

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

GREAT LAKES CONCRETE PRODUCTS)
 LLC,)
)
 Petitioner(s),)
)
 v.) Docket No. 15602-15 L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)
)
)
)
)

ORDER

This case is on the Court’s June 12, 2018 trial calendar for Buffalo, New York. It is an appeal from a notice of determination, and the main issue is the taxpayer’s request for a penalty abatement. The penalty involved is one for failure to deposit under I.R.C. § 6656. This prompted the parties to realize that this case raises yet another problem in the aftermath of *Chai v. Commissioner*, 851 F.3d 190 (2d Cir. 2017), *aff’g in part, rev’g in part* 109 T.C.M. 1206 (2015): Is the penalty under that section one that is “automatically calculated through electronic means”? I.R.C. § 6751(b)(2)(B). If it is not, then did the immediate supervisor of whoever made the initial determination to impose that penalty approve it in writing? And there are likely to be collateral problems as well, such as whether proof of the IRS’s compliance with § 6751 is part of the verification “that the requirements of any applicable law or administrative procedure have been met,” I.R.C. § 6330(c)(1), or is part of a challenge to the underlying liability, I.R.C. § 6330(c)(2)(B).

The Court spoke with the parties on February 2, 2018 and discussed how to move the case ahead. All agreed that a remand to the IRS Appeals Office is a reasonable way to proceed. That should lead to a supplemental notice of

determination, which Great Lakes can challenge once the IRS issues it. It is therefore

ORDERED that this case is stricken from the June 12, 2018 Buffalo trial calendar. It is also

ORDERED that this division of the Court retains jurisdiction of the case. It is also

ORDERED that respondent's January 25, 2018 motion to remand is granted. It is also

ORDERED that on or before August 2, 2018 the parties shall file a supplemental notice of determination or a status report describing their progress at IRS Appeals. Any supplemental notice of determination should explain the IRS's position on whether penalty abatement is a precluded issue for each liability at issue, a full explanation of whether Great Lakes met the reasonable-cause exception to penalties for each period at issue, and a statement and explanation of the effect of § 6751 and *Chai* on this case.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
February 5, 2018