

**Office of Chief Counsel
Internal Revenue Service**
memorandum

CC:PSI:7:CGabrysh
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date: JAN 28, 2010

to: R. B. McArthur
Chief, Excise Tax Program

from: Frank Boland
Chief, CC:PSI:7

subject: Statute of Limitations for Form 720 Terminal Operator (TO) and Carrier Summary (CS)

This responds to your June 29, 2009, memorandum in which you ask two questions: (1) is there a statute of limitations that applies to assessing, under section 6725 of the Internal Revenue Code, a penalty for a late filing, an incomplete filing, or an incorrect filing of Form 720-TO, Terminal Operator Report, or Form 720-CS, Carrier Summary Report; and (2) what is the statute of limitations for filing a claim for refund of a penalty imposed by section 6725. Form 720-TO and Form 720-CS are information reports regarding vessels and facilities pursuant to section 4101(d).

Section 6725 imposes a \$10,000 penalty on: (1) the failure to timely file a section 4101(d) report; and (2) the failure to file a complete and accurate section 4101(d) report. Section 6725 is in subchapter B, Assessable Penalties, of Chapter 68, Additions to the Tax and Additional Amounts.

Section 6671 is also in subchapter B of Chapter 68. Section 6671 (a) reads:

The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this chapter.

Section 6501(a) provides that the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed). Section 6501(c)(3) provides that in the case of a failure to file a return, the tax may be assessed at any time.

PMTA 2010-08

Section 6511 provides that a claim for credit or refund of an overpayment of any tax shall be filed within three years from the time a return was filed or two years from the time the tax was paid, whichever is later.

Accordingly, in the case of a failure to file an information report under section 4101(d), the IRS may assess the penalty imposed by section 6725 at any time. In the case of a filed report that does not contain the required information or contains incorrect information, the penalty generally must be imposed within 3 years after the report was filed.

The rules of section 6511 apply to claims for a refund of any penalty under section 6725.

This document may not be used or cited as precedent.

If you have any question or comments regarding this memorandum, please contact Celia Gabrysh at (202) 622-3130.