2021 WL 2709676
Only the Westlaw citation
is currently available.
United States District Court,
W.D. Texas, Austin Division.

Dominique G. COLLIOT, Plaintiff,
v.
UNITED STATES of America, Defendant.

CAUSE NO. 1:19-CV-212-LY
|
Signed 03/24/2021

Attorneys and Law Firms

Lawrence Robert Kemm, Holland & Knight LLP, Tampa, FL, for Plaintiff.

Herbert W. Linder, US Department of Justice, Tax Division, Dallas, TX, for Defendant.

MEMORANDUM OPINION AND ORDER

LEE YEAKEL, UNITED STATES DISTRICT JUDGE

***1** Before the court in the above-styled and numbered cause are competing motions for summary judgment disputing penalties under the Internal Revenue Code (the "Code"). Defendant United States of America (the "Government") filed a Motion for Summary Judgment on July 30, 2020 (Doc. #14), Plaintiff Dominique G. Colliot's response was filed on August 13, 2020 (Doc. #16), and the Government's reply was filed on August 20, 2020 (Doc. #18). On July 31, 2020, Colliot filed a Motion for Partial Summary Judgment and Memorandum in Support (Doc. #15), the Government filed a response on August 14, 2020 (Doc. #17), Colliot's filed a reply on August 21, 2020 (Doc. #19), and the Government filed a sur-reply on September 11, 2020 (Doc. #22).

This case arises out Colliot's allegations that the Government improperly assessed tax penalties for the late filing of Internal Revenue Service ("IRS") Form 5471 and Form 8865 (collectively, the "IRS Forms") for eight foreign entities owned directly or indirectly or controlled by Colliot (the "Entities") under the Code for the six tax years spanning 2005-10 as shown below:

(1) Outflow Capital Limited ("Outflow") (2005-10);

(2) Intersea Assets Limited ("Intersea") (2005-10);

(3) Harmony Business Management ("Harmony") (2005-10);

(4) Listeria Enterprises Limited ("Listeria") (2005-10);

(5) SEDE, LLC ("SEDE") (2005-08);

(6) Findecos SAS ("Findecos") (2009-10);

(7) Vertech SARL ("Vertech") (2006-10); and

(8) SARL MS Cosmesoap ("Cosmesoap") (2007-10).

On December 28, 2017, Colliot timely filed IRS Form 843, "Claim for Refund and Request for Abatement," seeking a refund

of the allegedly improper penalties and corresponding interest. The IRS has not responded to the refund claims. Colliot brings a four-count complaint that prays for a judgment against the Government determining that he is not liable for the assessed penalties under the Code, specifically Title 26 United States Code Section 6038 ("Section 6038"), a refund of approximately $411,000 of penalty payments with interest, attorney's fees, and costs.

Count I asserts that IRS Agent Anton Pukhalenko failed to obtain written supervisory approval prior to assessing the Section 6038 penalties against Colliot for tax years 2005-10. *See* 26 U.S.C. § 6751(b) ("Section 6751") (requiring written supervisory approval of initial penalty determination before assessing tax penalties). Colliot claims this failure entitles him to a full refund. Count II asserts that the statute of limitations expired prior to the IRS penalty assessments for tax years 2005-09 and the expiration is an independent justification for a refund of those tax years. 28 U.S.C. § 2462 ("Section 2462") (catch-all statute of limitations is five years).

Count III asserts that the IRS did not provide the statutorily-defined procedural notice requirements of the Section 6038 penalty assessments relating to Cosmesoap for tax years 2005-06. *See* 26 U.S.C. § 6751(a) (requiring IRS to provide notice of name of penalty, section of title under which penalty is imposed, and computation of penalty's amount). Count IV asserts that another reason that the Cosmesoap penalty assessments described in Count III are invalid is that Colliot did not have a direct, indirect, or constructive interest in Cosmesoap during tax years 2005-06 and therefore had no reporting obligation to file Form 5471.

***2** Because the Government concedes Counts III and IV to Colliot, the court restricts its analysis on Counts I (Section 6751) and II (Section 2462). Having reviewed the motions, exhibits, and governing caselaw, the court now renders the following opinion and order.

