

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**ARDEN ROW ASSETS, LLC
BASSWOOD AGGREGATES, LLC
DELWOOD RESOURCES, LLC**

Plaintiffs,

vs.

U.S. INTERNAL REVENUE SERVICE

Defendant.

Civil Action No. 23-cv-2696

**PLAINTIFFS' CONSOLIDATED OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM
IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT**

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I. INTRODUCTION

A. Overview

Plaintiffs Arden Row Assets, LLC (“Arden Row”), Basswood Aggregates, LLC (“Basswood”), and Delwood Resources, LLC (“Delwood”) (collectively, “Plaintiffs” or “Partnerships”) hereby submit this Consolidated Opposition To Defendant’s Motion For Summary Judgment And Memorandum In Support Of Cross-Motion For Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rules 7(a), (b), (h). The Court should deny the government’s motion and grant Plaintiffs summary judgment on their Complaint seeking access to records under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), because there is no genuine issue of material fact and Plaintiffs are entitled to judgment as a matter of law. *See Bennett v. DEA*, 55 F. Supp. 2d 36, 38–39 (D.D.C. 1999) (“[A] motion for summary judgment shall be granted if . . . there is no genuine issue of material fact, and . . . the moving party is entitled to judgment as a matter of law.”).

Neither the *Vaughn* Index, ECF No. 21-4, nor any of the sworn declarations submitted by the IRS establish its right to claim exemptions given the undisputed evidence of government misconduct. The Government devotes much of its brief to formulaic recitations about the adequacy of the IRS’s search for responsive materials, which is irrelevant because Plaintiffs do not allege bad faith in conducting the search. The issue is the propriety of the IRS’s assertion of exemptions to protect against the disclosure of evidence of government misconduct, given documented evidence of the government agents’ bad faith in asserting the penalties.

The government does not dispute that two IRS employees knowingly and willfully backdated documents for the purpose of imposing millions of dollars in financial penalties on Plaintiffs. When a government agency engages in such wrongdoing, it forfeits the opportunity to assert the Deliberative Process Exemption to conceal the misconduct from disclosure under FOIA.

In this case, which involves a FOIA request by taxpayers seeking access to their own tax information, no other exemption authorizes withholding. The IRS therefore must fully comply with the FOIA request.

Backdating documents the IRS is required by law to approve in writing before ordering taxpayers to pay penalties undermines the legitimacy of the federal tax system. When taxpayers rely on the tool provided by Congress to expose wrongdoing, the IRS should not seek to conceal it. Plaintiffs have a legal right to see the requested documents, and disclosure will deter future IRS misconduct.

B. Factual Summary

The IRS may not assess a penalty against a taxpayer “unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination.” 26 U.S.C. § 6751(b)(1). The statute expressly requires the determination to include “the name of the penalty, the section of this title under which the penalty is imposed, and a computation of the penalty.” 26 U.S.C. § 6751(a). The IRS did not comply with the written approval requirement before assessing penalties against Plaintiffs. Rather than honestly address that failure, the Revenue Agent auditing Plaintiffs asked his manager to backdate an approval form to provide the false appearance of compliance, and the manager agreed to and did do so. Ex. 1, Arden-001695.

Plaintiffs submitted a FOIA request to learn details about the backdating. Instead of complying with the law, the IRS redacted hundreds of pages from responsive documents, invoking various inapplicable FOIA exemptions. The IRS’s redactions undermine the purpose of FOIA, which “was intended to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Am. Civil Liberties Union v. U.S. Dep’t of Justice*, 655 F.3d 1, 5 (D.C. Cir. 2011) (citations omitted).

Plaintiffs do not challenge the IRS's redaction of personal identifying information pursuant to FOIA Exemption 6. Additionally, Plaintiffs do not seek the disclosure of Arden-000901 to 0993, Arden-001663 to 1682, Arden-001686 to 1694, Arden-001941 to 1945, and Arden-002016 to 2019, even though Plaintiffs do not agree that these are properly subject to FOIA exemptions, because these documents are either duplicative or, based on context, unlikely to provide additional information relating to the backdating issue. Further, Plaintiffs do not seek production of the nine documents withheld pursuant to Exemption 7(E). *See* ECF No. 21-1 at 18–19. This Court should order the IRS to produce the remaining documents because no exemption applies to them.

The IRS claims that communications relating to its fraudulent assertion of penalties are exempt from FOIA pursuant to Exemption 5, which protects deliberative records. But that privilege does not apply when the IRS has engaged in misconduct. *See Nat'l Whistleblower Ctr. v. U.S. Dep't of Health & Hum. Servs.*, 903 F. Supp. 2d 59, 67 (D.D.C. 2012) (Boasberg, J.) (holding that “the government-misconduct exception may be invoked to overcome the deliberative-process privilege in a FOIA suit.”). This Court should find that the government misconduct vitiates the FOIA exemption because the conduct meets the Crime/fraud exception. Indeed, if the shoe were on the other foot and taxpayers had backdated documents to deceive the IRS and the Tax Court, the government no doubt would successfully advance the same argument.

The other exemptions the IRS raises to forestall disclosure are also unavailing. For example, the IRS claimed Exemption 3 and cited 26 U.S.C. § 6103, but Section 6103 does not prohibit disclosure of a taxpayer's return information *to the taxpayer*. The IRS also invokes Exemption 7(A), arguing that disclosure would interfere with a law enforcement proceeding, but there is no investigation or enforcement proceeding with which disclosure of these materials would interfere.

Accordingly, Plaintiffs respectfully request that this Court deny the IRS's motion, grant the Plaintiffs' motion, and order the IRS to produce the withheld and redacted documents Plaintiffs are seeking. In the alternative, Plaintiffs request that this Court conduct an *in camera* review of the documents and order their production upon finding they were not properly withheld.

II. THE IRS'S MISCONDUCT PRECLUDES IT FROM RELYING ON THE DELIBERATIVE PRIVILEGE PROTECTION OF EXEMPTION 5.

A. IRS Neglected to Get the Required Approval Before Assessing Penalties.

Each Plaintiff donated a conservation easement on a separate parcel of real estate and claimed a tax deduction for the charitable contribution for tax year 2018. ECF No. 1 (Complaint) at ¶ 14; ECF No. 9 (Answer) at ¶ 14. Each Plaintiff's partners deducted on their individual tax returns, up to certain limits, a portion of the contribution that corresponded to their respective ownership share in the partnership. ECF No. 1 at ¶ 14.

Approximately two years later, the IRS audited each Plaintiff's tax return. ECF No. 1 at ¶ 15; ECF No. 9 at ¶ 15. The IRS assigned Revenue Agent Thomas E. Fields to conduct these audits. ECF No. 1 at ¶ 15; ECF No. 9 at ¶ 15. Team Manager David M. Combs directly supervised Agent Fields in connection with the audits. ECF No. 1 at ¶ 15; ECF No. 9 at ¶ 15. The Internal Revenue Code prohibits assessment of a penalty "unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination" or certain higher level IRS officials. 26 U.S.C. § 6751(b)(1). To lawfully assess penalties against the Partnerships, Agent Fields was required to make the initial determination to assert each penalty, and his immediate supervisor, Manager Combs, was required to approve that determination in writing. This approval process applies to, among other things, penalties involving negligence or disregard, 26 U.S.C. § 6662(c); substantial understatement of income tax, 26 U.S.C. § 6662(b)(2); substantial valuation misstatement, 26 U.S.C. § 6662(b)(3); gross valuation

misstatement, 26 U.S.C. § 6662(h); and reportable transaction understatement, 26 U.S.C. § 6662A(a), all of which IRS ultimately asserted against the Partnerships.

Here, Agent Fields and Manager Combs did not comply with the penalty approval requirement. Before asserting the penalties, on July 12, 2021, Agent Fields sent a separate email message to Manager Combs for each of the three Partnerships, stating there “will very likely be penalties” associated with its audits. ECF No. 1 at ¶¶ 17–19; ECF No. 9 at ¶¶ 17–19. Agent Fields did not tell Manager Combs which penalties he intended to impose, nor the basis for asserting any penalty. ECF No. 1 at ¶ 20; Ex. 2A. Two days later, on July 14, 2021, Manager Combs failed to specify any penalty when he replied to Agent Fields with the bare statement, “I approve penalties.” ECF No. 1 at ¶ 21; ECF No. 9 at ¶ 21; Ex. 2B. The correspondence completely ignored the approval requirement by failing to identify the penalties, the amounts, or the bases.

On March 3 and 4, 2022, despite his failure to comply with the written approval requirement of the Tax Code, Agent Fields issued to each Plaintiff’s partnership representative a Form 14791, Preliminary Partnership Examination Changes, Imputed Underpayment Computation and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts; and a Form 886-A, Explanation of Items. *See, e.g.*, Ex. 3. The Forms 14791 assessed millions of dollars of penalties against each plaintiff, none of which had been approved in writing by Agent Fields’ manager.

B. IRS Backdates Penalty Approvals.

Recognizing his failure to obtain the required approvals, Agent Fields emailed Manager Combs on March 11, 2022, requesting that he sign a separate Penalty Approval Lead Sheet for each Plaintiff. ECF No. 1 at ¶ 25; ECF No. 9 at ¶ 25. Agent Fields explicitly requested that Manager Combs backdate his signature on each Penalty Approval Lead Sheet, stating, “Ideally (?) the date you use to sign should be either the date you ‘approved’ penalties against Taxpayer (7/14/21) ...

or a little thereafter?” ECF No. 1 at ¶ 25; Ex. 1. Manager Combs complied with the deceitful request to backdate the approval forms. On March 14, 2022, Manager Combs replied by email to Agent Fields, stating, “All 3 [Penalty Lead Sheets] are signed with date of July 14, 2021.” ECF No. 1 at ¶ 28; ECF No. 9 at ¶ 28; Ex. 4. Manager Combs attached three Penalty Lead Sheets to his email, each containing his signature and each backdated to July 14, 2021. Exs. 4A, 4B, and 4C.

To conceal the backdating, Manager Combs did not sign the approval forms using Adobe Acrobat Sign, a practice he followed in executing other documents at that time. That program would have automatically generated the true date of his signing. Instead, Manager Combs pasted his signature from a different document and typed “July 14, 2021” as the execution date. *Compare* Ex. 4 and Ex. 5. These falsely dated Penalty Lead Sheets purported to approve penalties for: (1) negligence or disregard; (2) substantial understatement; (3) substantial valuation misstatement; (4) gross valuation misstatement; (5) accuracy related reportable transaction understatement; and (6) nondisclosed reportable transaction understatement. None of these penalties could have been asserted without prior written approval by Manager Combs. *See* 26 U.S.C. § 6751(b)(1).

In February 2023, the IRS issued a Final Partnership Adjustment, followed by a Notice of Proposed Adjustment (“NOPA”), to each Partnership, disallowing the claimed tax deduction for the charitable contribution of the conservation easement and asserting penalties. ECF No. 1 at ¶¶ 30–31; ECF No. 9 at ¶ 30.

C. The IRS’s Backdating Scheme Unravels.

In connection with litigation in U.S. Tax Court concerning the audit, Plaintiffs obtained some documents that raised suspicion about the IRS’s penalty approval process.¹ Plaintiffs

¹ *Delwood Res., LLC v. Comm’r of Internal Revenue*, Docket No. 3821-23, filed March 21, 2023; *Basswood Aggregates, LLC v. Comm’r of Internal Revenue*, Docket No. 3820-23 filed March 21, 2023; *Arden Row Assets, LLC v. Comm’r of Internal Revenue*, Docket No. 3817-23, filed March 21, 2023.

submitted requests for information on July 26, 2023, that highlighted evidence of possible IRS improprieties in connection with the penalty approvals. *See, e.g.*, Ex. 8. On October 13, 2023, without acknowledging wrongdoing, the IRS quietly walked away from its assertions of almost ten million dollars in penalties against each Plaintiff without acknowledging the backdating. The IRS informed each Plaintiff that it had “determined the documents in the administrative file evidencing managerial approval may not be sufficient to satisfy I.R.C. 6751(b). Therefore, respondent concedes the penalties in this case.” Ex. 9. In those letters, the IRS sought to prevent Plaintiffs from uncovering evidence of improprieties in the penalty approval process by asserting, “[s]ince respondent [the IRS] is conceding the penalties, petitioner’s Informal Requests for Production and Information (‘Informal Requests’) are moot. Thus, respondent objects to the Informal Requests on the grounds that they are irrelevant.” *Id.*²

Plaintiffs refused to acquiesce in the IRS’s effort to sweep its misconduct under the rug. On July 31, 2023, Plaintiffs submitted the three FOIA requests that led to this litigation. The requests sought documents relating to the evaluation or determination to assert any penalty against Plaintiffs. ECF. No. 1 at ¶ 33; ECF No. 9 at ¶ 33. The IRS failed to respond timely to the requests, leading Plaintiffs to file this lawsuit on September 14, 2023. ECF. No. 1. Pursuant to this Court’s order, over the course of the six months between January 25, 2024 through July 25, 2024, the IRS produced 3,342 heavily redacted pages of materials it identified as being responsive to the requests. Of these, the IRS withheld 1,962 pages in full (59% of all responsive pages) and produced in full only 1,216 pages (36% of responsive pages). The IRS tried to justify most of the redactions by raising FOIA Exemption 3 (disclosure prohibited by statute, specifically 26 U.S.C. § 6103),

² Basswood Aggregates and Delwood Resources have since settled their Tax Court cases; Arden Row has not.

Exemption 5 (privileged communication), and Exemption 7(A) (disclosure could reasonably be expected to interfere with law enforcement proceedings).

Several aspects of the IRS's productions demonstrate its failure to comply with FOIA. Most notably, the IRS claimed FOIA exemptions over documents or parts of documents that it had *already* produced in connection with the audit. More troubling, some of the documents produced with redactions in response to the FOIA claim previously had been produced without redactions in connection with the Tax Court case, and a comparison of those documents shows the absence of any good faith justification for the exemptions claimed by the IRS. For example:

- For the FOIA production version of a February 28, 2022 email from Agent Fields, the IRS redacted his statement that the “cases should have been sent to you 3 months ago at a minimum(?)” and that he was sending a copy of the penalty workbook “in case this is something you need to do your work for this case.” The redacted portions revealed the IRS's knowledge of problems, and the IRS willfully concealed it from its FOIA production. The IRS claims that FOIA disclosure is prohibited by the Deliberative Process, Section 6103, and Law Enforcement Exemptions.

○ *As produced by IRS in response to FOIA (Ex. 11, Arden-001669):*

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Monday, February 28, 2022 7:16 PM
To: Moss Matthew O <Matthew.O.Moss@irs.gov>
Subject: I hope you have still more extra time on your hands?

Again, hope all is well...

I have 3 syndicated conservation easement cases (b)(5) - DP, (b)(3)/6103, (b)(7)(A)

Any how please process what you should for this (second) case called Delwood Resources.

I am sending you a copy of (b)(5) - DP, (b)(3)/6103, (b)(7)(A)

Thank you very much for your help.

- *As produced by IRS in connection with audit (Ex. 12) [ONREV-0404935]:*

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Monday, February 28, 2022 7:16 PM
To: Moss Matthew O <Matthew.O.Moss@irs.gov>
Subject: I hope you have still more extra time on your hands?

Again, hope all is well..

I have 3 syndicated conservation easement cases that should have been sent to you 3 months ago at a minimum(?).

Any how please process what you should for this (second) case called Delwood Resources.

I am sending you a copy of Delwood's "Penalty workbook" in case it is something you need to do your work for this case.

Thank you very much for your help.

- For a March 1, 2022 email between Agent Fields and Manager Combs, the IRS's FOIA production redacted Manager Combs's statement, "Must be something WRONG!!" regarding his ability to understand a certain IRS form. Bizarrely, the IRS now claims Manager Combs's exclamation is protected under the Deliberative Process Exemption as well as Section 6103 and the Law Enforcement Exemption.

- *As produced by IRS in response to FOIA (Ex. 13, Arden-001684):*

From: Combs David M <David.M.Combs@irs.gov>
Sent: Tuesday, March 1, 2022 4:52 PM
To: Fields Thomas E <Thomas.E.Fields@irs.gov>
Subject: SIGNED: Please sign 3 Form 15260's

I understand THIS form. (b)(5) - DP, (b)(3)/6103, (b)(7)(A)

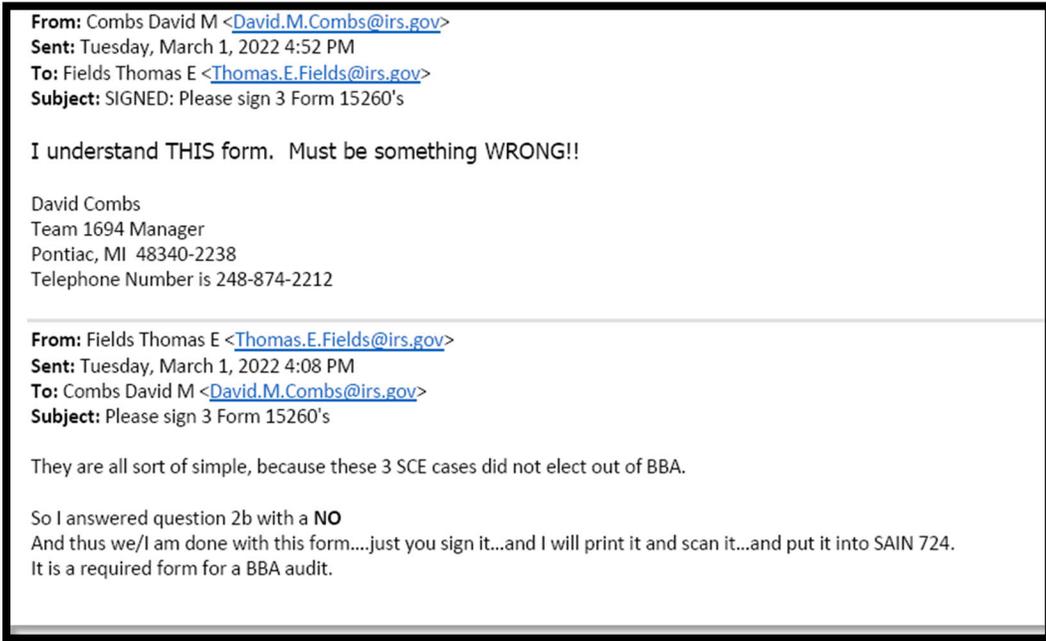
David Combs
Team 1694 Manager
Pontiac, MI 48340-2238
Telephone Number is 248-874-2212

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Tuesday, March 1, 2022 4:08 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: Please sign 3 Form 15260's

(b)(5) - DP, (b)(3)/6103, (b)(7)(A)

(b)(5) - DP, (b)(3)/6103, (b)(7)(A)

- *As produced by IRS in connection with audit (Ex. 14 [ONREV-0404804]):*



- For an April 12, 2022 email between Agent Fields and IRS attorneys, the IRS redacted, among other things, statements that: (a) an employee is “out this week;” (b) the Form 886A had been “corrected” to include more than \$20,000 in additional penalties (this was even after Manager Combs backdated his purported penalty approval); and (c) the additional penalties were due to a “math error”:
 - *As produced by IRS in response to FOIA (Ex. 15, Arden-001946):*

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Tuesday, April 12, 2022 5:07 PM
To: Hankla William C <William.C.Hankla@irscounsel.treas.gov>
Cc: Skinner Eric R <Eric.R.Skinner@IRSCOUNSEL.TREAS.GOV>
Subject: (b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC ; (b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC
(b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC

Dear Carl,

Last week Ashely (b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC.

Today while the Technical Services processor was going thru my cases (to send out her NOPA package) (b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC
(b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC

The body of the 886-A is still correct and nothing changed there.

Since Ashley is on vacation this week I am hoping (b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC
_____.

- *As produced by IRS in connection with audit (Ex. 16):*

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Tuesday, April 12, 2022 5:07 PM
To: Hankla William C <William.C.Hankla@irscounsel.treas.gov>
Cc: Skinner Eric R <Eric.R.Skinner@IRSCOUNSEL.TREAS.GOV>
Subject: Ashley is out this week. Would you please approve this corrected 886A? It has \$22,252 more of penalty in it that what the original 886A-2 had?

Dear Carl,

Last week Ashely approved the 886A's for my Conservation cases.

Today while the Technical Services processor was going thru my cases (to send out her NOPA package) she came across a small math error in one of my "penalty" 886A's.
The error is that there should have been \$22,252 more of penalty. This error did not cause the 886A to need to be rewritten as just the last page, a page of calculations, changed.
The body of the 886-A is still correct and nothing changed there.

Since Ashley is on vacation this week I am hoping you would give your approval to the enclosed "corrected 886A" because I need to send out another "Summary Report Package" ASAP because of this penalty change/correction.

- For an April 13, 2022 email between Agent Fields and Manager Combs, the IRS's FOIA production redacted Manager Combs's statement that he approved an "additional penalty amount of \$22,252" nine months after the backdated date of the purported penalty approval. The IRS cited the Deliberative Process, Section 6103, and Law Enforcement Exemptions as the bases for the redaction. The IRS now raises these spurious reasons for redacting Manager Combs's final approval of the penalty, falsely claiming that it was pre-

decisional, that it was confidential taxpayer information, and that disclosing it would interfere with a law enforcement proceeding.

- *As produced by IRS in response to FOIA (Ex. 17, Arden-001948):*

From: Combs David M
Sent: Wednesday, April 13, 2022 12:34 PM
To: Fields Thomas E
Subject: I approved (corrected) Delwood Summary Report package you put a copy on my desk today.
Signed By: David.M.Combs@irs.gov

(b)(5) - DP, (b)(3)/6103, (b)(7)(A) I concur with council's approval.

- *As produced by IRS in connection with audit (Ex. 18):*

From: Combs David M <David.M.Combs@irs.gov>
Sent: Wednesday, April 13, 2022 12:34 PM
To: Fields Thomas E <Thomas.E.Fields@irs.gov>
Subject: I approved (corrected) Delwood Summary Report package you put a copy on my desk today.

The additional penalty amount of \$22,252 is approved. I concur with council's approval.

- For an April 21, 2022 email between Agent Fields and Manager Combs, the IRS's FOIA production redacted Agent Fields's admission that he had deleted the 5701 notice that Manager Combs had previously approved and wanted to change the notice to match what IRS had "actually" sent to the Taxpayer. Again, the IRS cites the Deliberative Process, Section 6103, and Law Enforcement Exemptions as bases for the redaction.

- *As produced by IRS in response to FOIA (Ex. 19, Arden-001966):*

From: Fields Thomas E
Sent: Thursday, April 21, 2022 3:15 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: please check your inbox for two 5701's to be approved

(b)(5) - DP, (b)(3)/6103, (b)(7)(A)

So would you please approve these two new 5701-003 ?

- *As produced by IRS in connection with audit (Ex. 20):*

From: Fields Thomas E
Sent: Thursday, April 21, 2022 3:15 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: please check your inbox for two 5701's to be approved

You approved a Basswood 5701-003 a long time ago...and a Delwood 5701-002 and I was stupidly inputting a new one, that I did not need to do, and I deleted the one you had approved.
(The Delwood I wanted to change the IMS 5701 to agree to what was actually sent to the Taxpayer...so that is why I changed (made a new 5701) the 5701.

So would you please approve these two new 5701-003 ?

Most remarkably, when the IRS provided a *Vaughn* Index of documents it had withheld in full, on September 16, 2024, the Index revealed that the IRS fully redacted the false penalty lead sheets that Manager Combs backdated at the request of Agent Fields.

These egregiously improper redactions cast doubt on the integrity of the IRS's representations about exemptions. Courts normally apply a presumption of regularity and accept redactions at face value because judges presume that IRS made the redactions in good faith and taxpayers usually lack access to evidence that might show otherwise. In this unique case, however, there is indisputable evidence both that the underlying documents were created to perpetrate a fraud scheme and that the IRS officials responsible for the FOIA production misled Plaintiffs and the Court by redacting documents that would reveal the fraud.

III. STANDARD OF REVIEW

The government prevails at summary judgment in most FOIA cases because it enjoys the presumption of regularity and plaintiffs who lack access to government information cannot rebut it. *See Hall & Assocs. v. U.S. Env't Prot. Agency*, 14 F. Supp. 3d 1, 6 (D.D.C. 2014) (“FOIA cases typically and appropriately are decided on motions for summary judgment.”). In this unusual case, the Court cannot follow the routine practice of deferring to the government’s assertions of FOIA exemptions because there is overwhelming evidence both that the underlying documents were used in a fraudulent scheme and that the IRS made improper redactions in response to this Court’s order.

In this unusual case, the tables are turned. Instead of the normal lack of evidence to contest the government’s presumption of regularity, there is undisputed evidence that the IRS acted irregularly. Consequently, this is the paradigmatic case in which a plaintiff deserves summary judgment against the government because “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986).

The IRS asserts five FOIA exemptions—deliberate process privilege under Exemption 5; attorney-client privilege under Exemption 5; nondisclosure under Exemption 3; law enforcement interference under Exemption 7(A); and law enforcement techniques under Exemption 7(E)—to justify withholding or redacting documents.³ The agency bears the burden of establishing that a claimed exemption applies. *Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 755 (1989). Given FOIA’s “goal of broad disclosure,” the Supreme Court has “insisted that the exemptions be given a narrow compass.” *Milner v. Dep’t of Navy*, 562 U.S. 562, 571 (2011) (cleaned up); *see also FBI v. Abramson*, 456 U.S. 615, 630 (1982) (“FOIA exemptions are

³ Plaintiffs do not seek production of the nine documents withheld under Exemption 7(E).

to be narrowly construed.”). FOIA’s “limited exemptions [should] not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act.” *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 8 (2001).

Even if a FOIA exemption applies, an agency still must disclose information unless disclosure is legally prohibited or “the agency reasonably foresees that disclosure would harm an interest protected by an exemption.” 5 U.S.C. § 552(a)(8)(A)(i); *see also U.S. Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 150–51 (1989). This “foreseeable harm” test limits an agency’s ability to withhold materials from the public and reflects Congress’s intent to require disclosure unless it would result in a concrete injury.

IV. ARGUMENT

A. Plaintiffs are Entitled to Summary Judgment on Exemption 5 (Deliberative Process/Attorney-Client Privilege) because the IRS Engaged in Misconduct.

i. *Misconduct Invalidates Privilege Claims for Documents Created in Furtherance of Misconduct.*

Exemption 5 protects from disclosure “inter-agency or intra-agency memorand[a] or letters that would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). Exemption 5 covers materials protected under the attorney-client privilege, work-product privilege, or deliberative process privilege. *See Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 862 (D.C. Cir. 1980). But privilege exemptions give way “when there is *any reason* to believe government misconduct occurred.” *See In re Sealed Case*, 121 F.3d 729, 746 (D.C. Cir. 1997) (emphasis added); *see also ICM Registry, LLC v. U.S. Dep’t of Com.*, 538 F. Supp. 2d 130, 131 (D.D.C. 2008) (characterizing *In re Sealed Case* as “[c]ontrolling precedent in this Circuit” concerning deliberative process privilege under FOIA Exemption 5). “[W]here there is reason to believe the documents sought may shed light on government misconduct,” the exemption is inapplicable “on the grounds that shielding internal government deliberations in this

context does not serve the public's interest in honest, effective government.” *In re Sealed Case*, 121 F.3d at 738 (cleaned up).

In *National Whistleblower Center v. Department of Health and Human Services*, plaintiffs sought records relating to alleged retaliation by the Department of Health and Human Services (“HHS”), 903 F. Supp. 2d 59, 62 (D.D.C. 2012). HHS responded by citing several FOIA exemptions, including Exemption 5. *Id.* at 65. The government challenged the plaintiffs’ argument that government misconduct invalidated Exemption 5. *Id.* at 66. Noting that there were “several decisions from this District that did consider the government-misconduct exception in the context of FOIA,” Judge Boasberg found “no authority supporting [HHS’s] contention that the government-misconduct exception cannot apply in FOIA cases.” *Id.* Judge Boasberg held that “the government-misconduct exception may be invoked to overcome the deliberative-process privilege in a FOIA suit.” *Id.* at 67.

