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From:

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To:

Cc:

Subject: RE: 6707A question

As a conservative measure, we have treated the period of limitations on a 6707A penalty as generally 3 years from the filing of a return to which the disclosure statement (Form 8886) is supposed to be attached. For transactions governed by the most recent version of the section 6011 regulations (i.e., those transactions entered into after 8/2/2007), where the transaction becomes a listed transaction or a transaction of interest after the taxpayer files the return reflecting participation in the transaction, the taxpayer must disclose participation in certain prior years by filing F8886 with OTSA and not with a return. See Treas Reg 1.6011-4(e)(2)(i). In those cases, we've taken the position that there's no period of limitations applicable to the section 6707A penalty.

The first item in the collection of guidance found at <http://mysbse.web.irs.gov/exam/tip/ajca/irc6707a/guidance/default.aspx> discusses using F872 to extend the period of limitations regarding the 6707A penalty. The relevant part reads as follows:

Form 872

a. The Form 872 for the underlying income tax does not extend the period of limitations for assessment of the section 6707A penalty unless the form includes specific language addressing the penalty.

b. The following language is approved for use on the Form 872:
"Without otherwise limiting the applicability of this agreement, this agreement also extends the expiration date identified in paragraph (1) above to the period of limitations for assessing any penalty pursuant to section 6707A, Penalty For Failure to Include Reportable Transaction Information with the Return, with respect to the taxpayers, kind of tax, and tax periods identified above."

- c. A separate Form 872, apart from the income tax case(s), should be obtained from the taxpayer(s) using the language from 5.b., above for the section 6707A penalty.
- d. The section 6707A penalty is not assessed as a joint and several liability; it can be individually applied to each spouse who jointly files a Form 1040 provided each meets the legal criteria for the penalty. For these cases, the agent should request that each spouse sign a separate Form 872 that has the explicit language from the preceding bullet. The agent does not need a Form 872 from a spouse for whom the agent is not considering a section 6707A penalty.
- e. To extend the period of limitations for a partnership potentially subject to a section 6707A penalty, the Form 872 should be signed by the General Partner and not the Tax Matters Partner. Because there is no line on the Form 872 for a General Partner to sign, the agent should strike through the words "Corporate Name" and write in "Partnership Name" and strike through "Corporate Officer" and substitute "General Partner."
- f. If the taxpayer extends the statute of limitations with respect to the section 6707A penalty, ERCS should be updated to reflect the new statute date. The agent will need to request a P5 print from the secretary to validate that the statute has been updated in the ERCS system.

Please let me know if you have any other questions.