

Code Sec. 6672(d), a Quarter Century Later: How Has It Performed?

By Edward T. Perry*

Edward T. Perry analyzes the cases and few administrative pronouncements issued since Code Sec. 6672(d)'s enactment in 1996.

Introduction



When a business fails to pay over to the government the taxes it has withheld from its employees, the spectre of personal liability looms for all those who had any material responsibility for the financial affairs of the corporation or partnership.¹ If, in addition, his or her actions were “willful,” as defined by caselaw and regulation, the penalty will lie (Code Sec. 6672(a)).

Once taxes are withheld, the employee has no further responsibility for their payment. He or she may credit them against their income tax liabilities even if they were not remitted to the government by the employer. The government faces a “double whammy”: it loses the tax revenue from the employer while the employees receive a full credit. It is no wonder that it aggressively pursues trust fund liability.

Functionally, it is not a true “penalty,” which is typically an add-on to the underlying liability. It is a way to create an additional pocket from which to collect the liability, when the primary debtor, the corporation, cannot pay. Often, this involves looking to multiple responsible persons. Responsibility is frequently a matter of degree and your client will usually want to insist that others share his or her burden, wholly or in part. The principal mechanism for doing this lies in Code Sec. 6672(d).

A fairly recent addition to the Code, enacted in 1996, it raises several thorny issues in operation. While caselaw does exist, it is incomplete and almost exclusively at the U.S. District Court level, having little broad precedential weight. However, understanding what Code Sec. 6672(d) can do, and the traps for the unwary that are buried in it, is essential to representing your client fully.

This article analyzes the cases and few administrative pronouncements issued since its enactment in 1996, and particularly since the one extant law review article on the subject, written in 2003.² The limited attention the section has gotten is not commensurate with its importance.

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Certainly, the best defense, if supportable, is to concede no liability at all, developing that position with supporting documentation and the facts that your client had no responsibility for financial affairs. This should be pressed before the Revenue Officer, before and during the Form 4180 interview.³ Otherwise, the Revenue Officer will issue a letter of intent to assess the penalty, which allows 60 days to attempt to reverse that determination and, failing that, to appeal to Appeals Division. It is always in your client's interest to contest, as fully as possible, the assessment determination before Appeals. This will not insulate him or her from liability in the contribution action, but the refusal by the Service to pursue him or her would be persuasive, though not determinative, to the court.

Responsibility, though, except in unusual cases, is not clear-cut. Either your client may have had some of the indicia of control, but not all, or he or she shared responsibility for them with another. When a business falters, relationships fray badly, and it is advisable from the start to start assembling your case before the other party obtains representation and the relationship completely ruptures.

Prior to Assessment

It is always possible, in making the case before the Revenue Officer, to highlight the role played by other officers. This usually takes place during the interview on Form 4180, but may occur in earlier discussions, which can be used to help shape the narrative. In that sense, it may be possible to shift the Service's conception of responsibility, at least in part, to another person. However, the determination of responsibility and willfulness is binary; either your client is subject to the penalty or he or she is not.

Willfulness, the second component of liability, does not require an evil motive, but merely the conscious decision to pay other creditors while holding tax funds.⁴ "Evidence that a responsible person paid other creditors, while knowing that withheld funds were due and owing to the United States, is sufficient to establish willfulness."⁵

Nature of Liability

Liability is joint and several. Even if your client's responsibility is relatively minor, the Service may pursue him alone, him in conjunction with others, or others exclusively for collection. There is nothing literally in Code

Sec. 6672 to bar the Service from collecting 100% of the liability from more than one person, but established administrative policy, cited approvingly by the courts, dictates that it only collect once.⁶

Statutory Analysis

Code Sec. 6672(d) provided, for the first time, a federal statutory right of contribution.⁷ It has several key components. First, it requires that more than one person be "liable" for the penalty. Second, as and to the extent that one person has "paid" more than his or her "proportionate share" of the penalty, he or she may file an action to recover the excess share paid. Finally, the action must be a standalone; it may not be joined or consolidated with an action by the Service to collect the penalty⁸ or any proceeding in which the government files a counterclaim or third-party complaint to collect the penalty.⁹

This raises numerous questions. First, Officer 1 cannot seek the equivalent of a declaratory judgment action on his status at the outset; instead, he must first pay a disproportionate amount of the penalty. Implicit is that, if 60% responsible, he may recover only the amount greater than 60% that he actually pays; he may not pay 61% and then activate a right of contribution for the entire remaining 40%. One case has gone further, suggesting that until Officer 1 has paid the *entire* trust fund liability, he may not sue for contribution.¹⁰ The statutory language, which requires that he be a person "who paid such penalty," *i.e.*, the penalty for which he has been determined to be liable under Code Sec. 6672(a), supports that contribution, but then retreated to the position that Officer 1 must merely pay more than his proportionate share.

