

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

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

**ORDER**

On June 16, 2015, petitioner filed a petition to review the Internal Revenue Service’s (IRS) Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330<sup>1</sup> (notice of determination), which sustained proposed levies with respect to petitioner’s unpaid tax liabilities relating to its Forms 941, Employer’s Quarterly Federal Tax Return, for the tax periods ending March 31, 2013, June 30, 2013, September 30, 2013, December 31, 2013, March 31, 2014, and June 30, 2014.

On October 18, 2016, respondent filed a Motion for Summary Judgment (motion), pursuant to Rule 121, supported by a declaration submitted by Phillip J. Krell, IRS Office of Appeals (Appeals Office) settlement officer. Petitioner opposes respondent’s motion. By order dated June 13, 2017, respondent’s motion was assigned for disposition to the undersigned. See sec. 7443A(b)(4), (c).

Respondent attached to his motion Forms 4340, Certificate of Assessments, Payments, and Other Specified Matters, for the tax periods at issue in this case. The Forms 4340 indicates that the IRS assessed, among other things, penalties for failure to deposit required taxes under section 6656(a) on: (1) July 8, 2013, and August 12, 2013, for the tax period ending March 31, 2013; (2) October 7, 2013,

---

<sup>1</sup>Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

and November 11, 2013, for the tax period ending June 30, 2013; (3) March 31, 2014, for the tax period ending September 30, 2013; (4) March 31, 2014, for the tax period ending December 31, 2013; (5) October 20, 2014, for the tax period ending March 31, 2014; and (6) September 29, 2014, and November 3, 2014, for the tax period ending June 30, 2014.

Section 6751(b)(1) provides:

No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.

The notice of determination in this case states that the Appeals Office verified that the requirements of any applicable law or administrative procedure were met. The Appeals Office settlement officer is required by statute to verify that the requirements of any applicable law or administrative procedure have been met and must do so regardless of whether the taxpayer raised the issue at the CDP hearing. See sec. 6330(c)(1), (3)(A); Hoyle v. Commissioner, 131 T.C. 197, 200-203 (2008). However, the record does not show whether the verification by the Appeals Office pursuant to section 6330(c)(1) included a verification that the IRS assessed the failure to deposit penalties in conformity with section 6751(b)(1).<sup>2</sup> The record also does not include any documentation to substantiate that the IRS complied with section 6751(b)(1) before assessing the failure to deposit penalties for the tax periods at issue in this case. To show compliance with this provision, respondent must show (1) the identity of the individual who made the “initial

---

<sup>2</sup>In Graev v. Commissioner, 147 T.C. \_\_\_, \_\_\_ (slip. op. at 39) (Nov. 30, 2016), the Court held that the taxpayers’ argument in a deficiency case that the Commissioner failed to comply with sec. 6751(b)(1) was premature because the Commissioner had not yet assessed a sec. 6662(a) penalty. However, the Court stated: “We do not foreclose the possibility that a taxpayer who believes that a penalty has been assessed in violation of sec. 6751(b)(1) might raise this issue in a postassessment collection due process (CDP) proceeding.” Graev v. Commissioner, 147 T.C. at \_\_\_ (slip. op. at 39 n. 22) (citing section 6320(c), 6330(c)(1) which requires that the settlement officer in a CDP hearing obtain verification that the requirements of any applicable law or administrative procedure have been met).

determination”, (2) an approval “in writing”, and (3) the identity of the person giving approval and his or her status as the “immediate supervisor”. See sec. 6751(b)(1).

If respondent wishes to pursue summary judgment as to the entirety of this case, he shall file a supplemental memorandum in support of his motion including a declaration that attaches any relevant documents. If respondent believes that the Appeals Office was not required to verify compliance with section 6751(b)(1)-- e.g., in light of the exception in section 6751(b)(2) (“paragraph (1) shall not apply to \* \* \* any other penalty automatically calculated through electronic means”)--he shall set forth those arguments in his supplemental memorandum. Alternatively, if respondent concludes that the failure to deposit penalties were not properly assessed, he should consider abating those penalties, in which case the Court will consider the motion as it applies to the balance of the unpaid tax liabilities for the tax periods at issue.

Upon due consideration of the foregoing, it is

ORDERED that, on or before August 24, 2017, respondent shall file a supplement to his motion for summary judgment as described above. It is further

ORDERED that, on or before September 7, 2017, petitioner may file, if it wishes, a reply to respondent’s supplement to his motion for summary judgment.

**(Signed) Diana L. Leyden**  
**Special Trial Judge**

Dated: Washington, D.C.  
August 3, 2017