Background[1]

From 2005-10, Colliot was a resident and citizen of the United States. From 2005-10, Colliot did not timely file a Form 5471 or Form 8865 with any of his federal income tax returns.[2]

Colliot signed a Form 872, "Consent to Extend the Time to Assess Tax," on September 20, 2011, December 17, 2012, and on March 7, 2013. The IRS initiated an income-tax examination of Colliot's filings on or about June 23, 2011, during which Pukhalenko threatened to impose penalties for failing to timely file the IRS Forms. The IRS Forms are international-information returns that must be filed with respect to interests in a foreign entity. Failure to timely disclose such interests authorizes the imposition of penalties. 26 U.S.C. § 6038(b) (In general, "person [that] fails to furnish [the IRS Forms], within the time prescribed ... shall pay a penalty of $ 10,000 for each annual accounting period."). On July 2, 2012, Colliot late filed the IRS Forms for the Entities for tax years 2005-10.

On March 20, 2015, IRS Group Manager Theodore Curtis, Pukhalenko's immediate

supervisor, approved Pukhalenko's initial determination that Section 6038 tax penalties were due and notified Colliot by IRS Form Letter 3822 ("Letter 3822") that Colliot had failed to file or filed substantially incomplete IRS Forms for the Entities and that a penalty of $ 10,000 per failure would be imposed as follows:

Foreign Entity	Years at issue	Total Amount of penalty assessed ($10k per year)
Outflow Capital	2006-2010	$50,000
Intersea Assets	2005-2010	$60,000
Harmony	2005-2010	$60,000
Listeria	2006-2010	$50,000

***3** On March 23, 2015, Curtis also approved in a second Letter 3822 another determination of Section 6038 tax penalties, notifying Colliot that penalties of $10,000 per failure would be imposed as follows:

Foreign Entity	Years at issue	Total Amount of penalty assessed ($10k per year)
Vertech Sarl	2006-2010	$50,000
Sede Ltd.	2005-2008	$40,000
MS Cosmesoap	2007-2010	$40,000
Findecos SAS	2009-2010	$20,000

Colliot executed an IRS Form 2848, "Power of Attorney and Declaration of Representative," appointing Barbara Ruiz-Gonzalez to represent him before the IRS on civil penalties for tax years 2003-10. On April 14, 2015, Ruiz-Gonzalez signed IRS Form 872, "Consent to Extend the Time to Assess Tax," extending the time to assess penalties against Colliot until December 31, 2015. Colliot filed a revised Form 5471 for Cosmesoap for each of the tax years 2007-09 on September 2, 2015. On October 9, 2015, Curtis approved Pukhalenko's assessment of Section 6038 tax penalties of $10,000 per failure for Outflow and Listeria for the tax year 2005 and for Cosmesoap for tax years 2005-06.

On November 16, 2015, with Curtis's written approval, the Government assessed Section 6038 tax penalties against Colliot for failing to timely disclose the Entities or having filed substantially incomplete IRS Forms for the 2005-10 tax years as follows:

Year	Outflow	Intersea	Harmony	Listria	SEDE	Vertech	Findecos	Cosmesoap	Total
2005	$10,000	$10,000	$10,000	$10,000	$10,000			$10,000	$60,000
2006	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000		$10,000	$70,000

2007	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000		$10,000	$70,000
2008	$10,000	$ 10,000	$10,000	$10,000	$10,000	$10,000		$10,000	$70,000
2009	$10,000	$ 10,000	$10,000	$10,000		$10,000	$10,000	$10,000	$70,000
2010	$10,000	$10,000	$10,000	$10,000		$10,000	$10,000	$10,000	$70,000

A subsequently prepared undated IRS Form 886-A, "Explanation of Items," shows a computation of the Section 6038 tax penalties assessed against Colliot for the 41 alleged violations as follows:

Outflow	2005-10	$60,000
Intersea	2005-10	$60,000
Harmony	2005-10	$60,000
Listria	2005-10	$60,000
SEDE	2005-08	$40,000
Vertech	2006-10	$50,000
Findecos	2009-10	$20,000
Cosmesoap	2005-10	$60,000
Total		$410,000

The IRS issued "Notices of Intent to Levy" for civil penalties assessed with respect to the 2005-10 tax years on January 25, 2016. On February 23, 2016, Colliot paid the penalties assessed for those tax years with accrued interest under protest. Payment of the penalties enabled Colliot to avoid an increase in penalties, stop the accrual of interest, and avoid levies or other further collection activities. *See* 26 U.S.C. § 6038(b). On October 2, 2017, the IRS issued a notice of intent to levy and seize property from Colliot related to additional interest charges on the assessed Section 6038 penalties. On October 17, 2017, Colliot paid the additional accrued interest on the assessed Section 6038 penalties.

