

ID: CCA_2009091816283118

Number: **200945060**

Release Date: 11/6/2009

Office:

UILC: 6501.07-14, 6652.03-01

From:

Sent: Friday, September 18, 2009 4:28:32 PM

To:

Cc:

Subject: FW: Request for National Office Review

This is a follow-up email to our phone conversation on Sep. 8 and reiterates the conclusion we discussed. coordinated the issue w/ , and they're in agreement with the advice below.

After carefully considering the issue, our conclusion is that section 6501(e)(3) does not apply to the period for assessment of the section 6652(c)(1)(A)(ii) penalty. We reach that conclusion because section 6501(e)(3) by its terms extends the period (from three to six years) only as to: (1) a specified excise tax which a taxpayer omitted from a return reporting the tax--"an amount of such tax properly includible thereon"--by more than 25 percent, and (2) arguably any penalty based on the tax so omitted.

First, the penalty (which is in Chapter 68 of subtitle F) is not one of the subtitle D excise taxes to which section 6501(e)(3) is limited. Second, the penalty is not based on an excise tax so omitted. The penalty results from an omission on Form 990, but a Form 990 is not used to report excise tax, such as the section 4958 excise tax on excess benefit transactions; rather, the Form 990 is an annual information return of an exempt organization. Treas. Reg. § 1.6033-2(a)(1)-(2)(i). The section 4958(a)(1) excise tax is imposed on a disqualified person who benefited from the transaction, not the exempt organization that engaged in it, and the individual must report the tax on Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*. The section 6652(c)(1)(A)(ii) penalty, on the other hand, is imposed on an exempt organization for failure to include on Form 990 any required information, such as excess benefit transactions, or for reporting incorrect information. Thus, when a section 6652(c)(1)(A)(ii) penalty is assessed against an organization for failure to include information about an excess benefit transaction on its Form 990, the penalty is distinct from and not computed or otherwise based on any tax imposed on the organization itself (as distinguished from the disqualified person). We do not think a 6-year limitations period under section 6501(e)(3) can apply to a section 6652(c)(1)(A)(ii) penalty imposed on an exempt organization when that penalty bears no relation to any tax imposed on the organization.

Please let me know if you have questions or if we can assist further.