

D. Respondent's transcript records show that no assessment was made.

One of the issues raised by P in her CDP hearing request was that no properly executed certificate of assessment exists for the penalty.¹ In the landmark Brafman case,² the Fifth Circuit found that no liability exists without a properly executed certificate of assessment. P asked for what she hoped would be the properly signed "record of assessment"³ that would include such a certificate and that R is bound by §6203 to provide on request. She received instead a computer transcript indicating an assessment had been made. That transcript contained no signed assessment documents.⁴

Subsequent to the decision in Brafman, this Court has decided that R's compliance with the letter of §6203 is just too much trouble. Instead the Court allows R to produce and rely on only the transcript without the underlying assessment documents.⁵ Production of the transcript creates a presumption that the

¹ SOF, Exhibit 4-J, CDP request w attachments, pgs. 9-10.

² *Brafman v. U.S.*, 384 F.2d 863,867 (5th Cir. 1967)

³ § 6203. Method of assessment

"The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. **Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment.**" (Emphasis added)

⁴ SOF, Exhibit 21-J, F4340 transcript for 2005, pgs. 5 – 7.

⁵ *Nestor v. Commissioner*, 118 T.C. 162 (2002).

assessment was properly made unless the taxpayer can introduce evidence of irregularity with the transcript.⁶

In this case the transcripts themselves facially provide proof that no legitimate assessment exists. Additional information sent to P in response to a second FOIA request confirms that no assessment exists for the penalty.

In the following analysis P relies on readily available publications of the Internal Revenue Service, specifically, IRS Publication 6209, "IRS Processing Codes and Information" formerly titled "ADP and IDRS Information,"⁷ and the Internal Revenue Manual.⁸

Among the documents R has provided to support his case is IRS Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties. That form shows the approval of a §6702(a) penalty against a "1040 DATED 10/25/2008", with a PRN (Penalty Reference Number) of 666.⁹

Stipulation of Facts Exhibit 21-J is a FOIA request for assessment documents for the penalty at issue. In reply P received Form 4340 assessment transcript, Form CF5147, IMF -IDRS TRANSACTION RECORD, and two forms, one unnamed, and one titled

⁶ *Craig v. Commissioner*, 119 T.C. 252, 261-263 (2002).

⁷ IRS Publication 6209, http://www.irs.gov/pub/irs-utl/document6209_redacted.pdf.

⁸ The Internal Revenue Manual: <http://www.irs.gov/irm/>

⁹ SOF, Exhibit 18-J, Audit file, pg. 4, Form 8278 dated 6/3/09.

"On-line Adjustment."¹⁰ Form 4340 also appears, with slight variations in format, elsewhere in the record.^{11,12}

It is a violation of procedure to use Transaction Code (TC) 240 to assess Form 8278 penalties.¹³ IRS Publication 6209 specifically states:

"The TC 240 and TC 241 are generated transaction codes and should not be used to assess or abate a miscellaneous civil penalty that has a PRN."¹⁴

There is no question that §6702 penalties have a PRN and that the penalty in this case was posted to P's IMF with Transaction Code 240. Form 4340 in Exhibit 21-J on its face shows a Transaction Code of 240 for the alleged assessment. Form 8278 in Exhibit 18-J clearly shows the PRN is 666. This entry in P's IMF is a clear violation of procedure and an "irregularity" that

¹⁰ SOF, Exhibit 21-J, FOIA for Assessment Documents, pgs. 5 – 7.

¹¹ SOF, Exhibit 19-J, IMF MCC TRANSCRIPT – COMPLETE, pg. 9 of the exhibit, labeled top left corner PAGE NO – 0012, assessment appears as the first transaction on the page, marked with TC 240 07062009 .; This is the same transaction noted in SOF, Exhibit 21-J, FOIA for Assessment Transcript, pg. 5 of the Exhibit, marked PAGE 0001.

