

Section 6651(a)(2) Procedures

a. Notices of Deficiency

Notice (N)35-000-169 provides two ways to state the amount of the section 6651(a)(2) addition to tax in a notice of deficiency. First, if the amount of the addition to tax has accrued for the full fifty-month period (25 percent of the amount of the unpaid tax), then the notice of deficiency should reflect the full amount of the addition to tax owed by the taxpayer. Second, if the amount of the addition to tax has not accrued for the full fifty-month period, then the notice of deficiency should not include a dollar amount, but should state that the amount of the addition to tax cannot be determined at this time but that an addition to tax of 0.5 percent will be imposed for each month, or fraction thereof, of nonpayment, up to 25 percent, based upon the liability shown on the section 6020(b) return, or the final determined liability, if less.

Several of the Service's computer programs that generate notices of deficiencies cannot eliminate a dollar amount for the addition to tax under section 6651(a)(2). As an alternative, when the addition has not fully accrued and the program does not permit the elimination of the dollar amount, the Service should include a dollar amount for the addition with an asterisk and the following statement, "[t]his amount only reflects the addition to tax under section 6651(a)(2) through **[insert "date of this notice" or the specific date or event up to which the Service calculated the addition to tax (e.g., "date the Service prepared the section 6020(b) return")]**". The addition to tax will continue to accrue from the due date prescribed for payment of such tax at a rate of 0.5 percent for each month, or fraction thereof, of nonpayment, not exceeding 25 percent in the aggregate."

b. Answers

Notice N(35)000-169 provides that, after verifying that the years of the 6020(b) returns at issue are subject to the addition to tax under section 6651(a)(2) and that the administrative file contains a valid section 6020(b) return, the counsel attorney should determine whether the Service issued the notice of deficiency prior to the expiration of the fifty-month period. If the Service issued the notice of deficiency after the expiration of this period, then the notice of deficiency should reflect the full amount of the addition to tax actually owed by the taxpayer and the answer should allege that fact. If the Service issued the notice of deficiency prior to the expiration of this period, then the answer should allege that the Service is entitled to additional amounts under section 6651(a)(2), as the full amount of the addition to tax had not accrued as of the date of the notice of deficiency. The answer should also allege that the addition to tax will continue to accrue until the addition reaches 25 percent of the unpaid tax or until the tax is paid. In situations where the notice of deficiency does not provide for the addition to tax under section 6651(a)(2), the answer should allege the applicability of the addition to tax and explain how the addition accrues.

Attachment 1

A. The following language should be used when preparing decision documents in which the notice of deficiency determines an amount due under I.R.C. § 6651(a)(2) for years prior to the enactment of section 6651(g) and the taxpayer has not filed a return:

**NO ADDITION UNDER I.R.C. § 6651(a)(2)
6020(b) RETURN**

That there is no addition to tax due from the petitioner for the taxable year 1995, under the provisions of I.R.C. § 6651(a)(2).

[This paragraph can be used to dispose of the addition where it has been erroneously placed in a statutory notice for 1995 and earlier years.]

B. The following language should be used when preparing decision documents in which it is determined that the addition under I.R.C. § 6651(a)(2) applies.

**ADDITION UNDER I.R.C. § 6651(a)(2)
6020(b) RETURN**

(1) ADDITION DETERMINED 50 MONTHS HAS ALREADY TRANSPIRED

That there is an addition to tax due from the petitioner for the taxable year _____, under the provisions of I.R.C. § 6651(a)(2), in the amount of \$_____.

(2) ADDITION ACCRUING MONTHLY LESS THAN 50 MONTHS ELAPSED

(A) CASE CONCEDED IN FULL BY TAXPAYER

That there is an addition to tax due from the petitioner for the taxable year _____ under the provisions of I.R.C. § 6651(a)(2) of 0.5% of the amount of [insert amount] commencing on the due date of the petitioner's return and accruing for each month or fraction thereof during which the petitioner fails to pay, not exceeding 25% in the aggregate.

(B) CASE SETTLED FOR REDUCED DEFICIENCY

That there is an addition to tax due from the petitioner for the taxable year _____ under the provisions of I.R.C. § 6651(a)(2) of 0.5% of the amount of the income tax required to be shown on the return, [insert amount] commencing on the due date of the petitioner's return and accruing for each month or fraction thereof during which the petitioner fails to pay, not exceeding 25% in the aggregate.

(C) DELINQUENT RETURN FILED BY TAXPAYER

That there is an addition to tax due from the petitioner for the taxable year _____ under the provisions of I.R.C. § 6651(a)(2) of 0.5% of the amount of the income tax shown on the return, [insert amount] commencing on the due date of the petitioner's return and accruing for each month or fraction thereof during which the petitioner fails to pay, not exceeding 25% in the aggregate.

(3) NOTICE SETS FORTH THE ADDITION TO TAX IN A SUM CERTAIN

The following language should be used if the addition under section 6651(a)(2) is in the notice in a sum certain from the due date of the return to the date of the notice, and the amount of the ultimate addition to tax is greater than the amount in the notice. If the ultimate addition to tax is greater than the amount in the notice, we will have to move for an increase in addition to tax. The increased addition to tax language should be in the stipulation paragraph (below the judge's signature).

It is further stipulated that the respondent claims an increased addition to tax under the provisions of I.R.C. § 6651(a)(2), for the taxable year _____ of 0.5% of the amount of the income tax shown on the return, commencing on the due date of the petitioner's return and accruing for each month or fraction thereof during which the petitioner fails to pay, not exceeding 25% in the aggregate, pursuant to the provisions of I.R.C. § 6214(a).

(This paragraph should be modified if we know either the exact amount of the addition or we are using the required to be shown language in the addition paragraph.)

(4) SECTION 6651(a)(2) ADDITION IS NOT APPLICABLE; SECTION 6651(a)(1) ADDITION UNDERSTATED

Where it is determined that section 6651(a)(2) is not applicable, the section 6651(a)(1) addition will have been understated by 0.5% for five months and you will need to move for an increased 6651(a)(1) addition to tax. Since this addition only runs for five months, we will be able to determine an exact amount. We recommend the following increased addition to tax paragraph.

It is further stipulated that the respondent claims an increased addition to tax under the provisions of I.R.C. § 6651(a)(1), for the taxable year _____, in the amount of \$_____.