

RECEIVED  
UNITED STATES TAX COURT  
INTAKE  
UNITED STATES TAX COURT  
2016 OCT 24 AM 10:28

FILED  
U.S. TAX COURT  
STEPHANIE A. SERVOS, CLERK  
2016 OCT 24 AM 10:32

BENSON K. BOREYKO,

BY:

DEPUTY CLERK

BY:

DEPUTY CLERK

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent,

Docket No.

22864-16

PETITION

Petitioner hereby petitions for a redetermination of the deficiency as set forth by the Commissioner of Internal Revenue in the Commissioner's notices of deficiency for the taxable years ended December 31, 2012, and December 31, 2013. As a basis for this case, petitioner hereby alleges as follows:

PETITIONER

**Address Used By Court**

1. Petitioner resides at 1621 West Rio Salado Parkway, Tempe, Arizona 85281.

2. Petitioner's tax returns for the periods here involved were filed with the Office of the Internal Revenue Service at Fresno, California.

### JURISDICTION

3. The notices of deficiency were received by petitioner on or about July 21, 2016, and were issued by the Office of the Internal Revenue Service at Phoenix, Arizona.

4. A copy of the notice of deficiency issued to Benson K. Boreyko for tax year ended December 31, 2012, including so much of the statement and schedules accompanying the notice as is material, and as redacted in accordance with Tax Court Rule 27, is attached hereto as **Exhibit A**.

5. A copy of the notice of deficiency issued to Benson K. Boreyko for tax year ended December 31, 2013, including so much of the statement and schedules accompanying the notice as is material, and as redacted in accordance with Tax Court Rule 27, is attached hereto as **Exhibit B**.

6. The notices of deficiency mailed to petitioner state the last day to file a petition with the United States Tax Court is October 19, 2016.

### AMOUNTS IN DISPUTE

7. The deficiencies as determined by the Commissioner are in income taxes and penalties/additions to tax for the taxable years ended December 31, 2012, and December 31, 2013, as set forth as follows, all of which are in dispute:

<u>Year Ended</u>	<u>Deficiency</u>	<u>IRC 6662(a)</u>
Dec. 31, 2012	\$302,596.00	\$60,519.20
Dec. 31, 2013	\$4,176,860.00	\$823,176.20

#### ASSIGNMENT OF ERRORS

8. The determination of the tax set forth in the notices of deficiency are based upon the following errors:

a. The Commissioner erred in determining that petitioner's correct share of ordinary income from Vemma International Holdings, Inc. should be increased by \$689,131.00 for tax year ended December 31, 2012.

b. The Commissioner erred in determining that petitioner's taxable income from state income tax refunds should be increased by \$175,431.00 for tax year ended December 31, 2012.

c. The Commissioner erred in determining that petitioner's correct share of ordinary income from Vemma International Holdings, Inc. should be increased by \$1,226,864.00 for tax year ended December 31, 2013.

d. The Commissioner erred in determining that petitioner's gains/(loss) from Form 4797 should be increased by \$8,830,971.00 for tax year ended December 31, 2013.

e. The Commissioner erred in determining that petitioner's taxable income from state income tax refunds should be increased by \$5,516.00 for tax year ended December 31, 2013.

f. The Commissioner erred in determining that petitioner's taxable income from interest should be increased by \$678.00 for tax year ended December 31, 2013.

g. The Commissioner erred in determining that petitioner's Schedule C gross receipts should be increased by \$25,000.00 for tax year ended December 31, 2013.

h. The Commissioner erred in determining that petitioner's Schedule A itemized deductions should be decreased by \$302,661.00 for tax year ended December 31, 2013.

i. The Commissioner erred in asserting penalties against the petitioner under I.R.C. § 6662(a) in the amounts of \$60,519.20 and \$823,176.20 for tax years ending December 31, 2012, and December 31, 2013, respectively.

#### FACTS RELIED UPON

9. The facts upon which petition relies, as the basis of the petitioner's case, are as follows:

a. The Commissioner failed to properly review, weigh, and consider the relevant facts and information when making its determinations and therefore the determinations were made in error as follows:



- i. Petitioner's correct share of ordinary income on Schedule E from Vemma International Holdings, Inc. was properly reported for tax year ended December 31, 2012 and the Commissioner failed to take into account all relevant facts.
- ii. Petitioner's correct taxable income from state tax refunds was properly reported for tax year ended December 31, 2012 and the Commissioner failed to take into account all relevant facts.
- iii. Petitioner's correct share of ordinary income on Schedule E from Vemma International Holdings, Inc. was properly reported for tax year ended December 31, 2013 and the Commissioner failed to take into account all relevant facts.
- iv. Petitioner's loss from Form 4797 was properly reported for tax year ended December 31, 2013 and the Commissioner failed to take into account all relevant facts.
- v. Petitioner's taxable income from state tax refunds was properly reported for tax year ended December 31, 2013 and the Commissioner failed to take into account all relevant facts.

- vi. Petitioner's taxable income from interest was properly reported for tax year ended December 31, 2013 and the Commissioner failed to take into account all relevant facts.
- vii. Petitioner's Schedule C gross receipts were properly reported for tax year ended December 31, 2013 and the Commissioner failed to take into account all relevant facts.
- viii. Petitioner properly reported itemized deductions for tax year ended December 31, 2013. This adjustment is computational in nature and will be affected by the other adjustments in this case.
- ix. Petitioner is not liable for penalties/additions to tax under I.R.C. § 6662(a) for tax years December 31, 2012, and December 31, 2013. Petitioner acted reasonably and in good faith with respect to all income reported on his income tax returns for the calendar years ended December 31, 2012 and December 31, 2013.
- b. Additionally, if there are any errors they do not amount to negligence on the part of petitioner and petitioner has reasonable cause for those errors.

10. FURTHERMORE, as an additional defense that Petitioner is not liable for the deficiency in income tax and penalties or additions to tax as determined by the Commissioner for the calendar years ended December 31, 2012 and December 31, 2013, Petitioner asserts that the Commissioner has the burden of proof with respect to all issues raised in the Notice of Deficiency.

a. Petitioner has substantiated the full amount of all income and expenses reported on his income tax returns for the tax years ended December 31, 2012 and December 31, 2013.

b. Petitioner has maintained all records related to all income and expenses reported on his income tax return for the calendar years ended December 31, 2012, and December 31, 2013 and has cooperated with all reasonable requests by the Commissioner for information regarding the adjustments at issue.

c. The information provided by Petitioner to the Commissioner constitutes credible evidence with respect to all factual issues relevant to ascertaining the liability of Petitioner related to the claimed income and expenses on his income tax return for the tax years ended December 31, 2012 and December 31, 2013.

11. FURTHERMORE, as an additional defense that Petitioner is not liable for the deficiency in income tax and penalties or additions to tax as determined by the Commissioner for the calendar years ended December 31, 2012, and December 31, 2013,

Petitioner asserts that he may be entitled to additional deductions, credits or other adjustments that were not claimed or allowed on his original filed income tax returns.


WHEREFORE, petitioner prays that the Court determine;

- (1) that the adjustment asserted by the Commissioner on Schedule E relating to Vemma International Holdings, Inc. for tax year ended December 31, 2012 be denied;
- (2) that the adjustment asserted by the Commissioner relating to state refunds for tax year ended December 31, 2012 be denied;
- (3) that the adjustment asserted by the Commissioner on Schedule E relating to Vemma International Holdings, Inc. for tax year ended December 31, 2013 be denied;
- (4) that the adjustment asserted by the Commissioner relating to gains from Form 4797 for tax year ended December 31, 2013 be denied;
- (5) that the adjustment asserted by the Commissioner relating to state refunds for tax year ended December 31, 2013 be denied;
- (6) that the adjustment asserted by the Commissioner relating to interest for tax year ended December 31, 2013 be denied;



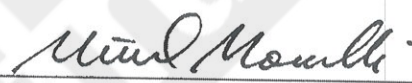
- (7) that the adjustment asserted by the Commissioner relating to Schedule C gross receipts for tax year ended December 31, 2013 be denied;
- (8) that the adjustment asserted by the Commissioner relating to Schedule A itemized deductions for tax year ended December 31, 2013 be denied;
- (9) that the petitioner is not liable for penalties/additions to tax under I.R.C. §§ 6662(a); and
- (10) for all other relief as the Court may deem appropriate.