Judge Boasberg’s recognition of the misconduct exception to Exemption 5 is widely held in this district and endorsed by the D.C. Circuit.⁴ *See, e.g., Conservation Force v. Jewell*, 66 F. Supp. 3d 46, 64 (D.D.C. 2014), *aff’d*, 2015 WL 9309920 (D.C. Cir. Dec. 4, 2015) (noting in the Exemption 5 context that “under the crime-fraud exception, communications between a lawyer and client are not privileged if they are made in furtherance of a crime, fraud, or other misconduct.”); *ICM Registry, LLC*, 538 F. Supp. 2d at 131 (noting that “[c]ontrolling precedent” in the D.C. Circuit holds that government misconduct vitiates the deliberate process privilege).

The D.C. Circuit has suggested that “*any* misconduct” invalidates the privilege, *In re Sealed Case*, 121 F.3d at 746 (emphasis added), and courts in this district generally invalidate the

⁴ The lone aberration arose in the context of an attorney work-product claim. In *Toensing v. U.S. Department of Justice*, the court held without explanation that attorney misconduct does not “vitalize the work product doctrine ... in the FOIA context.” 999 F. Supp. 2d 50, 58 (D.D.C. 2013).

privilege upon a showing of “nefarious or extreme government wrongdoing,” *Neighborhood Assistance Corp. of Am., v. U.S. Dep’t of Hous. & Urb. Dev.*, 19 F. Supp. 3d 1, 14 (D.D.C. 2013). The wrongdoing need not rise to the level of unlawful conduct. *See id.* at 13 (citing *Enviro Tech Int’l, Inc. v. U.S. EPA*, 371 F.3d 370, 377 (7th Cir. 2004) for the proposition that “internal discussions about a course of agency action that would be nefarious, if not illegal, ... would not be protected by the deliberative process privilege.”).

FOIA is designed to ensure the public has access to government records and does not authorize withholding evidence of government misconduct. *See Nat’l Immigr. Project of Nat. Laws. Guild v. U.S. Dep’t of Homeland Sec.*, 2014 WL 6850977, at *5 (S.D.N.Y. Dec. 3, 2014) (“Given Congress’s intent in enacting FOIA to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny, it is utterly implausible to suppose that Congress intended FOIA Exemption 5 to shield government documents when they were created for the purpose of furthering a crime or a fraud.”) (quotation marks and internal citation omitted). A FOIA plaintiff is not required to show that the entire government agency is corrupt. It is sufficient that the transactions at issue in the FOIA proceeding involved misconduct. It is not an indictment of the entire IRS to admit that sometimes, as in any organization, misconduct happens.

As with deliberative-process privilege, the attorney-client privilege gives way under Exemption 5 if the communication furthered a crime, fraud, or other misconduct. *Jewell*, 66 F. Supp. 3d at 64 (“[U]nder the crime-fraud exception [to Exemption 5], communications between a lawyer and client ‘are not privileged if they are made in furtherance of a crime, fraud, or other misconduct.’”) (citing *In re Grand Jury*, 475 F.3d 1299, 1305 (D.C. Cir. 2007)) (cleaned up). The government forfeits the privilege if “it is established that the client was engaged in or planning a criminal or fraudulent scheme when it sought the advice of counsel to further the scheme,” *In re*

Grand Jury, 475 F.3d at 1305, or if the relationship furthered “a crime, fraud, or other misconduct,” *In re Sealed Case*, 754 F.2d 395, 399 (D.C. Cir. 1985). The exception applies to “communications or work product with a ‘relationship’ to the crime or fraud.” *In re Grand Jury Investigation*, 2017 WL 4898143, at *9 (D.D.C. Oct. 2, 2017) (quoting *In re Sealed Case*, 676 F.2d 793, 814–15 (D.C. Cir. 1982)) (internal citation omitted). The party seeking to breach the privilege does not need to prove that the attorney is culpable. Instead, the moving party may prevail with a prima facie showing that (1) the client made or received the otherwise privileged communication with the intent to further an unlawful or fraudulent act, and (2) the client carried out the crime or fraud. *See Jewell*, 66 F. Supp. 3d at 64. The burden of proof is satisfied with “evidence that if believed by the trier of fact would establish the elements of an ongoing or imminent crime or fraud.” *In re Grand Jury*, 475 F.3d at 1305 (citation omitted).

ii. *The IRS Committed a Crime, Fraud, or Misconduct.*

The IRS engaged in misconduct when it backdated documents with intent to create a false record to justify penalties assessed against the Partnerships. The IRS may not assess a penalty “unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination” or certain higher-level IRS officials. 26 U.S.C. § 6751(b)(1). Agent Fields and Manager Combs knew they had not met that requirement. Rather than acknowledge that failure, they chose to backdate approval forms that the IRS, in the normal course, would use in court to establish the date of the approval. The agents knew that in the normal course, the taxpayer would be none the wiser and the court would automatically indulge the presumption of regularity.

On March 11, 2022, Agent Fields emailed Manager Combs, requesting that he sign and backdate a separate Penalty Lead Sheet for each Plaintiff.

From: Fields Thomas E <Thomas.E.Fields@irs.gov>

Sent: Friday, March 11, 2022 4:00 PM

To: Combs David M <David.M.Combs@irs.gov>

Subject: please sign one for each of the 3 audits.....they are PDF's. Do those work best?

Ideally(?) the date you use to sign should be either the date you “approved” penalties against the Taxpayer (7/14/21)...or a little thereafter?

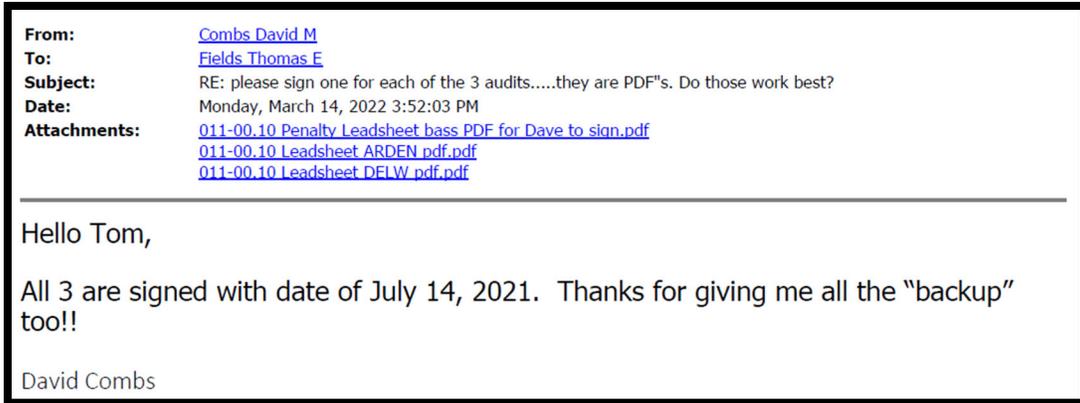
You can see Bass IMS has most of the workpapers that its SAIN 011 is ever going to have if you want to “look’ at something before signing this form.

The other two cases will eventually have all the workpapers in IMS that Bass has in SAIN 011...and the other two will also eventually have all the workpapers that Bass will eventually have.

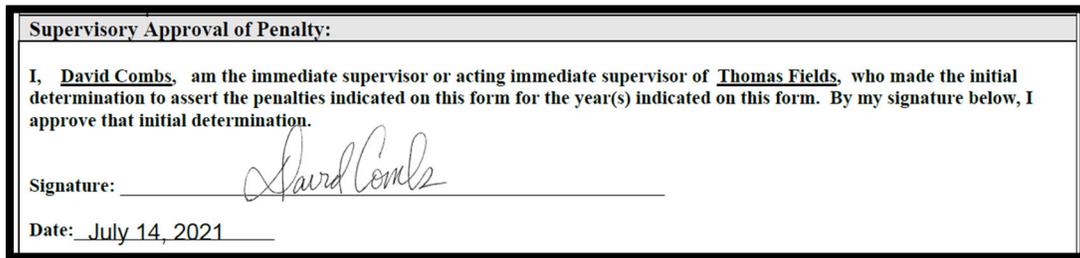
Ex. 4. Agent Fields put quotation marks around the word “approved” because he knew Manager Combs had *not* approved the penalties on July 14, 2021, or any other date. In actuality, on July 12, Agent Fields wrote to Manager Combs that “there will very likely be penalties,” and Manager Combs responded on July 14, “I approve penalties.” But Agent Fields had not identified which penalties and what amounts—not to mention any reason they were warranted—and Manager Combs had not approved any particular penalty assessments, let alone the factual basis for them. The IRS therefore had not complied with the statutory penalty approval requirements.

Lest there be any doubt, Agent Fields told Manager Combs that he could choose *any* date eight months earlier or “a little thereafter,” leaving no question that Agent Fields wanted Manager Combs to backdate the document and did not care whether the chosen date corresponded to any actual event, only that it was long before the assessment. Manager Combs agreed to participate in this scheme.

Three days later, Manager Combs complied with Agent Fields’s request, backdating the Penalty Lead Sheets and using a cut-and-paste signature instead of an Adobe automated signature that would have affixed the true date.

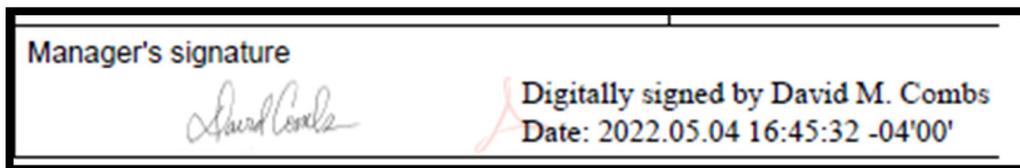


Ex. 4, Arden-001715.



Ex. 4A, Arden-001716 (Arden Row); *see also* Exs. 4B, Arden-001716 (Basswood), and 4C, Arden-001720 (Delwood). It is also notable that Manager Combs used quotation marks in thanking Agent Fields for providing "backup." This obviously conveyed irony, because Agent Fields did not provide any "backup" to support the penalties asserted in the lead sheets.

Other IRS documents show that Manager Combs executed documents using an Adobe program that automatically stamped the documents with the time and date of the signature:



Ex. 5, Arden-002347. However, Manager Combs chose not to use a digital signature that would reveal the truthful date of March 14, 2022, for the penalty approval documents. Instead, he cut and pasted his electronic signature and typed the false date of July 14, 2021.

Moreover, even when fabricating the appearance that it had followed the *process* for complying with the approval requirement, the IRS made no effort to comply with the *substance* of the approval requirement. In his March 11 email, Agent Fields told Manager Combs that for Basswood, “most of the workpapers” were available in the event the supervisor might “want to ‘look’ at something before signing.” No workpapers were available for the other two taxpayers, Arden and Delwood, yet Agent Fields told Manager Combs that Arden and Delwood would “eventually have all the workpapers that Bass will eventually have.” The email reveals that relevant workpapers did not yet exist and the IRS employees saw no need for the supervisor to actually “look” at them.

When confronted with this evidence, the IRS admitted that the backdated documents “may not be sufficient to satisfy I.R.C. 6751(b).” Ex. 9. Despite that grudging admission, the IRS has prevented the Partnerships from discovering details about the backdating scheme hatched to extract more than \$8 million in penalties from each of them. The IRS asserted that withdrawing the penalty assessments rendered the issue moot in the civil audit proceeding and declined to produce additional documents. That the issue is moot in the Tax Court litigation, of course, moots it as a basis for the IRS to avoid disclosure under FOIA.

iii. The IRS’s Prior Production of Some of the Documents Shows the Documents are Not Privileged.

The government’s prior disclosure of unredacted versions of documents the IRS now claims are privileged proves that the IRS’s FOIA exemptions claims are inapplicable. Exemption 5 protects materials “*that would not be available by law to a party other than an agency in litigation with the agency,*” 5 U.S.C. § 552(b)(5) (emphasis added), and such materials include documents protected under the attorney-client privilege and work-product doctrine, *Coastal States Gas Corp.*, 617 F.2d at 862. But the government would have asserted those privileges in the Tax Court

litigation if the materials were not discoverable because of deliberative process or work-product privilege, and it did not do so.

In any event, the government waived any privilege by previously disclosing those documents. Waiver of privilege applies under FOIA. *See Kolbusz v. Fed. Bureau of Investigation*, 2021 WL 1845352, at *16 (D.D.C. Feb. 17, 2021), *report and recommendation adopted*, 2023 WL 2072481 (D.D.C. Feb. 17, 2023) (noting that materials withheld as attorney-client privileged under FOIA must be “confidential[] both at the time of the communication and maintained since.”) (cleaned up); *Jud. Watch, Inc. v. U.S. Postal Serv.*, 297 F. Supp. 2d 252, 268 (D.D.C. 2004) (“The work-product privilege can be waived ... if the work product is disclosed to a third party who does not share a common interest in developing legal theories and analyses of documents with the primary party.”) (quotations omitted). The government cannot invoke Exemption 5 to protect documents it has already disclosed because there is no longer any privilege to protect.

iv. The IRS’s Pattern of Backdating Penalty Approvals in Conservation Easement Matters.

While the evidence of fraud in this case alone would be sufficient to vitiate the privilege, this backdating here is not an isolated incident. It may be part of a pattern of backdating by IRS agents handling conservation easement matters, perhaps in response to pressure from IRS leaders to penalize taxpayers who claimed deductions for conservation easements. In another case involving a conservation easement, known as *LakePoint Land II*, an IRS Revenue Agent learned that her initial penalty determination had not been approved in writing by her immediate supervisor. The agent admitted in an email to her supervisor, “I did not get the penalty leadsheet in the case file signed by you as is required by the IRM,” and “I did not include two penalties on the leadsheet, even though they are included in the NOPA being issued for the penalties.”

From: Stafford Pamela V
Sent: Friday, February 10, 2017 2:35 PM
To: Brooks Cathy
Cc: Chung Tammy
Subject: FW: please sign penalty sheet

Cathy,

They are getting ready to issue the FPAA for the LPL2 returns. I did not get the penalty leadsheet in the case file signed by you as is required by the IRM. Also, per Tammy's e-mail below, I did not include two penalties on the leadsheet, even though they are included in the NOPA being issued for the penalties.

Will you please sign this leadsheet so that I can forward to Tammy? Thanks
Pam

Ex. 21. The supervisor understood the gravity of the error, responding that it was a “HUGE OVERSIGHT.”

From: Brooks Cathy [REDACTED]
Sent: Friday, February 10, 2017 3:00 PM
To: Stafford Pamela V [REDACTED]
Subject: FW: please sign penalty sheet

HUGE oversight

Best regards,

Cathy Brooks
IRS Large Business & International Division

Id. The agent then backdated the Penalty Lead Sheet. Like Manager Combs, she chose to not sign the document digitally, which would have automatically recorded the time of her signing, even though she regularly signed other documents digitally.

Manager Approval: /s/ Catherine C Brooks –
penalties were discussed and approved by me - CCB Date: 7/16/2016

Rev. 6/2008 Workpaper #:

Ex. 22.

IRS lawyers then attempted to mislead the U.S. Tax Court. In *LakePoint Land II, LLC, LakePoint Land Group, LLC, Tax Matters Partner v. Commissioner*, Tax Court Docket No. 13925-17, IRS Counsel moved for summary judgment on the issue of whether it complied with the penalty approval requirement. The IRS supported the motion with a declaration from the supervisor in which she falsely claimed to have signed the penalty approval on July 16, 2016.

I reviewed the Penalty Consideration Lead Sheet Agent Stafford prepared and I signed and approved it on July 16, 2016, by typing the following language in the lower left-hand corner of the first page of the lead sheet in the "Manager Approval:" section, "/s/ Catherine C. Brooks -." The symbol "/s/" was meant to stand for my signature. That line continued beneath with my typed statement "penalties were discussed and approved by me – CCB." To the right of that last line in the "Date:" field, I typed in "7/16/2016."

Ex. 23 (emphasis added). The Tax Court found that the supervisor's declaration was false and that IRS Counsel had acted with bad faith. *Lakepoint Land II, LLC v. Comm'r*, T.C. Memo. 2023-111, *12 ("[W]e find respondent's counsel failed to timely advise the Court of [the supervisor's] erroneous Declaration. Accordingly, we find the actions of respondent's counsel to be in bad faith and to have multiplied the proceedings in this case unreasonably and vexatiously."). The Tax Court sanctioned the IRS, with the appropriate penalty to be determined in the future. The IRS and LakePoint then settled the case, with the IRS demanding as a condition of settlement that LakePoint dismiss a FOIA complaint that sought communications regarding the backdating.

Unlike LakePoint, Plaintiffs discovered the fraud before pursuing their Tax Court case, and the IRS withdrew its penalty assessment before reaching the point at which IRS employees would have faced the decision whether to file false declarations consistent with their cover story that a supervisor had provided the required written approval. When considered together, these three matters and the *LakePoint* case show similar misconduct by the IRS in assessing penalties against

taxpayers in conservation easement cases, suggesting there may be a lack of concern for truthfulness among some IRS auditors.

B. Plaintiffs are Entitled to Summary Judgment on Exemption 7(A) because Disclosure Could Not Reasonably Be Expected to Interfere with Law Enforcement Proceedings.

Exemption 7(A) is irrelevant because there is no ongoing law enforcement proceeding in which these documents are relevant. Exemption 7(A) protects “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(a). “The principal purpose of Exemption 7(A) is to prevent disclosures which might prematurely reveal the government’s cases in court, its evidence and strategies, or the nature, scope, direction, and focus of its investigations, and thereby enable suspects to establish defenses or fraudulent alibis or to destroy or alter evidence.” *Maydak v. U.S. Dep’t of Just.*, 218 F.3d 760, 762 (D.C. Cir. 2000).

To justify withholding materials under Exemption 7, the IRS must “demonstrate that disclosure (1) could reasonably be expected to interfere with (2) enforcement proceedings that are (3) pending or reasonably anticipated.” *Citizens for Resp. & Ethics in Washington v. U.S. Dep’t of Just.*, 746 F.3d 1082, 1096 (D.C. Cir. 2014) (internal quotation marks and citation omitted). The IRS bears the burden to identify “some particular, discernible way” disclosure would “disrupt, impede, or otherwise harm the enforcement proceeding.” *North v. Walsh*, 881 F.2d 1088, 1097 (D.C. Cir. 1989). Conclusory statements are not enough. *See Curry v. Fed. Bureau of Investigation*, 2024 WL 21466, at *3 (D.D.C. Jan. 2, 2024) (noting that the government must “show, by more than [a] conclusory statement, how the particular kinds of investigatory records requested would interfere with a pending enforcement proceeding.”) (quoting *Campbell v. DHSS*, 682 F.2d 256, 259 (D.C. Cir. 1982)). The IRS cannot meet its burden in this case because it offered only a

declaration with precisely the type of conclusory statement that is *not* sufficient. Demonstrating disrespect for this Court’s factfinding role, the IRS in essence says, “Trust us,” and states its desired conclusion instead of providing evidence that would allow this Court to make an independent assessment.

The IRS has not demonstrated that disclosure could reasonably be expected to interfere with a pending enforcement proceeding. The IRS relies entirely on Branch Chief Trissell’s illogical and conclusory declaration that disclosing the materials would “seriously impair the ability of the government to ensure the collection of the proper tax and penalties,” although the Basswood and Delwood audits have been resolved and the IRS no longer is seeking a penalty in the Arden matter. ECF No. 21-1 at 17; ECF No. 21-7 at ¶¶ 11–12. In place of judicial factfinding, the IRS would substitute an irrebuttable presumption: if an IRS employee states the government’s argumentative conclusions in a declaration, the Court will rubber-stamp them without requiring any factual basis.

But the IRS offers no evidence that would support this Court adopting its desired finding that the disclosure of documents *in this case* would interfere with a pending or anticipated proceeding. Consistent with the D.C. Circuit’s *North* decision, a court may find Exemption 7(A) appropriate where an affiant avers *specific* types of harm that result from disclosure. *See, e.g., Farahi v. Fed. Bureau of Investigation*, 643 F. Supp. 3d 158, 171 (D.D.C. 2022) (finding disclosure proper and contrasting with cases where plaintiffs sought confidential source and witness statements, information that would identify the agency’s investigative interests, or evidence that would allow plaintiff to develop a strategy to defeat the government’s case in chief). Branch Chief Trissell’s conclusory declaration that the government’s ability to collect taxes will be impaired lacks the specifics that might justify application of Exemption 7(A).

If the government could meet its factual burden merely by offering conclusory statements, it would eviscerate this Court's obligation to make factual findings. Instead, the government's burden is to offer declarations with *evidence* that might allow the Court to reach independent factual findings, not for the government to dictate conclusory findings and command this Court to adopt them. It is as if, in a case involving an alleged unlawful search, the government filed a declaration stating, "We had probable cause," instead of stating the facts that might give rise to probable cause and letting the Court reach its own conclusions.

Further, there is no pending or reasonably anticipated proceeding with which the disclosure of responsive information would interfere. The IRS has conceded penalties against all three Plaintiffs, eliminating any chance that disclosure of documents relating to the IRS's conduct in approving now-abandoned civil penalties could be relevant to, let alone ever interfere with, an enforcement proceeding. Moreover, the *Basswood* and *Delwood* cases have been entirely resolved and are no longer pending.

Ironically, only after it became clear that disclosure would reveal IRS misconduct did the IRS decide to argue that evidence of its own impropriety must be withheld for "law enforcement" purposes. In an Orwellian twist, the IRS disclosed some information *during* its enforcement actions, then decided after the enforcement actions were *concluded* that disclosure would interfere with them. If the IRS had sincerely believed disclosure would interfere with an enforcement proceeding, it would not have given Plaintiffs any information in the first place. *See supra* at 22.

C. Plaintiffs are Entitled to Summary Judgment on Exemption 3 because 26 U.S.C. § 6103 Does Not Prohibit Disclosure to a Taxpayer of Their Own Information and the IRS Fails to Prove Disclosure Would Seriously Impair Tax Administration.

Section 6103 does not prohibit the Partnerships from accessing their own tax information, and the IRS's justifications for withholding the information are either irrelevant or imaginary. The IRS's reliance on FOIA Exemption 3 is therefore misplaced.

FOIA Exemption 3 protects materials "specifically exempted from disclosure by statute." 5 U.S.C. § 552(b)(3). The IRS raises Section 6103, which provides that "[r]eturns and return information shall be confidential." 26 U.S.C. § 6103(a). But the restriction does not prevent taxpayers and their representatives from accessing the taxpayers' *own* tax information. In the case of a partnership, returns and return information "shall, upon written request, be open to inspection by or disclosure to ... any person who was a member of such partnership during any part of the period covered by the return." 26 U.S.C. § 6103(e)(1)(C). The Partnerships seek access to their own tax information and have executed all necessary authorizations, making Section 6103's general requirement of confidentiality irrelevant. There is no need to look elsewhere in the statute for permission.

The IRS mistakenly relies on Section 6103(e)(7), which provides that return information *otherwise required to be kept confidential* nonetheless may be open to inspection or disclosure "if the Secretary [of the Department of Treasury] determines that such disclosure would not seriously impair Federal tax administration." 26 U.S.C. § 6103(e)(7). That section is irrelevant because Section 6103(e)(1)(C) authorizes disclosure to partnership members, like the Partnerships. In any event, the Court reviews the Secretary's determination *de novo*, and the IRS bears the burden of proof to justify nondisclosure. *Powell v. Yellen*, 2023 WL 8947132, at *2 (D.C. Cir. Dec. 28, 2023); *Church of Scientology v. IRS*, 792 F.2d 146, 150 (D.C. Cir. 1986).

The IRS erroneously claims disclosure would seriously impair federal tax administration on the grounds that: (1) it would give the Partnerships insight into their own civil examinations; (2) “further litigation is possible;” and (3) it would give the Partnerships insight into the IRS’s litigation strategies. ECF No. 21-1 at 15–16. The civil examinations of the Partnerships are irrelevant because the IRS previously conceded penalties against all three Partnerships in the Tax Court cases and the penalty approval issues here no longer have any bearing there. The *Basswood* and *Delwood* cases have been resolved and are no longer pending, so that litigation is entirely irrelevant. And the IRS’s supposed concern about further litigation and supposed fear of the Partnerships gaining “insight” are the types of theoretical justifications that this Court has rejected in the past. *See, e.g., Sea Shepherd Conservation Soc’y v. Internal Revenue Serv.*, 89 F. Supp. 3d 81, 100–01 (D.D.C. 2015) (rejecting “conclusory assertions” that disclosure of tax information “would result in a chilling effect on confidential sources coming forward, thereby hampering future investigations.”).

The Partnerships are permitted to access their own tax information, and the IRS failed to offer any evidentiary basis to withhold the documents. Giving the Partnerships their own tax records will not seriously impair the federal tax administration, let alone impair it at all.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court grant summary judgment in their favor and order production of the withheld and redacted documents. In the alternative, Plaintiffs request this Court conduct an *in camera* review of the documents to test any claimed exemptions.

Dated: March 21, 2025

Respectfully submitted,

/s/ Rod J. Rosenstein

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Resources, LLC*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ARDEN ROW ASSETS, LLC
BASSWOOD AGGREGATES, LLC
DELWOOD RESOURCES, LLC

Plaintiffs,

vs.

U.S. INTERNAL REVENUE SERVICE

Defendant.

Civil Action No. 23-cv-2696

PLAINTIFFS' STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE

Pursuant to Local Rule 7(h), Plaintiffs submit this Statement of Material Facts Not in Genuine Dispute in support of Plaintiffs' Cross-Motion for Summary Judgment.

1. Plaintiffs Arden Row Assets, LLC ("Arden Row"), Basswood Aggregates, LLC ("Basswood"), and Delwood Resources, LLC ("Delwood") (collectively, "Plaintiffs") each donated a conservation easement on a separate parcel of real estate and claimed a tax deduction for the charitable contribution for tax year 2018. ECF No. 1 (Complaint) at ¶ 14; ECF No. 9 (Answer) at ¶ 14. Each Plaintiff's partners deducted on their individual tax returns, up to certain limits, a portion of the contribution that corresponded to their respective ownership share in the partnership. ECF No. 1 at ¶ 14.

2. Approximately two years later, the IRS initiated an examination of the tax return filed by each Plaintiff. ECF No. 1 at ¶ 15; ECF No. 9 at ¶ 15. The IRS assigned Revenue Agent Thomas E. Fields to conduct these audits. *Id.* Team Manager David M. Combs immediately supervised Agent Fields in connection with the audits. *Id.*

3. The Internal Revenue Code provides that the IRS may not assess a penalty “unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination” or certain higher level IRS officials. 26 U.S.C. § 6751(b)(1). Accordingly, to lawfully assess penalties against Plaintiffs, Agent Fields would have been required to make the initial determination to assert each penalty, and his supervisor, Manager Combs, would have been required to approve that determination in writing. This approval process applies to, among other things, certain penalties involving negligence or disregard, 26 U.S.C. § 6662(b)(1), (c), substantial understatement of income tax, 26 U.S.C. § 6662(b)(2), (d), substantial valuation misstatement, 26 U.S.C. § 6662(b)(3), (e), gross valuation misstatement, 26 U.S.C. § 6662(h), and reportable transaction understatement, 26 U.S.C. § 6662A(a), all of which were asserted against Plaintiffs.

4. On July 12, 2021, Agent Fields sent Manager Combs an email, stating, “This email is to inform you that there will very likely be penalties associated with the Arden Row Assets (conservation easement) audit.” ECF No. 1 at ¶ 17; ECF No. 9 at ¶ 17. Agent Fields sent two more emails to Manager Combs that day—identical except that he replaced the words “Arden Row Assets” with “Basswood Aggregates” and “Dellwood (sic) Resources.” ECF No. 1 at ¶¶ 17–19; ECF No. 9 at ¶¶ 17–19. Agent Fields did not tell Manager Combs the specific penalties he intended to impose, nor the basis for asserting any penalties. ECF No. 1 at ¶ 20; Ex. 2A.