However, this may pose an insuperable barrier to the relief provided by Code Sec. 6672(d), which is equitable in conception.¹¹ If the total trust fund liability is \$500,000, it may well be beyond the means of Officer 1 to pay that amount as the *entr e* to seeking contribution. For him, the door to contribution is tightly shut. Unfortunately, Code Sec. 6672(d) has not yet been held to be a "divisible tax" statute, whereby Officer 1 could pay the divisible tax for each tax period and then seek a determination by the court of proportionate liability for the whole, joining Officers 2 and 3 in the action.

Second, the statute requires only that Officer 1 have paid a disproportionate share; it does not require, as a condition of joinder, that Officers 2 and 3 have

paid their shares or any share at all. It does require that Officers 2 and 3 “are liable for such penalty.” The significance is unclear. It could be read to require that the penalty has been formally assessed against each. However, this raises a fundamental issue of fairness, and Code Sec. 6672(d) was enacted to counter perceived unfairness in dealing with multiple potentially liable parties.

The Service may pick and choose which officer against whom to assert the penalty. Conceivably, it might assert it against Officer 1, but not Officer 2, for any of a variety of tactical or substantive reasons. The case against Officer 1 may simply be, from a documentary standpoint, stronger than the case against Officer 2. Some of the reasons might not relate to substantive liability, but mere collectability concerns.¹² Officer 1 may have large liquid assets (but still not the full amount of the penalty) and Officer 2 may not. Officer 1 would surely disagree that Officer 2 cannot be pursued and that he should not, by the statute, be precluded from making his case.

Accordingly, I think the better interpretation of the word “liable” is a substantive one. This is consistent with Code Sec. 6672(a), which describes persons who are “liable” based on substantive characteristics.¹³ There is nothing to indicate that “liability” for this purpose depends on the Service’s procedural determination to assert the trust fund penalty against any specific individual; Code Sec. 6672(b) is not incorporated in the definition of “liability” or in Code Sec. 6672(d).¹⁴ The only subsection referenced in Code Sec. 6672(d) is Code Sec. 6672(a), which can be read to focus on the substantive liability of Officers 2 and 3. The words “liability” and “liable” do not appear in Code Sec. 6672(b); “liability” appears only once in Code Sec. 6672(c), in a context in which the plaintiff is seeking to avoid liability altogether. Finally, the word “paid” in Code Sec. 6672(d) applies only to Officer 1; Officers 2 and 3 need merely be “liable” for the penalty.

Moreover, Code Sec. 6671, which prescribes rules for assessable penalties, refers to the “penalties and liabilities” provided by Subchapter B. Unless we presume that Congress chose redundancy, it is differentiating the two, and provides that they shall be “assessed and collected” in the same manner as taxes. That is, it reflects a distinction between underlying conduct and the procedural mechanism for enforcing the “liabilities.” This is reflected further in the regulations, in which the term “person” for purposes of that subchapter is defined as one who “is under a duty to perform the act in respect of which the violation occurs.”¹⁵ A person

may be under a duty to remit payroll taxes without having been formally assessed.

In *Walker v. Crow*,¹⁶ the court held that it was “[the plaintiffs] burden to establish that [the defendants] were responsible parties.” If the statute required a prior determination by the Service that the defendants were responsible parties, plaintiff would have no obligation to do so.

If Officer 1 can make the case to the court that *substantively*, Officer 2 met the requirements for liability, regardless of whether the Service decided to pursue him, he should be entitled to maintain his action for contribution. Officer 1 has an independent interest in pursuing Officer 2; he should not be constrained by the Service’s choice of remedies. Moreover, he has no way of verifying that Officer 2 received a Letter 1153 notice and that he properly and timely protested it. If Code Sec. 6672(d) does import the procedural requirements of Code Sec. 6672(b), then Officer 1 must be made aware of the fact of appellate protest by Officer 2 and its determination.

In *id.*, the court underscored this point by characterizing the issue as obtaining contribution “from any other responsible person who *would be liable* for the penalty” (emphasis supplied). This language supports the proposition that the statutory language should be used to embrace Officer 2 not only if he has already formally assessed the penalty, but also if he simply meets the substantive requirements of Code Sec. 6672(a).