Respectfully Submitted,

  
Benjamin J. Peeler  
Counsel for Petitioner  
Tax Court Bar No. PB0180  
Eide Bailly LLP  
5 Triad Center, Ste. 600  
Salt Lake City, UT 84180-1128  
bpeeler@eidebailly.com  
(801) 456-5476

ADMITTED

10/17/2016  
Date

  
Michael J. Mondelli  
Counsel for Petitioner  
Tax Court Bar No. MM1070  
Eide Bailly LLP  
800 Nicollet Mall, Ste. 1300  
Minneapolis, MN 55402-7033  
(612) 253-6754

ADMITTED

10/18/2016  
Date



Department of the Treasury  
Internal Revenue Service  
Small Business and Self-Employed

4041 N. Central Avenue Ste 112  
MS 4020:PHX LM  
Phoenix AZ 85012

CERTIFIED MAIL

Benson K. Boreyko  
1621 West Rio Salado Parkway  
Tempe, AZ 85281

Date: JUL 21 2016

Taxpayer ID number:

Form:

1040

Person to contact:

Linda Marx

Contact telephone number:

602-636-9249

Contact fax number:

602-636-9395

Employee ID number:

1000359698

Last day to file petition with US tax court:

OCT 19 2016

Tax Year Ended:	December 31, 2012
Deficiency:	
Increase in tax	\$302,596.00
Penalties or Additions to Tax	
IRC 6662(a)	60,519.20

Dear Benson K. Boreyko:

**Why we are sending you this letter**

We determined that you owe additional tax or other amounts, or both, for the tax year or years identified above. This letter is your **Notice Of Deficiency**, as required by law. The enclosed Form 4549-A, *Income Tax Discrepancy Adjustments* or Form 5278, *Statement - Income Tax Changes*, shows how we figured the deficiency.

**If you wish to challenge this determination**

If you want to challenge this determination in court before making any payment, you have 90 days from the date of this letter (150 days if this letter is addressed to you outside of the United States) to file a petition with the United States Tax Court to reconsider the deficiency.

**Information you will need**

If you have recently sought bankruptcy relief by filing a petition in bankruptcy court, see enclosed Notice 1421, *How Bankruptcy Affects Your Right to File a Petition in Tax Court in Response to a Notice of Deficiency*.



Letter 531 (Rev. 10-2015)  
Catalog Number 40223L

You can get a copy of the rules for filing a petition and a petition form by writing to the following address:

United States Tax Court  
400 Second Street, NW  
Washington, DC 20217

- The Tax Court has a simplified procedure for small tax cases when the dispute for each tax year is \$50,000 or less.
- If you use this simplified procedure, you cannot challenge the Tax Court's decision. You can get information on the simplified procedure for small cases from the Tax Court by writing to the court at the address above or from the court's internet site at [www.ustaxcourt.gov](http://www.ustaxcourt.gov).
- If you file a petition for multiple tax years and the dispute for any one or more of the tax years exceeds \$50,000, this simplified procedure is not available to you.

### **The law regarding married couples**

The law requires separate notices for husbands and wives. Both must sign and file the petition or each must file a separate, signed petition if this letter is addressed to both husband and wife, and both want to petition the Tax Court.

If only one spouse is in bankruptcy at the time this letter was issued or files a bankruptcy petition after the date of this letter, the bankruptcy automatic stay does not prohibit the spouse who is not in bankruptcy from filing a petition with Tax Court. The bankruptcy automatic stay of the spouse seeking bankruptcy relief does not extend the time for filing a petition in Tax Court for the spouse who is not in bankruptcy.

### **How to file your petition form**

Send the completed petition form, a copy of this letter, and copies of all statements and/or schedules you received with this letter to the Tax Court at the address above. If more than one tax year is shown above, you may file one petition form showing all of the years you are challenging.

You may represent yourself before the Tax Court, or you may be represented by anyone admitted to practice before the Tax Court.

### **The limits on filing a petition**

The time you have to file a petition in the Tax Court is set by law.

1. The petition is considered timely filed if the postmark date falls within the prescribed 90 or 150 day period and the envelope containing the petition is properly addressed with the correct postage.
2. The Tax Court cannot consider your case if your Tax Court petition is filed late. IRS cannot grant an extension or allow a suspension of the prescribed deadline, even for reasonable cause. Thus, contacting the Internal Revenue Service (IRS) for more information, or receiving other correspondence from the IRS won't change the allowable period for filing a petition with the Tax Court.

### **If you agree with the Notice of Deficiency**

If you decide not to file a petition with the Tax Court, please sign the enclosed Form 4089-B, *Notice of Deficiency - Waiver*, and return it to us at the IRS address on the top of the first page of this letter. This will permit us to assess the deficiency quickly and can help limit the accumulation of interest.

### **If we don't hear from you**

If you decide not to sign and return Form 4089-B, and you do not file a petition with the Tax Court within the time limit, the law requires us to assess and bill you for the deficiency after 90 days from the date of this letter (150 days if this letter is addressed to you outside the United States).



**Note:** If you are a C-corporation, Section 6621(c) of the Internal Revenue Code requires that we charge an interest rate two percent higher than the normal rate on corporate underpayments in excess of \$100,000.

**Information about the IRS Taxpayer Advocate Office**

The IRS office whose phone number appears at the top of the notice can best address and access your tax information and help get you answers. You may be eligible for help from the Taxpayer Advocate Service (TAS) if you have tried to resolve your tax problem through normal IRS channels and have gotten nowhere, or you believe an IRS procedure just isn't working as it should. TAS is your voice at the IRS. TAS helps taxpayers whose problems are causing financial difficulty or significant cost, including the cost of professional representation (this includes businesses as well as individuals). You can reach TAS by calling the TAS toll-free number at 1-877-777-4778 or by contacting the local Taxpayer Advocate office at:

4041 North Central Avenue  
MS 1005  
Phoenix, AZ 85012

To learn more about TAS and your basic tax responsibilities, visit [www.TaxpayerAdvocate.irs.gov](http://www.TaxpayerAdvocate.irs.gov).

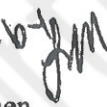
**How to contact us**

You may write or call the contact person whose name, telephone number, and IRS address are shown in the heading of this letter if you need further assistance. If you write, please include your telephone number, the best times if we need to call you and a copy of this letter to help us identify your account.

If you prefer to call and the telephone number is outside your local calling area, there may be a long distance charge to you.

Keep the original letter for your records.

Sincerely,

Heather J. Yocum 

John A. Koskinen  
Commissioner

By

Heather J Yocum

Territory Manager, Technical Services

Enclosures:  
Form 4549-A or Form 5278  
Form 4089-A or Form 4089-B



Continuation Sheet

NAME: Benson K. Boreyko

TIN: [REDACTED]

Interest on Deficiencies

Interest on Deficiencies will accrue from the due date of the return until paid.

