


Office of Chief Counsel
Internal Revenue Service
memorandum

CC:PA:B2:HMarx
POSTF-149729-13

Via Electronic Mail

date: December 20, 2013

to: Debbie L. Holmes
Tax Policy Analyst
Campus Compliance Services

from: Ashton P. Trice 
Chief, Branch 2
(Procedure & Administration)
CC:PA:B2

subject: Appeals Rights with respect to a Request to Abate a Section 6702 Penalty

This memorandum is not binding legal authority and should not be used or cited as precedent.

You have asked whether the law requires or prohibits Appeals from providing a taxpayer with appeal rights with respect to a request to abate a section 6702 penalty when the taxpayer has raised non frivolous arguments.¹ You asked the question in response to a recent change in a section of the Appeals Internal Revenue Manual (IRM). The answer to this question is no. No statute, regulation, or other published guidance requires or forbids the IRS from providing administrative appeal rights to taxpayers in this situation.² The decision whether to provide these rights is strictly a business decision.

¹Taxpayers are not entitled to appeal rights with respect to section 6702 abatement requests based solely on frivolous grounds. See IRM 4.10.12.5.5(1)2.c.

² Section 601.106(a)(1)(iv)(a) of the Statement of Procedural Rules contains a statement that post-assessment administrative appeals procedures do not apply to penalties that are not subject to a reasonable cause or reasonable basis determination. Provisions of the Statement of Procedural Rules, however, are not binding. See Rosenberg v. Commissioner, 450 F.2d 529, 531 (10th Cir. 1971); Boulez v. Commissioner, 810 F.2d 209, 215 (D.C. Cir. 1987); Luhring v. Glotzbach, 304 F.2d 560, 564-65 (4th Cir. 1962). In fact, many of the provisions of the Statement of Procedural Rules are outdated and are not consistent with current Service practice with respect to offering administrative appeals or IRM provisions governing those practices.

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