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When Does Time Begin: A Clarification of the Federal Courts' Inconsistent Application of the Federal Catch-All Statute of Limitations

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WHEN DOES TIME BEGIN?: A CLARIFICATION OF THE FEDERAL COURTS' INCONSISTENT APPLICATION OF THE FEDERAL "CATCH-ALL" STATUTE OF LIMITATIONS

I. INTRODUCTION

When does the clock start ticking in a civil penalty assessment case? When the underlying violation occurs or when the government agency issues its final penalty assessment? This question represents one of the many uncertainties resulting from the federal courts' inconsistent interpretation and application of 28 U.S.C. § 2462 (Section 2462). Congress enacted Section 2462 to apply to penalty enforcement claims arising under statutes that contain no specific time limitations. For decades, the federal courts have failed to consistently interpret and apply the "catch all" statute of limitations to civil penalty assessment cases. The ambiguity surrounding Section 2462 creates dilemmas for practitioners seeking shelter from government agencies wielding open ended civil penalties.

In United States v. Core Laboratories, Inc. and United States v. Meyer, two courts, each applying Section 2462 to the Export Admini-
istration Act (EAA), interpreted the accrual date differently. The court in *Core Laboratories, Inc. (Core)* found the accrual language in Section 2462 requires all agencies to initiate a civil penalty proceeding within five years of the violation date. Conversely, the *Meyer* court held that the statute of limitations does not begin to run until the administrative agency imposes a final civil penalty assessment. Essentially, the *Meyer* court gives an agency an additional five years after its final civil penalty assessment to bring an enforcement action.

The conflicting interpretations of Section 2462 are not limited to the *Core* and *Meyer* decisions. The court in *United States v. Graham* found the five year statute of limitations begins to run on the date the notice of violation or cessation orders were issued. The court in *Atlantic States Legal Found. v. AL Tech Specialty Steel Corp.* held that where an administrative proceeding is a prerequisite to a judicial action, the Section 2462 limitation period is tolled for the duration of the administrative proceeding.

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6 808 F.2d 912 (1st Cir. 1987).
7 See id. at 921 (finding Section 2462's accrual date to be date government issued final administrative assessment). But see *Core Lab., Inc.*, 759 F.2d at 483 (interpreting Section 2462 as requiring date of underlying violations as accrual date).
8 See *Core Lab., Inc.*, 759 F.2d at 481.
9 See *Meyer*, 808 F.2d at 915.
10 See id. at 921 (finding enforcement action claims do not accrue until after mandatory administrative proceedings conclude).
11 See e.g., 3M Co. v. Browner, 17 F.3d 1453, 1457-61 (D.C. Cir. 1994) (applying Section 2462 to civil penalty assessment proceedings and finding violation date as accrual date); Federal Election Comm'n v. National Republican Senatorial Comm. 877 F. Supp. 15, 19 (D.D.C. 1995) (concluding statute of limitations tolled during administrative assessment proceedings because they are not enforcement actions); United States v. Lueking, 125 B.R. 513, 514 (E.D. Tenn. 1990) (finding, where administrative proceedings are prerequisite, Section 2462 runs upon issuance of notice of violation).
13 See id. (reasoning notice of violation triggers statute of limitations because penalty proceedings are within government's control); *Lueking*, 125 B.R., at 514 (finding statute of limitations begins to run upon issuance of notice of violations).
15 See id. at 288 (ruling by sending notice letter of violation, statute of limitations is tolled for sixty days). The court followed the line of reasoning that, "if prior resort to an administrative body is a prerequisite to judicial review, the running of the statute of limitations period should be tolled during the administrative proceeding."
Id. See also Federal Election Comm'n v. National Republican Senatorial Comm., 877 F. Supp. 15, 20 (D.D.C. 1995) (finding Section 2462 is tolled only when administrative proceedings contain basic elements of adversarial adjudication).
The federal courts' inconsistent interpretations of Section 2462 creates unpredictability and bewilderment for private parties defending penalty assessment claims. Part I of this article explains the ambiguity in the federal courts' interpretation of Section 2462. Part II reviews the general legislative intent regarding statutes of limitations, exceptions to the general rule that statutes of limitations do not run against the government, and the legislative history of Section 2462. Part III proposes a hypothetical civil penalty fact pattern to further illustrate the complexities of certain civil penalty cases. Part IV addresses the problems included in the hypothetical and proposes a resolution based upon a consideration of the analysis used in three major decisions applying Section 2462 to civil penalty assessment claims. Part V proposes an analytical framework based on legislative intent, the language of Section 2462 and recent application by the federal courts. This framework will, in the absence of a clear definition of the statute's scope and its application, provide guidance for a suggested application of Section 2462. Part IV concludes by suggesting that the inconsistent application of a statute for nearly four decades necessitates that the Supreme Court define the scope and application of the federal "catch all" statute of limitations.

II. BACKGROUND

Statutes of limitations ensure fairness and protect parties from perpetual liability. Congress realizes such statutes are necessary to pre-
vent the injustice of requiring a party to defend against an old claim when memories have faded and witnesses are no longer available. Statutes of limitations promote the theory that "the right to be free of stale claims in time comes to prevail over the right to prosecute them." The time-honored maxim that claims should not last into perpetuity comes into conflict when a party applies the statute of limitations against the government.

Historically, the general rule provided that government enjoyed sovereign immunity from the running of statutes of limitations. Congress, however, held that an equitable judicial system requires protection for citizens against stale claims initiated by the government. Consistent with this belief, courts found that an exception to the general rule exists when Congress expressly imposes a limitations period upon government entities. In recognition of governmental immunity, however, courts maintain that "statutes of limitations sought to be applied to bar the government's rights, must receive a strict construction in favor of the government."