Accuracy-related Penalty IRC section 6662(a)

Since all or part of the underpayment of tax for the taxable year(s) is attributable to one or more of (1) negligence or disregard of rules or regulations; (2) any substantial understatement of income tax, or (3) any substantial valuation overstatement, an addition to the tax is charged as provided by section 6662(a) of the Internal Revenue Code. The penalty is twenty (20) percent of the portion of the underpayment of tax attributable to each component of this penalty. In addition, interest is computed on this penalty from the due date of the return (including any extensions).

Form **4089-B**  
(October 1999)

Department of the Treasury — Internal Revenue Service

**Notice of Deficiency-Waiver**

Symbols  
4020-PHX

Name and address of taxpayer(s)  
Benson K. & Courtney A Boreyko  
1621 West Rio Salado Parkway  
Tempe, AZ 85281

Social Security or Employer Identification Number  
[REDACTED]

Kind of tax

☐ Copy to authorized representative

Income

**DEFICIENCY — Increase in Tax and Penalties**

Tax Year Ended:	December 31, 2012
Deficiency: Increase in tax	302,596.00
Penalties	
IRC 6662 20%	60,519.20

**See the attached explanation for the above deficiencies**

I consent to the immediate assessment and collection of the deficiencies (increase in tax and penalties) shown above, plus any interest provided by law.

Your Signature \_\_\_\_\_ (Date signed) \_\_\_\_\_

Spouse's Signature  
(If A Joint Return  
Was Filed) \_\_\_\_\_ (Date signed) \_\_\_\_\_

Taxpayer's  
Representative  
Sign Here \_\_\_\_\_ (Date signed) \_\_\_\_\_

Corporate Name \_\_\_\_\_

Corporate Officers Sign Here	_____ (Signature)	_____ (Title)	_____ (Date signed)
	_____ (Signature)	_____ (Title)	_____ (Date signed)

If you agree, please sign one copy and return it; keep the other copy for your records.

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## Instructions for Form 4089 B

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### Note:

If you consent to the assessment of the amounts shown in this waiver, please sign and return it in order to limit the accumulation of interest and expedite our bill to you. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are entitled to a refund. It will not prevent us from later determining, if necessary, that you owe additional tax; nor will it extend the time provided by law for either action.

If you later file a claim and the Internal Revenue Service disallows it, you may file suit for refund in a district court or in the United States Claims Court, but you may not file a petition with the United States Tax Court.

### Who Must Sign

If this waiver is for any year(s) for which you filed a joint return, both you and your spouse must sign the original and duplicate of this form. Sign your name exactly as it appears on the return. If you are acting under power of attorney for your spouse, you may sign as agent for him or her.

For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed.

For a person acting in a fiduciary capacity (executor, administrator, trustee), file Form 56, Notice Concerning Fiduciary Relationship, with this form if not previously filed.

For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

### Optional Paragraphs

A check in the block to the left of a paragraph below indicates that the paragraph applies to your situation.

- ☐ The amount shown as the deficiency may not be billed, since all or part of the refund due has been held to offset all or a portion of the amount of the deficiency. The amount that will be billed, if any, is shown on the attached examination report.
- ☐ The amount shown as a deficiency may not be billed, since the refund due will be reduced by the amount of the deficiency. The net refund due is shown on the attached examination report.



Department of the Treasury-Internal Revenue Service  
**Income Tax Examination Changes**  
(Unagreed and Excepted Agreed)

Name and Address of Taxpayer

Benson K. & Courtney A Boreyko  
1621 West Rio Salado Parkway  
Tempe, AZ 85281-2608

Taxpayer Identification Number

Return Form No.:

1040

Person with whom  
examination  
changes were  
discussed.

Name and Title:

Benson K. &amp; Courtney A Boreyko

1. Adjustments to Income	Period End 12/31/2012	Period End	Period End
a. Sch E-Inc/Loss-Partnership/S Corps-Passive/Non-Passive	689,131.00		
b. State Refunds, Credits, or Offsets	175,431.00		
c.			
d.			
e.			
f.			
g.			
h.			
i.			
j.			
k.			
l.			
m.			
n.			
o.			
p.			
2. Total Adjustments	864,562.00		
3. Taxable Income Per Return or as Previously Adjusted	4,128,134.00		
4. Corrected Taxable Income	4,992,696.00		
Tax Method	SCHEDULE D		
Filing Status	Joint		
5. Tax	1,430,383.00		
6. Additional Taxes / Alternative Minimum			
7. Corrected Tax Liability	1,430,383.00		
8. Less			
Credits			
a. Foreign Tax Credit	5,924.00		
b.			
c.			
d.			
9. Balance (Line 7 less total of Lines 8a thru 8d)	1,424,459.00		
10. Plus			
Other			
Taxes			
a. Self Employment Tax	6,868.00		
b.			
c.			
d.			
11. Total Corrected Tax Liability (Line 9 plus Lines 10a thru 10d)	1,431,327.00		
12. Total Tax Shown on Return or as Previously Adjusted	1,128,731.00		
13. Adjustments to:			
a.			
b.			
c.			
14. Deficiency-Increase in Tax or (Overassessment - Decrease in Tax) (Line 11 less Line 12 adjusted by Lines 13a through 13c)	302,596.00		
15. Adjustments to Prepayment Credits-Increase (Decrease)			
16. Balance Due or (Overpayment) - (Line 14 adjusted by Line 15) (Excluding interest and penalties)	302,596.00		



Department of the Treasury-Internal Revenue Service  
**Income Tax Examination Changes**  
(Unagreed and Excepted Agreed)Page 2 of 2Name of Taxpayer  
Benson K. & Courtney A BorevkoTaxpayer Identification Number  
[REDACTED]Return Form No.:  
1040

17. Penalties/ Code Sections	Period End 12/31/2012	Period End	Period End
a. Accuracy-IRC 6662	60,519.20		
b.			
c.			
d.			
e.			
f.			
g.			
h.			
i.			
j.			
k.			
l.			
m.			
n.			
18. Total Penalties	60,519.20		
Underpayment attributable to negligence: (1981-1987) A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.			
Underpayment attributable to fraud: (1981-1987) A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.			
Underpayment attributable to Tax Motivated Transactions (TMT). Interest will accrue and be assessed at 120% of underpayment rate in accordance with IRC 6621(c).	0.00		
19. Summary of Taxes, Penalties and Interest:			
a. Balance due or (Overpayment) Taxes - (Line 16, Page 1)	302,596.00		
b. Penalties (Line 18) - computed to 07/18/2016	60,519.20		
c. Interest (IRC § 6601) - computed to 08/17/2016	0.00		
d. TMT Interest - computed to 08/17/2016 (on TMT underpayment)	0.00		
e. Amount due or refund - (sum of Lines a, b, c and d)	363,115.20		

Other Information:

Examiner's Signature:

Name

Linda Marx

Employee ID:

1000359698

Office:

Technical Services

Date:

07/18/2016

The Internal Revenue Service has agreements with state tax agencies under which information about federal tax, including increases or decreases, is exchanged with the states. If this change affects the amount of your state income tax, you should amend your state return by filing the necessary forms.

You may be subject to backup withholding if you underreport your interest, dividend, or patronage dividend income you earned and do not pay the required tax. The IRS may order backup withholding (withholding of a percentage of your dividend and/or interest payments) if the tax remains unpaid after it has been assessed and four notices have been issued to you over a 120-day period.

### Accuracy-Related Penalties under IRC 6662

#### 20 Percent Penalty -- Internal Revenue Code Section 6662(a)

It has been determined that the underpayment of tax shown on line 5 below is attributable to one or more of the following:

- (1) Negligence or disregard of rules or regulations;
- (2) Substantial understatement of income tax;
- (3) Substantial valuation misstatement (overstatement);
- (4) Transaction lacking economic substance.

Therefore, an addition to tax is imposed as provided by Section 6662(a) of the Internal Revenue Code.