5. Two days later, on July 14, 2021, Manager Combs replied to Agent Fields’s emails with the bare statement: “I approve penalties.” ECF No. 1 at ¶ 21; ECF No. 9 at ¶ 21; Ex. 2B. There are many types of IRS penalties, each of which requires a different showing. But as with Agent Fields’s request, Manager Combs’s reply did not specify which penalties were approved, let alone their amount or justification. Ex. 2B.

6. Between March 3, 2022 and March 4, 2022, Agent Fields issued each Plaintiff's partnership representative a Form 14791, Preliminary Partnership Examination Changes, Imputed Underpayment Computation and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts, and a Form 886-A, Explanation of Items. *See, e.g.*, Ex. 3. The Forms 14791 noted penalties of \$8,430,812 against Arden, \$8,431,909 against Basswood, and \$8,361,896 against Delwood, none of which had been properly approved by Fields's manager. *Id.*

7. On March 11, 2022, Agent Fields emailed Manager Combs, requesting that he sign a separate Penalty Approval Lead Sheet for each Plaintiff. ECF No. 1 at ¶ 25; ECF No. 9 at ¶ 25. In that email, Agent Fields explicitly requested that Manager Combs backdate his signature on each Penalty Approval Lead Sheet, stating, "Ideally (?) the date you use to sign should be either the date you 'approved' penalties against Taxpayer (7/14/21) . . . or a little thereafter?" *Id.* Ex. 1.

8. Prior to March 11, 2022, no Penalty Lead Sheet (or any other document of which Plaintiffs are aware) reflecting approval of specific penalties asserted against the Plaintiffs had been approved or signed by Manager Combs. ECF No. 1 at ¶ 26.

9. Manager Combs complied with the request to backdate the approval. On March 14, 2022, Manager Combs replied to Agent Fields, stating, "All 3 [Penalty Lead Sheets] are signed with date of July 14, 2021." ECF No. 1 at ¶ 28; ECF No. 9 at ¶ 28; Ex. 4. Manager Combs attached three Penalty Lead Sheets to his email, each backdated to July 14, 2021. Exs. 4A, 4B, and 4C.

10. Manager Combs's signature on each of the three Penalty Lead Sheets was electronically copied and pasted. *See id.* This differed from Manager Combs's practice of signing documents using Adobe Acrobat Sign, which automatically generated an electronic date that a user could not alter. *See, e.g.*, Ex. 5.

11. Each backdated Penalty Lead Sheet asserted a penalty for: (1) negligence or disregard; (2) substantial understatement; (3) substantial valuation misstatement; (4) gross valuation misstatement; (5) accuracy related reportable transaction understatement; and (6) nondisclosed reportable transaction understatement. Each of these penalties could not be asserted without proper written approval by Manager Combs. *See* 26 U.S.C. § 6751(b)(1).

12. On October 4, 2022, Plaintiffs separately requested that the IRS release copies of the administrative file for the audit of each partnership. *See, e.g.*, Ex. 6.

13. On February 13, 2023, the IRS issued a Final Partnership Adjustment to each Plaintiff, disallowing the claimed tax deduction for the charitable contribution of the conservation easement and asserting penalties. ECF No. 1 at ¶ 30; ECF No. 9 at ¶ 30.

14. On February 21, 2023, the IRS produced materials in response to Plaintiffs' requests of October 4, 2022. *See, e.g.*, Ex. 7.

15. On March 21, 2023, Plaintiffs filed suit in U.S. Tax Court to challenge the disallowance and the assertion of penalties. *Delwood Resources, LLC v. Comm'r of Internal Revenue*, Docket No. 3821-23, filed March 21, 2023; *Basswood Aggregates, LLC v. Comm'r of Internal Revenue*, Docket No. 3820-23 filed March 21, 2023; *Arden Row Assets, LLC v. Comm'r of Internal Revenue*, Docket No. 3817-23, filed March 21, 2023.

16. On May 2, 2023, the IRS issued a Notice of Proposed Adjustment (“NOPA”) in connection with the audit of each Plaintiff, disallowing the claimed tax deduction for the charitable contribution of the conservation easement and asserting a negligence penalty pursuant to 26 U.S.C. § 6662(c), a substantial understatement penalty pursuant to 26 U.S.C. § 6662(d), a substantial valuation misstatement penalty pursuant to 26 U.S.C. § 6662(e), a gross valuation misstatement

penalty pursuant to 26 U.S.C. § 6662(h), and a reportable transaction understatement penalty pursuant to 26 U.S.C. § 6662A. ECF No. 1 at ¶ 31.

17. On July 26, 2023, Plaintiffs submitted requests for information and documentation that raised concerns about possible IRS improprieties in connection with the penalty approvals. *See, e.g.*, Ex. 8.

18. On October 13, 2023, the IRS informed each Plaintiff that it had “determined the documents in the administrative file evidencing managerial approval may not be sufficient to satisfy I.R.C. 6751(b). Therefore, respondent concedes the penalties in this case.” Ex. 9. In the same letters, the IRS attempted to prevent efforts to discover improprieties in its penalty approval process, stating, “Since respondent [*i.e.*, the IRS] is conceding the penalties, petitioner’s Informal Requests for Production and Information (‘Informal Requests’) are moot. Thus, respondent objects to the Informal Requests on the grounds that they are irrelevant.” *Id.*

19. On March 22, 2024, the IRS filed a Notice of Concession in the Tax Court cases that finalized its concessions regarding penalties. For example, in the Arden Tax Court case, the Notice of Concession stated, “By a letter dated March 21, 2024, respondent informed petitioner’s counsel that respondent was conceding the Penalties at Issue. Respondent is filing the instant Notice of Concession to memorialize such concession with the Court. To be clear, respondent has conceded all of the penalties set forth in the FPA.” Ex. 10.

20. On July 31, 2023, Plaintiffs submitted to the IRS three identical FOIA requests for copies of government records. The requests sought all communications and materials relating to the evaluation or determination to assert any penalty against Plaintiffs. ECF. No. 1 at ¶ 33; ECF No. 9 at ¶ 33. The IRS failed to respond timely to the request.

21. On September 14, 2023, Plaintiffs filed the complaint in this matter and reiterated the document requests from the FOIA requests. ECF. No. 1.

22. Over the course of roughly seven months, from January 25, 2024 through July 25, 2024, the IRS reviewed a total of 5,158 pages of materials, of which it identified 3,342 pages as responsive to the requests, presumably defining responsiveness as relating to the evaluation and determination to assert penalties against Plaintiffs.

23. On July 25, 2024, the IRS informed Plaintiffs that it had completed its productions in response to the complaint.

24. Of the 3,342 pages that the IRS identified as being responsive to Plaintiffs' FOIA requests, the IRS withheld 1,962 pages in full (59% of all responsive pages), redacted 164 pages (5% of responsive pages), and produced in full only 1,216 pages (36% of responsive pages). The IRS claimed that the vast majority of the redactions were proper pursuant to FOIA Exemption 3 (disclosure prohibited by statute, specifically 26 § U.S.C. 6103), Exemption 5 (privileged communication), and Exemption 7(A) (disclosure could reasonably be expected to interfere with law enforcement proceedings).

25. On September 16, 2024, the IRS provided a *Vaughn* Index of the documents that it had withheld in full. The IRS did not provide a *Vaughn* Index of documents that it had redacted. Among other things, the *Vaughn* Index revealed that the IRS fully redacted the draft penalty lead sheets that Fields requested be backdated by Combs. The IRS asserted that the documents that Fields sought to backdate were protected from disclosure by the deliberative process privilege, Section 6103, and, ironically, the law enforcement exemption.

Dated: March 21, 2025

Respectfully submitted,

/s/ Rod J. Rosenstein

Rod J. Rosenstein (D.C. Bar No. 432439)

Michael R. Pauzé (D.C. Bar No. 453417)

Edmund P. Power (D.C. Bar No. 101378)

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*Counsel for Plaintiffs Arden Row Assets, LLC,
Basswood Aggregates, LLC, and Delwood
Resources, LLC*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**ARDEN ROW ASSETS, LLC
BASSWOOD AGGREGATES, LLC
DELWOOD RESOURCES, LLC**

Plaintiffs,

vs.

U.S. INTERNAL REVENUE SERVICE

Defendant.

Civil Action No. 23-cv-2696

**PLAINTIFFS’ RESPONSE TO INTERNAL REVENUE
SERVICE’S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE DISPUTE**

Pursuant to Local Rule 7(h), Plaintiffs submit this Response to Defendant Internal Revenue Service’s Statement of Material Facts As To Which There Is No Genuine Dispute (“IRS Statement of Facts”). Plaintiffs do not dispute paragraphs 1 – 53, 55, 59 – 61, 65 – 68, and 75 of the IRS Statement of Facts, which make representations about the IRS’s efforts to collect materials in response to the FOIA requests. Plaintiffs lack access to any information that might allow them to contest the extent of those efforts.

Plaintiffs dispute all assertions in the IRS Statement of Facts that are not statements of fact but instead legal arguments or conclusory statements. Specifically, Plaintiffs dispute the following paragraphs of the IRS’s Statement of Facts:

IRS Statement of Facts	Plaintiffs' Position
<p>54. The Service withholds in entirety only those records that fall within a FOIA exemption in their entirety, or those records wherein the portions exempt from disclosure under the FOIA are so inextricably intertwined with nonexempt material as to be impracticable to segregate. <i>Id.</i></p>	<p>As explained in Plaintiffs' Opposition to Defendant's Motion, the Service has withheld materials that are not exempt from disclosure.</p>
<p>56. The <i>Vaughn</i> Index indicates which records contain information exempt from disclosure pursuant to FOIA Exemption 5, attorney-client privilege. These records are intra-agency communications between Service and Chief Counsel employees, and contain facts or analysis relating to a legal matter for which the Service has sought legal advice from Chief Counsel. The Service expected these records to be handled with confidentiality because they reflect communications seeking or providing legal advice. This information is considered confidential under the attorney-client privilege, and is therefore exempt from disclosure under FOIA Exemption 5. <i>Id.</i> ¶ 26.</p>	<p>As explained in Plaintiffs' Opposition to Defendant's Motion, the <i>Vaughn Index</i> includes materials that are not exempt from disclosure pursuant to FOIA Exemption 5, attorney client privilege.</p>
<p>57. The <i>Vaughn</i> Index indicates which records contain information exempt from disclosure pursuant to FOIA Exemption 5, deliberative process privilege. These records are being withheld in full or in part because they are inter-agency or intra-agency memoranda, letters, or equivalent communications which reflect the pre-decisional deliberations of employees of the Service or their counsel, and could potentially result in confusion from the disclosure of pre-decisional facts, reasons, and rationales that were not the ultimate ground for the agency action. As such, these records are subject to withholding under Exemption 5. <i>Id.</i> ¶ 27.</p>	<p>As explained in Plaintiffs' Opposition to Defendant's Motion, the <i>Vaughn Index</i> includes materials that are not exempt from disclosure pursuant to FOIA Exemption 5, deliberative process privilege.</p>
<p>58. Unless otherwise indicated, all of these records were drafted, written, or compiled by IRS employees or attorneys in the IRS Office of Chief Counsel. Unless otherwise indicated, these records were created for intra-agency use by the Service. The Service notes that any withheld document</p>	<p>As explained in Plaintiffs' Opposition to Defendant's Motion, the IRS withheld intra-agency communications that are not exempt from disclosure pursuant to any FOIA Exemption.</p>

<p>that was drafted for use in future communication with parties outside the agency is still an intra-agency communication insofar as it is a draft sent from one agency employee to another for the purpose of reaching a final determination as to how such extra-agency communication should be written. <i>Id.</i> ¶ 28.</p>	
<p>62. All of the records exempt from disclosure pursuant to FOIA Exemption 5, deliberative process privilege are both deliberative and pre-decisional in nature. They are deliberative because they discuss or propose options for reaching the proper enforcement determinations, or provide suggested revisions, legal analysis, and other comments on the language of the draft document requests, subpoenas, communications with the taxpayer, and various intra-agency communications involved in the examination. The records or portions of records withheld under this exemption are pre-decisional because they reflect opinions and recommendations of agency personnel that precede the Service's decisions to make adjustments to Plaintiffs' tax liabilities for the 2018 tax year. These records are therefore subject to the deliberative process privilege. <i>Id.</i> ¶ 31.</p>	<p>As explained in Plaintiffs' Opposition to Defendant's Motion, the records IRS seeks to withhold under FOIA Exemption 5, deliberative process privilege, are not subject to the deliberative process privilege.</p>
<p>63. In accordance with the requirements of 5 U.S.C. § 552(a)(8)(A)(i)(I), Ahn carefully considered and applied the foreseeable harm standard in determining whether to withhold information under FOIA Exemption 5. Specifically, Ahn assessed whether disclosure of privileged information would reasonably be expected to harm the protected attorney-client relationship by discouraging full and frank discussions necessary for effective legal counsel and decision-making, and whether the disclosure of pre-decisional communications might harm the agency's decision-making process by inhibiting open and candid discussions among agency personnel or might harm the public's</p>	<p>Plaintiffs dispute that Ahn carefully considered and (correctly) applied the foreseeable harm standard in determining to withhold information.</p>

<p>understanding of the agency's final determinations. <i>Id.</i> ¶ 32.</p>	
<p>64. After thorough review, Ahn concluded that releasing the information which has been marked as withheld pursuant to these exemptions would foreseeably harm the agency's ability to engage in protected attorney-client communications or frank policy discussions, thereby justifying their protection under FOIA Exemption 5. <i>Id.</i></p>	<p>Plaintiffs dispute that Ahn correctly applied the foreseeable harm standard.</p>
<p>69. Disclosure of the information in the documents withheld under Exemption 3 in conjunction with IRC § 6103(e)(7) would allow Plaintiffs earlier and greater access to information about Plaintiffs' civil examination than Plaintiffs would otherwise be entitled to receive. Plaintiffs have initiated litigation in U.S. Tax Court related to Plaintiffs' civil examinations, and this litigation involves issues addressed in records responsive to Plaintiffs' FOIA requests (Docket Nos. 3817-23, 3820-23, and 3821-23). Fully releasing certain responsive records would allow Plaintiffs to determine the nature, direction, and scope of Plaintiffs' civil examination and similar examinations, and the strategies and theories utilized by examiners, as well as those strategies and theories that may be utilized by the government in ongoing litigation or future enforcement proceedings. Disclosure of the withheld information would provide Plaintiffs with an unfair advantage in that it would prematurely enable Plaintiffs to craft explanations or defenses based upon knowledge of the examiners' or Counsel attorneys' strategy, theories, methods, and points of focus. <i>Id.</i> ¶ 9.</p>	<p>The IRS has conceded the penalties at issue, and Plaintiffs dispute that the disclosure of information in the documents would have any material impact on the U.S. Tax Court proceeding or provide any unfair advantage.</p>
<p>70. Releasing the information the IRS withheld under Exemption 3 would seriously impair Federal tax administration by compromising ongoing litigation strategies, discouraging taxpayer compliance, and weakening confidentiality protections critical to effective enforcement. <i>Id.</i></p>	<p>The IRS has conceded the penalties at issue, and Plaintiffs dispute that releasing the information withheld under Exemption 3 would impair tax administration.</p>

<p>71. Enforcement proceedings against Plaintiffs in the future may potentially include enforcement and collection of any tax or penalty liabilities ultimately assessed, consideration by the Service's Appeals function, further examination of related issues or tax years, or additional litigation in U.S. Tax Court or U.S. District Court. Disclosure of the pages indicated would harm ongoing enforcement proceedings by prematurely revealing the Service's evidence and strategy; revealing the nature, direction, scope, and focus of the Service's case; and giving premature insight into the strength of the Service's position and its reliance on certain evidence. <i>Id.</i> ¶ 10.</p>	<p>The IRS has conceded the penalties at issue, and Plaintiffs dispute that disclosure would harm enforcement proceedings.</p>
<p>72. The <i>Vaughn</i> Index indicates which records contain information exempt from disclosure pursuant to FOIA Exemption 3 in conjunction with IRC § 6103(e)(7). These records are withheld in full or in part because Trissell determined that their disclosure would seriously impair the ability of the government to ensure the assessment and collection of the proper tax and penalties from Plaintiffs. <i>Id.</i> ¶ 11.</p>	<p>The IRS has conceded the penalties at issue, and disclosure would not impair the government's ability to ensure assessment and collection of proper tax and penalties.</p>
<p>73. The <i>Vaughn</i> Index also indicates which records contain information exempt from disclosure under Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). These records are withheld in full or in part because they contain information relevant to Plaintiffs' civil examination to determine tax liability, which is part of a law enforcement matter which is not yet concluded. The release of this information may reasonably be expected to interfere with ongoing enforcement proceedings to determine Plaintiffs' liability under the IRC. <i>Id.</i> ¶ 12.</p>	<p>The <i>Vaughn</i> Index does not indicate records subject to FOIA Exemption 7(A) because the IRS has conceded the penalties at issue, and the release of information would not interfere with ongoing enforcement proceedings.</p>
<p>74. The <i>Vaughn</i> Index indicates which records contain information exempt from disclosure pursuant to FOIA Exemption 3 in conjunction with IRC § 6103(e)(7). These records are withheld in full or in part pursuant to Exemption 3 in conjunction with IRC § 6103(e)(7) because disclosure of the</p>	<p>The <i>Vaughn</i> Index does not indicate which records are subject to FOIA Exemption 3 and I.R.C. § 6103(e)(7), and disclosure of the withheld information would not interfere with enforcement proceedings or impair the government's ability to ensure the collection of the proper tax and penalties.</p>

<p>withheld information could reasonably be expected to interfere with enforcement proceedings of the Service by providing taxpayers with information that could be used to circumvent tax laws, and could therefore seriously impair the ability of the government to ensure the collection of the proper tax and penalties. <i>Id.</i> ¶ 13.</p>	
<p>76. In accordance with the segregation requirement of subsection (b) of the FOIA, Trissell reviewed all records responsive to the FOIA requests at issue in this litigation that the Service exempts in full or in part pursuant to FOIA Exemption 3 in conjunction with IRC § 6103(e)(7), and attempted to make every reasonably segregable nonexempt portion of every responsive record available to Plaintiffs. The Service withholds in entirety only those records that fall within a FOIA exemption in their entirety, or those records wherein the portions exempt from disclosure under the FOIA are so inextricably intertwined with nonexempt material as to be impracticable to segregate. <i>Id.</i> ¶ 15.</p>	<p>Plaintiffs dispute that the Service has withheld only those records that fall within a FOIA exemption. As explained in Plaintiffs' Opposition to Defendant's Motion, the Service has withheld materials that are not exempt from disclosure.</p>
<p>77. In reviewing the information marked as withheld pursuant to Exemption 7E, Trissell considered and applied the foreseeable harm in accordance with 5 U.S.C. § 552(a)(8)(A)(i)(I), and determined that releasing the withheld information would harm the Service's interest in avoiding circumvention of the law that could result from public disclosure of certain enforcement techniques and procedures. <i>Id.</i> ¶ 16.</p>	<p>Plaintiffs dispute that the Service has correctly considered and applied the foreseeable harm standard and that releasing the withheld information would harm the IRS's interest in avoiding circumvention of the law.</p>

Dated: March 21, 2025

Respectfully submitted,

/s/ Rod J. Rosenstein

Rod J. Rosenstein (D.C. Bar No. 432439)

Michael R. Pauzé (D.C. Bar No. 453417)

Edmund P. Power (D.C. Bar No. 101378)

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*Counsel for Plaintiffs Arden Row Assets, LLC,
Basswood Aggregates, LLC, and Delwood
Resources, LLC*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**ARDEN ROW ASSETS, LLC
BASSWOOD AGGREGATES, LLC
DELWOOD RESOURCES, LLC**

Plaintiffs,

vs.

U.S. INTERNAL REVENUE SERVICE

Defendant.

Civil Action No. 23-cv-2696

DECLARATION OF EDMUND POWER

I, Edmund Power, declare as follows:

1. I am an attorney with the law firm King & Spalding LLP. I am a member in good standing of the bar of the District of Columbia and am admitted to practice before this Court. I am one of the attorneys representing Plaintiffs Arden Row Assets, LLC, Basswood Aggregates, LLC, and Delwood Resources, LLC in the above-captioned matter. I make this declaration in support of Plaintiffs' Cross-Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment. I have personal knowledge of the matters stated in this declaration.

2. Attached hereto as Exhibit 1 is a true and correct copy of an email exchange between Agent Thomas Fields and Manager David Combs as produced by the IRS in response to the complaint filed in this case.

3. Attached hereto as Exhibits 2A and 2B are true and correct copies of emails exchanged between Agent Fields and Manager Combs as produced by the IRS in connection with civil tax litigation.

4. Attached hereto as Exhibits 3, 3A, 3B, and 3C are a true and correct copies of a letter from Agent Fields and attached Preliminary Partnership Examination Changes documents relating to Arden Row Assets, LLC, Basswood Aggregates, LLC, and Delwood Resources, LLC as produced by the IRS in connection with civil tax litigation. Redactions of confidential personal identifying information/taxpayer identification numbers/audit control numbers made by Plaintiffs appear in black boxes labeled "REDACTED."

5. Attached hereto as Exhibits 4, 4A, 4B, and 4C are true and correct copies of an email exchange between Agent Fields and Manager Combs, and attached Penalty Consideration documents for Arden Row Assets, LLC, Basswood Aggregates, LLC, and Delwood Resources, LLC, as produced by the IRS in response to the complaint filed in this case.

6. Attached hereto as Exhibit 5 is a true and correct copy of the Bipartisan Budget Act (BBA) Partnership Procedures Check Sheet related to Arden Row Assets, LLC as produced by the IRS in response to the complaint filed in this case. Redactions of confidential personal identifying information/taxpayer identification numbers/audit control numbers made by Plaintiffs appear in black boxes labeled "REDACTED."

7. Attached hereto as Exhibit 6 is a true and correct copy of a letter from Macdonald Norman to Agent Fields.

8. Attached hereto as Exhibit 7 is a true and correct copy of a letter from Agent Fields and Manager Combs to Macdonald Norman. Redactions of confidential personal identifying

information/taxpayer identification numbers/audit control numbers made by Plaintiffs appear in black boxes labeled “REDACTED.”

9. Attached hereto as Exhibit 8 is a true and correct copy of letter from Kevin Johnson to General Attorney Kristin Joe. Redactions of confidential personal identifying information/taxpayer identification numbers/audit control numbers made by Plaintiffs appear in black boxes labeled “REDACTED.”

10. Attached hereto as Exhibit 9 is a true and correct copy of a letter from General Attorney Kristin Joe to Kevin Johnson.

11. Attached hereto as Exhibit 10 is a true and correct copy of a Note of Concession filed in *Arden Row Assets, LLC v. Comm’r of Internal Revenue*, Docket No. 3817-23.

12. Attached hereto as Exhibit 11 is a true and correct copy of an email exchange between Agent Fields and Tax Computation Specialist Matthew Moss produced by the IRS in response to the complaint filed in this case.

13. Attached hereto as Exhibit 12 is a true and correct copy of an email exchange between Agent Fields, Tax Computation Specialist Moss, Centralized Case Processing – Ogden, and Centralized Case Processing team member Wendy Anderson as produced by the IRS in connection with civil tax litigation.

14. Attached hereto as Exhibit 13 is a true and correct copy of an email exchange between Agent Fields and Manager David Combs as produced by the IRS in response to the complaint filed in this case.

15. Attached hereto as Exhibit 14 is a true and correct copy of an email exchange between Agent Fields and Manager David Combs as produced by the IRS in connection with civil tax litigation.

16. Attached hereto as Exhibit 15 is a true and correct copy of an email exchange between Agent Fields and several IRS employees as produced by the IRS in response to the complaint filed in this case.

17. Attached hereto as Exhibit 16 is a true and correct copy of an email exchange between Agent Fields and several IRS employees as produced by the IRS in connection with civil tax litigation.

18. Attached hereto as Exhibit 17 is a true and correct copy of an email exchange between Agent Fields, Manager Combs, and several other IRS employees produced by the IRS in response to the complaint filed in this case.

19. Attached hereto as Exhibit 18 is a true and correct copy of an email exchange between Agent Fields, Manager Combs, and several other IRS employees as produced by the IRS in connection with civil tax litigation.

20. Attached hereto as Exhibit 19 is a true and correct copy of an email exchange between Agent Fields and Manager David Combs as produced by the IRS in response to the complaint filed in this case.

21. Attached hereto as Exhibit 20 is a true and correct copy of an email exchange between Agent Fields and Manager Combs as produced by the IRS in connection with civil tax litigation.

22. Attached hereto as Exhibit 21 is a true and correct copy of an email exchange between Tax Equity and Fiscal Responsibility Act Coordinator Tammy Chung, Agent Pamela Stafford, and Manager Catherine Brooks as produced by the IRS in connection with civil tax litigation.

23. Attached hereto as Exhibit 22 is a true and correct copy of a Penalty Consideration Lead Sheet as produced by the IRS in connection with civil tax litigation.

24. Attached hereto as Exhibit 23 is a true and correct copy of the declaration of Manager Brooks as filed in U.S. Tax Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: March 21, 2025
Washington, DC

/s/ Edmund P. Power
Edmund Power

Exhibit 1

From: [Fields Thomas E](#)
To: [Combs David M](#)
Subject: please sign one for each of the 3 audits.....they are PDF"s. Do those work best?
Date: Friday, March 11, 2022 3:59:29 PM
Attachments: [011-00.10 Leadsheet bass PDF for Dave to sign.pdf](#)
[011-00.10 Leadsheet ARDEN pdf.docx](#)
[011-00.10 Leadsheet DELW pdf.docx](#)
[I approve penalties \(6.49 KB\).msg](#)
[I approve penalties \(6.49 KB\).msg](#)
[I approve penalties \(6.50 KB\).msg](#)
[886A-2 - Penalties \(C\) with Index BASSWOOD .docx](#)
[886A-3 - Imputed Underpayment BASS.docx](#)

Ideally(?) the date you use to sign should be either the date you "approved" penalties against the Taxpayer (7/14/21)...or a little thereafter?

You can see Bass IMS has most of the workpapers that its SAIN 011 is ever going to have if you want to "look" at something before signing this form.

The other two cases will eventually have all the workpapers in IMS that Bass has in SAIN 011...and the other two will also eventually have all the workpapers that Bass will eventually have.

This penalty workpaper leadsheet I am asking you to sign is "copied" from what someone else's CE case that their manager signed...

I have attached the two penalty NOPA's for Basswood as "backup" for why you are supposed to sign these 3 forms.

All 3 of the cases have these same two Penalty 5701's....pretty identical.

Exhibit 2A

Fields Thomas E

From: Combs David M
Sent: Wednesday, July 14, 2021 3:45 PM
To: Fields Thomas E
Subject: I approve penalties

Arden Row SCE Case.

David Combs
Team 1694 Manager
Pontiac, MI 48340-2238
Telephone Number is 248-874-2212

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Monday, July 12, 2021 5:13 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: penalties

Dave,

This email is to inform you that there will very likely be penalties associated with the Arden Row Assets (conservation easement) audit.

I will forward any 5701's (I write up) to you for approval.

Tom Fields

Exhibit 2B

Fields Thomas E

From: Combs David M
Sent: Wednesday, July 14, 2021 3:45 PM
To: Fields Thomas E
Subject: I approve penalties

Basswood Aggregates SCE case.

David Combs
Team 1694 Manager
Pontiac, MI 48340-2238
Telephone Number is 248-874-2212

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Monday, July 12, 2021 5:13 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: FW: penalties

Dave,

This email is to inform you that there will very likely be penalties associated with the Basswood Aggregates (conservation easement) audit.

I will forward any 5701's (I write up) to you for approval.

