

ID: CCA_2019030613140943

UILC: 6707A.00-00, 6501.00-00

Number: **201916006**

Release Date: 4/19/2019

From: [REDACTED]
Sent: Wednesday, March 06, 2019 1:14:10 PM
To: [REDACTED]
Cc: [REDACTED]
Bcc:
Subject: RE: 6707 FTF Stature

I've run this by P&A Branches 1-2 and this is their response:

Question 1: Correct. When disclosure is required with a return, the assessment of the section 6707A penalty for failure to timely or properly disclose a reportable transaction must be made within 3 years of the date of the filing of the underlying return. See section 6501(a). Disclosure is required with a return when the transaction is listed or otherwise reportable at the time the return is filed. For listed transactions, section 6501(c)(10) provides additional time to make an assessment of the penalty if the disclosure is not made with the return. Section 6501(c)(10) provides that the period to assess tax with respect to a listed transaction the taxpayer failed to disclose in accordance with section 6011 shall not expire before one year after the earlier of the following: (1) the date the taxpayer provides the information required under section 6011, or (2) the date that a material advisor meets the requirements of section 6112. See, e.g., IRM 4.32.4.1.4.1 (12-12-2013).

When disclosure is not required with a return, no limitations period to assess the section 6707A penalty applies. This typically occurs in the case of transactions listed after the due date of the return. In these cases disclosure is generally made to OTSA, rather than with a return. See, e.g., IRM 4.32.4.1.4.2 (12-12-2013).

Question 2: Section 6501(a) provides that an assessment of tax must be made "within 3 years after the return was filed." For purposes of section 6501, the term "return" means the return required to be filed by the taxpayer. See section 6501(a). Per section 6111, Form 8918 is a return required to be filed by the material advisor. Therefore, the penalty must be assessed within 3 years after the due date of the return or the date filed, whichever is later. See IRM 20.1.6.21 (07-26-2017).

Please note that while the above is the general rule, there is no applicable statute of limitations under section 6501 for the assessment of the penalty for failure to register a tax shelter under the pre-American Jobs Creation Act of 2004 (AJCA) version of section 6707(a)(1). See, e.g., IRM 4.32.2.3.1 (06-04-2018).