Analysis

I. Summary-Judgment Standard

A party is entitled to summary judgment on all or any part of a claim as to which there is no genuine issue of material fact and as to which the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). To meet its burden, the party moving for summary judgment "must 'demonstrate the absence of a genuine issue of material fact,' but need not negate the elements of the nonmovant's case." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–25 (1986)).

***4** If the movant meets its burden, the nonmovant must go beyond the pleadings to show admissible evidence that specific material facts over which there is a genuine issue exist for trial to survive summary judgment. *Celotex*, 477 U.S. at 322–23; *Wallace v. Texas Tech Univ.*, 80 F.3d 1042, 1046–47 (5th Cir. 1996). An issue is "genuine" if a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "[I]rrelevant and unnecessary" issues are not considered. *Id.* A fact is material if "its resolution could affect the outcome." *Aly v. City of Lake Jackson*, 605 Fed. App'x 260, 262 (5th Cir. 2015). All inferences from the record are viewed in the light most favorable to the nonmovant when analyzing summary judgment motions. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986).

Mere conclusory allegations are not competent summary-judgment evidence and thus are insufficient to defeat a summary-judgment motion. *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007). Unsubstantiated assertions, improbable inferences, and unsupported speculation are not competent summary-judgment evidence. *Id.* Rule 56 does not require courts to "sift through the record in search of evidence" to buoy the nonmovant's opposition. *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 164 (5th Cir. 2006).

II. The Code

Under the Code, a "U.S. person"[3] must file annual information returns reporting specified information with respect to any foreign business entity that such person owns or controls. 26 U.S.C. § 6038(a)(1). A "foreign business entity" includes foreign corporations and foreign partnerships. 26 U.S.C. § 6038(e)(1). For purposes of Section 6038, a person is in control of a foreign corporation "if such person owns stock that comprises more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent of the total value of shares of all classes of stock, of a corporation," and stock ownership by a person's spouse is attributable to that person. *See* 26 U.S.C. §§ 318, 6038(e)(2). Additionally, a U.S. person must file annual information returns reporting specified information under Section 6038 for any foreign corporation that is a controlled foreign corporation for an uninterrupted period of 30 days or more in the tax year and in which the person held at least a 10% ownership interest on the last day of that year. *See* 26 U.S.C. § 6038(a)(4). For a foreign partnership, the U.S. person must own directly or indirectly 50% of the capital or profits interest. *See* 26 U.S.C. § 6038(e)(3).

Section 6038 also requires that the information be furnished for each annual accounting period of the foreign entity ending with or within the U.S. person's taxable year and authorizes the Secretary of the Treasury to prescribe the time and manner for furnishing the required information. 26 U.S.C. § 6038(a)(2); *see also* Treas. Reg. § 1.6038-2(1)(e). Form 5471 satisfies Section 6038's reporting requirements for corporations. Form 8865 satisfies the reporting requirements for partnerships. The IRS Forms must be filed with the U.S. person's timely filed federal-income-tax return. Treas. Reg. § 1.6038-2(i). Thus, the deadline for filing

the IRS Forms are the same as the deadline for filing the taxpayer's income-tax return.

Failure to provide the information required by Section 6038 results in both a monetary penalty and a reduction of the foreign tax credit. 26 U.S.C. § 6038(b)-(c). The Code imposes a $10,000 penalty on any person that fails to timely file the IRS Forms or provide required information with respect to an annual accounting period. 26 U.S.C. § 6038(a)(1), (b)(1). The $10,000 penalty applies to each foreign entity not timely reported. 26 U.S.C. § 6038(b)(1).

III. Application

1) Count I: Failure to Obtain Written Supervisory Approval (Section 6751)

***5** Colliot seeks a refund of the Section 6038 penalties assessed on the 2005-10 tax years because of allegations that Pukhalenko failed to get written supervisory approval prior to assessing the penalties for those years. *See* 26 U.S.C. § 6751(b). The Government denies this.