Tom Fields

Exhibit 3



Department of the Treasury
Internal Revenue Service
SE:LB:EC:NC:TR9:Team1694
1270 Pontiac Road
Pontiac, MI 48340

Natural Aggregate Partners LLC
Matthew Kaynard
4355 Cobb Parkway, Suite J 555

Date:
03/03/2022
Partnership name:
Arden Row Assets, LLC
Partnership ID number (last 4 digits):
6870
Tax year ended:
2018
Person to contact:
Name: Tom Fields
Telephone:248-874-2308
Fax:877-267-4320
Hours:8:00am to 4:30pm
Employee ID number:
REDACTED
Partnership representative on file:
Natural Aggregate Partners LLC
Audit control number:
REDACTED
Response Date:
3/16/2022 (immediate)

Preliminary Partnership Examination Changes and Imputed Underpayment

Dear Partnership Representative:

We're enclosing Form 14791, Preliminary Partnership Examination Changes, Imputed Underpayment Computation and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts, and Form 886-A, Explanation of Items. Review the reports and tell us whether you agree or disagree by the response date above. Please reference the above audit control number in all communications going forward.

If you want a conference

Contact the examining agent above within 2 weeks from the date of this letter to schedule a date, time, and place for the conference. The examining agent will then discuss all proposed changes found in the report.

If you agree with the proposed changes and the imputed underpayment amount

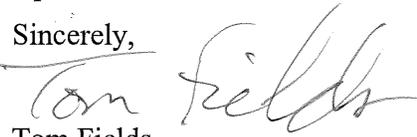
We'll send you and the partnership Letters 5892 and 5892-A, Notice of Proposed Partnership Adjustment (NOPPA).

If you don't agree with the proposed changes or if we don't hear from you

We'll issue you and the partnership Letter 5891, 30-Day Letter, if enough time remains on the partnership's statute of limitations. This letter provides information on how to file a protest and request for an Appeals conference.

Generally, at least 365 days must remain in the partnership's statute of limitations when Appeals receives your request for an Appeals conference. If Appeals needs additional time on the statute, we'll request your consent to extend the statute. If you don't consent to extend the statute, we'll close the case based on the proposed changes and send you and the partnership the NOPPA.

If you have questions, you can contact the person at the top of this letter.

Sincerely,

Tom Fields
Revenue Agent

Enclosures:
Form 14791
Forms 886-A

Exhibit 3A

Preliminary Partnership Examination Changes, Imputed Underpayment Computation and Partnership Level Determinations as to Penalties, Additions to Tax and Additional Amounts

Audit control number REDACTED	Tax year ended (mm/dd/yyyy) 12/31/2018
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Partnership Information

Name Arden Row Assets LLC			Taxpayer ID Number (TIN) REDACTED
Street address (including apartment no.) 4355 Cobb Parkway Suite J 555	City or town Atlanta	State GA	ZIP code 30339-4657

Person with Whom the Changes Were Discussed

Name Michael Stein	Title POA
-----------------------	--------------

General Imputed Underpayment

1. Reallocation Grouping	Subgroup	Positive Adjustment	Negative Adjustment
A.	<input checked="" type="checkbox"/>		
i.			
Subtotal for subgroup			
2. Sum of all net positive Reallocation Grouping adjustments (only include net positive adjustments in the total. See Line 3 for net negative adjustments)			
3. Sum of all net negative Reallocation Grouping Adjustments (only include net negative adjustments in the total. See Line 2 for net positive adjustments)			
4. Residual Grouping			
A. Sch K - Noncash contributions (50%) (Code C)	<input checked="" type="checkbox"/>		
i. Conservation Easement	57,080,000		
Subtotal for subgroup		57,080,000	
5. Sum of all net positive Residual Grouping adjustments (only include net positive adjustments in the total. See Line 6 for net negative adjustments)		57,080,000	
6. Sum of all net negative Residual Grouping adjustments (only include net negative adjustments in the total. See Line 5 for net positive adjustments)			
7. Sum of all net positive adjustments from Reallocation and Residual Groupings (add Lines 2 and 5). Total netted partnership adjustments		57,080,000	
8. Sum of all net negative adjustments from Reallocation and Residual Groupings (add Lines 3 and 6). This amount is ignored for calculating the imputed underpayment			
9. Highest effective tax rate for the tax year ended		37%	
10. Imputed Underpayment before Creditable Expenditures and Credit Groupings (multiply Line 7 by Line 9)		21,119,600	
11. Creditable Expenditures Grouping (decreases to creditable expenditures are positive adjustments and increases are negative adjustments)			
A.	<input checked="" type="checkbox"/>		
i.			
Subtotal for subgroup			
12. Sum of all net positive adjustments in the Creditable Expenditure Grouping (only include net positive adjustments in the total. See Line 13 for net negative adjustments)			

Name of partnership Arden Row Assets LLC		Taxpayer ID Number (TIN) REDACTED	Tax year ended 12/31/2018	Audit control number REDACTED
		Subgroup	Positive Adjustment	Negative Adjustment
13. Sum of all net negative adjustments in the Creditable Expenditure Grouping (only include net negative adjustments in the total. See Line 12 for net positive adjustments)				
14. Credit Grouping (decreases to credits are positive adjustments and increases are negative adjustments)		Subgroup	Positive Adjustment	Negative Adjustment
A.		<input checked="" type="checkbox"/>		
i.				
Subtotal for subgroup				
15. Sum of all net positive adjustments in the Credit Grouping (only include net positive adjustments in the total. See Line 16 for net negative adjustments)				
16. Sum of all net negative adjustments in the Credit Grouping (only include net negative adjustments in the total. See Line 15 for net positive adjustments)				
17. Imputed Underpayment (add Lines 10, 12 and 15)				21,119,600
18. Penalties			Code Section	Penalty Amount
A. Accuracy Related Penalty on Understatements with respect to Reportable Transactions			6662A	17,027
B. Gross Valuation Mistatement			6662(b)(3) & 6662l	8,413,785
19. Total Penalties with respect to the Imputed Underpayment (add all lines in 18)				8,430,812
20. Estimated interest				
Interest (IRC § 6233(a)(2)) estimated and computed to (mm/dd/yyyy)		Amount of interest		
Other information				

490 Activity Summary - **REDACTED** ARDE

FED - **_***6870 ARDEN ROW ASSETS LLC 1065 Tax Period: 2018/12

Run Method: IRS Default	Module Status: Open/(Open)
Interest To: 05/15/2022	
GATT Method: Retain Character (New)	GATT Date: 01/01/1995 Amount: \$10,000
LCU Method: Default IRS	LCU Interest Date: LCU Interest is OFF
Underpay Net Start: All Dates Included	Overpay Net Start: All Dates Included

Date Transcript	Date Start	Date Adj / End	Description	Susp/Equal	Principal	Balance
07/08/2019		03/15/2019	150 Return Filed & Assessed Tax Liability			
05/15/2022		03/15/2019	300 Additional Tax Assessment By Examinati		21,119,600.00	21,119,600.00
05/15/2022		09/15/2019	240 Miscellaneous Penalty 6662A		17,027.00	21,136,627.00
05/15/2022		09/15/2019	240 Miscellaneous Penalty 6662(b)(3)		8,413,785.00	29,550,412.00

Date	Description	Amount	Factor	Interest	Balance
03/15/2019	300 Additional Tax Assessment By Examina	21,119,600.00			21,119,600.00
03/16/2019 09/15/2019	Underpay	21,119,600.00	0.028534340	602,633.86	21,722,233.86
09/15/2019	240 Miscellaneous Penalty	17,027.00			
	240 Miscellaneous Penalty	8,413,785.00			30,153,045.86
09/16/2019 05/15/2022	Underpay	30,153,045.86	0.100422031	3,028,030.11	33,181,075.97

Account Summary:	As Computed	Per Transcript	Adjustment
Deficiency Interest	3,630,663.97		3,630,663.97
Overpayment Interest			
Principal Balance			29,550,412.00
	3,630,663.97		33,181,075.97

Exhibit 3B

Preliminary Partnership Examination Changes, Imputed Underpayment Computation and Partnership Level Determinations as to Penalties, Additions to Tax and Additional Amounts

Audit control number REDACTED	Tax year ended (mm/dd/yyyy) 12/31/2018
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Partnership Information

Name Basswood Aggregates LLC			Taxpayer ID Number (TIN) REDACTED
Street address (including apartment no.) 4355 Cobb Parkway Suite J 555	City or town Atlanta	State GA	ZIP code 30339-4657

Person with Whom the Changes Were Discussed

Name Michael Stein	Title POA
-----------------------	--------------

General Imputed Underpayment

1. Reallocation Grouping	Subgroup	Positive Adjustment	Negative Adjustment
A.	<input checked="" type="checkbox"/>		
i.			
Subtotal for subgroup			
2. Sum of all net positive Reallocation Grouping adjustments (only include net positive adjustments in the total. See Line 3 for net negative adjustments)			
3. Sum of all net negative Reallocation Grouping Adjustments (only include net negative adjustments in the total. See Line 2 for net positive adjustments)			
4. Residual Grouping			
A. Sch K - Noncash contributions (50%) (Code C)	<input checked="" type="checkbox"/>		
i. Conservation Easement	57,030,000		
Subtotal for subgroup		57,030,000	
5. Sum of all net positive Residual Grouping adjustments (only include net positive adjustments in the total. See Line 6 for net negative adjustments)		57,030,000	
6. Sum of all net negative Residual Grouping adjustments (only include net negative adjustments in the total. See Line 5 for net positive adjustments)			
7. Sum of all net positive adjustments from Reallocation and Residual Groupings (add Lines 2 and 5). Total netted partnership adjustments		57,030,000	
8. Sum of all net negative adjustments from Reallocation and Residual Groupings (add Lines 3 and 6). This amount is ignored for calculating the imputed underpayment			
9. Highest effective tax rate for the tax year ended		37%	
10. Imputed Underpayment before Creditable Expenditures and Credit Groupings (multiply Line 7 by Line 9)		21,101,100	
11. Creditable Expenditures Grouping (decreases to creditable expenditures are positive adjustments and increases are negative adjustments)			
A.	<input checked="" type="checkbox"/>		
i.			
Subtotal for subgroup			
12. Sum of all net positive adjustments in the Creditable Expenditure Grouping (only include net positive adjustments in the total. See Line 13 for net negative adjustments)			

Name of partnership Basswood Aggregates LLC		Taxpayer ID Number (TIN) REDACTED	Tax year ended 12/31/2018	Audit control number REDACTED
		Subgroup	Positive Adjustment	Negative Adjustment
13. Sum of all net negative adjustments in the Creditable Expenditure Grouping (only include net negative adjustments in the total. See Line 12 for net positive adjustments)				
14. Credit Grouping (decreases to credits are positive adjustments and increases are negative adjustments)		Subgroup	Positive Adjustment	Negative Adjustment
A.		<input checked="" type="checkbox"/>		
i.				
Subtotal for subgroup				
15. Sum of all net positive adjustments in the Credit Grouping (only include net positive adjustments in the total. See Line 16 for net negative adjustments)				
16. Sum of all net negative adjustments in the Credit Grouping (only include net negative adjustments in the total. See Line 15 for net positive adjustments)				
17. Imputed Underpayment (add Lines 10, 12 and 15)				21,101,100
18. Penalties			Code Section	Penalty Amount
A. Accuracy Related Penalty on Understatements with respect to Reportable Transactions			6662A	8,530
B. Gross Valuation Mistatement			6662(b)(3) & 6662i	8,423,379
19. Total Penalties with respect to the Imputed Underpayment (add all lines in 18)				8,431,909
20. Estimated interest				
Interest (IRC § 6233(a)(2)) estimated and computed to (mm/dd/yyyy)		Amount of interest		
Other information				

490 Activity Summary - **REDACTED** BASS

FED - **.***2742 BASSWOOD AGGREGATES LLC 1065 Tax Period: 2018/12

Run Method: IRS Default	Module Status: Open/(Open)
Interest To: 05/15/2022	
GATT Method: Retain Character (New)	GATT Date: 01/01/1995 Amount: \$10,000
LCU Method: Default IRS	LCU Interest Date: LCU Interest is OFF
Underpay Net Start: All Dates Included	Overpay Net Start: All Dates Included

Date Transcript	Date Start	Date Adj / End	Description	Susp/Equal	Principal	Balance
07/08/2019		03/15/2019	150 Return Filed & Assessed Tax Liability			
05/15/2022		03/15/2019	300 Additional Tax Assessment By Examinati		21,101,100.00	21,101,100.00
05/15/2022		09/15/2019	240 Miscellaneous Penalty 6662A		8,530.00	21,109,630.00
05/15/2022		09/15/2019	240 Miscellaneous Penalty 6662(b)(3)		8,423,909.00	29,533,539.00

Date	Description	Amount	Factor	Interest	Balance
03/15/2019	300 Additional Tax Assessment By Examina	21,101,100.00			21,101,100.00
03/16/2019 09/15/2019	Underpay	21,101,100.00	0.028534340	602,105.97	21,703,205.97
09/15/2019	240 Miscellaneous Penalty	8,530.00			
	240 Miscellaneous Penalty	8,423,909.00			30,135,644.97
09/16/2019 05/15/2022	Underpay	30,135,644.97	0.100422031	3,026,282.68	33,161,927.65

Account Summary:	As Computed	Per Transcript	Adjustment
Deficiency Interest	3,628,388.65		3,628,388.65
Overpayment Interest			
Principal Balance			29,533,539.00
	3,628,388.65		33,161,927.65

Exhibit 3C

Preliminary Partnership Examination Changes, Imputed Underpayment Computation and Partnership Level Determinations as to Penalties, Additions to Tax and Additional Amounts

Audit control number REDACTED	Tax year ended (mm/dd/yyyy) 12/31/2018
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Partnership Information

Name Delwood Resources LLC			Taxpayer ID Number (TIN) REDACTED
Street address (including apartment no.) 4355 Cobb Parkway Suite J 555	City or town Atlanta	State GA	ZIP code 30339-4657

Person with Whom the Changes Were Discussed

Name Michael Stein	Title POA
-----------------------	--------------

General Imputed Underpayment

1. Reallocation Grouping	Subgroup	Positive Adjustment	Negative Adjustment
A.	<input checked="" type="checkbox"/>		
i.			
Subtotal for subgroup			
2. Sum of all net positive Reallocation Grouping adjustments (only include net positive adjustments in the total. See Line 3 for net negative adjustments)			
3. Sum of all net negative Reallocation Grouping Adjustments (only include net negative adjustments in the total. See Line 2 for net positive adjustments)			
4. Residual Grouping			
A. Sch K - Noncash contributions (50%) (Code C)	<input checked="" type="checkbox"/>		
i. Conservation Easement	56,800,000		
Subtotal for subgroup		56,800,000	
5. Sum of all net positive Residual Grouping adjustments (only include net positive adjustments in the total. See Line 6 for net negative adjustments)		56,800,000	
6. Sum of all net negative Residual Grouping adjustments (only include net negative adjustments in the total. See Line 5 for net positive adjustments)			
7. Sum of all net positive adjustments from Reallocation and Residual Groupings (add Lines 2 and 5). Total netted partnership adjustments		56,800,000	
8. Sum of all net negative adjustments from Reallocation and Residual Groupings (add Lines 3 and 6). This amount is ignored for calculating the imputed underpayment			
9. Highest effective tax rate for the tax year ended		37%	
10. Imputed Underpayment before Creditable Expenditures and Credit Groupings (multiply Line 7 by Line 9)		21,016,000	
11. Creditable Expenditures Grouping (decreases to creditable expenditures are positive adjustments and increases are negative adjustments)			
A.	<input checked="" type="checkbox"/>		
i.			
Subtotal for subgroup			
12. Sum of all net positive adjustments in the Creditable Expenditure Grouping (only include net positive adjustments in the total. See Line 13 for net negative adjustments)			

Name of partnership Delwood Resources LLC		Taxpayer ID Number (TIN) REDACTED	Tax year ended 12/31/2018	Audit control number REDACTED
		Subgroup	Positive Adjustment	Negative Adjustment
13. Sum of all net negative adjustments in the Creditable Expenditure Grouping <i>(only include net negative adjustments in the total. See Line 12 for net positive adjustments)</i>				
14. Credit Grouping <i>(decreases to credits are positive adjustments and increases are negative adjustments)</i>		Subgroup	Positive Adjustment	Negative Adjustment
A.		<input checked="" type="checkbox"/>		
i.				
Subtotal for subgroup				
15. Sum of all net positive adjustments in the Credit Grouping <i>(only include net positive adjustments in the total. See Line 16 for net negative adjustments)</i>				
16. Sum of all net negative adjustments in the Credit Grouping <i>(only include net negative adjustments in the total. See Line 15 for net positive adjustments)</i>				
17. Imputed Underpayment <i>(add Lines 10, 12 and 15)</i>				21,016,000
18. Penalties			Code Section	Penalty Amount
A. Gross Valuation Mistatement			6662(b)(3) & 6662	8,361,896
19. Total Penalties with respect to the Imputed Underpayment <i>(add all lines in 18)</i>				8,361,896
20. Estimated interest				
Interest <i>(IRC § 6233(a)(2))</i> estimated and computed to <i>(mm/dd/yyyy)</i>		Amount of interest		
Other information				

490 Activity Summary - **REDACTED** DELW BBA

FED - **-*3164 DELWOOD RESOURCES LLC 1065 Tax Period: 2018/12

Run Method: IRS Default	Module Status: Open/(Open)
Interest To: 05/15/2022	
GATT Method: Retain Character (New)	GATT Date: 01/01/1995 Amount: \$10,000
LCU Method: Default IRS	LCU Interest Date: LCU Interest is OFF
Underpay Net Start: All Dates Included	Overpay Net Start: All Dates Included

Date Transcript	Date Start	Date Adj / End	Description	Susp/Equal	Principal	Balance
07/08/2019		04/15/2019	150 Return Filed & Assessed Tax Liability			
05/15/2022		04/15/2019	300 Additional Tax Assessment By Examinati		21,016,000.00	21,016,000.00
05/15/2022		09/15/2019	240 Miscellaneous Penalty 6662(b)(3)		8,361,896.00	29,377,896.00

Date	Description	Amount	Factor	Interest	Balance
04/15/2019	300 Additional Tax Assessment By Examina	21,016,000.00			21,016,000.00
04/16/2019 09/15/2019	Underpay	21,016,000.00	0.023306803	489,815.76	21,505,815.76
09/15/2019	240 Miscellaneous Penalty	8,361,896.00			29,867,711.76
09/16/2019 05/15/2022	Underpay	29,867,711.76	0.100422031	2,999,376.28	32,867,088.05

Account Summary:	As Computed	Per Transcript	Adjustment
Deficiency Interest	3,489,192.05		3,489,192.05
Overpayment Interest			
Principal Balance			29,377,896.00
	3,489,192.05		32,867,088.05

Exhibit 4

From: [Combs David M](#)
To: [Fields Thomas E](#)
Subject: RE: please sign one for each of the 3 audits.....they are PDF"s. Do those work best?
Date: Monday, March 14, 2022 3:52:03 PM
Attachments: [011-00.10 Penalty Leadsheet bass PDF for Dave to sign.pdf](#)
[011-00.10 Leadsheet ARDEN pdf.pdf](#)
[011-00.10 Leadsheet DELW pdf.pdf](#)

Hello Tom,

All 3 are signed with date of July 14, 2021. Thanks for giving me all the "backup" too!!

David Combs
Team 1694 Manager
Pontiac, MI 48340-2238
Telephone Number is 248-874-2212

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Friday, March 11, 2022 4:00 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: please sign one for each of the 3 audits.....they are PDF's. Do those work best?

Ideally(?) the date you use to sign should be either the date you "approved" penalties against the Taxpayer (7/14/21)...or a little thereafter?

You can see Bass IMS has most of the workpapers that its SAIN 011 is ever going to have if you want to "look" at something before signing this form.

The other two cases will eventually have all the workpapers in IMS that Bass has in SAIN 011...and the other two will also eventually have all the workpapers that Bass will eventually have.

This penalty workpaper leadsheet I am asking you to sign is "copied" from what someone else's CE case that their manager signed...

I have attached the two penalty NOPA's for Basswood as "backup" for why you are supposed to sign these 3 forms.

All 3 of the cases have these same two Penalty 5701's....pretty identical.

Exhibit 4A

Penalty Consideration

Taxpayer(s): Arden Row Assets, LLC		Year(s): 201812				
Code Section	Penalty Description	IRM	Assert Penalty		Position (primary or alternative)	SAIN WP REF.
			YES	NO		
6651(a)(1)	Failure to File (<i>Lead Sheet Available</i>)	20.1.2.3.7		X		
6651(a)(2)	Failure to Pay (<i>Lead Sheet Available</i>)	20.1.2.3.8		X		
6651(f)	Fraudulent Failure to File, Civil	20.1.2.3.7.5		X		
6654	Estimated Tax – Individual and Fiduciary	20.1.3.3		X		
6655	Estimated Tax – Corporate	20.1.3.4		X		
6662(a)/(b)(1)/(c)	Negligence or Disregard (<i>Lead Sheet Available</i>)	20.1.5.8	X			011-00.20 and 011-00.40
6662(a)/(b)(2)/(d)*	Substantial Understatement (<i>Lead Sheet Available</i>)	20.1.5.9	X			011-00.20, 011-00.50
6662(a)/(b)(3)/(e)	Substantial Valuation Misstatement	20.1.5.10	X			011-00.20
6662(a)/(b)(4)/(f)	Substantial Overstatement of Pension Liabilities	20.1.5.11		x		
6662(a)/(b)(5)/(g)	Substantial Estate or Gift Tax Valuation Overstatement	20.1.5.12		x		
6662(a)/(h)	Gross Valuation Misstatement Note: If this penalty is asserted, the row for the 6662(b)(3) / (e) (substantial valuation misstatement) penalty should have a check in the “YES” column.	20.1.5.10.3	X			011-00.20
6662(a)/(b)(6)	Accuracy Related Penalty-Noneconomic Substance Transaction	20.1.5.13		X		
6662(a)/(i)	Increased rate (40%) for Nondisclosed Noneconomic Substance Transaction Note: If this penalty is asserted, the row for the 6662(b)(6) penalty (noneconomic substance transaction) should have a check in the “YES” column.	20.1.5.13.1		X		
6662(a)/(b)(7)/(j)	Undisclosed Foreign Financial Asset Understatement	20.1.5.14		X		
6662(a)/(b)(8)/(k)	Inconsistent Estate Basis Reporting	20.1.5.15		X		
6662(a)/(b)(9) and (l)	<i>Effective for tax years beginning after 12/31/2020:</i> Penalty (50%) for overstatement of Qualified Charitable Contributions (deduction under 170(p))	20.1.5.15.1		X		
6662A(a)	Accuracy Related Penalty on Understatements with Respect to Reportable Transactions	20.1.5.17	X			011-00.20
6662A(c)	Increased rate (30%) for Nondisclosed Reportable Transaction Understatements Note: If this penalty is asserted, the row for the 6662A(a) penalty should have a check in the “YES” column.	20.1.5.17	X			011-00.20

Penalty Consideration

6663	Civil fraud	20.1.5.16		X		
6676*	Erroneous claim for refund or credit	20.1.5.18		X		
6707A	Failure to Include reportable transaction Information with Return or Statement	4.32.4 20.1.6.17		X		
Code Section	Penalty Description	IRM	Assert Penalty		Position (primary or alternative)	SAIN WP REF.
			YES	NO		
Other (For Penalty Not Shown)						
Preparer, Promoter and Material Advisor Penalties						
6694(a)	Preparer Penalties - Understatements due to unrealistic positions	20.1.6.4.6		X		
6694(b)	Preparer Penalties - Willful or reckless conduct	20.1.6.4.13		X		
6700	Promoting abusive tax shelters	20.1.6.13		X		
6701	Aiding & abetting understatement of tax liability	20.1.6.14		X		
6707	Failure to furnish information regarding reportable transactions	20.1.6.16		X		
6708	Failure to Maintain Lists of Advisees with respect to reportable transactions	20.1.6.18		X		
<p>* Non-Assertion of Penalties: For the substantial understatement penalty in 6662(b)(2) and (d) and the penalty for an erroneous refund/claim under 6676, supervisory approval is required for both assertion and non-assertion of the penalty if either penalty could apply. The case file should contain the rationale for not asserting either penalty. IRM 20.1.5.9.2 at (3) (08-31-2021) and 20.1.5.18.5 at (17) (08-31-2021).</p>						
YES	NO					
	X	No Change Case				
	X	Other - Explanation Required, W/P Reference _____				
		Supervisory signature for non-assertion of IRC 6662(d): _____				
		Supervisory signature for non-assertion of IRC 6676: _____				
Supervisory Approval of Penalty:						
<p>I, <u>David Combs</u>, am the immediate supervisor or acting immediate supervisor of <u>Thomas Fields</u>, who made the initial determination to assert the penalties indicated on this form for the year(s) indicated on this form. By my signature below, I approve that initial determination.</p>						
Signature: _____ 						
Date: <u>July 14, 2021</u>						
Title: Manager of Team 1694						
Supervisory involvement in penalty approval process should be properly documented. Exception see IRM 20.1.5.2.3(4)						

Exhibit 4B

Penalty Consideration

Taxpayer(s): Basswood Aggregates LLC		Year(s): 201812				
Code Section	Penalty Description	IRM	Assert Penalty		Position (primary or alternative)	SAIN WP REF.
			YES	NO		
6651(a)(1)	Failure to File (<i>Lead Sheet Available</i>)	20.1.2.3.7		X		
6651(a)(2)	Failure to Pay (<i>Lead Sheet Available</i>)	20.1.2.3.8		X		
6651(f)	Fraudulent Failure to File, Civil	20.1.2.3.7.5		X		
6654	Estimated Tax – Individual and Fiduciary	20.1.3.3		X		
6655	Estimated Tax – Corporate	20.1.3.4		X		
6662(a)/(b)(1)/(c)	Negligence or Disregard (<i>Lead Sheet Available</i>)	20.1.5.8	X			011-00.20 and 011-00.40
6662(a)/(b)(2)/(d)*	Substantial Understatement (<i>Lead Sheet Available</i>)	20.1.5.9	X			011-00.20, 011-00.50
6662(a)/(b)(3)/(e)	Substantial Valuation Misstatement	20.1.5.10	X			011-00.20
6662(a)/(b)(4)/(f)	Substantial Overstatement of Pension Liabilities	20.1.5.11		x		
6662(a)/(b)(5)/(g)	Substantial Estate or Gift Tax Valuation Overstatement	20.1.5.12		x		
6662(a)/(h)	Gross Valuation Misstatement Note: If this penalty is asserted, the row for the 6662(b)(3) / (e) (substantial valuation misstatement) penalty should have a check in the “YES” column.	20.1.5.10.3	X			011-00.20
6662(a)/(b)(6)	Accuracy Related Penalty-Noneconomic Substance Transaction	20.1.5.13		X		
6662(a)/(i)	Increased rate (40%) for Nondisclosed Noneconomic Substance Transaction Note: If this penalty is asserted, the row for the 6662(b)(6) penalty (noneconomic substance transaction) should have a check in the “YES” column.	20.1.5.13.1		X		
6662(a)/(b)(7)/(j)	Undisclosed Foreign Financial Asset Understatement	20.1.5.14		X		
6662(a)/(b)(8)/(k)	Inconsistent Estate Basis Reporting	20.1.5.15		X		
6662(a)/(b)(9) and (l)	<i>Effective for tax years beginning after 12/31/2020:</i> Penalty (50%) for overstatement of Qualified Charitable Contributions (deduction under 170(p))	20.1.5.15.1		X		
6662A(a)	Accuracy Related Penalty on Understatements with Respect to Reportable Transactions	20.1.5.17	X			011-00.20
6662A(c)	Increased rate (30%) for Nondisclosed Reportable Transaction Understatements Note: If this penalty is asserted, the row for the 6662A(a) penalty should have a check in the “YES” column.	20.1.5.17	X			011-00.20

