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Release Date: 1/28/2022

From: [REDACTED]

Sent: Monday, September 13, 2021 5:35:47 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE: Request for Review of Proposed Advice to Collection: Son-of-BOSS Promoter Request for Release of Liens (re: Section 6707 Penalties for Failing to Disclose Shelters) Based on Purported Non-Compliance with Section 6751(b) -

Good afternoon.

PA has one comment on the memo.

With regard to releasing the liens, you state:

As you know, releases of lien relate only to situations where the underlying liability has been satisfied or has become unenforceable due to lapse of time, i.e., expiration of the collection statute. See I.R.C. § 6325(a); IRM 5.12.3.3, 5.12.3.4. Because the penalties have neither been satisfied nor expired due to the expiration of the collection statute under I.R.C. § 6502, we recommend that you notify [REDACTED] that a certificate of release cannot be issued.

In our view, this needs to be clarified. As you note, the Code requires release where the underlying liability has been satisfied or has become unenforceable due to lapse of time. The Treasury Regulations provide that the liability is satisfied when the Service determines the entire liability listed in a NFTL has been satisfied or the taxpayer provides proof of payment. See Treas. Reg. 301.6325-1(a)(4). Per the IRM, the satisfaction of liability criteria for releasing liens includes both payment of the liability and abatement of the liability. See, e.g., IRM 5.12.3.3.1; 5.12.3.3.1.2; 5.12.3.9; 5.12.3.9.1.

Therefore, if the assessment of the section 6707 penalties were improper, and it were abated, then the liens should be released. The taxpayer has asserted that the Service failed to comply with section 6751(b). Based on the information provided, in our opinion, the Service did not fail to comply with section 6751(b), and therefore the purported non-compliance with section 6751(b) is not a basis to challenge the validity of the section 6707 penalties. The IRM instructs LB&I and SB/SE employees regarding the preferred form of written supervisory approval of penalties. But the Tax Court has specifically held that compliance with section 6751(b) does not require written supervisory approval in any particular form, and that “[e]mails may constitute written

supervisory approval.” *Est. of Morrissette v. Commissioner*, T.C. Memo. 2021-60 at *119; *Rogers v. Commissioner*, T.C. Memo. 2019-61 at *25 (finding that Associate Area Counsel emails satisfied § 6751(b)) (citation omitted); see also *Belair Woods, LLC v. Commissioner*, 154 T.C. 1, 17 (2020) (“[T]he written supervisory approval requirement requires just that: written supervisory approval.”); *Trib. Media Co. v. Commissioner*, T.C. Memo. 2020-2 at *20-21 (“Although the IRS has various forms that can be used for approving penalties, courts have not restricted the Commissioner to using only those forms in order to comply with the written approval requirement.”). Unlike in *Laidlaw’s Harley Davidson Sales, Inc.*, where there was nothing in the record to reflect that the Revenue Agent’s supervisor had approved the section 6707 penalty in writing before the 30-day letter was issued to the taxpayer, here the Revenue Agent received written supervisory approval of his report recommending section 6707 penalties before he issued the 30-day letter. Accordingly, even though the written supervisory approval did not take the form recommended in the IRM guidance, it meets the statutory requirement of written approval.

If not section 6751(b), but some other reason results in abating the penalties, then in conjunction with the abatement, the federal tax liens would be released. But at this juncture, there is no reason to release the liens.

As an aside, you may wish to correct the spelling of the taxpayer’s name in the title of the Word file. Doing so may facilitate locating the electronic Word document in the future.

If you have questions or comments, please contact us.