1. Total underpayment, excluding underpayment attributable to Section 6662A penalty issues, if any	302,596.00
2. Less: Underpayment attributable to non-penalty issues	0.00
3. Less: Underpayment attributable to 40% Section 6662 penalty issues	0.00
4. Less: Underpayment attributable to civil fraud penalty issues	0.00
5. Underpayment to which Section 6662(a) applies (Line 1 less the sum of lines 2, 3, and 4)	302,596.00
6. Applicable penalty rate	20.00%
7. Section 6662(a) accuracy-related penalty (Line 5 times line 6)	60,519.20
8. Less: Previously assessed/previously agreed Section 6662(a) penalty	0.00
9. Total section 6662(a) accuracy-related penalty (Line 7 less line 8)	60,519.20

#### 40 Percent Penalty -- Internal Revenue Code Section 6662(h); 6662(i); 6662(j)

It has been determined that the underpayment of tax shown on line 5 below is attributable to one or more of the following:

- (1) Gross valuation misstatement (overstatement);
- (2) Non-disclosed transaction lacking economic substance;
- (3) Undisclosed foreign financial assets.

Therefore, an addition to tax is imposed as provided by Section 6662(h); 6662(i); or 6662(j) of the Internal Revenue Code.

1. Total underpayment, excluding underpayment attributable to Section 6662A penalty issues, if any	302,596.00
2. Less: Underpayment attributable to non-penalty issues	0.00
3. Less: Underpayment attributable to 20% Section 6662 penalty issues	302,596.00
4. Less: Underpayment attributable to civil fraud penalty issues	0.00
5. Underpayment to which 40% Section 6662 penalty applies (Line 1 less the sum of lines 2, 3, and 4)	0.00
6. Applicable penalty rate	40.00%
7. 40% Section 6662 accuracy-related penalty (Line 5 times line 6)	0.00
8. Less: Previously assessed/previously agreed 40% Section 6662 penalty	0.00
9. Total 40% section 6662 accuracy-related penalty (Line 7 less line 8)	0.00

Name Of Taxpayer: Benson K. & Courtney A Boreyko  
Identification Number: [REDACTED]

07/18/2016

Total

17.20.00

**2012 - Adjustments Subject to Accuracy-Related Penalty - IRC 6662**

**ADJUSTMENTS TO WHICH THE ACCURACY RELATED PENALTY APPLIES:**

**PENALTY RATES**

20% 40%

Sch E-Inc/Loss-Prtnrship/S Corps-Passve/Non-Passve	X	689,131.00	IRC 6662(c)
State Refunds, Credits, or Offsets	X	175,431.00	IRC 6662(c)

All or part of the underpayment to tax is due to negligence or disregard of rules and regulations. Negligence is defined as a failure to make a reasonable attempt to comply with the provisions of the Internal Revenue Code or to exercise ordinary and reasonable care in the preparation of a tax return. Negligence also includes a failure to keep proper books and records or to properly substantiate claimed items. Consequently, there is added to the tax an amount equal to 20 percent of the underpayment, as provided by IRC 6662.

Form <b>886-A</b> (Rev. January 1994)886-A	<b>EXPLANATION OF ITEMS</b>		Schedule number or exhibit
Name of Taxpayer Benson K. & Courtney A Boreyko	Taxpayer Identification Number [REDACTED]	Year/Period Ended 2012	

**Sch E-Inc/Loss-Prtnrship/S Corps-Passve/Non-Passve**

Tax Period	Per Return	Per Exam	Adjustment
2012	\$1,335,757.00	\$2,024,888.00	\$689,131.00

It is determined from our examination of the books and records of the S Corporation known as Vemma International Holdings Inc. ([REDACTED]) that your correct share of its ordinary income for the taxable year 2012 is \$2,024,888 rather than the \$1,335,757 reported on your tax return. See Exhibit A for more details of the adjustments to Vemma International Holdings, Inc.

**State Refunds, Credits, or Offsets**

Tax Period	Per Return	Per Exam	Adjustment
2012	\$53,511.00	\$228,942.00	\$175,431.00

A refund of any part of your state income tax that you deducted in prior years, and which reduced your federal income tax in those years, is includible in income in the year you received the refund.



Form **4605-A**

Department of the Treasury — Internal Revenue Service

**Examination Changes - Partnerships, Fiduciaries, S Corporations, and  
Interest Charge Domestic International Sales Corporations (Unagreed and Excepted Agreed)**

Name and address Vemma International Holdings, Inc. 1621 West Rio Salado Parkway Tempe, , Arizona 85281-2608	Employer Identification Number	Form Number 1120S	
	Person Examination Changes Were Discussed With	Name Vemma International Holdings, Inc. Title Taxpayer	
1. Adjustments to ordinary, distributable net, or taxable income.	Period End: 12/31/2012	Period End: 12/31/2013	Period End:
a. Salaries & wages	575,351.00	807,313.00	
b. Amortization	(2,375.00)	(7,014.00)	
c. Other Deductions - Legal & Accounting	71,257.00	67,897.00	
d. Other Deductions - Meetings and Conventions	282,965.00	782,502.00	
e.			
f.			
g.			
2. Total adjustments to ordinary, distributable net, or taxable income.	927,198.00	1,650,698.00	
3. Ordinary, distributable net, or taxable income as reported.	1,797,208.00	8,817,255.00	
4. Corrected ordinary, distributable net, or taxable income.	2,724,406.00	10,467,953.00	
5. Other adjustments			
a.			
(1) Adjustment			
(2) As Reported			
(3) Corrected			
b.			
(1) Adjustment			
(2) As Reported			
(3) Corrected			
Remarks			

Examiner's Signature:	Employee ID:	Area Office:	Date:
Name Linda Marx	1000359698	Technical Services	06/16/2016



**EXPLANATION OF ITEMS**

Schedule number or exhibit

Name of taxpayer

Vemma International Holdings, Inc.

Tax Identification Number

Year/Period ended

2012 & 2013

**Issue 1** Salaries & Wages

Tax Period	Per Return	Per Exam	Adjustment
2012	10,684,285.00	10,108,934.00	575,351.00
2013	16,439,758.00	15,632,445.00	807,313.00

Since you did not establish that the amount shown was (a) compensation, and (b) paid, the amount is not deductible.

\*\*Please note, that above per return amount is a combination of lines 7 & 8 on the filed tax returns which includes both compensation to officers, line 7, and salaries and wages, line 8.

**Issue 2** Amortization Expense

Tax Period	Per Return	Per Exam	Adjustment
2012	15,336.00	17,711.00	-2,375.00
2013	10,946.00	17,960.00	-7,014.00

You are allowed an additional deduction for amortization expense.

**Issue 3** Other Deductions- Legal & Accounting

Tax Period	Per Return	Per Exam	Adjustment
2012	847,263.00	776,006.00	71,257.00
2013	1,597,327.00	1,529,430.00	67,897.00

Since you did not establish that the business expense shown on your return was paid or incurred during the taxable year and that the expense was ordinary and necessary to your business, we have disallowed the amount shown.



Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>		Schedule number or exhibit
Name of taxpayer Vemma International Holdings, Inc.	Tax Identification Number [REDACTED]	Year/Period ended 2012 & 2013	

**Issue 4** Other Deductions-Meetings & Conventions

Tax Period	Per Return	Per Exam	Adjustment
2012	1,279,106.00	996,141.00	282,965.00
2013	2,704,458.00	1,921,953.00	782,505.00

Since you did not establish that the business expense shown on your return was paid or incurred during the taxable year and that the expense was ordinary and necessary to your business, we have disallowed the amount shown.