Penalty Consideration

6663	Civil fraud	20.1.5.16		X		
6676*	Erroneous claim for refund or credit	20.1.5.18		X		
6707A	Failure to Include reportable transaction Information with Return or Statement	4.32.4 20.1.6.17		X		
Code Section	Penalty Description	IRM	Assert Penalty		Position (primary or alternative)	SAIN WP REF.
			YES	NO		
Other (For Penalty Not Shown)						
Preparer, Promoter and Material Advisor Penalties						
6694(a)	Preparer Penalties - Understatements due to unrealistic positions	20.1.6.4.6		X		
6694(b)	Preparer Penalties - Willful or reckless conduct	20.1.6.4.13		X		
6700	Promoting abusive tax shelters	20.1.6.13		X		
6701	Aiding & abetting understatement of tax liability	20.1.6.14		X		
6707	Failure to furnish information regarding reportable transactions	20.1.6.16		X		
6708	Failure to Maintain Lists of Advisees with respect to reportable transactions	20.1.6.18		X		
<p>* Non-Assertion of Penalties: For the substantial understatement penalty in 6662(b)(2) and (d) and the penalty for an erroneous refund/claim under 6676, supervisory approval is required for both assertion and non-assertion of the penalty if either penalty could apply. The case file should contain the rationale for not asserting either penalty. IRM 20.1.5.9.2 at (3) (08-31-2021) and 20.1.5.18.5 at (17) (08-31-2021).</p>						
YES	NO					
	X	No Change Case				
	X	Other - Explanation Required, W/P Reference _____				
		Supervisory signature for non-assertion of IRC 6662(d): _____				
		Supervisory signature for non-assertion of IRC 6676: _____				
Supervisory Approval of Penalty:						
<p>I, <u>David Combs</u>, am the immediate supervisor or acting immediate supervisor of <u>Thomas Fields</u>, who made the initial determination to assert the penalties indicated on this form for the year(s) indicated on this form. By my signature below, I approve that initial determination.</p>						
Signature: <u>David Combs</u>						
Date: <u>July 14, 2021</u>						
Title: <u>Manager of Team 1694</u>						
Supervisory involvement in penalty approval process should be properly documented. Exception see IRM 20.1.5.2.3(4)						

Exhibit 4C

Penalty Consideration

Taxpayer(s): Delwood Resources LLC		Year(s): 201812				
Code Section	Penalty Description	IRM	Assert Penalty		Position (primary or alternative)	SAIN WP REF.
			YES	NO		
6651(a)(1)	Failure to File (<i>Lead Sheet Available</i>)	20.1.2.3.7		X		
6651(a)(2)	Failure to Pay (<i>Lead Sheet Available</i>)	20.1.2.3.8		X		
6651(f)	Fraudulent Failure to File, Civil	20.1.2.3.7.5		X		
6654	Estimated Tax – Individual and Fiduciary	20.1.3.3		X		
6655	Estimated Tax – Corporate	20.1.3.4		X		
6662(a)/(b)(1)/(c)	Negligence or Disregard (<i>Lead Sheet Available</i>)	20.1.5.8	X			011-00.20 and 011-00.40
6662(a)/(b)(2)/(d)*	Substantial Understatement (<i>Lead Sheet Available</i>)	20.1.5.9	X			011-00.20, 011-00.50
6662(a)/(b)(3)/(e)	Substantial Valuation Misstatement	20.1.5.10	X			011-00.20
6662(a)/(b)(4)/(f)	Substantial Overstatement of Pension Liabilities	20.1.5.11		x		
6662(a)/(b)(5)/(g)	Substantial Estate or Gift Tax Valuation Overstatement	20.1.5.12		x		
6662(a)/(h)	Gross Valuation Misstatement Note: If this penalty is asserted, the row for the 6662(b)(3) / (e) (substantial valuation misstatement) penalty should have a check in the “YES” column.	20.1.5.10.3	X			011-00.20
6662(a)/(b)(6)	Accuracy Related Penalty-Noneconomic Substance Transaction	20.1.5.13		X		
6662(a)/(i)	Increased rate (40%) for Nondisclosed Noneconomic Substance Transaction Note: If this penalty is asserted, the row for the 6662(b)(6) penalty (noneconomic substance transaction) should have a check in the “YES” column.	20.1.5.13.1		X		
6662(a)/(b)(7)/(j)	Undisclosed Foreign Financial Asset Understatement	20.1.5.14		X		
6662(a)/(b)(8)/(k)	Inconsistent Estate Basis Reporting	20.1.5.15		X		
6662(a)/(b)(9) and (l)	<i>Effective for tax years beginning after 12/31/2020:</i> Penalty (50%) for overstatement of Qualified Charitable Contributions (deduction under 170(p))	20.1.5.15.1		X		
6662A(a)	Accuracy Related Penalty on Understatements with Respect to Reportable Transactions	20.1.5.17	X			011-00.20
6662A(c)	Increased rate (30%) for Nondisclosed Reportable Transaction Understatements Note: If this penalty is asserted, the row for the 6662A(a) penalty should have a check in the “YES” column.	20.1.5.17	X			011-00.20

Penalty Consideration

6663	Civil fraud	20.1.5.16		X		
6676*	Erroneous claim for refund or credit	20.1.5.18		X		
6707A	Failure to Include reportable transaction Information with Return or Statement	4.32.4 20.1.6.17		X		
Code Section	Penalty Description	IRM	Assert Penalty		Position (primary or alternative)	SAIN WP REF.
			YES	NO		
Other (For Penalty Not Shown)						
Preparer, Promoter and Material Advisor Penalties						
6694(a)	Preparer Penalties - Understatements due to unrealistic positions	20.1.6.4.6		X		
6694(b)	Preparer Penalties - Willful or reckless conduct	20.1.6.4.13		X		
6700	Promoting abusive tax shelters	20.1.6.13		X		
6701	Aiding & abetting understatement of tax liability	20.1.6.14		X		
6707	Failure to furnish information regarding reportable transactions	20.1.6.16		X		
6708	Failure to Maintain Lists of Advisees with respect to reportable transactions	20.1.6.18		X		
<p>* Non-Assertion of Penalties: For the substantial understatement penalty in 6662(b)(2) and (d) and the penalty for an erroneous refund/claim under 6676, supervisory approval is required for both assertion and non-assertion of the penalty if either penalty could apply. The case file should contain the rationale for not asserting either penalty. IRM 20.1.5.9.2 at (3) (08-31-2021) and 20.1.5.18.5 at (17) (08-31-2021).</p>						
YES	NO					
	X	No Change Case				
	X	Other - Explanation Required, W/P Reference _____				
		Supervisory signature for non-assertion of IRC 6662(d): _____				
		Supervisory signature for non-assertion of IRC 6676: _____				
Supervisory Approval of Penalty:						
<p>I, <u>David Combs</u>, am the immediate supervisor or acting immediate supervisor of <u>Thomas Fields</u>, who made the initial determination to assert the penalties indicated on this form for the year(s) indicated on this form. By my signature below, I approve that initial determination.</p>						
Signature: <u>David Combs</u>						
Date: <u>July 14, 2021</u>						
Title: <u>Manager of Team 1694</u>						
Supervisory involvement in penalty approval process should be properly documented. Exception see IRM 20.1.5.2.3(4)						

Exhibit 5

Bipartisan Budget Act (BBA) Partnership Procedures Check Sheet

A separate check sheet is required for each tax period under exam.

Partnership name Arden Row Assets LLC	EIN REDACTED	Tax period 201812	Audit Control Number (ACN) REDACTED
Partnership Representative (PR) at time of transfer to Technical Services (Status 21) Name <u>Natural Aggregate Partners LLC</u> Date _____		IRC 6235(a)(1) (Statute date at the time of transfer to Technical Services (status 21)) 6/13/2022	
Designated Individual (DI) at time of transfer to Technical Services (Status 21) Name <u>Matthew S. Kaynard</u> Date _____			
Agent's signature Thomas E. Fields Digitally signed by Thomas E. Fields Date: 2021.11.22 19:45:41 -05'00'	Name of Tax Computation Specialist (TCS) Matt Moss		TCS Telephone number 616-365-4632
Manager's name David Combs	Manager's signature  Digitally signed by David M. Combs Date: 2022.05.04 16:44:13 -04'00'		

Managerial involvement and signature are REQUIRED. See instructions section below for more information.

Part 1 – Planning the Examination

Action	Date Completed	W/P Reference
(1) Complete Form 15260, Determination of Pass-through Audit Regime before completing this form REMINDER: Determining the incorrect pass-through audit regime can create examination delays or barred statutes.	11/22/2021	724-00.00-
(2) Determine the IRC 6235(a)(1) statute date (MM/DD/YYYY) <u>6/13/2022</u> <ul style="list-style-type: none"> • Confirm that the "IRC6235A1-PPA-DEADLINE-DT" is on ERCS and is correct. Update if necessary. • You are responsible for the IRC 6235(a)(1) date, which is 3 years after the later of: <ul style="list-style-type: none"> - The date the tax return was filed - The return due date for the taxable year, or - The date on which the latest AAR was filed NOTE: Or an extended date if a Form 872-M was secured to extend the 6235(a)(1) date. REMINDER: There must be at least 12 months on the IRC 6235(a)(1) statute of limitations to begin the exam. Managerial approval is required to start the exam if there is less than 12 months on this statute.	11/22/2021	713-01.00-
(3) Conduct risk assessment by evaluating the overall partnership structure <ul style="list-style-type: none"> • Is this an SFR or delinquent return? (If yes, see the instructions) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No • Do Special Allocations exist <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No • Do Chapter 3 (foreign withholding) and 4 (tax on certain foreign accounts) issues exist? (If you have Chapter 3 or 4 issues, see the BBA Interim Guidance Memorandum LB&I-04-1019-0010) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No • Was a BBA AAR filed? (If yes, see AAR section 7 below) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 		
(4) Determine the applicability of Chapter 2 (SECA)/Chapter 2A (NIIT) <ul style="list-style-type: none"> • Complete Form 15263, BBA Partnership Chapter 2/2A Relevant Partner Determination Check Sheet to determine if any Chapter 2/2A issues impact any partners <ul style="list-style-type: none"> - Do Chapter 2 (Tax on Self-Employment Income – "SECA") issues exist <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No - Do Chapter 2A (Unearned Income Medicare Contribution – "NIIT") issues exist <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No • If yes to either, Form 15264, BBA Chapter 2/2A Linkage Check Sheet must be submitted within 60 days of issuing the NAP. • Your answer must match your Yes/No determination per Form 15263 NOTE: if Ch 2/2A issues are present you will need a contact for Ch 2/2A issues in addition to a Partnership Representative of record. See item 6 below for the Chapter 1 issues developed under the Centralized Partnership Audit Regime.	11/22/2021	724-03.00

Exhibit 6



Macdonald "Mac" A. Norman
+1 (404) 239-2064
mac@toddweltypc.com

October 4, 2022

VIA FACSIMILE: (877) 267-4320

Thomas E. Fields
Internal Revenue Service
1270 Pontiac Road
Pontiac, MI. 48340-2238

RE: Arden Row Assets LLC - Request for Complete Administrative File

Dear Mr. Fields:

We are writing with regard to Arden Row Assets LLC (EIN: 83-2536870) ("Partnership"), and your audit of its 2018 Form 1065 (U.S. Return of Partnership Income). Please see the relevant Form 2848 on file with the IRS.

We understand that you have issued a Notice of Proposed Partnership Adjustment ("NOPPA"), and the Internal Revenue Service ("IRS") is now preparing the Final Partnership Adjustments ("FPA") or similar document. **We request that you send us a copy of the complete administrative file related to the audit of the Partnership, as described below.**

I.R.M. 4.2.5.6 (03-16-2022) states as follows: "Under IRC 6103(e), Disclosure to Persons Having Material Interest, taxpayers have a right to receive their return information (administrative file and workpapers) unless the Secretary determines that the release of the information would seriously impair tax administration. Examiners should provide the taxpayer and their POA a copy of the file and workpapers for open examinations directly when asked"

In addition, in 2019, IRS Chief Counsel, Michael Desmond, stated publicly that IRS administrative files are available from the Revenue Agent upon request at the conclusion of an audit and that there is no need to file a separate request under the Freedom of Information Act ("FOIA"). This is substantively the same as the Memorandum for Distribution by Chief Privacy Officer Robert S. Choi, dated March 14, 2022, regarding "Freedom of Information Act (FOIA) Obligations and Transparency" (the "FOIA Memorandum").¹ In relevant part, the FOIA Memorandum states as follows:

¹ ROBERT S. CHOI, INTERNAL REVENUE SERVICE, FREEDOM OF INFORMATION ACT (FOIA) OBLIGATIONS AND TRANSPARENCY (MAR. 14, 2022), <https://www.irs.gov/pub/irs-utl/freedom-of-information-act-obligations-and-transparency-memo.pdf>.

Request for Complete Administrative File

October 4, 2022

Page 2 of 3

Open compliance files should be made available to taxpayers and/or their authorized representatives without directing them to submit a FOIA request. Under Internal Revenue Code § 6103, taxpayers have a right to receive copies of these files to the extent release will not impair tax administration.

Accordingly, as noted above, please send us a copy of the complete administrative file related to the audit of the Partnership. To the extent that you cannot provide the complete administrative file at this time, please send us the materials on a "rolling production" schedule, as they become available, until you have provided all requested materials. In addition, if new materials become available, please supplement your response to our request for the complete administrative file after your initial submissions.

For sake of clarity, please note that the term "complete administrative file" herein includes, but is not limited to, the following items:

- Any documents containing proposed or actual adjustments by the IRS as well as the basis for such adjustments.
- Any activity logs, requests for legal advice, lead sheets, fraud development recommendation letters, any interview questions, any notes taken during an interview, any e-mail correspondence, and any and all similar materials for all IRS employees, including persons contracted by the IRS and any third parties with any involvement with the audit.
- Any draft and final appraisals, reports, analyses, studies, or similar materials relating to the real property and/or conservation easement placed on real property held by the Partnership.
- Details about all contacts made by IRS employees or persons contracted by the IRS (i) with any third parties pursuant to Section 7602 of the Internal Revenue Code, (ii) with any of the partners/members in the Partnership, and/or (iii) with any prior owners of the property held by the Partnership that was protected via a conservation easement and/or donated in fee simple. The details should include (i) name of the person contacted, (ii) contact information for person contacted, (iii) date of contact, (iv) manner of contact, i.e., by phone, email, correspondence, or in person, (v) reason for contact, (vi) content of contact, (vii) copies of any documents received in response to contact, (viii) name and title of person initiating the contact for or on behalf of the IRS, and (ix) description of efforts to receive the information or documentation from the Partnership Representative or another Partnership representative before making contact with the person.

Request for Complete Administrative File

October 4, 2022

Page 3 of 3

Please contact me at (404) 239-2064 if there is anything further that the Partnership needs to do to obtain a copy of the complete administrative file from you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Macdonald' followed by a stylized flourish.

Macdonald "Mac" A. Norman, Esq.

Todd Welty, P.C.

DIRECT +1 (404) 239-2064

MOBILE +1 (903) 658-0663

FAX +1 (678) 840-3481

mac@toddweltypc.com

cc: Matthew Kaynard, Esq.

Exhibit 7

Date: 2-21-2023
To: MacDonald Norman, Attorney at Todd Welty PC
From: Tom Fields, LB&I Revenue Agent, 248-874-2308
Dave Combs, Manager 248-874-2212
Subject: Direct Release of Open Compliance File
Taxpayer: Arden Row Assets LLC
EIN: **REDACTED** Tax Year: 201812

On 10/4/22, you requested a copy of the administrative/exam/audit file on an "open compliance file" for the taxpayer identified above. This type of request is known as a Direct Release Request.

You have received, or will receive upon closing of the examination, certain examination administrative file records. The examination administrative file also contains records submitted to the IRS by the taxpayer. Records that have been, or will be, provided to you in the course of the examination and records submitted by the taxpayer will not be provided in response to your request. Examples of these records include but are not limited to: tax and information returns filed by the taxpayer, correspondence between the taxpayer and the IRS, Information Document Requests and the taxpayer's responses, Revenue Agent Reports, Examination Reports, Engineering Reports, 60-Day Letters, Summary Reports, Notices of Proposed Adjustment, Notices of Proposed Partnership Adjustment, Notices of Final Partnership Administrative Adjustment, Notices of Final Partnership Adjustment, and appraisals and similar materials relating to any real or personal property.

During the examination, the IRS advised you of the taxpayer's right to request a record of third-party contacts. And I believe you made such a request. (But there were not any third party contacts made during the course of this audit.) If you made such a request, you have received Letter 3173 from the Third-Party Contact Coordinator. We are not providing a list of third parties contacted in this response.

The following documents from the examination administrative file are provided on the enclosed thumb drive/disc. The password will be sent to you under separate cover.

1. Standard Audit Index Number (SAIN) Lead Sheets
2. Activity records
3. Workpapers
4. Notes of meetings and interviews (all such were between POA's and Agent)
5. Emails (such as those approving penalties)

There may be records not provided or provided in part (redacted) if they are subject to a privilege or if their release would impair tax administration (IRC 6103(e)(7)).

Please note "Direct Release" is in-place to facilitate taxpayers' access to their record(s) in the most efficient manner possible and is not intended to be utilized parallel to FOIA – i.e., for the same records. In the event the IRS identifies a request has been submitted through both "Direct Release" and FOIA, for essentially the same record(s), the IRS may decline to honor future "Direct Release" requests from the requester, the requester's firm or the taxpayer on whose behalf the request is made for a period of 12 months.

My contact information is provided above.

ARDEN ROW ASSETS FILES FROM HARD DRIVE & IMS

AGENT: Tom Fields emails

10/02/2020 Appraiser requests info from Agent
07/14/2021 Manager Dave Combs approves penalties
08/27/2021 DR Kenny 6695A Final Appraiser Penalty Memo Arden EA
08/27/2021 DR Kenny 6695A Final Appraiser Penalty Memo Arden EA
08/30/2021 Appraiser report (IRS)
08/30/2021 Engineer Appraiser sends ROV report
09/01/2021 Engineer manager sends 6695A for penalty on R Kenny
09/01/2021 Manager sends approved 6695A penalty for DR Kenny
12/21/2021 Arden 895 signed and filed
03/02/2022 Received Form 14791 and 14792 from TCS
03/09/2022 Manager Dave Combs signs the 15260
03/14/2022 Manager Dave Combs signs 3 penalty lead sheets
03/30/2022 Manager Dave Combs approves the NOPPA
04/07/2022 Manager Dabe Combs approves all three 5701's
04/22/2022 Manager Dave Combs approves 5701-003
04/26/2022 Manager Dave Combs approves seeking statute extension
04/26/2022 Manager Dave Combs approves new Summary Report packages
04/28/2022 Manager Dave Combs signs all three 5701's

AGENT: Tom Fields Hard Drive and IMS items

004-02.00- Audit plan mailed out 11 19 2021
004-06.00- 12 16 2020 initial interview for 3 Cons Easement Audits
005-03.00- Time reports
005-03.01- Time reports
005-03.02- Time reports
005-04.00- Specialist Referral requests
005-08.00- Risk Analysis
005-08.40- Examination timeline
010-00.02- Rebuttal
011-00.00- Index
011-00.10- Arden Penalty Consideration signed by Dave 7 14 2021
011-00.20- Penalty Calculations
011-00.40- Negligence Lead Sheet
011-00.50- Substantial Understatement Penalty Lead Sheet
011-00.60- Reasonable Cause Lead Sheet
011-00.70- Penalty Approval Form re: Doug Kenny
011-16.00- 4 7 2022 Counsel approved two penalty 886A's
016-05.00- 11 4 2020 mailing of all letters again
016-06.00- 11 4 2020 mailing of all letters again
016-07.00- 11 5 2020 mailing of NAP letter
016-08.00- 11 5 2020 mailing of NAP letter 5893
016-09.00- 11 5 2020 mailing of NAP letter 5893
016-12.00- 12 16 2020 initial interview for all 3 audits (at once)

016-18.00- 1 26 2021 telecon with POA
016-19.00- 1 29 2021 mailing Letter 3164E
016-22.00- 2 18 2021 telecon with new POA
016-27.00- 4 27 2021 email faxing 872 and 907M letters
016-29.00- 4 27 2021 faxing 872Ms and 907M letters
016-31.00- 5 7 2021 correspondnce with POA re 3164 E letter
016-32.00- 5 20 2021 telecon with POA's
016-33.00- 6 16 2021 email with POA re: extending the statute
016-33.50- 6 24 2021 email with POA re 872
016-33.70- 6 29 2021 email from POA re: statute extension
016-33.80- 6 30 2021 POA email stating no statute extension to be forthcoming
016-38.00- 8 3 2021 telecon with POA's
016-39.00- 8 5 2021 email with POA's
016-44.00- 11 19 2021 sending exam timeline and audit plan and risk analysis
016-45.00- 2 8 2022 Letter 5893A mailed
016-46.00- 2 8 2022 Letter 5893A mailed to POA
016-47.00- Letter 3253 explanation why not sent
016-49.00- Letter 5895 mailed 3 3 2022 with IU workbook and returned 14791
016-50.50- 4 7 2022 Counsel approval of 886A-1
016-50.55- 4 7 2022 Counsel approved two penalty 886A's
016-50.60- 4 7 2022 Manager approves Summary Report Package
016-52.00- 4 11 2022 5893A form mailed out
016-53.00- 4 26 2022 Manager approval to send out a revised Summary Report Package
024-01.00- Risk Analysis
519-00.00- Lead Sheet
519-00.20- Perpetuity
519-00.30- Conservation Purpose
519-00.40- Qualified Appraisal Requirements
519-00.50- Valuation
519-00.60- Amount of Deduction
519-00.80- Landowner's return
519-00.90- Fee Simple Interest
519-05.00- 4 7 2022 Counsel approval of 886A-1
624-01.00- Negligence Lead Sheets
624-20.00- 4 7 2022 Counsel approved two penalty 886A's
724-00.00- Form 15260 signed by Manager
724-02.00- Form 15262
724-03.00- Form 15263 signed by Manager 3 3 2022
724-05.00- ACN Audit Control Number assigned after NAP
724-06.00- 6 30 2021 email from POA saying no to statute extensions
724-19.00- 3 30 2022 Manager approves NOPPA package
724-20.00- 4 7 2022 Manager approves Summary Report Package
724-24.00- 4 26 2022 Manager approval to send out revised Summary Report Package

Exhibit 8



KEVIN JOHNSON
+1 (404) 835-1601
kjohnson@toddweltypc.com

July 26, 2023

Via Email: kristin.h.joe@irscounsel.treas.gov

Kristin H. Joe
Internal Revenue Service
33 Maiden Lane, 12th Floor
New York, NY 10038

**RE: Basswood Aggregates LLC, Basswood Partners, LLC, Partnership
Representative v. Commissioner (Docket No. 3820-23)**

Dear Ms. Joe,

We are writing to request information and documents to better understand Respondent's position with respect to his alleged compliance with section 6751(b)(1) with respect to the penalties asserted in this case. In the spirit of *Branerton Corp. v. Commissioner*, 61 T.C. 691 (1974), we would appreciate your response to our informal discovery requests by August 15, 2023. Please note that our discovery requests are continuing in nature to the extent permitted under the Tax Court's Rules, and Respondent is under a duty to supplement his responses promptly with respect to any request if additional information should come to his attention at any time before the conclusion of the trial in this case.

Definitions

- A. 2018 Form 1065: This phrase refers to the Form 1065 (U.S. Return of Partnership Income) for the Partnership's 2018 Tax Year.
- B. 2018 Tax Year: This phrase refers to the tax period ended December 31, 2018.
- C. RA Fields: This phrase refers to Revenue Agent Thomas E. Fields.
- D. TM Combs: This phrase refers to Team Manager David M. Combs.
- E. Audit: This term refers to Your audit or examination of the Partnership's 2018 Form 1065.

Kristin H. Joe
July 26, 2023
Page 2 of 10

- F. Communication or Communications: These terms should be read broadly to include any communication, or transmittal of information, in any form, whether written, electronic, or oral, including, without limitation, communications with outside parties, correspondence, memoranda, interoffice or intra-office communications, written letters, notes, e-mails, facsimiles, analyses, studies, maps, reports, surveys, assessments, statistical data, computer records, notes regarding oral discussions, and voicemails.
- G. Document or Documents: These terms should be read broadly to include any and all preserved writings, Communications, and other written, electronic, recorded, or graphic material of any kind, whether prepared by you or by any other person or process, in Your possession, custody, or control.
- a. The terms include electronically-stored data from which information can be obtained either directly or by translation through detection devices or readers, such as computer drives, diskettes, computer tape, CDs, DVDs, thumb drives or other similar devices or equipment.
 - b. The terms include the original (or a copy thereof if the original is not available) and all copies that differ in any respect from the original, or that bear any handwriting, notation, marking, or information not on the original, regardless of whether such alteration was made by hand, electronic device, or otherwise.
 - c. The terms include but are not limited to originals, copies, non-identical copies, facsimiles, drafts, modifications, changes and amendments, hand-written or electronic notes, audio recordings, video recordings, as well as audio or video reproductions of all statements, conversations, or events, electronic mail messages, voice mail messages, and any materials stored in computer readable form, documents, contracts, agreements, letters, emails, facsimiles, interoffice communications, memoranda, notes, books, files, records, reports, analyses, notebooks, surveys, lists, outlines, drafts, schedules, social media content, text messages (including messages sent through Microsoft Teams, Slack or similar systems), pamphlets, newsletters, flyers, charts, logs, tabulations, compilations, telephone books, logs or messages, visitor logs or books, calendar or diary entries, desk or appointment calendars, proof of mailing, business cards, minutes of meetings or conferences, notes or

Kristin H. Joe
July 26, 2023
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memos or other records of telephone or other conversations or Communications, ledges, bills, invoices, purchase orders, work requests, work orders, maps, testing data, receipts, photographs, movies, diagrams, illustrations, plans, blueprints, schematics, photostats, microfilm, and microfiche.

- H. FPA: This term refers to the notice of Final Partnership Adjustment issued by Respondent, dated February 13, 2023, upon which this case is based.
- I. Matter: This term refers to all stages of Your examination of the Partnership's 2018 Form 1065, including, without limitation, the identification of the 2018 Form 1065 for examination, the Audit, and this litigation.
- J. Partnership: This term refers to Basswood Aggregates, LLC, an Alabama limited liability company.
- K. Penalty or Penalties: These terms refer, either individually or in the aggregate, to the alternative penalties under sections 6663, 6662A, 6662(e), 6662(h), 6662(d) or 6662(c) for the 2018 Tax Year that Respondent determined in the FPA.
- L. Petitioner: This term refers to Basswood Partners, LLC, an Alabama limited liability company and the partnership representative for the Partnership.
- M. Respondent or Respondent [and/or] his designated agents: These terms are used interchangeably and mean "You" and "Your", as defined below.
- N. You and Your: These terms mean any or all of the following:
 - a. Current and prior Commissioners of Internal Revenue;
 - b. Current and prior counsel for the Commissioner of Internal Revenue;
 - c. All divisions and departments of the Internal Revenue Service; and
 - d. Any agent, special agent, employee, representative, investigator, or contractor or, or any other person who is in possession of or who obtained information for, any of the foregoing.

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Informal Requests for Admissions (“RFAs”)

Please admit the following facts to the fullest extent possible:

1. Respondent contends that, on July 12, 2021, RA Fields made the initial determination to assert each of the following Penalties against the Partnership for the 2018 Tax Year:
 - a. Section 6662A penalty for reportable transaction understatement;
 - b. Section 6662(e) penalty for substantial valuation misstatement;
 - c. Section 6662(h) penalty for gross valuation misstatement;
 - d. Section 6662(d) penalty for substantial understatement of income tax;
and
 - e. Section 6662(c) penalty for negligence or disregard for rules or regulations.
2. Respondent contends that TM Combs was the immediate supervisor of RA Fields at all times during the Audit.
3. Respondent contends that, on July 14, 2021, TM Combs approved the assertion of the following Penalties against the Partnership for the 2018 Tax Year:
 - a. Section 6662A penalty for reportable transaction understatement;
 - b. Section 6662(e) penalty for substantial valuation misstatement;
 - c. Section 6662(h) penalty for gross valuation misstatement;
 - d. Section 6662(d) penalty for substantial understatement of income tax;
and
 - e. Section 6662(c) penalty for negligence or disregard for rules or regulations.
4. Attached hereto as **Exhibit 1** is a copy of a July 12, 2021 email from RA Fields to TM Combs (“July 12, 2021 email”).

