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From: [REDACTED]

Sent: Friday, April 24, 2020 2:02:10 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE: 6695A question

Hi

Thank you for your question: Can Penalty Examiners assess the section 6695A penalty without having sent the L4477/IDR and not conducted an interview? (e.g. short statute but we may be able to assess penalty through CCP)

There is no case law or guidance on the issue, but our position is that, in order to assess the 6695A penalty, the IRS is not legally required to send the L4477, to send an IDR, or to conduct an interview with the appraiser, but it may be a good policy decision to do so. As I'm sure you're aware, the IRM is not legally binding on the IRS. See e.g. *United States v. Horne*, 714 F.2d 206, 207 (1st Cir. 1983); *First Fed. Sav. & Loan Ass'n of Pittsburgh v. Goldman*, 644 F. Supp. 101, 103 (W.D. Pa. 1986). And our reading of section 6695A is that the exception in subsection (c) is a defense to the penalty, not a prerequisite to assessing it. So as long as the IRS is able to establish the facts necessary to meet the requirements of 6695A(a), then the IRS can assess the penalty. Thus, the IRS needs to establish that the person prepared an appraisal, the person knew or should have known it would be used in connection with a return, the reported amount resulted in at least a substantial valuation misstatement, and, for purposes of calculating the penalty, the person received some gross income.

Please let us know if you have any further questions. Thanks.