¹² SOF, Exhibit 15-J is a certified copy of Form 4340 for the 2005 penalty assessment, but does not include the TC, or Transaction Code, 240 that appears on the form received in reply to the FOIA and in the IMF.

¹³ [IRS Publication 6209, IRS Processing Codes and Information](#), formerly titled *ADP and IDRS Information*, 2010, pg. 11-45. "Most return-related penalties are assigned specific Transaction Codes (TC), and are **not** assessed or abated using data from Form 8278. Penalties should always be assessed/abated using the appropriate PRN or TC. The TC 240 and TC 241 are generated transaction codes and should not be used to assess or abate a miscellaneous civil penalty that has a PRN" (**emphasis in the original**)

¹⁴ IRS Publication 6209 supra, pg. 11-45.

questions the validity of the assessment. But it doesn't end there.

There are additional irregularities that reveal a pattern of fraud and deception in posting §6702 penalties to the Master File.

Master File transactions use a reference number called a Document Locator Number or DLN. The DLN is actually a series of shorter codes expressed as a sub-divided 13 digit number. The format for a DLN is nnnnn-nnn-nnnnn-n. Within the DLN shorter number codes contain information about the transaction.

We are concerned here with two of those codes, the Document Code, and the Blocking Series. The Document Code is a 2 digit code that appears in the DLN as the fourth and fifth digit in the first five number section. The Blocking Series is a 3 digit code that begins the third group of numbers in the DLN. For example: nnnDC-nnn-BBBnn-n, where DC is the 2 digit Document Code and BBB is the 3 digit Blocking Series.

The DLN for the assessment at issue is: 92254-563-52003-9.¹⁵ The number 54 is the Document Code and 520 the Blocking Series.

The IRM §3.17.243-6¹⁶ provides a list of the valid Document Codes associated with TC 240. DC 54 is not listed as a valid

¹⁵ SOF, Exhibit 21-J, pg. 5, first transaction entry, second line ; see also, pg. 6, Form CF5147, first line right side, where the DLN has spaces between the various code fields of the DLN.

¹⁶ [IRM Exhibit 3.17.243-6](#) Valid IMF Transaction Code Table

Trans Code	Section	Doc Code	MFT
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code for TC 240. IRM §3.17.244-9¹⁷ confirms this by providing a separate table listing the valid Document Codes associated with TC 240. DC 54 is not listed as valid code for TC 240 in that table either.

And again, IRM 3.17.46-8¹⁸ shows that when DC 54 is paired with Blocking Series 520, as in P's IMF, TC 240 is not on the list of valid transaction codes. Yet the Commissioner recorded a TC 240 with Doc Code 54 in P's IMF using Blocking Series 520. These entries represent a violation of IRS procedure. They are "irregularities" that call into question the reliability of transcripts, and in turn, the validity of the assessment.

Further irregularities are found on Form CF5147.¹⁹ This is a computer form that allows R to make entries to the Non Master

Debit(+) Credit(-)
 240 241 02-19 51, 52 30, 31, 55

¹⁷ [IRM Exhibit 3.17.244-9](#) Valid IMF Transaction Codes

Trans Code Section Doc Code MFT
 Debit(+) Credit(-)

240 241 02-19 51, 52 30, 31, 55

¹⁸ [IRM Exhibit 3.17.46-8 Validity Table](#) – DOCUMENT CODE/BLOCKING SERIES AND TRANSACTION CODE TABLE – This table contains the Document Code/Blocking Series/Transaction Code combinations that are valid on the ANMF System.

DOCUMENT CODE TRANSACTION
 BLOCKING SERIES CODE

54 / 190 - 198 240
 54 / 000 - 999 161 171 181 201 235 241 270 271 281 291 301 311 321
 340 341 351 360 361 430 610 611 640 641 650 661 662
 670 671 681 682 690 691 694 700 702 710 716 730 732
 764 765 766 767 820 822 850 852

¹⁹ SOF, Exhibit 21-J, pg . 6. (Form number appears bottom left.)