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5. In the July 12, 2021 email, RA Fields stated "This email is to inform you that there will very likely be penalties associated with the Basswood Aggregates (conservation easement) audit."

6. In the July 12, 2021 email, RA Fields did not specify any of the specific Penalties, nor the basis for assertion of any Penalties, that Respondent is asserting in this Matter.

7. Attached hereto as **Exhibit 2** is a copy of a July 14, 2021 email from TM Combs to RA Fields ("July 14, 2021 email") in which TM Combs responded to the July 12, 2021 email.

8. In the subject line of the July 14, 2021 email, TM Combs stated "I approve penalties."

9. In the text of the July 14, 2021 email, TM Combs stated "Basswood Aggregates SCE Case."

10. In the July 14, 2021 email, TM Combs did not specify any of the specific Penalties, nor the basis for any Penalties, that Respondent is asserting in this Matter.

11. Attached hereto as **Exhibit 3** is the Record of Examining Agent prepared by RA Fields as part of the Audit (the "Record of Examining Agent").

12. The Record of Examining Agent contains an entry dated July 14, 2021 stating "Manager Combs approved penalties for this case."

13. The July 14, 2021 entry in the Record of Examining Agent does not specify which Penalties, if any, allegedly were approved by TM Combs.

14. The July 14, 2021 entry in the Record of Examining Agent was not signed or otherwise approved in writing by TM Combs.

15. Attached hereto as **Exhibit 4** is a copy of a March 11, 2022 email from RA Fields to TM Combs ("March 11, 2022 email").

16. In the March 11, 2022 email, RA Fields requested that TM Combs sign penalty approval lead sheets for three separate audits, including the Audit.

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17. In the March 11, 2022 email, RA Fields stated, "Ideally (?) the date you use to sign should be either the date you 'approved' penalties against Taxpayer (7/14/21) . . . or a little thereafter?"

18. The March 11, 2022 email does specify any specific Penalties, nor the basis for any Penalties, that RA Fields was asking TM Combs to approve against the Partnership for its 2018 Tax Year.

19. At the time that RA Fields sent the March 11, 2022 email, no specific Penalties had been approved by Respondent with respect to the Partnership's 2018 Form 1065.

20. At the time that RA Fields sent the March 11, 2022 email, no penalty approval lead sheet or similar form had been signed by RA Fields' immediate supervisor.

21. In the March 11, 2022 email, RA Fields requested that TM Combs backdate his signature on the penalty approval lead sheet to July 14, 2021 or a little after that date.

22. In the March 11, 2022 email, RA Fields stated:

You can see Bass IMS has most of the workpapers that its SAIN 011 is ever going to have if you want to "look" at something before signing this form.

The other two cases will eventually have all the workpapers in IMS that Bass has in SAIN 011...and the other two will also eventually have all the workpapers that Bass will eventually have.

This penalty workpaper lead sheet I am asking you to sign is "copied" from what someone else's CE case that their manager signed ...

I have attached the two penalty NOPA's for Basswood as "backup" for why you are supposed to sign these 3 forms. All 3 of the cases have these same two Penalty 5701's...pretty identical.

23. When asking TM Combs to approve Penalties with respect to the Partnership's 2018 Form 1065, RA Fields did not provide TM Combs with any workpapers or notices of proposed adjustment prepared as part of the Audit.

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24. When asking TM Combs to approve Penalties with respect to the Partnership's 2018 Form 1065, RA Fields told TM Combs that he could "look" at documents from an examination of a different taxpayer for any "backup".

25. At the time that RA Fields sent the March 11, 2022 email, RA Fields had not prepared any workpapers or notices of proposed adjustment supporting the assertion of Penalties with respect to the Partnership's 2018 Form 1065.

26. Attached as **Exhibit 5** is a copy of a March 14, 2022 email from TM Combs to RA Fields ("March 14, 2022 email") in which TM Combs responded to the March 11, 2022 email.

27. In the March 14, 2022 email, TM Combs stated:

Hello Tom,

All 3 are signed with a date of July 14, 2021. Thanks for giving me all the "backup" too!!

28. In the March 14, 2022 email, TM Combs admitted to backdating penalty consideration lead sheets for three separate examinations to July 14, 2021.

29. TM Combs knew when he signed those three penalty consideration lead sheets that it was March 2022, not July 2021.

30. TM Combs backdated the penalty consideration lead sheet for this Matter by exactly 8 months from March 14, 2022 to July 14, 2021.

31. Attached to the March 14, 2022 email was a penalty consideration lead sheet with respect to the Audit.

32. The signature of TM Combs on that penalty consideration lead sheet was copied and pasted from another document.

33. The penalty consideration lead sheet signed by TM Combs for this Matter does not contain either his physical signature or his electronic signature.

34. At the time that TM Combs "signed" the penalty consideration lead sheet for this Matter, he had not been provided with any workpapers, notices of proposed

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adjustment prepared as part of the Audit, or other backup information to support the assertion of Penalties against the Partnership.

35. The Penalties asserted against the Partnership in the FPA were not approved by TM Combs on July 14, 2021.

36. RA Fields co-mingled information, documents, and workpapers from three separate taxpayers in his work on the Audit.

37. Respondent does not rely on any Document other than Exhibit 5 to establish his compliance with section 6751(b) with respect to the Penalties asserted in this Matter.

Informal Requests for Production and Information (“Requests”)

Please respond to the following to the fullest extent possible:

1. To the extent that Respondent relies on any Document other than Exhibit 5 to establish his compliance with section 6751(b) with respect to the penalties asserted in this Matter, provide each such Document, in its original, native format with the metadata preserved.

2. Provide all email correspondence relating to Respondent’s determination to assert any Penalty with respect to the Partnership’s 2018 Tax Year.

3. Identify all employees of Respondent who were assigned to work on this Matter who would have any knowledge of any type regarding the assertion or non-assertion of any Penalty and the date such person was assigned to this Matter, including, without limitation, all revenue agents assigned to work on the Audit, any person temporarily assigned to work on the Audit, and all supervisors and managers of the foregoing, and explain the role that such person served with respect to this Matter.

4. To the extent not previously provided, provide complete, unredacted activity records for this Matter for all persons identified in response to Request 3 above, including, with limitation, activity records or similar documents for RA Fields and TM Combs. If activity records do not exist, explain why.

5. To the extent that You denied Informal RFA 1 above, identify all individuals who Respondent contends made the initial determination to assert any

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Penalty in this Matter. Provide all Documents that You rely on in support of Your response.

6. Provide all Documents supporting Your contention that TM Combs had actual authority to act as the manager or supervisor of RA Fields during the period from (and including) July 12, 2021 through (and including) March 14, 2022.

7. Identify the person who typed the date below the signature of TM Combs on the penalty consideration approval lead sheet with respect to the Partnership's 2018 Form 1065.

8. To the extent not provided in response to the Requests, provide copies of all Documents, including any Communications, in their original, native format with the metadata preserved, from Respondent or his designated agents to the Partnership and/or the Petitioner or any of their representatives regarding the assertion of any Penalty in this Matter.

9. To the extent not provided in response to the Requests above, provide copies of all Documents, including Communications, in their original, native format with the metadata preserved, regarding any alleged determination to assert or not to assert any Penalty in this Matter, including, without limitation, any Communications between any or all of the following: RA Fields, TM Combs or any other person assisting with or involved in the Matter.

10. To the extent not provided in response to the Requests above, provide copies of all Documents, including Communications, in their original, native format with the metadata preserved, regarding the consideration of any alleged determination to assert or not to assert any Penalty in this Matter, including, without limitation, any Communications between any or all of the following: RA Fields, TM Combs or any other person assisting with or involved in the Matter.

11. To the extent not provided in response to the Requests above, provide copies of all Documents, including Communications, in their original, native format with the metadata preserved, regarding the communication of any alleged determination to assert or not to assert any Penalty in this Matter, including, without limitation, any Communications between any or all of the following: RA Fields, TM Combs or any other person assisting with or involved in the Matter.

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12. To the extent not provided in response to the Requests above, provide copies of all Documents, including Communications, in their original, native format with the metadata preserved, regarding any alleged approval of any determination to assert or not to assert any Penalty in this Matter, including, without limitation, any Communications between any or all of the following: RA Fields, TM Combs or any other person assisting with or involved in the Matter.

13. To the extent not provided in response to the Requests above, provide all other Documents, including any Communications, in their original or native format with the metadata preserved, that support Your contention that the immediate supervisor of the individual who made the initial determination to assert each Penalty in this Matter, personally and timely approved the Penalties in writing as required by section 6751(b).

Sincerely,



Kevin Johnson, Esq.

Todd Welty, P.C.

DIRECT +1 (404) 835-1601

MOBILE +1 (215) 588-5591

FAX +1 (678) 840-3481

kjohnson@toddweltypc.com



Fields Thomas E

From: Combs David M
Sent: Wednesday, July 14, 2021 3:45 PM
To: Fields Thomas E
Subject: approve penalties

Basswood relates to S E case.

David Combs
Team 1694 Manager
Pontiac, MI 48340-2238
Telephone Number is 248-874-2212

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Monday, July 12, 2021 5:13 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: FW: penalties

Dave,

This email is to inform you that there will very likely be penalties associated with the Basswood Aggregates (conservation easement) audit.

I will forward any 5701's (I write up) to you for approval.

Tom Fields

Fields Thomas E

From: Combs David M
Sent: Wednesday, July 14, 2021 3:45 PM
To: Fields Thomas E
Subject: approve penalties

Basswood aggregates S E case.

David Combs
Team 1694 Manager
Pontiac, MI 48340-2238
Telephone Number is 248-874-2212

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Monday, July 12, 2021 5:13 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: FW: penalties

Dave,

This email is to inform you that there will very likely be penalties associated with the Basswood Aggregates (conservation easement) audit.

I will forward any 5701's (I write up) to you for approval.

Tom Fields

Examining Officer's Activity Record

Examining Officer

Fields, Thomas E

Date assigned/Opened

(mm/dd/yyyy)
09/01/2020

Taxpayer name and address (Use the preprinted label if possible)

Business name and address

BASSWOOD AGGREGATES LLC 201812
4355 COBB PARKWAY SUITE J 555
ATLANTA, Georgia 303394657
UNITED STATES

Residence telephone number ()

Business telephone number ()

Fax telephone number ()

Taxpayer Representative name and address

Representative has ("x" proper box)

Power of Attorney

Taxpayer Authorization

Representative's telephone number

Fax telephone number

Contacts and Activities

Date (mm/dd/yyyy)	Tax Year/SAIN	LOC	CONT	Time on Activity	Remarks, Notes, Actions Taken
11/05/2020	201812/005	O	3	2.0	mailing out NBAP correspondence, certified, took to USPO
11/06/2020	201812/005	O	3	1.5	mailing out NBAP correspondence, certified, took to USPO
11/13/2020	201812/005	O	3	1.5	working on IDR 1, mailing IDR 1
11/19/2020	201812/005	O	4	3.5	working on Bass narrative, and IDR 2, and letter 2295
11/20/2020	201812/005	O	4	0.0	working on write up narrative, and chop up 1065, and IDR 2
11/24/2020	201812/005	O	4	5.0	working on narrative
11/25/2020	201812/005	O	3	7.5	working on IDR 1 and 2, mailed out idr 1
12/01/2020	201812/005	O	4	3.0	write up appraisal
12/02/2020	201812/005	O	4	1.0	reading appraisal to get FACTS, writing narrative
12/03/2020	201812/005	O	4	2.5	reviewing google maps in detail to make IDR questions
12/16/2020	201812/005	R	2	2.0	telecon with POA's, updating IDR's for errors and give them a due date for the 2:30 telecall
12/17/2020	201812/005	O	4	2.0	sending IDR's 1 and 2, based on 12/16 telecon
12/18/2020	201812/005	O	2	4.0	doing flowcharts, making new IDR based on a review of the facts

706.5
AGREES
TO
T.A.A.

Date (mm/dd/yyyy)	Tax Year/SAIN	LOC	CONT	Time on Activity	Remarks, Notes, Actions Taken
12/21/2020	201812/005	O	4	2.0	researching Meadowbrook Farms
12/23/2020	201812/005	O	4	0.0	working on 5701
12/28/2020	201812/005	O	4	2.5	reading a Ben Brantley email re: a plea deal, up all IDR's
12/29/2020	201812/005	O	4	3.0	reading a Ben Brantley email re: a plea deal, up all IDR's
12/30/2020	201812/005	O	4	2.5	reading CE deeds and adding to IDR 3
12/31/2020	201812/005	O	4	3.0	reading SCE cases, updating IDR's based on CE deeds, writing an excel file based on the similarities for the 3 audits
01/04/2021	201812/005	O	4	2.5	Reviewing IDR 3 for B and D.... Faxed IDR's 3 to POA
01/05/2021	201812/005	O	4	1.5	fax confirms not coming in...thus resent. prepared to certify mail. Then confirms start coming in hours late...
01/07/2021	201812/005	O	4	1.5	setting up Appraiser and Issue (telecall = 1 hour), SCE group telecall = 1 hour, reviewing 1040's to see if they reported gains on their 2018 returns
01/12/2021	201812/005	O	4	1.0	fraud calls for SCE cases, Jackson County cases
01/13/2021	201812/005	O	4	1.0	fraud calls for SCE cases, Jackson County cases
01/15/2021	201812/005	O	4	1.0	fact discussions about Jackson County cases for adjoining properties, who have a similar ownership history
01/21/2021	201812/005	O	4	1.0	sce call
01/25/2021	201812/005	O	4	1.5	reading an analysis that was sent
01/26/2021	201812/005	R	2	2.5	reading analysis of alabama aggregate, telecall with POA to discuss all 3 SCE cases
01/27/2021	201812/005	O	4	2.0	writing up 3rd party questions (i.e., reading material sent by Trainers)
01/28/2021	201812/005	O	4	0.5	SCE group telecall, reviewing Forms/Letter sent during telecall
01/29/2021	201812/005	O	4	2.5	3164 letter mailed to all 3 sce audit cases, a discussion with IRS coworkers?
02/02/2021	201812/005	O	4	0.5	correspondence
02/03/2021	201812/005	O	4	3.0	writing to POA to get new 2848's
02/04/2021	201812/005	O	4	1.5	organizing files and paperwork, civil penalties, sce call 1.5 hours
02/05/2021	201812/005	O	4	1.0	reviewing deed analysis example

005-03.02

Date (mm/dd/yyyy)	Tax Year/SAIN	LOC	CONT	Time on Activity	Remarks, Notes, Actions Taken
02/08/2021	201812/005	R	3	2.0	received new 2848's, new POA (Michel Stein) wants a copy of all IDR's issued, I sent them (faxing and mailing).
2/18/2021	201812/005	O	3	1.0	SCE telecall, other
02/19/2021	201812/005	R	2	0.0	POA telecon
02/22/2021	201812/005	O	4	2.5	responding to POA request for any 3rd party contacts, trying to scan timeline, reviewing SCE info
03/03/2021	201812/005	R	2	0.5	telecon with poa, re: Baseline and title policy
03/05/2021	201812/005	O	4	1.5	reviewing IDR 1 response
03/10/2021	201812/005	O	4	0.5	reviewing case
03/11/2021	201812/005	O	4	1.0	reviewing IDR 1 response
03/12/2021	201812/005	O	4	1.0	reviewing IDR response
03/22/2021	201812/005	O	4	3.0	reviewing mail
04/07/2021	201812/005	O	4	1.5	reviewing case
04/22/2021	201812/005	O	4	3.0	doing an 872 for all 3 SCE cases, BBA point of contact research
04/23/2021	201812/005	O	4	0.0	finished and faxed IDR 4 to POA
04/26/2021	201812/005	O	4	2.5	faxed 872 with 907 letter.
04/27/2021	201812/005	O	4	2.0	mailed out 872, emailed twice (once with a 907 letter and then with a 937 letter also), did the 937 letter
04/29/2021	201812/005	O	4	5.0	reviewing the case, organizing folders, looking at IDR 1 response also
04/30/2021	201812/005	O	4	8.0	reviewing IDR 1 response, printing it out
05/07/2021	201812/005	O	4	1.0	reviewing IDR responses. faxing and mailing out 3164-E letter.
05/11/2021	201812/519	O	4	1.0	adding Brian Flynn, IRS appraiser to IMS.
05/13/2021	201812/519	O	4	1.0	reviewing IDR responses

Date (mm/dd/yyyy)	Tax Year/SAIN	LOC	CONT	Time on Activity	Remarks, Notes, Actions Taken
05/18/2021	201812/519	O	4	2.0	reviewing IDR responses
05/20/2021	201812/519	R	2	0.0	telecall with POA's Michel Stein and MacDonald Norman they want me to label IDR 4 with their file names....what was the file they gave me that I am asking about....
06/01/2021	201812/005	O	4	1.0	reviewing various aspects of audit
06/02/2021	201812/005	O	2	2.0	trying to get 2018 data from Jackson County website.
06/03/2021	201812/005	O	4	2.0	responding to a Cinci IRS attorney and Katie Lynn (counsel on this case) request for information.
06/10/2021	201812/005	O	4	0.5	reviewing case
06/11/2021	201812/005	O	4	0.5	emails
06/14/2021	201812/005	O	4	2.0	writing a 5701 on the borrow pit. will be applicable to all 3 cases.
06/15/2021	201812/005	O	4	4.0	writing a 5701 on the borrow pit. will be applicable to all 3 cases.
06/16/2021	201812/005	O	4	3.5	writing a 5701 on the borrow pit. will be applicable to all 3 cases.
06/17/2021	201812/005	O	4	3.5	writing a 5701 on the borrow pit. will be applicable to all 3 cases.
06/21/2021	201812/519	O	4	2.0	working on FACTS of overall NOPA...
07/09/2021	201812/519	O	4	8.5	worked on timeline FACTS
07/12/2021	201812/519	O	4	7.5	worked on updating TIMELINE facts
07/14/2021	201812/519	O	4	0.0	Manager Dave Combs approved penalties for this case
07/22/2021	201812/519	O	4	6.0	worked on IDR's that are recommended for SCE cases to send out
07/23/2021	201812/519	O	3	0.0	worked on IDR's that are recommended for SCE cases to send out
07/26/2021	201812/519	O	3	8.0	worked on and mailed out IDR's 5 thru 9.
07/29/2021	201812/519	O	4	3.0	worked on borrow pit 5701
08/13/2021	201812/519	O	4	8.0	working on the NOPA 886A for alternative valuation
08/16/2021	201812/519	O	4	8.0	writing ALTERNATIVE Valuation NOPA
08/19/2021	201812/519	O	4	7.5	writing Conservation NOPA (i.e., that it did not comply with Sect 170)

Date (mm/dd/yyyy)	Tax Year/SAIN	LOC	CONT	Time on Activity	Remarks, Notes, Actions Taken
08/20/2021	201812/519	O	4	0.0	writing Conservation NOPA (i.e., that it did not comply with Sect 170)
8/23/2021	201812/519	O	4	8.0	writing Conservation NOPA (i.e., that it did not comply with Sect 170)
08/24/2021	201812/519	O	4	2.0	writing Conservation NOPA (i.e., that it did not comply with Sect 170)
08/25/2021	201812/519	O	4	8.0	writing Conservation NOPA (i.e., that it did not comply with Sect 170)
08/26/2021	201812/519	O	4	8.0	writing Conservation NOPA (i.e., that it did not comply with Sect 170)
09/09/2021	201812/519	O	4	4.0	working on a NOPA re: not a qualified Appraisal
09/10/2021	201812/519	O	4	4.0	working on a NOPA re: not a qualified Appraisal
09/13/2021	201812/519	O	4	2.0	working on the FACTS section of my "overall" 5701
09/14/2021	201812/519	O	4	8.0	working on the FACTS section of my "overall" 5701
09/15/2021	201812/519	O	4	8.0	working on the FACTS section of my "overall" 5701
09/16/2021	201812/519	O	4	8.0	working on the FACTS section of my "overall" 5701
09/22/2021	201812/519	O	4	8.0	working on the FACTS section of my "overall" 5701
09/23/2021	201812/519	O	4	8.0	working on the FACTS section of my "overall" 5701
09/24/2021	201812/519	O	4	8.0	working on the FACTS section of my "overall" 5701
09/27/2021	201812/519	O	4	8.0	working on "generic" FACTS for my "overall" 5701
09/28/2021	201812/519	O	4	8.0	working on "generic" FACTS for my "overall" 5701
09/29/2021	201812/519	O	4	8.0	working on "generic" FACTS for my "overall" 5701
09/30/2021	201812/519	O	4	5.0	working on "generic" FACTS for my "overall" 5701
10/01/2021	201812/519	O	4	8.0	working on "generic" FACTS for my "overall" 5701
10/04/2021	201812/519	O	4	8.0	working on "generic" FACTS for my "overall" 5701
10/05/2021	201812/519	O	4	8.0	working on "generic" FACTS for my "overall" 5701
10/06/2021	201812/519	O	4	8.0	working on "generic" FACTS for my "overall" 5701. (finished it?)
10/07/2021	201812/519	O	4	8.0	reviewing this Overall NOPA

Date (mm/dd/yyyy)	Tax Year/SAIN	LOC	CONT	Time on Activity	Remarks, Notes, Actions Taken
10/08/2021	201812/519	O	4	0.0	Done reviewing this Overall NOPA. Sent it, via skype (because a zip file could not be sent through Outlook (after trying)) to Ashley Van Fleet who is Counsel person on this case. Sent the large NOPA and all attachments to Ashley today.
11/15/2021	201812/519	O	4	3.0	working on IU Penalty Notebook and the two 5701 for Penalties.
11/16/2021	201812/624-01	O	4	3.0	Telecon with Ashley, Eric Skinner (Counsel Detroit) and Ben Brantley (Manager of SCE cases). Counsel would prefer that I re-do the NOPA (the OVERALL 60 page NOPA) to follow a different "format". The "long branch" format. Redoing encryption on the case so that it is easier for Counsel to use the files. Working on IU notebook and the two Penalty NOPA's.
11/17/2021	201812/624-01	O	4	3.0	doing penalty NOPA's, resending UNENCRYPTED files to Ashley, glanced at the LONG Branch format NOPA. It is 60 or 70 pages! Scanning in some documents. Working on "penalty" IDR...
11/18/2021	201812/005	O	4	3.0	working on Penalty IDR. Putting in 2021 timesheet data. printing Exam Plans, Risk Analysis and Timelines to be mailed and faxed.
11/19/2021	201812/005	O	4	0.0	putting time into IMS, mailing and faxing out a Penalty IDR, mailing audit plan, exam timeline, and risk analysis, scanning some documents
11/22/2021	201812/624-01	O	4	3.0	Putting scanned documents into IMS, looking for manager's penalty ok (email) to put into IMS (7/14/2021), working on Forms 15260, 15262, and 15263.
11/23/2021	201812/624-01	O	4	2.0	organizing files, working on forms 15260, 2, and 3. Updating "timeline", create SAIN 724
12/03/2021	201812/624-01	O	4	1.5	finding items for IRS Penalty person Deb Zenon...putting them into a file to transmit to her via Skype
12/13/2021	201812/519	O	4	9.0	working on "Long Branch" format 5701
12/14/2021	201812/519	O	4	10.0	working on "Long Branch" format 5701
12/15/2021	201812/519	O	4	8.0	working on Long Branch format 5701 (working on page 9)
12/16/2021	201812/519	O	4	11.0	working on Basswood's NOPA using the Long Branch format
12/17/2021	201812/519	O	4	8.0	working on rewriting the large 886A to be in the "Long Branch" format
12/20/2021	201812/519	O	4	11.0	working on rewriting the large 886A to be in the "Long Branch" format
12/21/2021	201812/519	O	4	9.5	working on rewriting the large 886A to be in the "Long Branch" format, scanning IDR's and responses to be Exhibits 30 to 34

Date (mm/dd/yyyy)	Tax Year/SAIN	LOC	CONT	Time on Activity	Remarks, Notes, Actions Taken
12/22/2021	201812/519	O	4	8.0	working on rewriting the large 886A to be in the "Long Branch" format
12/23/2021	201812/519	O	4	8.0	working on rewriting the large 886A to be in the "Long Branch" format
12/27/2021	201812/519	O	4	8.0	working on rewriting the large 886A to be in the "Long Branch" format
12/28/2021	201812/519	O	4	8.5	working on rewriting the large 886A to be in the "Long Branch" format
12/29/2021	201812/519	O	4	8.0	working on rewriting the large 886A to be in the "Long Branch" format
12/30/2021	201812/519	O	4	8.0	working on rewriting the large 886A to be in the "Long Branch" format
01/05/2022	201812/519	O	4	0.0	Sent the Basswood NOPA, in the Long Branch format, to Ashley in Counsel...for her to review. I have reviewed the entire NOPA and all footnotes.
02/03/2022	201812/519	O	4	0.0	received back the B large NOPA, in the Long Branch format, from Ashley with her questions and corrections needed.
02/14/2022	201812/519	O	4	10.0	reviewing corrections to Main NOPA that Counsel wanted done, answered questions in Counsel's 2/3/22 email sending back the BASS NOPA, making "cheat sheets" for my 3 SCE cases for Counsel to say who the "players" are...emailed (all 3 cases) penalty NOPA's to Counsel
02/15/2022	201812/519	O	4	9.5	reviewing and making corrections to the big NOPA that Counsel wanted done, per her 2/3/33 email of the NOPA to me
02/16/2022	201812/519	O	4	10.0	reviewing and making corrections to the big NOPA that Counsel wanted done, per her 2/3/33 email of the NOPA to me. Emailed back to her today the BASS NOPA with all corrections. Sent another ARA NOPA to ashley after adding a NAP section to the NOPA and making NAP's 2018 US1065 into an exhibit (in ARA).
02/17/2022	201812/519	O	4	0.0	Correcting the 886A for Ashley's comments, sent back to her today (corrected).
02/18/2022	201812/519	O	4	0.0	really worked on A audit sending a Long Br formatted 886A to Ashley...but arranged B's scanned workpapers into IMS
02/22/2022	201812/519	O	4	8.0	transferring scanned documents into IMS
02/23/2022	201812/519	O	4	4.5	working on scanned documents....also worked on the A audit's scanned documents
02/24/2022	201812/519	O	4	6.5	really worked on A scanning documents
02/25/2022	201812/519	O	4	9.0	working on 15262 and 15260 and 15263 (for all 3 cases)
02/28/2022	201812/519	O	4	8.0	Sending 886A to Dave Combs manager and TCS person