Department of the Treasury  
Internal Revenue Service  
Small Business and Self-Employed

4041 N. Central Avenue Ste 112  
MS 4020:PHX LM  
Phoenix AZ 85012

CERTIFIED MAIL

Benson K. Boreyko  
1621 West Rio Salado Parkway  
Tempe, AZ 85281-2608

Date: **JUL 21 2016**

Taxpayer ID number:

Form:

1040

Person to contact:

Linda Marx

Contact telephone number:

602-636-9249

Contact fax number:

602-636-9395

Employee ID number:

1000359698

Last day to file petition with US tax court:

**OCT 19 2016**

Tax Year Ended:	December 31, 2013
Deficiency:	
Increase in tax	\$4,176,860.00
Penalties or Additions to Tax	
IRC 6662(a)	823,176.20

Dear Benson K. Boreyko:

**Why we are sending you this letter**

We determined that you owe additional tax or other amounts, or both, for the tax year or years identified above. This letter is your **Notice Of Deficiency**, as required by law. The enclosed Form 4549-A, *Income Tax Discrepancy Adjustments* or Form 5278, *Statement - Income Tax Changes*, shows how we figured the deficiency.

**If you wish to challenge this determination**

If you want to challenge this determination in court before making any payment, you have 90 days from the date of this letter (150 days if this letter is addressed to you outside of the United States) to file a petition with the United States Tax Court to reconsider the deficiency.

**Information you will need**

If you have recently sought bankruptcy relief by filing a petition in bankruptcy court, see enclosed Notice 1421, *How Bankruptcy Affects Your Right to File a Petition in Tax Court in Response to a Notice of Deficiency*.



Letter 531 (Rev. 10-2015)  
Catalog Number 40223L

You can get a copy of the rules for filing a petition and a petition form by writing to the following address:

United States Tax Court  
400 Second Street, NW  
Washington, DC 20217

- The Tax Court has a simplified procedure for small tax cases when the dispute for each tax year is \$50,000 or less.
- If you use this simplified procedure, you cannot challenge the Tax Court's decision. You can get information on the simplified procedure for small cases from the Tax Court by writing to the court at the address above or from the court's internet site at [www.ustaxcourt.gov](http://www.ustaxcourt.gov).
- If you file a petition for multiple tax years and the dispute for any one or more of the tax years exceeds \$50,000, this simplified procedure is not available to you.

### **The law regarding married couples**

The law requires separate notices for husbands and wives. Both must sign and file the petition or each must file a separate, signed petition if this letter is addressed to both husband and wife, and both want to petition the Tax Court.

If only one spouse is in bankruptcy at the time this letter was issued or files a bankruptcy petition after the date of this letter, the bankruptcy automatic stay does not prohibit the spouse who is not in bankruptcy from filing a petition with Tax Court. The bankruptcy automatic stay of the spouse seeking bankruptcy relief does not extend the time for filing a petition in Tax Court for the spouse who is not in bankruptcy.

### **How to file your petition form**

Send the completed petition form, a copy of this letter, and copies of all statements and/or schedules you received with this letter to the Tax Court at the address above. If more than one tax year is shown above, you may file one petition form showing all of the years you are challenging.

You may represent yourself before the Tax Court, or you may be represented by anyone admitted to practice before the Tax Court.

### **The limits on filing a petition**

The time you have to file a petition in the Tax Court is set by law.

1. The petition is considered timely filed if the postmark date falls within the prescribed 90 or 150 day period and the envelope containing the petition is properly addressed with the correct postage.
2. The Tax Court cannot consider your case if your Tax Court petition is filed late. IRS cannot grant an extension or allow a suspension of the prescribed deadline, even for reasonable cause. Thus, contacting the Internal Revenue Service (IRS) for more information, or receiving other correspondence from the IRS won't change the allowable period for filing a petition with the Tax Court.

### **If you agree with the Notice of Deficiency**

If you decide not to file a petition with the Tax Court, please sign the enclosed Form 4089-B, *Notice of Deficiency - Waiver*, and return it to us at the IRS address on the top of the first page of this letter. This will permit us to assess the deficiency quickly and can help limit the accumulation of interest.

### **If we don't hear from you**

If you decide not to sign and return Form 4089-B, and you do not file a petition with the Tax Court within the time limit, the law requires us to assess and bill you for the deficiency after 90 days from the date of this letter (150 days if this letter is addressed to you outside the United States).



**Note:** If you are a C-corporation, Section 6621(c) of the Internal Revenue Code requires that we charge an interest rate two percent higher than the normal rate on corporate underpayments in excess of \$100,000.

**Information about the IRS Taxpayer Advocate Office**

The IRS office whose phone number appears at the top of the notice can best address and access your tax information and help get you answers. You may be eligible for help from the Taxpayer Advocate Service (TAS) if you have tried to resolve your tax problem through normal IRS channels and have gotten nowhere, or you believe an IRS procedure just isn't working as it should. TAS is your voice at the IRS. TAS helps taxpayers whose problems are causing financial difficulty or significant cost, including the cost of professional representation (this includes businesses as well as individuals). You can reach TAS by calling the TAS toll-free number at 1-877-777-4778 or by contacting the local Taxpayer Advocate office at:

4041 North Central Avenue  
MS 1005  
Phoenix, AZ 85012

To learn more about TAS and your basic tax responsibilities, visit [www.TaxpayerAdvocate.irs.gov](http://www.TaxpayerAdvocate.irs.gov).

**How to contact us**

You may write or call the contact person whose name, telephone number, and IRS address are shown in the heading of this letter if you need further assistance. If you write, please include your telephone number, the best times if we need to call you and a copy of this letter to help us identify your account.

If you prefer to call and the telephone number is outside your local calling area, there may be a long distance charge to you.

Keep the original letter for your records.

Sincerely,

Heather J. Yocum 

John A. Koskinen

Commissioner

By

Heather J Yocum

Territory Manager, Technical Services

Enclosures:

Form 4549-A or Form 5278

Form 4089-A or Form 4089-B

Continuation Sheet

NAME: Benson K. Boreyko

TIN: [REDACTED]

Interest on Deficiencies

Interest on Deficiencies will accrue from the due date of the return until paid.

Accuracy-related Penalty IRC section 6662(a)

Since all or part of the underpayment of tax for the taxable year(s) is attributable to one or more of (1) negligence or disregard of rules or regulations, (2) any substantial understatement of income tax, or (3) any substantial valuation overstatement, an addition to the tax is charged as provided by section 6662(a) of the Internal Revenue Code. The penalty is twenty (20) percent of the portion of the underpayment of tax attributable to each component of this penalty. In addition, interest is computed on this penalty from the due date of the return (including any extensions).



Form **4089-B**  
(October 1999)

Department of the Treasury — Internal Revenue Service

**Notice of Deficiency-Waiver**

Symbols

4020-PHX

Name and address of taxpayer(s)

Benson K. Boreyko  
1621 West Rio Salado Parkway  
Tempe, AZ 85281-2608

Social Security or Employer Identification Number



Kind of tax

☐ Copy to authorized representative

Income

**DEFICIENCY — Increase in Tax and Penalties**

Tax Year Ended:

December 31, 2013

Deficiency: Increase in tax

4,176,860.00

Penalties

IRC 6662 20%

823,176.20

**See the attached explanation for the above deficiencies**

I consent to the immediate assessment and collection of the deficiencies (increase in tax and penalties) shown above, plus any interest provided by law.

Your Signature



(Date signed)

Spouse's Signature  
(If A Joint Return  
Was Filed)



(Date signed)

Taxpayer's  
Representative  
Sign Here



(Date signed)

Corporate Name



Corporate Officers  
Sign Here



(Signature)

(Title)

(Date signed)



(Signature)

(Title)

(Date signed)

If you agree, please sign one copy and return it; keep the other copy for your records.

