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“Better-late-than-never” Doesn’t Fly with Form 5471 Penalties

By Steve Minson, CPA

Effective **January 1, 2009**, the Internal Revenue Service will automatically begin assessing penalties on late filed corporate tax returns (Form 1120 series of forms) with Form(s) 5471 attached. Previously, these penalties were normally imposed at the discretion of an IRS examining agent in the course of a tax return examination.

Form 5471 is required to be filed by U.S. citizens and residents (including U.S. corporations, partnerships and trusts) who are officers, directors, or shareholders in certain foreign corporations, to satisfy reporting requirements with respect to these foreign corporations. By law, a penalty of \$10,000 is imposed for each failure to timely furnish the required information. An additional penalty equal to a 10% reduction of the available foreign tax credit may also be imposed.

The Internal Revenue Service Large & Mid-Size Business Division recently began mailing letters to corporate taxpayers who filed late tax returns in the past that included Form 5471 informing them of this change in policy. While this letter states that the penalties will be automatically assessed beginning 1/1/09, it also reminds taxpayers that penalties may be imposed before that date under current policy and procedures.

It is our understanding that this new policy currently exists only with respect to corporate tax returns, but could be expanded in the future to other types of taxpayers. Taxpayers who are penalized may request a waiver of the penalty based on reasonable cause after the penalty has been assessed. Guidance from the IRS with respect to this matter continues to be monitored.

Questions or concerns about Form 5471? Contact Steve at 781-937-5120 or sminson@dgccpa.com.