Fourth, the statute does not mention how, or on what basis, Officer 1 may demonstrate the proportionate shares of the liable persons. If the Service assigned numerical grades of responsibility among more than one responsible person in its trust fund investigations, that would be a logical place to start, but it does not. I have been successful in obtaining, through FOIA, the Form 4180 for other responsible persons, albeit redacted. This would be a logical start, although since the Service need not pursue any particular responsible person, there might be no administrative record at all upon which to pursue recovery. Nor can one simply assume the Service’s cooperation in taking an expansive view of what it may disclose under FOIA. Few plaintiffs would be inclined to commence FOIA litigation at the same time that they file a complaint for contribution.¹⁷

We have yet to see how a court would determine a contribution claim by a plaintiff who paid 70% of the penalty, was 70% responsible, but only 30% willful, against a defendant who had much less responsibility, but acted unmistakably willfully as to the lesser

amounts subject to his control. Ryesky, *supra*, lists all the factors that may go into a determination of liability, but there is no methodology for weighing them in some kind of consistent way that can be emulated by subsequent courts. It appears to rest solely with a judgment call by the court. An indication, perhaps, of the difficulty of making a principled determination of relative proportion is the absence of any authority accomplishing it.

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Fifth, Officer 1 would clearly want to develop and present his own case concerning proportionate liability. This would be done through the judicious use of depositions and other discovery directed to the other potentially responsible officers, as well as the Service. As a practical matter, however, one would expect their attitude to be highly uncooperative, with answers designed to obscure, rather than illuminate, the witness' potential responsibility. There is a distinct paucity of caselaw or administrative guidance on how this procedure would be managed.

Interpreting Authority

The Service has taken few steps, in Treasury Regulations or guiding authority, to explicate these issues. In 1998 FSA LEXIS 4 (“the FSAM”), it determined that even where multiple responsible persons jointly pay more than the assessed amount, the Service should not refund any portion until the time for filing a refund suit has expired or the refund suit has been finally adjudicated. This extends to declining to refund an excess payment to Officer 1, who claims to have paid more than his proportionate share, or even to the person who paid the amount that created the amount in excess of the entire liability.

Officer 1 sought a taxpayer assistance order requesting that he be refunded his excess share. Collections personnel contacted Officer 2 who, unsurprisingly, refused the accommodation.

Officer 1 should take pains to assert his claim against other officers as soon as possible. Under bankruptcy law, the claim is considered to arise when the underlying taxes were not paid, not when Officer 1 pays more than his share. Accordingly, it has been held that an action for contribution initiated after bankruptcy discharge was barred, because the underlying claim had been discharged in bankruptcy and was ineligible to be maintained later.¹⁸ It is not clear whether filing a proof of claim in bankruptcy would be sufficient to circumvent this hurdle, but it is highly advised as a caution. Failure to file a claim could be fatal to your client's later case for contribution.

It noted that a prior version of the IRM (Sec. 5.7.7.7) allowed the Service to refund the overpayment to the taxpayer whose payment created it. The FSAM characterized this as a permissibly act of the Service's discretion, *i.e.*, to refund the “taxpayer who made the last payments amounts in excess of the liability.” Nonetheless, the author, then Assistant Chief Counsel, disavowed this, stating that “in this case ... literal application of the manual provision is inadvisable.” The current version of the IRM does not even contain that provision.

In IRS Non-Docketed SAR LEXIS 174 (2003), the Service dealt with an analogous situation, the imposition of the penalty under Code Sec. 6707 for failing to register a tax shelter on an organizer and other participants. All are jointly and severally liable for the penalty. It noted that Code Sec. 6707 does not explicitly provide joint and several liability, but Temporary Reg. §301.6707-1T does.

It noted:

There is no formal guidance on precisely how the joint and several liabilities under IRC Sec. 6707 are to be administered or allocated among co-promoters. The question is, however analogous to the joint and several liability imposed under IRS Sec. 6672 ... Thus, we look to the cases decided under section 6672 for guidance in determining the rights and responsibilities of the parties in cases of joint and several liability for the section 6707 penalty. (emphasis supplied)

It conceded that “[t]he Service appears to have no set procedure for abating or equalizing payments among joint and severally liable responsible persons [for the Sec. 6707

penalty], *which seems to be accomplished on an ad hoc, or case by case, basis*" (emphasis supplied).