A. Doctrine of Variance, Lack of Jurisdiction, and Sovereign Immunity

The Government, as sovereign, is immune from suit except to the extent it consents to be sued. *United States v. Sherwood*, 312 U.S. 584, 586 (1941). The Government has consented to be sued for "erroneously or illegally assessed or collected" taxes. 28 U.S.C. § 1346(a)(1). Before waiving sovereign immunity, refund suits must first comply with reporting requirements. *See* 26 U.S.C. §§ 6511, 6532, and 7422; *United States v. Dalm*, 494 U.S. 596, 601 (1990).

Other than the 2005-06 penalties for Cosmesoap, which the Government concedes, the Government argues that Colliot's claims for a refund of the remaining penalties are barred by the doctrine of variance, which provides that the district court lacks jurisdiction over refund suits unless the taxpayer has first complied with the requirement to file a timely administrative claim for refund with the IRS under Sections 6402 and 6511. *See* 26 U.S.C. § 7422; *El Paso CGP Co. v. United States*, 748 F.3d 225, 228 (5th Cir. 2014) (doctrine of variance bars jurisdiction for failure to specifically set forth error in refund claim). The requirement for jurisdiction provides that:

> No suit prior to filing claim for refund. – No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary [of the Treasury], according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

26 U.S.C. § 7422(a). The filing of an administrative claim for refund must be in accordance with the provisions of the Code and regulations as prerequisite to filing suit, as that is the requirement for the waiver of sovereign immunity. *See Mallette Bros. Constr. Co. Inc. v. United States*, 695 F.2d 145, 155 (5th Cir. 1983); 26 U.S.C. §§ 6402, 7422; 26

C.F.R. § 301.6402-2(b)(1). A refund suit may not assert a ground for recovery which has not been specifically detailed, both legally and factually, in an administrative claim for refund. *See Mallette Bros. Constr. Co., Inc.*, 695 F.2d at 155. And because sovereign-immunity issues concern the court's subject-matter jurisdiction, the issues must be addressed before reaching the merits of a claim. *See FDIC v. Meyer*, 510 U.S. 471, 475 (1994). Waivers are strictly and narrowly construed in favor of the Government, and it is the plaintiff's burden to demonstrate the waiver. *Lane v. Pena*, 518 U.S. 187, 192 (1996).

Colliot argues that the IRS implicitly waived its doctrine-of-variance defense because the IRS did not act upon Colliot's claim for refund within six months. The Government responds that there is no waiver implicit or otherwise because it preserved its rights regarding the filing of the administrative claim until the actual administrative claims were located and forwarded to counsel for the Government to physically review to see if the claims were filed. Not acting within six months and the anticipated rejection of the refund claim, which the statute contemplates, are not grounds for suspending or relieving taxpayers of any jurisdictional requirement. *See United States v. Felt & Tarrant Mfg. Co.*, 283 U.S. 269, 273 (1931). The court concludes that the Government has not waived the doctrine of variance, jurisdictional requirements, or sovereign immunity.

***6** Here, except for those already conceded by the Government, Colliot's administrative refund claims each fail to specifically identify which of the Entities or years that Colliot alleges the IRS failed to provide notice of the penalties. Colliot's administrative refund claims also do not contend that the IRS failed to comply with Section 6751 for any of the other penalties. Instead, those administrative claims only state that

> to the extent the IRS is unable to satisfy its burden of production for showing that the approval requirement of Section 6751(b) has been satisfied with respect to penalties assessed under Section 6038(b) for the year in question, the taxpayer reserves and asserts his right to a refund of such amounts.

The court therefore concludes that Count I is barred by the doctrine of variance.

B. Whether the IRS Obtained Section 6751(b) Supervisory Approval

The Government further argues that, even if Count I was not barred by the doctrine of variance, the undisputed summary-judgment evidence shows that the IRS met Section 6751's requirements of personal, written supervisory approval of the initial determination for the penalties that were not conceded by the Government. 26 U.S.C. § 6751(b)(1) ("No penalty ... shall be assessed unless the initial determination of such assessment is *personally approved (in writing)* by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.") (emphasis added).[4] A specific form for managerial approval is not required because

> the plain language of § 6751(b) mandates only that the approval of the penalty assessment be "in writing" and by a manager

(either the immediate supervisor or a higher level official) and a managerial signature on the cover letter of summary report on an examination of the taxpayer meet the statutory requirement of 26 U.S.C.§ 6751(b). *PBBM-Rose Hill, Ltd. v. Commissioner*, 900 F.3d 193, 213 (5th Cir. 2018).

