

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

LEROY M. JAGGERS,)	SR
)	
Petitioner,)	
)	
v.)	Docket No. 21873-16 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This is a collection due process (“CDP”) case brought pursuant to section 6330(d)(1). The liabilities at issue include penalties for “frivolous tax submissions” assessed against petitioner Leroy M. Jagers pursuant to section 6702.

On July 19, 2017, respondent (the IRS) filed a motion for summary judgment. The motion very generally alleges “verification * * * that the requirements of any applicable law or administrative procedure have been met”, see sec. 6330(c)(1), and in support of that allegation the motion relies on the very general statement to the same effect in the notice of determination issued by IRS Appeals. Neither the notice nor the motion mentions verification as to the section 6702 penalties in particular.

However, section 6751(b)(1) requires special supervisory approval of the “initial determination” of section 6702 penalties. See IRM pt. 25.25.10.8.1 (08-13-2015) (“Pursuant to IRC Section 6751(b), written management approval must be indicated before assessing the IRC Section 6702 penalty. This written managerial approval should be indicated on Form 8278”). And under section 7491(c), the IRS has the burden of production as to penalties. IRS Appeals’ “verification” was presumably required to include a verification of compliance with section 6751(b)(1).

The Court would not grant the IRS's motion before giving Mr. Jagers an opportunity to respond to it, but before we order such a response, it is first

ORDERED that, no later than July 28, 2017, the IRS shall either--

(a) file a supplement to its motion for summary judgment that shows the IRS's compliance with section 6751(b)(1), or that explains why such a showing is not necessary to the success of the motion, or that concedes the section 6702 penalties; or

(b) withdraw the motion for summary judgment and file a motion to remand the case to IRS Appeals for purposes of obtaining verification as to the penalties; or

(c) make another appropriate filing.

**(Signed) David Gustafson
Judge**

Dated: Washington, D.C.
July 20, 2017