

## **2009 OVDI Compliance Penalty Guidance**

I wanted to alert you to an issue that has come up. The decision made on the VDP cases is that we would assess either the accuracy related penalty OR the delinquency penalty on the disclosures made by the taxpayer. It was determined that we would only assess the delinquency penalty on the VDP cases when as part of the disclosure process the taxpayer files a delinquent return(s) (had not filed prior to VDP disclosure) as part of the VDP process. In all other cases the accuracy related penalty would be applied only. There are cases where the taxpayer filed delinquent when they filed their original returns (prior to the VDP Disclosure). In these cases the Campus may have already assessed a Delinquency Penalty against the taxpayer which will be shown by a TC 166 on the module. If a TC 166 appears (Note: another way to identify these cases is if the AMDISA shows "DEL RET IND") on the transcript then the delinquency penalty MUST be addressed on the Form 5344 or the case will be rejected. Since we are not assessing the delinquency penalty in these situations, in order to remedy the problem, the agent must enter a TC 160 with a 0 on line 12 and also input a Penalty Reasonable Code in Line #2 (recommend to Use Reason Code #45 - Other) on the Form 5344 in RGS or the case will reject at Centralized Case Processing. We will add this advice to the Case Closing Job Aid, but in the meantime we recommend that you forward this advice to the agents.

Another note on this issue. If the TP filed amended returns with the campus after they entered the VDP process (as part of the VDP requirement), and the amended return was processed by the Campus and a Delinquency Penalty was assessed on this Amended Return then this penalty needs to be abated. The correction can be made on your closing RAR through RGS by inputting a manual penalty for the abatement and then coding that penalty amount with a TC 161 on the Form 5344. If the TC 161 is input on the Form 5344, then the agent will not have to input the TC 160 with a 0 for that return. Note: if a delinquency penalty was assessed on the Original return or any additional tax adjustments prior to entering the VDP program, this penalty amount will not be abated and will remain as assessed on the module. No changes are needed to the Closing Agreement if you abate the delinquency penalty because you are just correcting the module to what the taxpayer is agreeing to in the Closing Agreement.

Below is a link to a website with a detailed explanation on the first 2 pages of how to make the corrections mentioned above in RGS.

<http://sbse.web.irs.gov/ccp/Exam/TopAIMS%20Rejects%96Examine%20rErrors.pdf>