---

## Instructions for Form 4089 B

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### Note:

If you consent to the assessment of the amounts shown in this waiver, please sign and return it in order to limit the accumulation of interest and expedite our bill to you. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are entitled to a refund. It will not prevent us from later determining, if necessary, that you owe additional tax; nor will it extend the time provided by law for either action.

If you later file a claim and the Internal Revenue Service disallows it, you may file suit for refund in a district court or in the United States Claims Court, but you may not file a petition with the United States Tax Court.

### Who Must Sign

If this waiver is for any year(s) for which you filed a joint return, both you and your spouse must sign the original and duplicate of this form. Sign your name exactly as it appears on the return. If you are acting under power of attorney for your spouse, you may sign as agent for him or her.

For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed.

For a person acting in a fiduciary capacity (executor, administrator, trustee), file Form 56, Notice Concerning Fiduciary Relationship, with this form if not previously filed.

For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

### Optional Paragraphs

A check in the block to the left of a paragraph below indicates that the paragraph applies to your situation.

- ☐ The amount shown as the deficiency may not be billed, since all or part of the refund due has been held to offset all or a portion of the amount of the deficiency. The amount that will be billed, if any, is shown on the attached examination report.
- ☐ The amount shown as a deficiency may not be billed, since the refund due will be reduced by the amount of the deficiency. The net refund due is shown on the attached examination report.

Department of the Treasury-Internal Revenue Service  
**Income Tax Examination Changes**  
(Unagreed and Excepted Agreed)

Name and Address of Taxpayer

Benson K. Boreyko  
1621 West Rio Salado Parkway  
Tempe, AZ 85281-2608

Taxpayer Identification Number

Return Form No.:

1040

Person with whom  
examination  
changes were  
discussed.

Name and Title:

Benson K. Boreyko

1. Adjustments to Income	Period End 12/31/2013	Period End	Period End
a. Sch E-Inc/Loss-Prtnrship/S Corps-Passve/Non-Passve	1,226,864.00		
b. Other Gains or Losses From Form 4797	8,830,971.00		
c. State Refunds, Credits, or Offsets	5,516.00		
d. Taxable Interest	678.00		
e. Sch C1 - Gross Receipts or Sales	25,000.00		
f. SE AGI Adjustment	(335.00)		
g. Itemized Deductions	302,661.00		
h.			
i.			
j.			
k.			
l.			
m.			
n.			
o.			
p.			
2. Total Adjustments	10,391,355.00		
3. Taxable Income Per Return or as Previously Adjusted	10,963,330.00		
4. Corrected Taxable Income	21,354,685.00		
Tax Method	SCHEDULE D		
Filing Status	Married Separate		
5. Tax	8,116,145.00		
6. Additional Taxes / Alternative Minimum			
7. Corrected Tax Liability	8,116,145.00		
8. Less Credits			
a. Foreign Tax Credit	327,291.00		
b.			
c.			
d.			
9. Balance (Line 7 less total of Lines 8a thru 8d)	7,788,854.00		
10. Plus Other Taxes			
a. Self Employment Tax	911.00		
b. Net Investment Income Tax	61,005.00		
c. Additional Medicare Tax	35,406.00		
d.			
11. Total Corrected Tax Liability (Line 9 plus Lines 10a thru 10d)	7,886,176.00		
12. Total Tax Shown on Return or as Previously Adjusted	3,709,316.00		
13. Adjustments to:			
a.			
b.			
c.			
14. Deficiency-Increase in Tax or (Overassessment - Decrease in Tax) (Line 11 less Line 12 adjusted by Lines 13a through 13c)	4,176,860.00		
15. Adjustments to Prepayment Credits-Increase (Decrease)			
16. Balance Due or (Overpayment) - (Line 14 adjusted by Line 15) (Excluding interest and penalties)	4,176,860.00		



Form **4549-A**

(Rev. March 2013)

Department of the Treasury-Internal Revenue Service  
**Income Tax Examination Changes**  
(Unagreed and Excepted Agreed)Page 2 of 2Name of Taxpayer  
Benson K. BorevkoTaxpayer Identification Number  
[REDACTED]Return Form No.:  
1040**17. Penalties/ Code Sections**Period End  
12/31/2013

Period End

Period End

a. Accuracy-IRC 6662

823,176.20

b.

c.

d.

e.

f.

g.

h.

i.

j.

k.

l.

m.

n.

**18. Total Penalties**

823,176.20

Underpayment attributable to negligence: (1981-1987)  
A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.Underpayment attributable to fraud: (1981-1987)  
A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.Underpayment attributable to Tax Motivated Transactions (TMT).  
Interest will accrue and be assessed at 120% of underpayment rate in accordance with IRC 6621(c).

0.00

**19. Summary of Taxes, Penalties and Interest:**

a. Balance due or (Overpayment) Taxes - (Line 16, Page 1)

4,176,860.00

b. Penalties (Line 18) - computed to 06/20/2016

823,176.20

c. Interest (IRC § 6601) - computed to 07/20/2016

0.00

d. TMT Interest - computed to 07/20/2016 (on TMT underpayment)

0.00

e. Amount due or refund - (sum of Lines a, b, c and d)

5,000,036.20

**Other Information:**

Examiner's Signature:

Name

Linda Marx

Employee ID:

1000359698

Office:

Technical Services

Date:

06/20/2016

The Internal Revenue Service has agreements with state tax agencies under which information about federal tax, including increases or decreases, is exchanged with the states. If this change affects the amount of your state income tax, you should amend your state return by filing the necessary forms.

You may be subject to backup withholding if you underreport your interest, dividend, or patronage dividend income you earned and do not pay the required tax. The IRS may order backup withholding (withholding of a percentage of your dividend and/or interest payments) if the tax remains unpaid after it has been assessed and four notices have been issued to you over a 120-day period.



Name of Taxpayer: Benson K. Boreyko  
Identification Number: [REDACTED]

Total

06/20/2016  
17.20.00

**2013 - Form 8959 - Additional Medicare Tax**

1. Medicare wages and tips from Form W-2, box 5	4,027,507.00
2. Unreported tips from Form 4137, line 6	0.00
3. Wages from Form 8919, line 6	0.00
4. Add lines 1 through 3	4,027,507.00
5. Amount based on filing status	125,000.00
6. Subtract line 5 from line 4 (if zero or less, enter 0.00)	3,902,507.00
7. Additional Medicare tax on Medicare wages (multiply line 6 by .009)	35,123.00
8. Self-employment income from Schedule SE (if zero or less, enter 0.00)	31,411.01
9. Amount based on filing status	125,000.00
10. Amount from line 4	4,027,507.00
11. Subtract line 10 from line 9 (if zero or less, enter 0.00)	0.00
12. Subtract line 11 from line 8 (if zero or less, enter 0.00)	31,411.01
13. Additional Medicare tax on self-employment income (multiply line 12 by .009)	283.00
14. Railroad retirement compensation from Form W-2, box 14	0.00
15. Amount based on filing status	125,000.00
16. Subtract line 15 from line 14 (if zero or less, enter 0.00)	0.00
17. Tier I employee Additional Medicare Tax on railroad retirement compensation (multiply line 16 by .009)	0.00
18. Total Additional Medicare Tax (add lines 7, 13, and 17)	35,406.00
19. Medicare tax withheld from Form W-2, box 6	92,846.00
20. Amount from line 1	4,027,507.00
21. Multiply line 20 by .0145	58,399.00
22. Subtract line 21 from line 19 (if zero or less, enter 0.00)	34,447.00
23. Additional Medicare Tax from Form W-2, box 14	0.00
24. Total Additional Medicare Tax withholding (add lines 22 and 23)	34,447.00