In sum, the Service appears to take a hands-off position on how to calculate payments in excess of, or disproportionate to, the underlying liability, preferring to leave it to taxpayers to settle the issue in the exercise of their statutory right of contribution.

Caselaw since 1996 heavily focuses on the attempts of persons subject to the penalty to obtain summary judgment against another, usually denying it. It does not elaborate significantly on instances in which the court determined specific percentages of liability, and thus of a plaintiff's right to contribution. In this respect, the caselaw is disappointing. The determination of proportionate shares of trust fund liability is nothing that the Service is now, or ever has been, required to determine. Taxpayers must look to the courts for guidance on the specific procedural and substantive grounds required to demonstrate, to the court, a specific percentage of liability.

For example, in *Happy v. Cong. Materials, LLC*,¹⁹ the court denied the plaintiff's motion for summary judgment for contribution. The Service had assessed the trust fund penalty against Officer 1 six years after the company's bankruptcy. The court denied summary judgment because Officer 1 had failed to submit "evidentiary documents establishing all essential elements of his claim." It held that, while he established responsibility, he failed to adduce any evidence tending to show willfulness.

In later litigation involving the same plaintiff, *Happy v. McNeil*,²⁰ plaintiff sought contribution from the corporation's chief financial officer. The trust fund taxes totaled more than \$300,000. The Service assessed against both parties, but "[the defendant] eventually settled the IRS claim against him for \$30,000." Apparently, after he conceded liability for two quarters, the Service withdrew the remaining assessments. Plaintiff paid \$15,000, sought contribution for half of that, and a declaratory judgment that defendant would owe him one-half of every payment later made by him.

Defendant contended that plaintiff was not entitled to any contribution until he had paid more than his proportionate share of the original penalty. The court found defendant both responsible and willful, but stated:

Congress chose to use the past tense not once but twice. The statute refers to "each person who paid such penalty" and also the "excess of the amount paid by such person". No caselaw has been cited by

either the Plaintiff or the Defendant, and the Court's research has found none. However, the statute appears to be ... unambiguous. A responsible person who is liable for the penalty cannot seek contribution until he has paid his proportionate share of the penalty. *Id* at *5.

Unfortunately, the court ducked entirely the issue of determining his proportionate share. It also ducked how a plaintiff can have standing to maintain his action as having paid more than his proportionate share, when the precise purpose of the litigation is to determine his proportionate share.

There is insufficient guidance from the Service and the courts how to interpret and implement Code Sec. 6672(d).

In *Spade v. Star Bank*,²¹ the court denied plaintiff's motion for summary judgment on contribution because of the quality of the evidence he presented. Nonetheless, the court evaluated the types of evidence that might be probative. Plaintiff's self-serving affidavit was little use, along with documents showing that the defendant had participated in negotiating a management agreement and eventual purchase and sale of the business. The court characterized the evidence as "unsupported assertions, conclusory allegations and mere suspicions."

Although the plaintiff was unsuccessful, the range of evidence that a similarly situated person might submit is unfettered. Mere participation in negotiations on a management agreement is insufficient, but the plaintiff could marshal numerous items, such as cancelled checks, accounting software, participation in discussions about preferring creditors to the government, how the defendant represented himself or herself publicly, *etc.*

The cases do not indicate that plaintiffs have gone before the courts with specific percentages of comparative liability for which they seek the court's approval; rather, they appear to want to leave it up to the court to decide. The courts have generally assumed that the parties and readers know what "proportionate" means under the facts of the case and declined to specifically

find a percentage. As litigating strategy, I believe plaintiffs should go into the suit claiming a specific percentage of responsibility, and let the court work off that.

A trap for the unwary exists when Officers 2 and 3 file for bankruptcy. In *Hardegger*, *supra*, the court held that the right of contribution under Code Sec. 6672(d) may be eclipsed by a bankruptcy where proof of claim was not asserted pre-petition. This is so even when the claim has not accrued, or become anything but contingent. The court held that plaintiff's claim for contribution arose when the debtor committed the conduct on which the claim is based, *i.e.*, the underpayment of taxes. After Officer 2 had been discharged in bankruptcy, the Service assessed the trust fund penalty against both officers. Officer 1 paid the entire liability and sought contribution from Officer 2. It was deemed barred by the bankruptcy discharge.