The record shows that on March 20, 2015, March 23, 2015, and October 9, 2015, Curtis—IRS Group Manager and Pukhalenko's immediate supervisor—approved in writing Pukhalenko's initial determinations for penalty assessments.[5] Accordingly, the court agrees and concludes that even if Colliot's claims in Count I were not barred by the doctrine of variance, the Government is entitled to summary judgment on the question of the IRS's compliance with the supervisory-approval requirements at the heart of Colliot's Section 6751-based refund claims. The court will therefore dismiss Count I with prejudice.

2) Count II: Failure to Assess Penalties Within Statute of Limitations (Section 2462)

Colliot also asserts that the IRS's assessments violate Section 2462's general five-year catch-all statute of limitations for claims. 28 U.S.C. § 2462. The Government argues that, in his administrative claims for refund, Colliot only asserts as a limitations defense a different section that allows for extensions by agreement. 26 U.S.C. § 6501 ("Section 6501"). Because Colliot's agent agreed to extensions, the Government asserts the statute of limitations did not run.

A. Doctrine of Variance, Lack of Jurisdiction, and Sovereign Immunity

***7** A refund claim based on statute of limitations must be specific as to the law and facts, and a non-stated basis for recovery will not be assumed or be inherently included but is barred by the doctrine of variance. *Rodgers v. United States*, 843 F.3d 181, 195–96 (5th Cir. 2016) (general claim or argument is insufficient because "the Commissioner must be apprised of the exact nature of the claim and the facts upon which the claim is advanced so that there is an opportunity to make an administrative determination of the claim."). The Government argues that because Section 2462 was not asserted in Colliot's administrative claims for refund, the claims are barred. Colliot argues that referencing "the applicable statute of limitations" in his claims is sufficient. The doctrine of variance applies to Count II—not because Colliot failed to cite to Section 6751—but because he failed to specify the names of the Entities in the years that penalties were imposed.[6]

B. Whether Catch-All Statute of Limitations Applies to Section 6038 Penalties

If a statute of limitations is sought to be applied against the Government, the court must strictly construe the statute of limitations in the Government's favor. *Badaracco v. Commissioner*, 464 U.S. 386, 398 (1984). As it applies to the claims not conceded by either party and, assuming *arguendo* that the doctrine of variance does not apply, the assessment of

the Section 6038(b) penalties is not an action, suit, or proceeding under Section 2462:

> *Except as otherwise provided by Act of Congress, an action, suit or proceeding* for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

28 U.S.C. § 2462 (emphasis added). The IRS's assessment of penalties is not an action, suit, or proceeding, but rather an *ex parte* act by the IRS determining the amount of the penalties and officially recording the liability. 26 U.S.C. § 6203; Treas. Reg. § 301.6203-1. Here, because congress has specifically provided that a different statute of limitations should control, the court concludes that the correct limitations period for the assessment of these penalties is Section 6501. 26 U.S.C. § 6501(a), (c)(8)(A). Under Section 6501, the statute of limitations for making a Section 6038 penalty assessment is three years after the date the Form 5471 and Form 8865 are filed with the IRS, but the deadline can be extended by agreement. *Id.*

Colliot draws a distinction between a "tax" and a "penalty" and argues that the statute of limitations in Section 6501 is for assessing *taxes* and therefore does not apply to Section 6038 *penalties*. Colliot asserts that there is no indication that congress intended for the enlarged statute of limitations to apply to penalties. The Government responds that the applicable statute of limitations for assessing Section 6038 penalties is established in the Code and in Treasury Regulations. *See* 26 U.S.C. §§ 6202, 6501(a), 6501(c)(8)(A) and 6501(c)(8)(B); Treas. Reg §§ 1.6038-2 and 1.6038-3. Colliot fails to distinguish Section 6202's authorization for the Secretary of the Treasury to use regulations to establish the time for an assessment by reference back to Section 6501. Nothing in Section 6202 indicates that the section does not apply to Section 6038 penalties. Section 6202 does not limit its application to taxes. Section 6202 provides that "[i]f the mode or time for the assessment of *any* internal revenue tax (including interest, additional amounts, additions to the tax, and assessable penalties) is not otherwise provided for, the Secretary may establish the same by regulations." 26 U.S.C. § 6202 (emphasis added). Thus, under the Treasury Regulations, the court concludes that the correct limitations period for assessment of these Section 6038(b) penalties is three years after the date Colliot filed Forms 5471 and 8865 with the IRS unless extended by agreement.