Name of Taxpayer: Benson K. Boreyko  
Identification Number: [REDACTED]

Total

06/20/2016  
17.20.00

**2013 - Form 8960 - Net Investment Income Tax**

1. Total investment income as filed	0.01
2. Adjustments to total investment income	1,605,399.00
3. Total investment income (combine lines 1 and 2)	1,605,399.01
4. Total deductions and modifications as filed	0.00
5. Adjustments to total deductions and modifications	0.00
6. Total deductions and modifications (combine lines 4 and 5; no less than 0.00)	0.00
7. Net investment income (subtract line 6 from line 3; no less than 0.00)	1,605,399.01
8. Modified adjusted gross income	21,741,670.00
9. Threshold based on filing status	125,000.00
10. Subtract line 9 from line 8 (no less than 0.00)	21,616,670.00
11. Smaller of line 7 or line 10	1,605,399.01
12. Net investment income tax (multiply line 11 by .038)	61,005.00

### Accuracy-Related Penalties under IRC 6662

#### 20 Percent Penalty -- Internal Revenue Code Section 6662(a)

It has been determined that the underpayment of tax shown on line 5 below is attributable to one or more of the following:

- (1) Negligence or disregard of rules or regulations;
- (2) Substantial understatement of income tax;
- (3) Substantial valuation misstatement (overstatement);
- (4) Transaction lacking economic substance.

Therefore, an addition to tax is imposed as provided by Section 6662(a) of the Internal Revenue Code.

1. Total underpayment, excluding underpayment attributable to Section 6662A penalty issues, if any	4,176,860.00
2. Less: Underpayment attributable to non-penalty issues	60,979.00
3. Less: Underpayment attributable to 40% Section 6662 penalty issues	0.00
4. Less: Underpayment attributable to civil fraud penalty issues	0.00
5. Underpayment to which Section 6662(a) applies (Line 1 less the sum of lines 2, 3, and 4)	4,115,881.00
6. Applicable penalty rate	20.00%
7. Section 6662(a) accuracy-related penalty (Line 5 times line 6)	823,176.20
8. Less: Previously assessed/previously agreed Section 6662(a) penalty	0.00
9. Total section 6662(a) accuracy-related penalty (Line 7 less line 8)	823,176.20

#### 40 Percent Penalty -- Internal Revenue Code Section 6662(h); 6662(i); 6662(j)

It has been determined that the underpayment of tax shown on line 5 below is attributable to one or more of the following:

- (1) Gross valuation misstatement (overstatement);
- (2) Non-disclosed transaction lacking economic substance;
- (3) Undisclosed foreign financial assets.

Therefore, an addition to tax is imposed as provided by Section 6662(h); 6662(i); or 6662(j) of the Internal Revenue Code.

1. Total underpayment, excluding underpayment attributable to Section 6662A penalty issues, if any	4,176,860.00
2. Less: Underpayment attributable to non-penalty issues	60,979.00
3. Less: Underpayment attributable to 20% Section 6662 penalty issues	4,115,881.00
4. Less: Underpayment attributable to civil fraud penalty issues	0.00
5. Underpayment to which 40% Section 6662 penalty applies (Line 1 less the sum of lines 2, 3, and 4)	0.00
6. Applicable penalty rate	40.00%
7. 40% Section 6662 accuracy-related penalty (Line 5 times line 6)	0.00
8. Less: Previously assessed/previously agreed 40% Section 6662 penalty	0.00
9. Total 40% section 6662 accuracy-related penalty (Line 7 less line 8)	0.00

Name Of Taxpayer: Benson K. Boreyko  
Identification Number: [REDACTED]

06/20/2016  
17.20.00

Total

**2013 - Adjustments Subject to Accuracy-Related Penalty - IRC 6662**

**ADJUSTMENTS TO WHICH THE ACCURACY RELATED PENALTY APPLIES:**

**PENALTY RATES**

20% 40%

Sch E-Inc/Loss-Prtnrship/S Corps-Passve/Non-Passve	X	1,226,864.00	IRC 6662(c)
Other Gains or Losses From Form 4797	X	8,830,971.00	IRC 6662(c)
State Refunds, Credits, or Offsets	X	5,516.00	IRC 6662(c)
Taxable Interest	X	678.00	IRC 6662(c)
Sch C1 - Gross Receipts or Sales	X	25,000.00	IRC 6662(c)

All or part of the underpayment to tax is due to negligence or disregard of rules and regulations. Negligence is defined as a failure to make a reasonable attempt to comply with the provisions of the Internal Revenue Code or to exercise ordinary and reasonable care in the preparation of a tax return. Negligence also includes a failure to keep proper books and records or to properly substantiate claimed items. Consequently, there is added to the tax an amount equal to 20 percent of the underpayment, as provided by IRC 6662.



Name of Taxpayer: Benson K. Boreyko  
Identification Number: [REDACTED]

Total

06/20/2016  
17.20.00

2013 - SCHEDULE A - ITEMIZED DEDUCTIONS

	PER RETURN	PER EXAM	ADJUSTMENT
1. Medical, dental and insurance premiums	3,991.00	3,991.00	0.00
2. 10.0% of adjusted gross income	1,165,298.00	2,174,167.00	
3. Net medical and dental expenses	0.00	0.00	0.00
4. Taxes	749,398.00	749,398.00	0.00
5. Home interest expense	60,088.00	60,088.00	0.00
6. Qualified mortgage insurance premiums	0.00	0.00	0.00
7. Investment interest	0.00	0.00	0.00
8. Other interest expense	0.00	0.00	0.00
9. Total interest expense	60,088.00	60,088.00	0.00
10. Contributions	225,249.00	225,249.00	0.00
11. Casualty and theft losses	0.00	0.00	0.00
12. Miscellaneous deductions	569.00	569.00	0.00
13. 2% of adjusted gross income	233,060.00	434,833.00	
14. Excess miscellaneous deductions	0.00	0.00	0.00
15. Other miscellaneous deductions	0.00	0.00	0.00
16. Total itemized deductions (Sum of lines 3, 4, 9, 10, 11, 14, and 15 less any applicable limitation)	689,646.00	386,985.00	302,661.00

ITEMIZED DEDUCTIONS WORKSHEET - PER EXAM

A Total of lines 3, 4, 9, 10, 11, 14, and 15 above	1,034,735.00
B Total of lines 3, 7, and 11, (plus any gambling and casualty or theft losses on line 15 above)	0.00
C Line A less line B	1,034,735.00
D Multiply the amount on line C by 80%	827,788.00
E Adjusted gross income	21,741,670.00
F Itemized deduction limitation based on filing status	150,000.00
G Line E less line F	21,591,670.00
H Multiply the amount on line G by 3%	647,750.00
I Enter the smaller of line D or line H	647,750.00
J Total itemized deductions (Line A less line I, entered on line 16 per exam column above)	386,985.00

Name of Taxpayer: Benson K. Boreyko  
Identification Number: [REDACTED]

06/20/2016  
17.20.00

Total

2013 - SCHEDULE SE - COMPUTATION OF SELF-EMPLOYMENT TAX

Primary  
Benson K. Boreyko

1. Self-employment income	34,013.00
2. Multiply line 1 by 92.35%	31,411.01
3. Farm optional method income	0.00
4. Nonfarm optional method income	0.00
5. Earnings subject to self-employment tax (sum of 2, 3, 4)	31,411.01
6. Maximum earnings subject to social security	113,700.00
7. Social security wages and tips from W-2	4,013,074.00
8. Unreported tips subject to social security tax from Form 4137	0.00
9. Wages subject to social security tax from Form 8919	0.00
10. Sum of lines 7, 8 and 9	4,013,074.00
11. Line 6 less line 10	0.00
12. Multiply the smaller of line 5 or 11 by 12.40%	0.00
13. Multiply line 5 by 2.90%	910.92
14. Self-employment tax (sum of lines 12 and 13)	910.92

