer responds to the automatically-proposed penalty, the employee assigned to the case must review the submission. The assessment is no longer “automatically calculated through electronic means” and will be reviewed by a manager. The taxpayer who does not respond will not get the same review.

There are many reasons why a taxpayer may not respond to a notice. First, the taxpayer may not respond to the first notice because he or she agrees with the adjustment proposed and thus does not review the second separate notice that contains the penalty assessment. Second, low income taxpayers often face particular challenges when dealing with the IRS.³⁹

Moreover, in an environment of continuing budget cuts, the inability to contact the IRS is a challenge faced not only by low income taxpayers, but by *all* taxpayers. In fiscal year (FY) 2014, only 64.4 percent of taxpayers calling to speak to an IRS customer service representative could get through and the average time on hold was 19.55 minutes.⁴⁰ The National Taxpayer Advocate has highlighted the need to improve customer service to preserve taxpayer rights.⁴¹ The consequences of this problem are exacerbated with automatically-assessed penalties, which are reviewed only when a taxpayer responds. Most importantly, automatic IRC § 6662(b)(1) penalty assessments, while “efficient” from the IRS’s point of view, may actually decrease taxpayer compliance and therefore the collection of revenue.⁴²

Several taxpayer rights are impacted when negligence penalties are assessed automatically without managerial approval. For instance, taxpayers who must defend themselves from automatically assessed penalties that go to their intent, have not had *their right to quality service* honored. Likewise, *the right to pay no more than the correct amount of tax*, which includes interest and penalties, is violated when the IRS can assess penalties without first reviewing the appropriateness of the assessment. Finally, *the right to a fair and just tax system*, which ensures that the IRS will “consider facts and circumstances that might affect

36 See IRM 4.10.6.3.5, *Soliciting the Taxpayer’s Explanations*, (May 14, 1999). See also National Taxpayer Advocate 2013 Annual Report to Congress 186.

37 IRS Data Book, Table 14, Information Reporting Program (FY 2013).

38 IRS Compliance Data Warehouse, Individual Master File (Dec. 22, 2014). This figure omits the accuracy-related penalties assessed in FY 2014 as a result of AUR cases opened in earlier periods. It also omits taxpayers who received a CP 2000 only after receiving a letter (CP 2501) inquiring about the reason for the discrepancy.

39 Low income taxpayers are more likely to face limited English proficiency, low literacy rates, physical or mental disabilities, lower education levels, limited access to the internet, and limited access to qualified tax professionals. See National Taxpayer Advocate 2009 Annual Report to Congress 112-113.

40 IRS, Joint Operations Center, *Snapshot Reports: Enterprise Snapshot* (week ending Sept. 30, 2014).

41 See National Taxpayer Advocate 2013 Annual Report to Congress 20-39 (Most Serious Problem: *IRS BUDGET: The IRS Desperately Needs More Funding to Serve Taxpayers and Increase Voluntary Compliance*); National Taxpayer Advocate 2012 Annual Report to Congress 34-41 (Most Serious Problem: *The IRS Is Significantly Underfunded to Serve Taxpayers and Collect Tax*); National Taxpayer Advocate 2011 Annual Report to Congress 3-14 (Most Serious Problem: *The IRS is Not Adequately Funded to Serve Taxpayers and Collect Taxes*).

42 See National Taxpayer Advocate 2013 Annual Report to Congress, vol. 2 1-12 (Research Study: *Do Accuracy-Related Penalties Improve Future Reporting Compliance by Schedule C Filers?*).

[the taxpayer's] underlying liabilities,” is violated when the IRS automatically imposes negligence penalties, without any managerial approval. It also brings into question the fairness of the system when the IRS reviews penalties against taxpayers who respond to a notice, but automatically assesses penalties against taxpayers who do not reply.

EXPLANATION OF RECOMMENDATION

This legislative recommendation requires managerial approval prior to assessment of the accuracy-related penalty imposed on the portion of underpayment attributable to negligence or disregard of rules or regulations under IRC § 6662(b)(1). The managerial review of this penalty, which includes the failure to make a “reasonable attempt” to comply with rules or “any careless, reckless, or intentional disregard” of the rules, should involve a thorough review of the taxpayer’s facts and circumstances, which is not possible with an automatic assessment.⁴³

There may be other instances where the IRS automatically imposes penalties where an analysis of facts and circumstances is required. For instance, the IRS applies IRC § 6751 to the analysis of its two-year EITC ban cases under IRC § 32(k).⁴⁴ Under IRS procedures, managerial approval is required in all cases that involve the two-year ban under IRC § 32(k).⁴⁵ However, in 2013, TAS reviewed cases involving the two-year ban and found that in 69 percent of the cases, the ban was imposed without the required managerial approval.⁴⁶

In response to this review, the IRS agreed to reinforce among its employees “that all two-year bans must have managerial approval on all manual cases and on systemically imposed two-year ban cases *if correspondence is received*.”⁴⁷ (emphasis added). This leaves taxpayers facing a two-year ban under IRC § 32(k) in a similar situation to taxpayer receiving automatic penalty assessments under IRC § 6662(b)(1). Therefore, the National Taxpayer Advocate recommends that Congress specify which penalties and facts and circumstances result in penalties “automatically calculated through electronic means.”

43 IRC § 6662(c).

44 See National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress, vol. 2 44. IRC § 32(k)(1)(B)(ii) disallows Earned Income Tax Credit (EITC) claims for two taxable years if there has been a final determination that the taxpayer’s claim of credit was due to “reckless or intentional disregard of rules and regulations.”

45 See IRM 4.19.14.6.1(4), *EITC 2/10 Year Ban - Correspondence Guidelines for Examination Technicians (CET)*, (Jan. 1, 2013).

46 See National Taxpayer Advocate 2013 Annual Report to Congress 104. Based on this review, the National Taxpayer Advocate made a legislative recommendation in 2013 to amend IRC § 32(k) to provide that the IRS has the burden of proof as to whether it is appropriate to impose the two-year ban on claiming EITC. See National Taxpayer Advocate 2013 Annual Report to Congress at 311-15 (Most Serious Problem: *Allocate to the IRS the Burden of Proving it Properly Imposed the Two-Year Ban on Claiming the Earned Income Tax Credit*).

47 See National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress, vol. 2 44.