C. Whether the Section 6501 Statute of Limitations Expired

***8** On July 2, 2012, Colliot late filed the IRS Forms for the Entities. Thus, without any extension, the statute of limitations for assessment would have expired on July 2, 2015. However, Colliot extended the time to assess the Section 6038 penalties for the 2005-10 years until December 31, 2015, through his authorized representative Ruiz-Gonzalez when she signed Form 872, "Consent to Extend the Time to Assess Tax" on April 14, 2015.

On November 16, 2015, the IRS timely assessed the Section 6038 penalties against

Colliot for the 2005-10 tax years. Accordingly, the court concludes that the Government is entitled to summary judgment because the Section 6038 penalty assessments were within the statute of limitations. The court will therefore dismiss Count II with prejudice.

Conclusion

The Government conceded Counts III and IV—the refund claims for the 2005-06 tax years with regard to Cosmesoap in the aggregate amount of $20,000 plus applicable interest. For the reasons explained above, the court will deny Colliot's motion for partial summary judgment as to Counts I and II and grant the Government's motion for summary judgment.

IT IS ORDERED that, in accordance with the Government conceding Counts III and IV of Colliot's complaint, Colliot is entitled to refund of $20,000 plus applicable statutory interest for the 2005-06 tax penalties relating to Cosmesoap.

IT IS FURTHER ORDERED that Colliot's motion for partial summary judgment on Counts I and II (Doc. #15) is **DENIED.**

IT IS FURTHER ORDERED that the Government's motion for summary judgment (Doc. #14) is **GRANTED.** Counts I and II of Colliot's complaint are **DISMISSED WITH PREJUDICE.**

A final judgment shall be rendered subsequently.

All Citations

Slip Copy, 2021 WL 2709676

Footnotes

1 Colliot does not dispute any of the facts that were established in the Government's Statement of Undisputed Material Facts (Doc. #14-3). Because Colliot fails to properly address another the Government's assertion of facts as required by Federal Rule of Procedure 56(c), the court considers the facts undisputed for purposes of the summary-judgment motions. Fed. R. Civ. P. 56(e)(2).

2 For the 2005 tax year, Colliot was required, but failed, to timely file a separate Form 5471 for Intersea, Harmony, Listria, and Outflow, and a Form 8865 for SEDE.

For the 2006 tax year, Colliot was required, but failed, to timely file a separate Form 5471 for Intersea, Harmony, Listria, Outflow, and Vertech, and a Form 8865 for SEDE.

For the 2007 tax year, Colliot was required, but failed, to timely file a separate Form 5471 for Intersea, Harmony, Listria, Outflow, Vertech, and Cosmesoap, and a Form 8865 for SEDE.

For the 2008 tax year, Colliot was required, but failed, to timely file a separate Form 5471 for Intersea, Harmony, Listria, Outflow, Vertech, and Cosmesoap, and a Form 8865 for SEDE.

For the 2009 tax year, Colliot was required, but failed, to timely file a separate Form 5471 for Intersea, Harmony, Listria, Outflow, Vertech, Cosmesoap, and Findecos.

For the 2010 tax year, Colliot was required, but failed, to timely file a separate Form 5471 for Intersea, Harmony, Listria, Outflow, Vertech, Cosmesoap, and Findecos.

3 A “U.S. person” is any citizen of or alien admitted for permanent residence in the United States, and any corporation, partnership, or other organization organized under United States law.

4 Section 6751(b)(1) applies to all IRS penalties in Title 26, except penalties under Sections 6651, 6654, and 6655 and penalties that are automatically calculated through electronic means.

5 On both March 20, 2015, and March 23, 2015, Curtis used Letter 3822 to approve Pukhalenko's determination in writing. On October 9, 2015, Curtis used Forms 8278.

6 Additionally, the Government argues that the statute-of-limitations claim as it relates to Cosmesoap for the 2007-09 tax years should be dismissed under the doctrine of variance because Colliot's administrative claims for refund filed with the IRS for violating the statute of limitations only specifically names the foreign entities Outflow, Intersea, Harmony, Listria, Vertech, Findecos, and SEDE.

Colliot acknowledges that he omitted Cosmesoap from the 2007-09 statute-of-limitation claims and concedes the statute-of-limitations argument for Cosmesoap for those tax years.