Secondary

1. Self-employment income	0.00
2. Multiply line 1 by 92.35%	0.00
3. Farm optional method income	0.00
4. Nonfarm optional method income	0.00
5. Earnings subject to self-employment tax (sum of 2, 3, 4)	0.00
6. Maximum earnings subject to social security	113,700.00
7. Social security wages and tips from W-2	0.00
8. Unreported tips subject to social security tax from Form 4137	0.00
9. Wages subject to social security tax from Form 8919	0.00
10. Sum of lines 7, 8 and 9	0.00
11. Line 6 less line 10	0.00
12. Multiply the smaller of line 5 or 11 by 12.40%	0.00
13. Multiply line 5 by 2.90%	0.00
14. Self-employment tax (sum of lines 12 and 13)	0.00

Form <b>886-A</b> (Rev. January 1994)886-A	<b>EXPLANATION OF ITEMS</b>		Schedule number or exhibit
Name of Taxpayer Benson K. Boreyko	Taxpayer Identification Number [REDACTED]	Year/Period Ended 2013	

#### Taxes From Form 8960

Tax Period 2013	Per Return \$0.00	Per Exam \$1,604,721.00	Adjustment \$1,604,721.00
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Your net investment income tax is calculated on the lesser of (A) your net investment income under IRC 1411 for the taxable year, or (B) the excess, if any, of your modified adjusted gross income (MAGI) over certain threshold amounts based on your filing status. Since you have net investment income and are now above the applicable threshold amount, you are liable for the net investment income tax. We have attached a worksheet to show the computation of the tax.

#### Sch E-Inc/Loss-Prtnrship/S Corps-Passve/Non-Passve

Tax Period 2013	Per Return \$6,553,337.00	Per Exam \$7,780,201.00	Adjustment \$1,226,864.00
--------------------	------------------------------	----------------------------	------------------------------

It is determined from our examination of the books and records of the S Corporation known as Vemma International Holdings, Inc. ([REDACTED]) that your correct share of its ordinary income for the taxable year 2013 is \$7,780,201 rather than the \$6,553,337 reported on your tax return. See Exhibit A for more details of the adjustments to Vemma International Holdings, Inc.

#### Other Gains or Losses From Form 4797

Tax Period 2013	Per Return (\$2,880,971.00)	Per Exam \$5,950,000.00	Adjustment \$8,830,971.00
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We have adjusted your net gain (or loss) from the sale or exchange of assets as reported on form 4797 as shown.

#### State Refunds, Credits, or Offsets

Tax Period 2013	Per Return \$183,026.00	Per Exam \$188,542.00	Adjustment \$5,516.00
--------------------	----------------------------	--------------------------	--------------------------

A refund of any part of your state income tax that you deducted in prior years, and which reduced your federal income tax in those years, is includible in income in the year you received the refund.

#### Taxable Interest

Tax Period 2013	Per Return \$0.00	Per Exam \$678.00	Adjustment \$678.00
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All interest income is includible in income unless specifically exempted by law.



Form <b>886-A</b> (Rev. January 1994)886-A	<b>EXPLANATION OF ITEMS</b>		Schedule number or exhibit
Name of Taxpayer Benson K. Boreyko	Taxpayer Identification Number [REDACTED]	Year/Period Ended 2013	

**Sch C1 - Gross Receipts or Sales**

Tax Period 2013	Per Return \$0.00	Per Exam \$25,000.00	Adjustment \$25,000.00
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We have adjusted your income to include amounts shown in box 7 on Form 1099-MISC.

Issued By: AZ Laboratories LLC  
Amount: \$25,000

**Statutory-SE AGI Adjustment**

Tax Period 2013	Per Return \$121.00	Per Exam \$456.00	Adjustment (\$335.00)
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Your self-employment tax has changed as a result of adjustments made to your net earnings from self-employment as shown in this report. The self-employment tax deduction has been adjusted to one-half of the recomputed amount.

**Statutory-Self Employment Tax**

Tax Period 2013	Per Return \$241.00	Per Exam \$911.00	Adjustment \$670.00
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We have adjusted your self-employment tax due to a change in your net earnings from self-employment.

Form **4605-A**

Department of the Treasury — Internal Revenue Service

**Examination Changes - Partnerships, Fiduciaries, S Corporations, and  
Interest Charge Domestic International Sales Corporations (Unagreed and Excepted Agreed)**

Name and address Vemma International Holdings, Inc. 1621 West Rio Salado Parkway Tempe, , Arizona 85281-2608		Employer Identification Number [REDACTED]	Form Number 1120S	
		Person Examination Changes Were Discussed With	Name Vemma International Holdings, Inc. Title Taxpayer	
1. Adjustments to ordinary, distributable net, or taxable income.	Period End: 12/31/2013	Period End:	Period End:	
a. Salaries & wages	807,313.00			
b. Amortization	(7,014.00)			
c. Other Deductions - Legal & Accounting	67,897.00			
d. Other Deductions - Meetings and Conventions	782,502.00			
e.				
f.				
g.				
2. Total adjustments to ordinary, distributable net, or taxable income.	1,650,698.00			
3. Ordinary, distributable net, or taxable income as reported.	8,817,255.00			
4. Corrected ordinary, distributable net, or taxable income.	10,467,953.00			
5. Other adjustments				
a.				
(1) Adjustment				
(2) As Reported				
(3) Corrected				
b.				
(1) Adjustment				
(2) As Reported				
(3) Corrected				
Remarks				

Examiner's Signature:

Name Linda Marx

Employee ID:

1000359698

Area Office:

Technical Services

Date:

06/16/2016





Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>		Schedule number or exhibit
Name of taxpayer Vemma International Holdings, Inc.	Tax Identification Number [REDACTED]	Year/Period ended 2012 & 2013	

**Issue 1** Salaries & Wages

Tax Period	Per Return	Per Exam	Adjustment
2013	16,439,758.00	15,632,445.00	807,313.00

Since you did not establish that the amount shown was (a) compensation, and (b) paid, the amount is not deductible.

**\*\*Please note, that above per return amount is a combination of lines 7 & 8 on the filed tax returns which includes both compensation to officers, line 7, and salaries and wages, line 8.**

**Issue 2** Amortization Expense

Tax Period	Per Return	Per Exam	Adjustment
2013	10,946.00	17,960.00	-7,014.00

You are allowed an additional deduction for amortization expense.

**Issue 3** Other Deductions- Legal & Accounting

Tax Period	Per Return	Per Exam	Adjustment
2013	1,597,327.00	1,529,430.00	67,897.00

Since you did not establish that the business expense shown on your return was paid or incurred during the taxable year and that the expense was ordinary and necessary to your business, we have disallowed the amount shown.

Form **886-A**  
(Rev. January 1994)

**EXPLANATION OF ITEMS**

Schedule number or exhibit

Name of taxpayer

Vemma International Holdings, Inc.

Tax Identification Number

Year/Period ended

2012 & 2013

**Issue 4** Other Deductions-Meetings & Conventions

**Tax Period**

**Per Return**

**Per Exam**

**Adjustment**

2013

2,704,458.00

1,921,953.00

782,505.00

Since you did not establish that the business expense shown on your return was paid or incurred during the taxable year and that the expense was ordinary and necessary to your business, we have disallowed the amount shown.



**Postmeter  
OCT 19 2016**

22864-16

800 Nicollet Mall  
Suite 1300  
Minneapolis, MN 55402-1145



United States Tax Court  
400 Second Street, N.W.  
Washington, DC 20217