Date (mm/dd/yyyy)	Tax Year/SAIN	LOC	CONT	Time on Activity	Remarks, Notes, Actions Taken
03/01/2022	201812/011	O	4	9.5	doing 14791 with Matt Moss, the TCS person, for all 3 cases...because the 14791's do not seem to be "consistent"
03/02/2022	201812/016	R	3	2.5	Worked on a Summary Report package for all 3 cases because I had 14791 from TCS and from CCP
03/03/2022	201812/016	R	3	3.0	working on another 5895 Summary Report Package
03/03/2022	201812/519	R	3	1.0	working on another 5895 Summary Report Package
03/08/2022	201812/519	O	4	5.0	working on closing workpapers...
03/09/2022	201812/519			10.0	putting 15260 and 15262 an 15263 into the W/P's and into IMS, scanning W/p's into IMS, working on SAIN 011, putting Exhibits into IMS
03/10/2022	201812/005	O	4	6.5	working on SAIN 011
03/14/2022	201812/519	O	4	8.0	working on Bass files and scans
03/15/2022	201812/519	O	4	6.5	scanning, printing various form (SAINS 0121, 724, and etc.)
03/16/2022	201812/519			7.0	
03/17/2022	201812/519	O	4	8.0	scanning, printing various form (SAINS 012, 724, and etc.)
03/18/2022	201812/519	O	4	8.0	scanning, printing various form (SAINS 012, 724, and etc.)
03/21/2022	201812/519	O	4	11.0	organizing and scanning various documents for the case
03/22/2022	201812/519	O	4	5.0	organizing and scanning various documents for the case
03/23/2022	201812/519	O	4	5.0	organizing and scanning various documents for the case
03/24/2022	201812/519	O	4	6.0	organizing and scanning various documents for the case
03/25/2022	201812/519	O	4	4.0	worked on SAIN 519 w/p's
03/28/2022	201812/519	O	4	8.0	Bass exhibit scans.....
03/29/2022	201812/519	O	4	6.0	print out all Basswood exhibits
03/30/2022	201812/519	O	4	11.5	working on printing/scanning all Exhibits and that all exhibits are listed...
04/05/2022	201812/519	O	4	1.0	putting scans into w/p's, verifying that all scans are in IMS and in the physical w/p binder
04/06/2022	201812/519	O	4	1.0	putting scans into w/p's, verifying that all scans are in IMS and in the physical w/p binder

Date (mm/dd/yyyy)	Tax Year/SAIN	LOC	CONT	Time on Activity	Remarks, Notes, Actions Taken
04/07/2022	201812/519	O	4	3.0	Got approved NOPA's from TCS (Caroline Workman), reading and printing and scanning all documents
4/08/2022	201812/519	R	3	3.0	Sent out a Summary Report Pkage, step #20 on Form 15262 for each of my 3 cases
04/11/2022	201812/005	O	4	3.0	getting info for Caroline Workman (TCS)
04/12/2022	201812/005	O	4	3.0	getting info for Caroline Workman (TCS)
04/13/2022	201812/005	O	4	3.0	scanning, copying, reviewing if all paper copies are in IMS
04/14/2022	201812/005	O	4	3.0	reviewing, scanning, copying to make sure all documents in case file are in IMS and all items in IMS are in case file
04/15/2022	201812/005	O	4	1.0	reviewing, scanning, copying to make sure all documents in case file are in IMS and all items in IMS are in case file
04/18/2022	201812/005	O	4	2.0	reviewing, scanning, copying to make sure all documents in case file are in IMS and all items in IMS are in case file
04/19/2022	201812/005	O	4	2.0	reviewing, scanning, copying to make sure all documents in case file are in IMS and all items in IMS are in case file
04/20/2022	201812/005	O	4	2.0	reviewing, scanning, copying to make sure all documents in case file are in IMS and all items in IMS are in case file
04/21/2022	201812/005	O	4	2.0	organizing and scanning B documents
04/22/2022	201812/005	O	4	2.0	reviewing, scanning, copying to make sure all documents in case file are in IMS and all items in IMS are in case file, reviewing form 15262 for completeness
Total				706.5	

ONT = Contact Codes: 1 = 1) Field Visit 2 = 2) Telephone 3 = 3) Correspondence 4 = 4) Other (explain) T = T=Taxpayer R = R=Representative O = O=Other (explain)
 LOC = Location of Activity: T. T=Taxpayer R. R=Representative O. O=Other (explain) 1. 1) Field Visit 2. 2) Telephone 3. 3) Correspondence 4. 4) Other (explain)

Time on Entities

Entity Name	Total Hours
REDACTED BASSWOOD AGGREGATES LLC	706.5

AGREES

Fields Thomas E

From: Fields Thomas E
Sent: Monday, November 21, 2022 4:10 PM
To: Fields Thomas E
Subject: FW: please sign one for each of the 3 audits...they are PDFs. Do those work best
Attachments: 011-0010 Penalty leadsheet Bass PDF or Dave to sign pd 011-0010
leadsheet DE pd pd 011-0010 leadsheet DE W
pd pd

From: Combs David M <David.M.Combs@irs.gov>
Sent: Monday, March 14, 2022 3:52 PM
To: Fields Thomas E <Thomas.E.Fields@irs.gov>
Subject: E: please sign one for each of the 3 audits.....they are PDFs. Do those work best

Hello Tom,

All are signed with date of Jul 1, 2021. Thanks or I'll let me all the backup too

David Combs
Team 1694 Manager
Pontiac, MI 48340-2238
Telephone Number is 248-874-2212

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Friday, March 11, 2022 4:00 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: please sign one for each of the 3 audits.....they are PDFs. Do those work best

Ideally () the date you use to sign should be either the date you approved penalties against the Taxpayer (7/14/21) or a little thereafter

You can see Bass IM has most of the workpapers that its AIN 011 is ever going to have if you want to 'look' at something before signing this form. The other two cases will eventually have all the workpapers in IM that Bass has in AIN 011 and the other two will also eventually have all the workpapers that Bass will eventually have.

This penalty workpaper leadsheet I am asking you to sign is copied from what someone else's CE case that their manager signed

I have attached the two penalty NPA's for Basswood as backup for why you are supposed to sign these 3 forms. All 3 of the cases have these same two Penalty 5701's. pretty identical.

Fields Thomas E

From: Fields Thomas E
Sent: Monday, November 21, 2022 4:10 PM
To: Fields Thomas E
Subject: FW: please sign one for each of the 3 audits...they are PDFs. Do those work best
Attachments: 011-0010 Penalty leadsheet Bass PDF or Dave to sign pd 011-0010
leadsheet DE pd pd 011-0010 leadsheet DE W
pd pd

From: Combs David M <David.M.Combs@irs.gov>
Sent: Monday, March 14, 2022 3:52 PM
To: Fields Thomas E <Thomas.E.Fields@irs.gov>
Subject: E: please sign one for each of the 3 audits.....they are PDFs. Do those work best

ello Tom,

Will be signed with date of Jul 1, 2021. Thanks or I'll let me all the backup too

David Combs
Team 1694 Manager
Pontiac, MI 48340-2238
Telephone Number is 248-874-2212

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Friday, March 11, 2022 4:00 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: please sign one for each of the 3 audits.....they are PDFs. Do those work best

Ideally () the date you use to sign should be either the date you approved penalties against the Taxpayer (7/14/21) or a little thereafter

You can see Bass IM has most of the workpapers that its AIN 011 is ever going to have if you want to 'look' at something before signing this form. The other two cases will eventually have all the workpapers in IM that Bass has in AIN 011 and the other two will also eventually have all the workpapers that Bass will eventually have.

This penalty workpaper leadsheet I am asking you to sign is copied from what someone else's CE case that their manager signed

I have attached the two penalty NPA's for Basswood as backup for why you are supposed to sign these 3 forms. All 3 of the cases have these same two Penalty 5701's. pretty identical.

Exhibit 9

2023.10.13 - Basswoord - FAX Ltr from IRS counsel Kristin Joe RE IRS
Conceding Penalties and Proposed 1st Stip of Facts

INTERNAL REVENUE SERVICE



FAX TRANSMISSION
Cover Sheet

Date: October 13, 2023

To: Kevin Johnson

Address/Organization: _____

Fax Number: (678) 840-3481 Office Number: _____

From: Kristin Joe

Address/Organization: _____

Fax Number: _____ Office Number: _____

Number of pages: *Including cover page*

Subject: Letter in Dkt. No. 3820-23

Mr. Johnson,

Please see the attached letter in Dkt. No. 3820-23.

Thank you,

Kristin H. Joe

General Attorney - LB&I

Office of Chief Counsel

This communication is intended for the sole use of the individual to whom it is addressed and may contain confidential information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by the provisions of the Internal Revenue code. If you have received this communication in error, please contact the sender immediately by telephone. Thank you.



OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF DIVISION COUNSEL
LARGE BUSINESS & INTERNATIONAL
JACKSON FEDERAL BUILDING
915 SECOND AVE., RM. 2704, M/S W670
SEATTLE, WASHINGTON 98174
(206) 946-3450

October 13, 2023

CC:LB:5:SEA:2:KHJoe
TL-3820-23**Via e-fax and certified mail**

Kevin M. Johnson
Todd Welty, P.C.
4279 Roswell Rd NE, Suite 208, #352
Atlanta, Georgia 30342

Reference: Basswood Aggregates, LLC, Basswood Partners, LLC, Partnership
Representative v. Commissioner, Docket. No. 3820-23

Dear Mr. Johnson:

Respondent conducted an additional review of the penalty approval in the above referenced case.

Respondent has determined the documents in the administrative file evidencing managerial approval may not be sufficient to satisfy I.R.C. § 6751(b). Therefore, respondent concedes the penalties in this case.

Please review the enclosed proposed stipulation of settled issues. By October 20, 2023, please sign the proposed stipulation of settled issues and return it to me, or notify me if petitioner objects to the proposed stipulation of settled issues. If petitioner objects, respondent expects to file a notice of concession.

Since respondent is conceding the penalties, petitioner's Informal Requests for Production and Information ("Informal Requests") are moot. Thus, respondent objects to the Informal Requests on the grounds that they are irrelevant.

TL-3820-23

- 2 -

Please contact me for any questions. Thank you.

Sincerely,

JULIE A. FIELDS
Acting Area Counsel
(Large Business & International: Area 5)

By: **Kristin H. Joe**
Kristin H. Joe
General Attorney
(Large Business & International)

Digitally signed by
Kristin H. Joe
Date: 2023.10.13
14:20:08 -07'00'

Enclosure: Proposed stipulation of settled issues

UNITED STATES TAX COURT

BASSWOOD AGGREGATES, LLC,)	
BASSWOOD PARTNERS, LLC,)	
PARTNERSHIP REPRESENTATIVE,)	
)	
Petitioner,)	
)	
v.	)	Docket No. 3820-23
)	
COMMISSIONER OF INTERNAL	)	Filed Electronically
REVENUE,)	
	)	Honorable Joseph Robert Goeke
Respondent.)	

STIPULATION OF SETTLED ISSUES

THE PARTIES report settlement of the following issues in the above-entitled case and agree as follows:

1. Respondent has determined the documents in the administrative file evidencing managerial approval may not be sufficient to satisfy I.R.C. § 6751(b). Therefore, respondent concedes the penalties in this case.

2. No accuracy-related penalty for any gross valuation misstatement under I.R.C. § 6662(h) applies to any underpayment of tax attributable to any adjustments to the partnership-related items of Basswood Aggregates, LLC (“Basswood”) for the 2018 tax year.

3. No accuracy-related penalty for any substantial valuation misstatement under I.R.C. § 6662(e) applies to any underpayment of tax attributable to any adjustments to the partnership-related items of Basswood for the 2018 tax year.

Docket No. 3820-23

- 2 -

4. No accuracy-related penalty for reportable transaction understatement under I.R.C. § 6662A applies to any understatement attributable to any adjustments to the partnership-related items of Basswood for the 2018 tax year.

5. No accuracy-related penalty for negligence or disregard of rules or regulations under I.R.C. § 6662(c) applies to any underpayment of tax attributable to any adjustments to the partnership-related items of Basswood for the 2018 tax year.

6. No accuracy-related penalty for substantial understatement of income tax under I.R.C. § 6662(d) applies to any underpayment of tax attributable to any adjustments to the partnership-related items of Basswood for the 2018 tax year.

WILLIAM M. PAUL
Acting Chief Counsel
Internal Revenue Service

KEVIN JOHNSON
Todd Welty, P.C.
Counsel for Petitioner
Tax Court Bar No. JK0059
4279 Roswell Rd NE
Suite 208, #352
Atlanta, GA 30342
Phone: (404) 835-1601
kjohanson@toddweltypc.com

By: _____
KRISTIN H. JOE
General Attorney
(Large Business & International)
Tax Court Bar No. JK0066
915 Second Avenue
2704 Jackson Federal Building
M/S W670
Seattle, WA 98174
Telephone: (206) 946-3327
kristin.h.joe@irsounsel.treas.gov

Date: _____

Date: _____

2023.10.13 Delwood - FAX Ltr from IRS counsel Kristin Joe RE IRS
Conceding Penalties and Proposed 1st Stip of Facts

INTERNAL REVENUE SERVICE



FAX TRANSMISSION
Cover Sheet

Date: October 13, 2023

To: Kevin Johnson

Address/Organization: _____

Fax Number: (678) 840-3481 Office Number: _____

From: Cappel Matthew A

Address/Organization: _____

Fax Number: _____ Office Number: _____

Number of pages: *Including cover page*

Subject: Third Attempt: Letter in Dkt. No. 3821-23

Mr. Johnson,

Please see the attached letter in Dkt. No. 3821-23.

Thank you,

Matt Cappel
General Attorney | Tax
Large Business & International Division
Office of Chief Counsel | IRS
Ph: 408-283-1427

This communication is intended for the sole use of the individual to whom it is addressed and may contain confidential information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by the provisions of the Internal Revenue code. If you have received this communication in error, please contact the sender immediately by telephone. Thank you.



OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF DIVISION COUNSEL
LARGE BUSINESS & INTERNATIONAL
JACKSON FEDERAL BUILDING
915 SECOND AVE., RM. 2704, M/S W670
SEATTLE, WASHINGTON 98174
(206) 946-3450

October 13, 2023

CC:LB:5:SEA:2:KHJoe
TL-3821-23**Via e-fax and certified mail**

Kevin M. Johnson
Todd Welty, P.C.
4279 Roswell Rd NE, Suite 208, #352
Atlanta, Georgia 30342

Reference: Delwood Resources, LLC, Delwood Partners, LLC, Partnership
Representative v. Commissioner, Docket. No. 3821-23

Dear Mr. Johnson:

Respondent conducted an additional review of the penalty approval in the above referenced case.

Respondent has determined the documents in the administrative file evidencing managerial approval may not be sufficient to satisfy I.R.C. § 6751(b). Therefore, respondent concedes the penalties in this case.

Please review the enclosed proposed stipulation of settled issues. By October 20, 2023, please sign the proposed stipulation of settled issues and return it to me, or notify me if petitioner objects to the proposed stipulation of settled issues. If petitioner objects, respondent expects to file a notice of concession.

Since respondent is conceding the penalties, petitioner's Informal Requests for Production and Information ("Informal Requests") are moot. Thus, respondent objects to the Informal Requests on the grounds that they are irrelevant.

TL-3821-23

- 2 -

Please contact me for any questions. Thank you.

Sincerely,

JULIE A. FIELDS
Acting Area Counsel
(Large Business & International: Area 5)

Kristin H. Digitally signed by
Kristin H. Joe
Date: 2023.10.13
14:15:26 -07'00'

By: **Joe**

Kristin H. Joe
General Attorney
(Large Business & International)

Enclosure: Proposed stipulation of settled issues

UNITED STATES TAX COURT

DELWOOD RESOURCES, LLC,)	
DELWOOD PARTNERS, LLC,)	
PARTNERSHIP REPRESENTATIVE,)	
)	
Petitioner,)	
)	
v.	)	Docket No. 3821-23
)	
COMMISSIONER OF INTERNAL	)	Filed Electronically
REVENUE,)	
	)	Honorable Joseph Robert Goeke
Respondent.)	

STIPULATION OF SETTLED ISSUES

THE PARTIES report settlement of the following issues in the above-entitled case and agree as follows:

1. Respondent has determined the documents in the administrative file evidencing managerial approval may not be sufficient to satisfy I.R.C. § 6751(b). Therefore, respondent concedes the penalties in this case.

2. No accuracy-related penalty for any gross valuation misstatement under I.R.C. § 6662(h) applies to any underpayment of tax attributable to any adjustments to the partnership-related items of Delwood Resources, LLC (“Delwood”) for the 2018 tax year.

3. No accuracy-related penalty for any substantial valuation misstatement under I.R.C. § 6662(e) applies to any underpayment of tax attributable to any adjustments to the partnership-related items of Delwood for the 2018 tax year.

Docket No. 3821-23

- 2 -

4. No accuracy-related penalty for reportable transaction understatement under I.R.C. § 6662A applies to any understatement attributable to any adjustments to the partnership-related items of Delwood for the 2018 tax year.

5. No accuracy-related penalty for negligence or disregard of rules or regulations under I.R.C. § 6662(c) applies to any underpayment of tax attributable to any adjustments to the partnership-related items of Delwood for the 2018 tax year.

6. No accuracy-related penalty for substantial understatement of income tax under I.R.C. § 6662(d) applies to any underpayment of tax attributable to any adjustments to the partnership-related items of Delwood for the 2018 tax year.

WILLIAM M. PAUL
Acting Chief Counsel
Internal Revenue Service

KEVIN JOHNSON
Todd Welty, P.C.
Counsel for Petitioner
Tax Court Bar No. JK0059
4279 Roswell Rd NE
Suite 208, #352
Atlanta, GA 30342
Phone: (404) 835-1601
kjohnson@toddweltypc.com

By: _____
KRISTIN H. JOE
General Attorney
(Large Business & International)
Tax Court Bar No. JK0066
915 Second Avenue
2704 Jackson Federal Building
M/S W670
Seattle, WA 98174
Telephone: (206) 946-3327
kristin.h.joe@irsounsel.treas.gov

Date: _____

Date: _____

2023-10-13 Arden Row - FAX from IRS Counsel Kristen Joe RE. IRS Conceding Penalties and Proposed 1st Stip of Facts

INTERNAL REVENUE SERVICE



FAX TRANSMISSION
Cover Sheet

Date: October 13, 2023

To: Kevin Johnson

Address/Organization: _____

Fax Number: (678) 840-3481 Office Number: _____

From: Kristin Joe

Address/Organization: _____

Fax Number: _____ Office Number: _____

Number of pages: *Including cover page*

Subject: Letter in Dkt. No. 3817-23

Mr. Johnson,

Please see the attached letter in Dkt. No. 3817-23.

Thank you,

Kristin H. Joe

General Attorney - LB&I

Office of Chief Counsel

This communication is intended for the sole use of the individual to whom it is addressed and may contain confidential information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by the provisions of the Internal Revenue code. If you have received this communication in error, please contact the sender immediately by telephone. Thank you.



OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF DIVISION COUNSEL
LARGE BUSINESS & INTERNATIONAL
JACKSON FEDERAL BUILDING
915 SECOND AVE., RM. 2704, M/S W670
SEATTLE, WASHINGTON 98174
(206) 946-3450

October 13, 2023

CC:LB:5:SEA:2:KHJoe
TL-3817-23**Via e-fax and certified mail**

Kevin M. Johnson
Todd Welty, P.C.
4279 Roswell Rd NE, Suite 208, #352
Atlanta, Georgia 30342

Reference: Arden Row Assets, LLC, Natural Aggregates Partners, LLC,
Partnership Representative v. Commissioner, Docket. No. 3817-23

Dear Mr. Johnson:

Respondent conducted an additional review of the penalty approval in the above referenced case.

Respondent has determined the documents in the administrative file evidencing managerial approval may not be sufficient to satisfy I.R.C. § 6751(b). Therefore, respondent concedes the penalties in this case.

Please review the enclosed proposed stipulation of settled issues. By October 20, 2023, please sign the proposed stipulation of settled issues and return it to me, or notify me if petitioner objects to the proposed stipulation of settled issues. If petitioner objects, respondent expects to file a notice of concession.

Since respondent is conceding the penalties, petitioner's Informal Requests for Production and Information ("Informal Requests") are moot. Thus, respondent objects to the Informal Requests on the grounds that they are irrelevant.

TL-3817-23

- 2 -

Please contact me for any questions. Thank you.

Sincerely,

JULIE A. FIELDS
Acting Area Counsel
(Large Business & International: Area 5)

Kristin H. Joe

Digitally signed by Kristin H. Joe
Date: 2023.10.13 14:11:22
-07'00'

By:

Kristin H. Joe
General Attorney
(Large Business & International)

Enclosure: Proposed stipulation of settled issues

UNITED STATES TAX COURT

ARDEN ROW ASSETS, LLC, NATURAL)	
AGGREGATES PARTNERS, LLC,)	
PARTNERSHIP REPRESENTATIVE,)	
)	
Petitioner,)	
)	
v.	)	Docket No. 3817-23
)	
COMMISSIONER OF INTERNAL	)	Filed Electronically
REVENUE,)	
	)	Honorable Joseph Robert Goeke
Respondent.)	

STIPULATION OF SETTLED ISSUES

THE PARTIES report settlement of the following issues in the above-entitled case and agree as follows:

1. Respondent has determined the documents in the administrative file evidencing managerial approval may not be sufficient to satisfy I.R.C. § 6751(b). Therefore, respondent concedes the penalties in this case.

2. No accuracy-related penalty for any gross valuation misstatement under I.R.C. § 6662(h) applies to any underpayment of tax attributable to any adjustments to the partnership-related items of Arden Row Assets, LLC (“Arden Row”) for the 2018 tax year.

3. No accuracy-related penalty for any substantial valuation misstatement under I.R.C. § 6662(e) applies to any underpayment of tax attributable to any adjustments to the partnership-related items of Arden Row for the 2018 tax year.

Docket No. 3817-23

- 2 -

4. No accuracy-related penalty for reportable transaction understatement under I.R.C. § 6662A applies to any understatement attributable to any adjustments to the partnership-related items of Arden Row for the 2018 tax year.

5. No accuracy-related penalty for negligence or disregard of rules or regulations under I.R.C. § 6662(c) applies to any underpayment of tax attributable to any adjustments to the partnership-related items of Arden Row for the 2018 tax year.

6. No accuracy-related penalty for substantial understatement of income tax under I.R.C. § 6662(d) applies to any underpayment of tax attributable to any adjustments to the partnership-related items of Arden Row for the 2018 tax year.

WILLIAM M. PAUL
Acting Chief Counsel
Internal Revenue Service

KEVIN JOHNSON
Todd Welty, P.C.
Counsel for Petitioner
Tax Court Bar No. JK0059
4279 Roswell Rd NE
Suite 208, #352
Atlanta, GA 30342
Phone: (404) 835-1601
kjohnson@toddweltpc.com

By: _____
KRISTIN H. JOE
General Attorney
(Large Business & International)
Tax Court Bar No. JK0066
915 Second Avenue
2704 Jackson Federal Building
M/S W670
Seattle, WA 98174
Telephone: (206) 946-3327
kristin.h.joe@irsounsel.treas.gov

Date: _____

Date: _____

Exhibit 10



Received

03/22/24 12:29 pm

Filed

03/22/24

Arden Row Assets, LLC, Natural Aggregates Partners,
LLC, Partnership Representative,

Petitioner(s)

v.

Commissioner of Internal Revenue

Respondent

Electronically Filed

Docket No. 3817-23

Document No. 26

Notice of Concession

SERVED 03/22/24

UNITED STATES TAX COURT

ARDEN ROW ASSETS, LLC, NATURAL)
AGGREGATES PARTNERS, LLC,)
PARTNERSHIP REPRESENTATIVE,)
)
Petitioner,)
)
v.) Docket No. 3817-23
)
COMMISSIONER OF INTERNAL) Filed Electronically
REVENUE,)
) Honorable Joseph Robert Goeke
Respondent.)

NOTICE OF CONCESSION

Respondent files the instant Notice of Concession to inform the Court of the following with respect to the instant case:

1. In the Notice of Final Partnership Adjustment upon which this case is based (“FPA”), respondent determined, inter alia, that Arden Row Assets, LLC was not entitled to a noncash charitable deduction in the amount of \$57,080,000 claimed with respect to its taxable year ending December 31, 2018 (“Charitable Deduction at Issue”).

2. In the FPA, respondent also determined that penalties under I.R.C. § 6662(c), (d), (e), and (h) applied to any underpayment of tax resulting from the disallowance of the Charitable Deduction at Issue and I.R.C. § 6662A applied to any understatement of tax resulting from the Charitable Deduction at Issue for the taxable year ending December 31, 2018 (collectively, “Penalties at

Docket No. 3817-23

- 2 -

Issue”).

3. By a letter dated March 21, 2024, respondent informed petitioner’s counsel that respondent was conceding the Penalties at Issue. Respondent is filing the instant Notice of Concession to memorialize such concession with the Court.

To be clear, respondent has conceded all of the penalties set forth in the FPA.

4. The issues remaining for trial involve whether Arden Row Assets, LLC is entitled to a noncash charitable contribution deduction, and if so, in what amount.

MARJORIE A. ROLLINSON
Chief Counsel
Internal Revenue Service

Date: March 22, 2024

By:



KRISTIN H. JOE
Senior Counsel
(Small Business/Self-Employed)
Tax Court Bar No. JK0066
915 Second Avenue, Room 2704
Seattle, WA 98174
Telephone: (206) 946-3450
kristin.h.joe@irsounsel.treas.gov
cjc

OF COUNSEL:
JOSEPH W. SPIRES
Division Counsel
(Small Business/Self-Employed)
KATHRYN A. MEYER
Area Counsel
(Small Business/Self-Employed: Area 7)
CATHERINE J. CABALLERO
Associate Area Counsel
(Small Business/Self-Employed)

Exhibit 11

From: [Moss Matthew O](#)
To: [Fields Thomas E](#)
Subject: RE: I hope you have still more extra time on your hands?
Date: Tuesday, March 1, 2022 8:56:31 AM
Attachments: [image001.png](#)
[2022-3-1 F14791 DELW 830643164 201812.pdf](#)

Hi Tom,

Yes, I can produce Forms 14791/14792 from your completed IU computation workbooks for BBA cases (b)(5) - DP, (b)(3)/6103, (b)(7)(A)
(b)(5) - DP, (b)(3)/6103, (b)(7)(A)
(b)(5) - DP, (b)(3)/6103, (b)(7)(A)

Attached is a preliminary 14791.

Regards,

Matthew Moss

Tax Computation Specialist
P: 616-365-4632 F:855-747-0621

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Monday, February 28, 2022 7:16 PM
To: Moss Matthew O <Matthew.O.Moss@irs.gov>
Subject: I hope you have still more extra time on your hands?

Again, hope all is well...

I have 3 syndicated conservation easement cases (b)(5) - DP, (b)(3)/6103, (b)(7)(A)

Any how please process what you should for this (second) case called Delwood Resources.

I am sending you a copy of (b)(5) - DP, (b)(3)/6103, (b)(7)(A)

Thank you very much for your help.

Exhibit 12

Fields Thomas E

From: Fields Thomas E
Sent: Friday, March 4, 2022 9:23 AM
To: Fields Thomas E
Subject: FW: Request for Interest calculation Form 14791 enclosed
Attachments: 2022-3-1_F14791_DELW_830643164_201812.pdf; DMI DELW 3164 201812.pdf

Importance: High

From: Anderson Wendy L <Wendy.Anderson@irs.gov>
Sent: Thursday, March 3, 2022 5:49 PM
To: Fields Thomas E <Thomas.E.Fields@irs.gov>
Subject: FW: Request for Interest calculation Form 14791 enclosed
Importance: High

We have completed your request for interest computation. Please find enclosed the necessary attachments.

Wendy Anderson
CCP TEAM 303 FORT
PH 801-620-2163

From: *CCP Ogden <CCP.Ogden@irs.gov>
Sent: Thursday, March 3, 2022 3:05 PM
To: Anderson Wendy L <Wendy.Anderson@irs.gov>
Subject: FW: Request for Interest calculation Form 14791 enclosed
Importance: High

Wendy-

Assigned to you-BBA comp request

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Tuesday, March 1, 2022 4:53 PM
To: *CCP Ogden <CCP.Ogden@irs.gov>
Subject: Request for Interest calculation Form 14791 enclosed

Please perform a Form 14791 calculation.

This is for a 201812 tax year.
The 1065 would have been due on 3/15/2019.
"Ending date" is 75 days from today? which would be 5/15/2022 ?

Thank you.

From: Moss Matthew O <Matthew.O.Moss@irs.gov>
Sent: Tuesday, March 1, 2022 8:56 AM
To: Fields Thomas E <Thomas.E.Fields@irs.gov>
Subject: RE: I hope you have still more extra time on your hands?