Significantly, Officer 1 did not argue, until the case reached the Colorado Supreme Court, that her claim was excepted from discharge. The court implied that had she filed a proof of claim during the bankruptcy, the result might have been different. The most prudent course is to make unmistakably clear, as early as possible, the intent to seek contribution. During the assessment procedure, or even earlier (when taxes are unpaid) Officer 1 could put the other two on formal notice that he would seek contribution in the event that he is held responsible for more than his self-determined proportionate share. He should monitor whether they have filed for bankruptcy, and file a proof of claim.

A similar result was obtained in *Ford v. Cicoletti*.²² In that case, plaintiff argued unsuccessfully that the non-dischargeability of the tax obligation inured to him, who had paid the obligation on behalf of the debtor.

Absent from the court's analysis was whether a claim for contribution for the trust fund penalty could have been discharged in the bankruptcy proceeding at all.

Indeed, in *Cooper*,²³ a pre-Code Sec. 6672 case, the court cited with approval the lower court's statement that "the plaintiffs' 100 percent penalty, whether assessed or not, was not dischargeable. See 11 U.S.C. Secs 523(a) and 507(a)(7)." It upheld the lower court's determination that in waiting six years following the close of bankruptcy to argue that assessment by the Service during the bankruptcy violated the automatic stay, plaintiffs were guilty of laches and denied the claim on that ground.

Conclusion

There is insufficient guidance from the Service and the courts how to interpret and implement Code Sec. 6672(d). One can expect that over time, the blank areas will be filled in. However, at this point, there is no caselaw detailing exactly how a court should determine a plaintiff's "proportionate share." There is much caselaw discussing the parties' attempts to gain summary judgment, usually ending with a decision that factual issues of responsibility and willfulness bar a summary judgment.

If the Service and the courts explicate more completely the blank areas, plaintiffs are well advised to create a record, if their responsibilities include financial affairs to any degree, of their determination that federal employment taxes must be paid; consider resignation if those determination is not heeded; place the other potentially responsible, willful persons on formal notice that you will seek contribution if the Service even starts the process of asserting the penalty against them; and monitor carefully whether they file for bankruptcy. In the latter event, they should consider filing a formal proof of claim, in order to avoid any later contention that the bankruptcy eclipsed their right to file an action for contribution.

ENDNOTES

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¹ Those taxes are the personal income tax and employee's share of his FICA liability. Usually, these are 65% to 75% of the total reported on Form 941.

² Ryesky, K., "In Employers We Trust": *The Federal Right of Contribution Under Internal Revenue Code Section 6672*, 9 FORDHAM J. CORP. & FIN. L. 191 (2003). His piece contains a helpful analysis

of the interplay of Code Sec. 6672 with the estate tax and bankruptcy law, which are outside the purview of this article. He also discusses the historical development of Code Sec. 6672.

³ However, even if successful with the Revenue Officer, this will not bar a later suit for contribution. There is nothing to indicate that the court's processes necessarily depend upon the Service's result, but the Service's determination not to pursue your client should have probative, though not determinative, weight.

⁴ Money being fungible, by definition, it matters little that the problematic expenditures cannot be specifically traced to the withheld funds.

⁵ *R.D. Barnett v. Internal Revenue Service*, CA-5, 93-1 USTC ¶150,269, 988 F.2d 1449, 1457.

⁶ See *S. Woodley*, 114 TCM 625, Dec. 61,087(M), TC Memo. 2017-242, citing IRM 1.2.14.1.3(2). However, the Service has suggested holding on to all collected funds, even if they exceed the liability, as a prophylactic measure in the event of refund suits. See FSAM, *supra*.

⁷ Prior to its enactment, responsible persons were consigned to actions under state law for contribution or indemnification, but their availability varied among the states. See *Alter v. Ellin & Tucker, Chartered*, 854 F.Supp 283 (D. Del. 1994), in which the court denied contribution and any form of indemnity, based on the willfulness of the principal trust fund debtor. No federal caselaw of contribution in this situation existed. This is not to say that an explicit release of any right to contribution, supported by consideration, may not be upheld. *Walker v. Crow*, 2006 U.S. Dist. LEXIS 105335 (S.D. Ca. 2006).

The Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 104th Congress* (hereinafter, the “Blue Book”), at 40, explained that prior to Code Sec. 6672(d): “[T]axpayers must pursue such claims for contribution under state law (to the extent state law permits such claims). The variations in state law sometimes make it difficult or impossible to press successful suits in state courts to force a contribution from other responsible persons.”