File (NMF). NMF entries are not restricted by software safeguards that are in place for entries into the Master Files.²⁰

The IRM has this to say about the NMF:

“A non-master file account established on AIMS is not subject to many of the same computer checks of a master file account. A non-master file account can be established on AIMS with incorrect information because the account information is not compared to a computer file, such as is with Master File, or the manual ledger account cards at the campus.”

A NMF entry could be established with fraudulent information as well, if someone were so inclined. Referring to the Form CF5145 in Exhibit 21-J we see a Master File Transaction (MFT) type 55 for the year 2005. In the DLN on the first line spaces divide the internal code fields. That DLN has a Document Code of 54 and a Blocking Series of 520, as we would expect since in the same DLN we find on Form 4340, the penalty assessment transcript.

Referencing the IRM once again we find that a Form CF5145 entry with Blocking Series 520 on an MFT 55 transaction is a

²⁰ [IRM §4.4.1-1 \(05-19-2009\)](#), Reference Guide Non-Master File (NMF) “A non-master file account established on AIMS **is not subject to many of the same computer checks of a master file account. A non-master file account can be established on AIMS with incorrect information because the account information is not compared to a computer file, such as is with Master File, or the manual ledger account cards at the campus.** When establishing a non-master file AIMS record, you should ensure the taxpayer and tax account information is correct.” (Emphasis added)

user fee.²¹ Once this user fee has been entered into the NMF, however, it can be transferred to an IMF. Once the liability is in the IMF it appears as money owing, just as it would if it had been a properly assessed penalty or tax. But no assessment is necessary for user fees. That's why they can be applied in the unguarded NMF.

We have further evidence of fraud in Exhibit 21-J on the last page. There we find Form 13128, On-line Adjustment. This form allows R to make an account adjustment of \$5,000 to P's account. R is thus able to bypass software safeguards built into the IRS computer system that would prevent his assessing a penalty against P for which she is not and could not be liable. Mission accomplished.

User fees are charges for services and do not need to be assessed like taxes and penalties. They are usually collected by the Treasury Financial Management Service (FMS) using their Pay.gov system and in other ways.²² But they don't have to be

²¹ [IRM §3.5.61.24.1 \(01-01-2011\)](#) IMF Blocking Series Chart (Document Code 54) – The non re-file DLN blocking series cannot contain an original tax return. (From the Blocking Series table)... “500-529 X For BMF MFT 13/IMF MFT 55 (User Fee), no original return or any other source document is required.”

²² IRM §1.32.19.5.1 (10-29-2008) Receipt of User Fees – 1. User fee remittances may be received at the campuses, through lockbox agreements, National Office post office boxes, or Pay.gov. The IRS follows the Treasury Financial Management Service (FMS) guidelines for payment receipts. FMS guidelines require federal agencies to move payment processing to the electronic environment. The use of Pay.gov is recommended. Pay.gov is an FMS system that collects user fees electronically using a customer's debit or credit card.

collected by FMS. As we have seen here, they can simply be transferred to the Master File as though they were assessed taxes and nobody is the wiser.

Confirming this shabby fraud is the reply P received for a FOIA request dated March 22, 2010.²³ She requested the identities of the IRS employees who made the penalty assessment. Two IRS employees were listed as the only agents associated with the alleged assessment. They are Agents Read and Smith.

Agents Read and Smith signed Form 8278 in Exhibit 21-J. Ms. Read is a GS-7 "Correspondence Examination Technician." Ms. Smith is a GS-8 "Supervisor Tax Examining Assistant." Neither of these ladies are "Assessment Officers." No other IRS employees are associated with the alleged assessment. Agents Read and Smith are essentially file clerks. File clerks are not authorized to make assessments. But no assessment is necessary for a user fee. According to IRS records, no other IRS employees were involved in the alleged assessment. Without the signature of an assessment officer, there can be no valid assessment.

²³ SOF, Exhibit 22-J, FOIA reply of March 22, 2010.