Hi Tom,

Yes, I can produce Forms 14791/14792 from your completed IU computation workbooks for BBA cases. The process generally goes that I provide F14791 to you without interest. You go to service center and request interest comp with the 14791 I provided. Then you come back to me with their interest calcs and I provide updated 14791/14792s.

Attached is a preliminary 14791.

Regards,

Matthew Moss

Tax Computation Specialist
P: 616-365-4632 F:855-747-0621

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Monday, February 28, 2022 7:16 PM
To: Moss Matthew O <Matthew.O.Moss@irs.gov>
Subject: I hope you have still more extra time on your hands?

Again, hope all is well...

I have 3 syndicated conservation easement cases that should have been sent to you 3 months ago at a minimum(?).

Any how please process what you should for this (second) case called Delwood Resources.

I am sending you a copy of Delwood’s “Penalty workbook” in case it is something you need to do your work for this case.

Thank you very much for your help.

stem - [Case Maintenance: Delwood Resources LLC - 570441]

Window Help

My Reminders

LLC - 570

Case Attributes

Case Status:	Open	CIC Indicator:	<input type="checkbox"/>
*Team Code:	1694	Specialist Referral:	<input type="checkbox"/>
*Team Manager:	Combs, David M Manage TM	Virtual Sites:	
*Primary Team Coordinator:	Fields, Thomas E	Site Short Name:	
Team Coordinator Permissions:	Moss, Matthew Oliver Manage TC Permissions	Virtual Server Name:	
*Cycle Begin Year:	201812 (YYYYMM)		
*Cycle End Year:	201812 (YYYYMM)		
*Cycle Type Code:	Regular		
Secondary Cycle Type Code:			
Secondary Cycle Type Date:			
Actual Closed Date:			
Re-Opened Date:	None		
*Planned Start Date:	09/01/2020		
*Planned End Date:	03/31/2022		
Revised Closed Date - First:	03/31/2022		
Revised Closed Date - Second:			
Pre-Risk Program:	None		

Exhibit 13

From: [Fields, Thomas E](#)
To: [Fields, Thomas E](#)
Subject: FW: SIGNED: Please sign 3 Form 15260's
Date: Wednesday, March 9, 2022 10:39:00 AM
Attachments: [image001.png](#)
[Form 15260 BASSWOOD.pdf](#)
[Form 15260 DELWOOD.pdf](#)
[Form 15260 ARDEN.pdf](#)

From: Combs David M <David.M.Combs@irs.gov>
Sent: Tuesday, March 1, 2022 4:52 PM
To: Fields Thomas E <Thomas.E.Fields@irs.gov>
Subject: SIGNED: Please sign 3 Form 15260's

I understand THIS form. (b)(5) - DP, (b)(3)/6103, (b)(7)(A)

David Combs
Team 1694 Manager
Pontiac, MI 48340-2238
Telephone Number is 248-874-2212

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Tuesday, March 1, 2022 4:08 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: Please sign 3 Form 15260's

(b)(5) - DP, (b)(3)/6103, (b)(7)(A)

(b)(5) - DP, (b)(3)/6103, (b)(7)(A)

(b)(3)/6103, (b)(7)(A), (b) (7)(E)

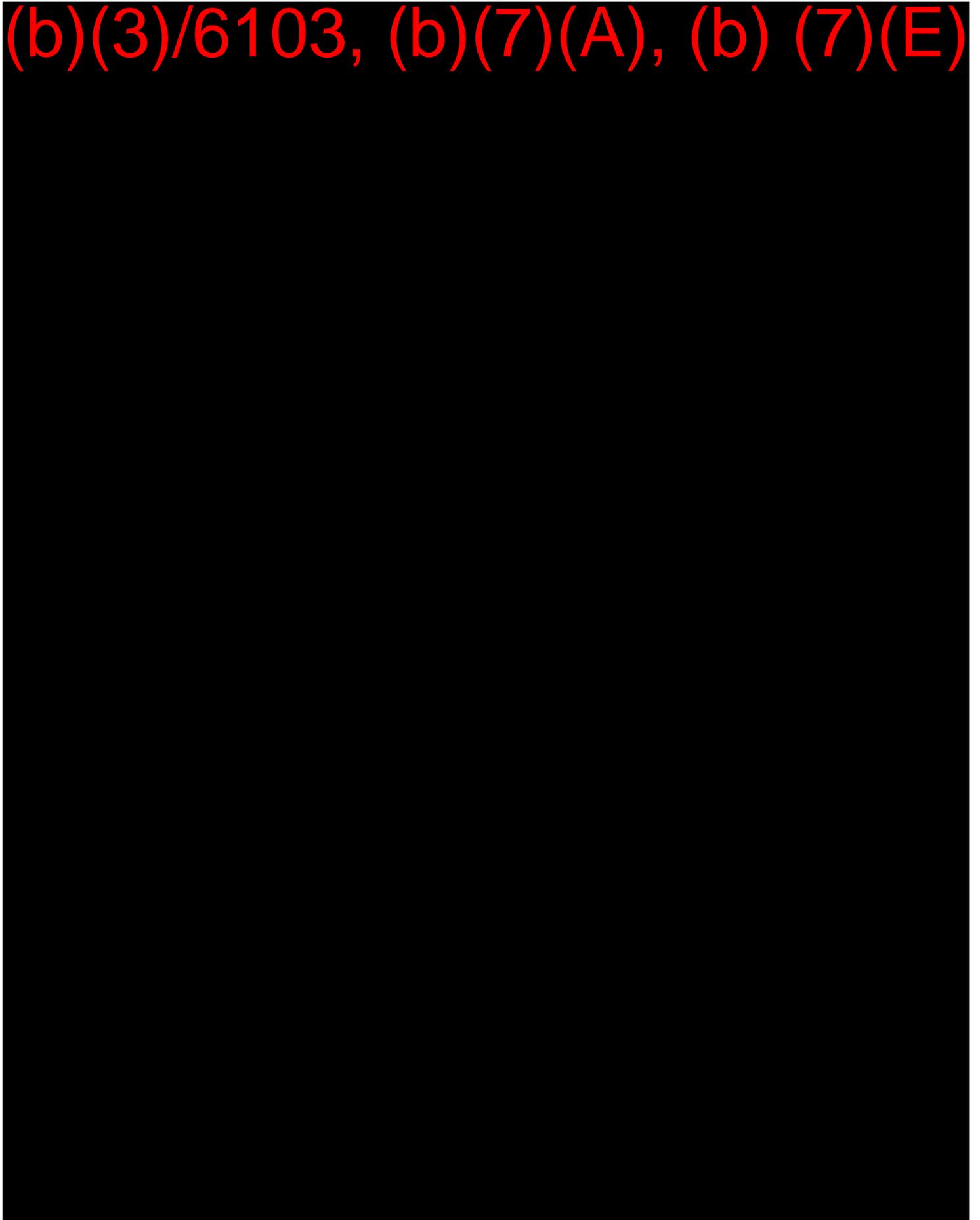


Exhibit 14

Fields Thomas E

Subject: FW: SIGNED: Please sign 3 Form 15260's
Attachments: Form 15260 ARDEN.pdf

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Wednesday, March 9, 2022 10:39 AM
To: Fields Thomas E <Thomas.E.Fields@irs.gov>
Subject: FW: SIGNED: Please sign 3 Form 15260's

From: Combs David M <David.M.Combs@irs.gov>
Sent: Tuesday, March 1, 2022 4:52 PM
To: Fields Thomas E <Thomas.E.Fields@irs.gov>
Subject: SIGNED: Please sign 3 Form 15260's

I understand THIS form. Must be something WRONG!!

David Combs
Team 1694 Manager
Pontiac, MI 48340-2238
Telephone Number is 248-874-2212

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Tuesday, March 1, 2022 4:08 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: Please sign 3 Form 15260's

They are all sort of simple, because these 3 SCE cases did not elect out of BBA.

So I answered question 2b with a **NO**
And thus we/I am done with this form....just you sign it...and I will print it and scan it...and put it into SAIN 724.
It is a required form for a BBA audit.

Part 2 – Partnership tax years beginning on or after 1/1/2018

<p>a. Is this partnership a substitute for return (SFR) or delinquent return</p> <p>If yes, the partnership is subject to the BBA regime and is not eligible to elect out of BBA. If an election out of BBA was made as part of the delinquent return, send the partnership Letter 6062, Notice of Invalid Election Out of the BBA.</p> <ul style="list-style-type: none"> • File this form in SAIN 724/Section 600 • Go to Form 15262, Bipartisan Budget Act (BBA) Partnership Procedures Check Sheet • Stop here <p>If no, continue</p>	<p>Yes</p> <p>BBA</p> <p><input type="checkbox"/></p>
<p>b. Did the partnership elect out of BBA</p> <p>If no, the partnership is subject to the BBA regime.</p> <ul style="list-style-type: none"> • File this form in SAIN 724/Section 600 • Go to Form 15262, Bipartisan Budget Act (BBA) Partnership Procedures Check Sheet • Stop here <p>If yes, continue</p>	<p>Continu</p>

Exhibit 15

Fields Thomas E

From: an la William C
Sent: Wednesday, pril 13, 2022 11:43 M
To: Fields Thomas E
c: inner Eric an Flee shley M Wor man Caroline
Subject: Dell ood E: (b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC
(b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC
(b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC
Si ned : William C an la irsco nsel reas gov

Tom,

The Form 886-A for penalties in this case, (b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC Caroline Workman, is approved.

Thanks,
Carl

W. Carl Hankla
Attorney
IRS Office of Chief Counsel (LB&I)
985 Michigan Avenue
Suite 907, Stop 31
Detroit, MI 48226
(313) 234-1723
William.C.Hankla@irsounsel.treas.gov

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Tuesday, April 12, 2022 5:07 PM
To: Hankla William C <William.C.Hankla@irsounsel.treas.gov>
Cc: Skinner Eric R <Eric.R.Skinner@IRSCOUNSEL.TREAS.GOV>
Subject: (b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC ? (b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC
(b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC

Dear Carl,

Last week Ashely (b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC.

Today while the Technical Services processor was going thru my cases (to send out her NOPA package) (b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC
(b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC

The body of the 886-A is still correct and nothing changed there.

Since Ashley is on vacation this week I am hoping (b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC
.

Thank you very much for your help,
Tom Fields
248-874-2308

Here was Ashley's email: (b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC

Delete | Respond | Quick Steps | 19 | Move

RE: (b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC



Van Fleet Ashley M

To Fields Thomas E

Cc Skinner Eric R; Combs David M

You replied to this message on 4/7/2022 2:17 PM.

Tom,

(b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC

Best,

Ashely

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Thursday, April 7, 2022 11:32 AM
To: Van Fleet Ashley M <Ashley.M.VanFleet@irscounsel.treas.gov>
Subject: FW: (b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC

Exhibit 16

Fields Thomas E

From: Hankla William C
Sent: Wednesday, April 13, 2022 11:43 AM
To: Fields Thomas E
Cc: Skinner Eric R; Van Fleet Ashley M; Workman Caroline B
Subject: [Dellwood] RE: Ashley is out this week. Would you please approve this corrected 886A? It has \$22,252 more of penalty in it that what the original 886A-2 had?

Signed By: William.C.Hankla@irscounsel.treas.gov

Tom,

The Form 886-A for penalties in this case, with corrected computations by Caroline Workman, is approved.

Thanks,
Carl

W. Carl Hankla

Attorney
IRS Office of Chief Counsel (LB&I)
985 Michigan Avenue
Suite 907, Stop 31
Detroit, MI 48226
(313) 234-1723
William.C.Hankla@irscounsel.treas.gov

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Tuesday, April 12, 2022 5:07 PM
To: Hankla William C <William.C.Hankla@irscounsel.treas.gov>
Cc: Skinner Eric R <Eric.R.Skinner@IRSCOUNSEL.TREAS.GOV>
Subject: Ashley is out this week. Would you please approve this corrected 886A? It has \$22,252 more of penalty in it that what the original 886A-2 had?

Dear Carl,

Last week Ashley approved the 886A's for my Conservation cases.

Today while the Technical Services processor was going thru my cases (to send out her NOPA package) she came across a small math error in one of my "penalty" 886A's. The error is that there should have been \$22,252 more of penalty. This error did not cause the 886A to need to be rewritten as just the last page, a page of calculations, changed. The body of the 886-A is still correct and nothing changed there.

Since Ashley is on vacation this week I am hoping you would give your approval to the enclosed "corrected 886A" because I need to send out another "Summary Report Package" ASAP because of this penalty change/correction.

Thank you very much for your help,
Tom Fields
248-874-2308

Here was Ashley's email approving my 886A's....at least it is the email for the "penalty 886A's":

Delete | Respond | Quick Steps | | Move

RE: NOPAs Delwood



Van Fleet Ashley M

To Fields Thomas E

Cc Skinner Eric R; Combs David M

You replied to this message on 4/7/2022 2:17 PM.

Tom,

The two Penalty NOPA's for Delwood look fine except the 886A-2 references Basswood's 1065 instead of Dellwood on page 2 un

Best,

Ashely

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Thursday, April 7, 2022 11:32 AM
To: Van Fleet Ashley M <Ashley.M.VanFleet@irscounsel.treas.gov>
Subject: FW: NOPAs Delwood

Exhibit 17

From: Combs David M
Sent: Wednesday, April 13, 2022 12:34 PM
To: Fields Thomas E
Subject: I approved (corrected) Delwood Summary Report package you put a copy on my desk today.
Signed By: David.M.Combs@irs.gov

(b)(5) - DP, (b)(3)/6103, (b)(7)(A) I concur with council's approval.

David Combs
Team 1694 Manager
Pontiac, MI 48340-2238
Telephone Number is 248-874-2212

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Wednesday, April 13, 2022 12:11 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: Would you please approve this (corrected) Delwood Summary Report package I am sending out today?

I will put a copy on your desk.

From: Hankla William C <William.C.Hankla@irscounsel.treas.gov>
Sent: Wednesday, April 13, 2022 11:43 AM
To: Fields Thomas E <Thomas.E.Fields@irs.gov>
Cc: Skinner Eric R <Eric.R.Skinner@IRSCOUNSEL.TREAS.GOV>; Van Fleet Ashley M <Ashley.M.VanFleet@irscounsel.treas.gov>; Workman Caroline B <caroline.workman@irs.gov>
Subject: [Dellwood] RE: Ashley is out this week. **(b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC**
(b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC

Tom,

The Form 886-A for penalties in this case, **(b)(5) - DP, (b)(3)/6103, (b)(7)(A), (b)(5) - AC** Caroline Workman, is approved.

Thanks,
Carl

W. Carl Hankla
Attorney
IRS Office of Chief Counsel (LB&I)
985 Michigan Avenue
Suite 907, Stop 31
Detroit, MI 48226
(313) 234-1723
William.C.Hankla@irscounsel.treas.gov

Exhibit 18

From: Combs David M
Sent: Wednesday, April 13, 2022 12:34 PM
To: Fields Thomas E
Subject: I approved (corrected) Delwood Summary Report package you put a copy on my desk today.
Signed By: David.M.Combs@irs.gov

The additional penalty amount of \$22,252 is approved. I concur with council's approval.

David Combs
Team 1694 Manager
Pontiac, MI 48340-2238
Telephone Number is 248-874-2212

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Wednesday, April 13, 2022 12:11 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: Would you please approve this (corrected) Delwood Summary Report package I am sending out today?

I will put a copy on your desk.

From: Hankla William C <William.C.Hankla@irscounsel.treas.gov>
Sent: Wednesday, April 13, 2022 11:43 AM
To: Fields Thomas E <Thomas.E.Fields@irs.gov>
Cc: Skinner Eric R <Eric.R.Skinner@IRSCOUNSEL.TREAS.GOV>; Van Fleet Ashley M <Ashley.M.VanFleet@irscounsel.treas.gov>; Workman Caroline B <caroline.workman@irs.gov>
Subject: [Dellwood] RE: Ashley is out this week. Would you please approve this corrected 886A? It has \$22,252 more of penalty in it that what the original 886A-2 had?

Tom,

The Form 886-A for penalties in this case, with corrected computations by Caroline Workman, is approved.

Thanks,
Carl

W. Carl Hankla
Attorney
IRS Office of Chief Counsel (LB&I)
985 Michigan Avenue
Suite 907, Stop 31
Detroit, MI 48226
(313) 234-1723
William.C.Hankla@irscounsel.treas.gov

Exhibit 19

Fields Thomas E

From: Fields Thomas E
Sent: Wednesday, December 7, 2022 12:00 PM
To: Fields Thomas E
Subject: 4 25 2022 Manager Dave Combs approves 5701-003

From: Combs David M <David.M.Combs@irs.gov>
Sent: Thursday, April 28, 2022 12:28 PM
To: Fields Thomas E <Thomas.E.Fields@irs.gov>
Subject: So, all 3 DW have been signed and we are all good.

YES, this was problem with new computer. No problem now.

David Combs
Team 1694 Manager

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Monday, April 25, 2022 11:08 AM
To: Combs David M <David.M.Combs@irs.gov>
Subject: This is the email you can't open....It had two copy jobs of Snag it pictures in it...that could have something to do with why you can't open it?

From: Fields Thomas E
Sent: Thursday, April 21, 2022 3:15 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: please check your inbox for two 5701's to be approved

(b)(5) - DP, (b)(3)/6103, (b)(7)(A)

So would you please approve these two new 5701-003 ?

(b)(7)(E)

(b) (7) (E)

Exhibit 20

Fields Thomas E

From: Combs David M
Sent: Thursday, April 28, 2022 1:03 PM
To: Fields Thomas E
Subject: SIGNED: here are Basswood's 3
Attachments: Basswood 5701-001.pdf; Basswood 5701-002.pdf; Basswood 5701-003.pdf

David Combs
Team 1694 Manager

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Thursday, April 28, 2022 12:44 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: here are Basswood's 3

From: Combs David M <David.M.Combs@irs.gov>
Sent: Thursday, April 28, 2022 12:28 PM
To: Fields Thomas E <Thomas.E.Fields@irs.gov>
Subject: So, all 3 DW have been signed and we are all good.

YES, this was problem with new computer. No problem now.

David Combs
Team 1694 Manager

From: Fields Thomas E <Thomas.E.Fields@irs.gov>
Sent: Monday, April 25, 2022 11:08 AM
To: Combs David M <David.M.Combs@irs.gov>
Subject: This is the email you can't open....It had two copy jobs of Snag it pictures in it...that could have something to do with why you can't open it?

From: Fields Thomas E
Sent: Thursday, April 21, 2022 3:15 PM
To: Combs David M <David.M.Combs@irs.gov>
Subject: please check your inbox for two 5701's to be approved

You approved a Basswood 5701-003 a long time ago...and a Delwood 5701-002 and I was stupidly inputting a new one, that I did not need to do, and I deleted the one you had approved.
(The Delwood I wanted to change the IMS 5701 to agree to what was actually sent to the Taxpayer...so that is why I changed (made a new 5701) the 5701.

So would you please approve these two new 5701-003 ?

tenance: Basswood Aggregates LLC - 570438]

My Reminders

5701s

Filter:

Tax Year: Entity Name: Document Status:

Examiner: SAIN: Entity Status:

Position Code: UIL:

5701 Ag
Age Of I

Age Of C

Alpha Document ...	Numeric Document ...	5701 Year	Tax Year	Issue Date	Days Outstanding	Due Date	Received Date	Examiner (
	1	201812	201812	04/08/2022	13	04/11/2022		Fields, Thor
	2	201812	201812	04/08/2022	13	04/11/2022		Fields, Thor
	3	201812	201812		0	03/31/2022		Fields, Thor

e Maintenance: Delwood Resources LLC - 570441]

Help

My Reminders

5701s

Filter:

Tax Year: Entity Name: Document Status:

Examiner: SAIN: Entity Status:

Position Code: UIL:

Alpha Document ...	Numeric Document ...	5701 Year	Tax Year	Issue Date	Days Outstanding	Due Date	Received Date	Exa
	1	201812	201812		0	03/31/2022		Field
	2	201812	201812		0	03/31/2022		Field
	3	201812	201812		0	03/31/2022		Field

Exhibit 21

From: [Stafford Pamela V](#)
To: [Brooks Cathy](#)
Subject: FW: please sign penalty sheet
Date: Friday, November 4, 2022 8:55:41 PM
Attachments: [SAIN 011 - Penalty Leadsheet LAKE.doc](#)

PVS

From: Brooks Cathy <Catherine.C.Brooks@irs.gov>
Sent: Friday, February 10, 2017 3:00 PM
To: Stafford Pamela V <Pamela.V.Stafford@irs.gov>
Subject: FW: please sign penalty sheet

HUGE oversight

Best regards,

Cathy Brooks
IRS, Large Business & International Division
East Compliance Practice Area Team Manager 1021
Atlanta, GA.

470-719-6553 (O)
770-633-0078 (Cell)
877-874-9964 (Fax)

From: Stafford Pamela V
Sent: Friday, February 10, 2017 2:35 PM
To: Brooks Cathy
Cc: Chung Tammy
Subject: FW: please sign penalty sheet

Cathy,

They are getting ready to issue the FPAA for the LPL2 returns. I did not get the penalty leadsheet in the case file signed by you as is required by the IRM. Also, per Tammy's e-mail below, I did not include two penalties on the leadsheet, even though they are included in the NOPA being issued for the penalties.

Will you please sign this leadsheet so that I can forward to Tammy? Thanks
Pam

From: Chung Tammy
Sent: Friday, February 10, 2017 1:55 PM
To: Stafford Pamela V

Subject: FW: please sign penalty sheet

I forgot. Here is the penalty sheet for LakePoint Land II, LLC. Counsel recommended Substantial valuation (6662(b)(3)(1)) and gross valuation penalties (6662(e) & (h)). (see Counsel's memo for LakePoint 2). The LakePoint II's penalty sheet, although signed, does not have the Substantial valuation and gross valuation penalties.

If you want those 2 penalties asserted, please ensure they are on the penalty sheet. Otherwise, they will not be on the FPAA, thus, will not be asserted.

Tammy

From: Chung Tammy
Sent: Friday, February 10, 2017 1:28 PM
To: Stafford Pamela V
Subject: please sign penalty sheet

Hi Pamela,

Re: [REDACTED]
LakePoint Land II, LLC, 61-1712446, 201113, 201213 & 201412

Counsel just finished reviewing FPAA's for the above cases. FPAA's are approved subject to recommended changes. 1 of the recommendations is penalty. [REDACTED]
[REDACTED]
[REDACTED]

I need to speak with Counsel for clarification so I can make the changes. Once done, FPAA's will be issued to the taxpayers.

I am attaching Counsel's memo for your record.

Regards,

Tammy Chung

TEFRA Coordinator
JFK Building, Stop 41100
15 New Sudbury Street
Boston, MA 02203-0208
Desk : 617-316-2888
Efax : 855-753-8251

Exhibit 22

Examiner: Pamela V. Stafford

Form 5701 #: 2

Date: 07/15/2016

Tax Period(s): 201311; 201312; 201412

Penalty Consideration Lead Sheet

IRC §	Penalty	IRM Reference	For each applicable penalty enter either: Reason for Assertion or Non-Assertion; Work paper Reference
6651(a)(1) 6651(a)(2)	Failure to File Failure to Pay	20.1.2 20.1.2	This penalty is not applicable because the taxpayer timely filed its return. Since this is a partnership, tax is paid at the individual partner level. Failure to Pay does not apply.
6654 6655	Estimated Tax	20.1.3 20.1.3	Since this is a partnership, it does not pay taxes.
6662(c)	Negligence (General)	20.1.5	The Negligence Penalty was applied to NOPA 2 and 3. See NOPA 5 for complete information on the reasons.
6662(d)	Substantial Understatement	20.1.5	The substantial understatement was applied to NOPA 2 and 3. See NOPA 5 for complete information on the reasons.
6662(b)	Substantial Valuation Misstatement	20.1.5	The penalty for substantial valuation misstatement applies to NOPA 3. See NOPA 5 for complete information on the reasons.
6663	Fraud	20.1.5	The fraud penalty was considered and discussions with the LB&I attorney as well as Jerrold Fink, Fraud Coordinator were conducted. Ultimately it was decided that this penalty would not be asserted.
6662(e)	Substantial Valuation Misstatement	20.1.5	The substantial valuation misstatement applies to NOPA 3. See NOPA 5 for a complete discussion.
6662(h)	Gross Valuation Misstatement	20.1.5	The gross valuation misstatement applies to NOPA 3. See NOPA 5 for a complete discussion.
	Other:		
	Alternative Penalty Position	20.1.5 and 4.10.6	N/a
	Abatement of Assessed Penalties	20.1.1	The penalties should not be abated.
6676	Excessive Claims		N/a

Manager Approval: /s/ Catherine C Brooks –
penalties were discussed and approved by me - CCB

Date: 7/16/2016

Examiner: Pamela V. Stafford	
Form 5701 #: 2	Date: 07/15/2016
Tax Period(s): 201311; 201312; 201412	
Penalty Consideration Lead Sheet	

6694(a) or 6694(b)	Preparer Penalties considered in accordance with IRM	20.1.6 20.1.6	Agent is referring the preparer as well as promoters to the ATAT group.

Note regarding taxpayer's position on the penalty assertion. The taxpayer was given the opportunity to provide a reasonable cause position for their tax treatment of the adjusted items. The taxpayer refused to provide a position. See the letter attached to this sheet.

Manager Approval: /s/ Catherine C Brooks –
penalties were discussed and approved by me - CCB

Date: 7/16/2016

Exhibit 23

Exhibit A to Motion

UNITED STATES TAX COURT

LAKEPOINT LAND II, LLC,)	
LAKEPOINT LAND GROUP, LLC,)	
TAX MATTERS PARTNER,)	
)	
Petitioner,	)	Docket No. 13925-17
)	
v.	)	Filed Electronically
)	
COMMISSIONER OF INTERNAL	)	Judge Weiler
REVENUE,)	
)	
Respondent.)	

DECLARATION OF CATHERINE C. BROOKS

I, Catherine C. Brooks, under penalty of perjury under the laws of the United States of America, including 28 U.S.C. § 1746, declare as follows:

1. I am over 18 years of age, of sound mind, capable of making this Declaration, and am personally acquainted with the facts stated in this Declaration.

2. I was Pamela V. Stafford’s manager at all times during her examination of LakePoint Land, II, LLC (“LakePoint”) for its November 30, 2013, December 31, 2013, and December 31, 2014, tax years. Agent Stafford proposed penalties for tax year December 31, 2013 under I.R.C. §§ 6662(c) 6662(d), 6662(b), 6662(e), and 6662(h) and for tax year December 31, 2014 under I.R.C. § 6662(b) in connection with this examination.

Docket No. 13925-17

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3. I reviewed the Penalty Consideration Lead Sheet Agent Stafford prepared and I signed and approved it on July 16, 2016, by typing the following language in the lower left-hand corner of the first page of the lead sheet in the “Manager Approval:” section, “/s/ Catherine C Brooks -.” The symbol “/s/” was meant to stand for my signature. That line continued beneath with my typed statement “penalties were discussed and approved by me – CCB.” To the right of that last line in the “Date:” field, I typed in “7/16/2016.”

4. After this case was closed to IRS Technical Services for preparation of a Notice of Final Partnership Administrative Adjustment, I was asked to sign the Penalty Consideration Lead Sheet again because agent Stafford informed me that the Technical Services representative had “indicated that she saw your signature on the penalty NOPA, but still wants the form signed”, even though I had previously signed it. I then signed the penalty lead sheet approving all penalties for a second time on November 29, 2016 using my digital signature. A copy of the Penalty Consideration Lead Sheet that I signed and approved on two separate occasions is attached as Exhibit A.

5. I know the foregoing facts to be true to the best of my knowledge and belief. I am competent to testify to such facts and would so testify if I appeared as a witness in this case.

Docket No. 13925-17

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6. I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

CATHERINE C. BROOKS
PROGRAM MANAGER

Date: August 9, 2022

By:

Catherine C. Brooks

Digitally signed by Catherine C. Brooks

Date: 2022.08.09 12:55:45 -04'00'

CATHERINE C. BROOKS
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