⁸ Because the trust fund penalty is a “divisible tax,” a person held responsible for the penalty may pay only so much of the total liability as equals the tax wrongfully not withheld from one employee for each tax period, and then file suit for refund either in U.S. District Court or the U.S. Federal Court of Claims. Typically, the Service immediately counterclaims for the entire tax due. There is no indication in the caselaw that Code Sec. 6672(d) operates on the same principle, *i.e.*, that Officer 1 could pay a divisible portion of the penalty paid and then sue for contribution.

Moreover, Code Sec. 6672(c), which embodies a variation on a divisible tax, constrains the collection process only, not the liability determination; requires a bond; and explicitly contemplates a counterclaim by the Service for the full amount of the penalty, in Code Sec. 6672(c)(1). That automatically takes the action out of the ambit of Code Sec. 6672(d), which requires a separate proceeding from any one in which the Service asserts a counterclaim or third-party claim for the full amount due.

⁹ In the discussion below, I will refer to Officer 1, Officer 2 and Officer 3. For simplicity’s sake, and not out of any rigid conception of gender roles, I will use the masculine singular, except where otherwise stated. Moreover, it is well established that officership is not alone determinative of trust fund liability.

¹⁰ In *Chavez v. West Tex. Outreach*, 2019 U.S. Dist. LEXIS 199408 and 199407 (W.D. Tex. 2019), the court stated that “Sec. 6672(d) also allows a person who has paid the penalty to see contribution” and that “it is clear from the Plaintiff’s pleadings that he had not yet paid the penalty” At issue was a trust fund penalty of more than one million dollars.

¹¹ “It would accordingly promote fairness in the administration of the tax laws to establish a right of contribution among multiple responsible parties.” The Blue Book, *supra*, at 40 (December 18, 1996).

¹² *Id.* “The IRS may collect this penalty from a responsible person from whom it can collect most easily, rather than from the person with the greatest culpability for the failure.” This language was taken directly by the Joint Committee from the House Report 104-506, Part 1 (March 28, 1996).

¹³ *Id.* The Blue Book refers only to persons who are “liable” for the penalty. It also refers to then-present law as presenting a situation in which a “responsible” person may seek recovery “from other individuals who also may have the obligations of a responsible person but who have not yet contributed their proportionate share” It says nothing about a completed assessment against the other parties and posits simply that they share the “obligations” of a responsible person. To “share the obligations” of a responsible person is an ambiguous phrase.

¹⁴ *Myron v. Philip+Co.* (In re Myron), 2012 Bankr. LEXIS 3771 (N.D. Indiana 2012), a case not designated for publication, is one of the few cases to mention this issue. The court said:

[One] may only seek contribution from others who are [also] liable for the penalty.

One of the requirements for that liability is a notice to the taxpayer that they are subject to the assessment. 26 U.S.C. Sec. 6672(b)(1). There is no evidence that the individual defendants were given such a notice. Consequently, it does not appear that the I.R.S. contends they are responsible persons; it is only the plaintiff who takes that position. In light of the notice provision of Sec. 6672(b)(1), at least arguably, the I.R.S. must have assessed the penalty against the one from who contribution is being sought, rather than, as here, a responsible person asserting that others should also be considered responsible, thereby justifying contribution. Nonetheless, because the parties have not focused their attention on these arguments, the court does not consider them further. *Id.* at fn. 5.

¹⁵ Reg. §301.6671-1(b).

¹⁶ *Walker v. Crow*, 2006 U.S. Dist. LEXIS 195335 (S.C. Ca. 2007).

¹⁷ Code Sec. 6103(e)(9) provides for limited disclosure of certain collection information concerning others subject to the trust fund penalty: first, the name of the other person or person; second, whether the Service has attempted to collect from such persons; third, the “general nature” of collection activities; and fourth, the amount actually collected. Significantly, there is no mention of the specific factual basis on which the Service pursued the other person, nor of his proportionate share.

¹⁸ *Hardegger v. Clark*, 403 P3d 176 (Sup. Ct. Colo., 2017).

¹⁹ *Happy v. Cong. Materials, LLC*, 2014 U.S. Dist. LEXIS 185652 (W.D. Tex. 2014).

²⁰ *Happy v. McNeil*, 2015 U.S. Dist. LEXIS 13931 (W.D. Tex. 2017).

²¹ *Spade v. Star Bank*, 2002 U.S. Dist. LEXIS 21643 (E.D. Pa. 2002).

²² *Ford v. Cicoletti*, 2010 U.S. Dist. LEXIS 43417 (N.D. Ca. 2010).

²³ *Cooper*, 1995 U.S. App. LEXIS 27622 (6th Cir. 1995).

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