

ID: CCA_2022070711080150

UILC: 6700.00-00

Number: **202232015**

Release Date: 8/12/2022

From: [REDACTED]

Sent: Thursday, July 7, 2022 11:08:01 AM

To: [REDACTED]

Cc:

Bcc:

Subject: RE: case guidance

Good afternoon,

[REDACTED]

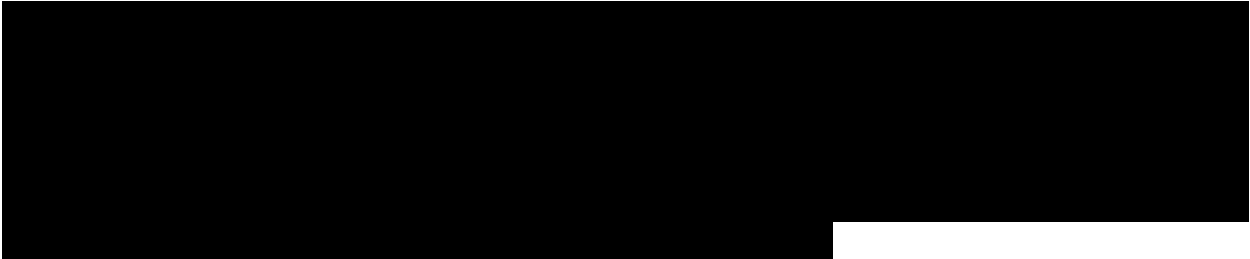
Generally, section 6700 imposes a penalty on any person who organizes or assists in the organization of an abusive tax shelter, or participates in the sale of interests in such a shelter, and makes or furnishes (1) a statement regarding a tax benefit of a shelter which he knows or has reason to know is false or fraudulent as to a material matter, or (2) a gross valuation overstatement (that is, a valuation exceeding 200 percent of the correct value) as defined in section 6700(b).

Section 6700(b) defines a “gross valuation overstatement” as one that exceeds 200 percent of the correct valuation of goods or services, where that value is directly related to the amount of a deduction or credit allowable under Chapter 1 of the Code. *See, e.g., United States v. Turner*, 601 F. Supp. 757, 766–67 (E.D. Wis. 1985), *aff’d sub nom. United States v. Smith*, 787 F.2d 595 (7th Cir. 1986) (“Priced for sale at \$80,000, the Saxon Energy Brain “001” unit, also known as “EB1,” was overvalued by more than 200%, which therefore constitutes the first prong of a “gross valuation overstatement” in accordance with § 6700(b)(1)(A). As the selling price is represented to be the fair market value of the 001 unit, and therefore the figure upon which the Investment and Energy tax credits are computed, that overstatement would be *directly related to the amounts of those credits which is the second prong of the definition of a gross valuation overstatement.*”) (emphasis added).

[REDACTED]

But the 6700 penalty also applies to a promoter who, in connection with the organization or sale of an interest in the tax shelter, makes or furnishes (or causes another person to make or furnish) a statement with respect to: (1) the allowability of any deduction or

credit; (2) the excludability of any income; or (3) the securing of any other tax benefit, by reason of holding an interest in the entity or participating in the plan or arrangement that the promoter knows or has reason to know is false or fraudulent as to any material matter. §6700(a)(2)(A). A “statement” includes those “directly addressing the availability of tax benefits, and those concerning factual matters that are relevant to the availability of tax benefits.” United States v. Campbell, 897 F.2d 1317, 1320 (5th Cir. 1990). In determining whether there is reason to know, courts have looked to “what a reasonable person in the defendant’s subjective position would have discovered.” Id. at 1322 (cleaned up); see also id. at 1320–21 (finding that defendant made false statements under §6700 when he made and furnished statements that certain notes were deductible in the full amount of their contemporaneous exchange rate when he promoted an 8 to 1 deduction and disseminated his tax attorney’s letter opinion because he knew or had reason to know that the notes were virtually worthless); see also CCA 202125009 (for purposes of abusive micro-captive insurance transactions, statements include advice, promotional materials, or any false statements that are material relating to income exclusion under §831(b) or deductions under §162 for paid insurance premiums).



Please let us know if you have any further questions or would like to discuss.

All best,

Very respectfully,

Aurora

Aurora Wheeland

Attorney

CC:PA:02

Aurora.M.Wheeland@irsounsel.treas.gov

Office phone: 202-317-5266

Personal cell: 202-641-2454