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27 See Brower, 17 F.3d at 1456 (acknowledging statute of limitations do not run against government unless Congress provides otherwise); Federal Election Comm’n v. National Republican Senatorial Comm., 877 F. Supp. 15, 18 (D.D.C. 1995) (finding tolling of Section 2462 proper only when administrative proceedings contain elements of adversarial adjudication). "[T]he equitable need to eliminate older claims must be balanced against the general Supreme Court's competing requirement that statutes of limitations should be strictly construed in favor of the government." Id.
28 See Guaranty Trust Co. v. United States, 304 U.S. 126, 132-33 (1938) (noting United States exemption from operation of statutes of limitations). The Court reasoned that because government actions are brought for the benefit of the public interest, they should not be subject to statutes of limitations. Id.
29 See Carroll, supra note 1, at 186 (acknowledging necessity to apply statute of limitations against government).
30 See E.I. Du Pont De Nemours & Co. v. Davis, 264 U.S. 456, 462 (1924) (reasoning governmental actions not subject to time limitations unless otherwise granted by Congress); United States v. Weintraub, 613 F.2d 612, 614 (6th Cir. 1979) (finding in absence of specific Congressional authorization, statutes of limitations not applicable to government); United States v. Tri-No Enter., Inc., 819 F.2d 154, 158 (7th Cir. 1987) (holding where statute does not include limitations period, government may seek recovery at any time).
The federal "catch all" statute of limitations has existed, in one form or another, since originating from the Judiciary Act of 1799. Despite certain changes in language, the objective of the "catch all" statute of limitation; to protect parties from inappropriate open ended penalties, remains consistent. Legislative history demonstrates Congress regarded time limitations on government penalty claims to be essential to an even-handed government.

Enacted in 1948, Section 2462 is essentially a rewriting of its predecessor. Nevertheless, certain language changes became the subject of debate between the courts. Specifically, the courts argue that the 1948 revision altered the legislative intent of the original "catch all" statute of limitations by including the word "enforcement." The Reviser's Notes on the rewriting of Section 2462 describes the alterations as "changes in phraseology." Consequently, an established canon of construction dictates that changes in phraseology do not change the original statutory meaning. Further, federal courts have debated whether Sec-

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22 See Browner, 17 F.3d at 1453-57 (outlining Section 2462's history); see also Carroll, supra note 1, at 183 (explaining Section 2462's history).

23 Judiciary Act of 1799, ch. 22, § 89 1 Stat. 695 (1799). See also S. Rep. No. 363 (1965), reprinted in 1965 U.S.C.C.A.N. 1826, 1832 (revealing original statutory intent endured with each amendment); Carroll, supra note 1, at 184 (outlining legislative history of Section 2462).

24 See Holderer, supra note 4 (discussing legislative and Supreme Court pronouncements requiring protection against stale claims for persons dealing with government).

25 See Browner, 17 F.3d at 1457 (outlining history of Section 2462 and recognizing Section 791 as codified version of Revised Statutes § 1047, 18 Stat. 193 (1874)). The 1874 version of Section 2462 replaced a similar version contained in the Act of Feb. 28, 1839, Ch. 36, § 4, 5 Stat. 321. Id. See also 28 U.S.C. § 791 (1911). Section 791 provides in pertinent part: "no suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States, shall be maintained, except in cases where it is specially provided, unless the same is commenced within five years from the time when the penalty or forfeiture accrued..." Id.

26 See Browner, 17 F.3d at 1457 (acknowledging textual changes in statutory rewrite, but noting no consequential changes to Section 2462).

27 See id. (noting addition of the word "enforcement"). Section 2462's predecessors provided that "no suit or prosecution for any penalty pecuniary or otherwise, accruing under the laws of the United States, shall be maintained..." Id. Alternatively, Section 2462 provides: "except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty..." 28 U.S.C. § 2462 (1999).

28 See Browner, 17 F.3d at 1457 (outlining amendments made to section 2462).

29 See id. (acknowledging change in phraseology does not change statute's original meaning).
tion 2462 should receive strict construction based on the plain language of the statute or whether its interpretation should be based on a consideration of legislative intent and history.\(^{40}\)

**III. HYPOTHETICAL FACT PATTERN**

Consider a scenario involving a company in a closely regulated business. A government agency regulates the particular business under a congressionally enacted statute.\(^{41}\) This statute enables the agency to impose civil penalties upon businesses that violate statutory provisions.\(^{42}\)

Suppose the company violated a statutory provision in 1990, and the agency issued a notice of such violation in 1992. According to the statute, after the notice of violation the company could either: (1) pay the fine proposed, (2) make an informal response, or (3) request a formal hearing.\(^{43}\) Presume the company decided to make an informal...

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\(^{40}\) See id. at 1455-57 (interpreting Section 2462 based on its legislative history). The *Browner* court relied heavily on the legislative intent of the word “accrued” in determining that the accrual date is the date of the underlying violation. *Id.* Compare United States v. Core Lab., Inc., 759 F.2d 480, 481-82 (5th Cir. 1985) (requiring statutory interpretation in light of its general legislative history), with United States v. Meyer, 808 F.2d 912, 914 (1st Cir. 1987) (finding plain language statutory interpretation requires date of final civil assessment be accrual date). The *Meyer* court refused to consider the statute’s legislative history. *Id.* at 914. The *Meyer* court held that the statute should be interpreted with the common meaning of its words where the language is unambiguous. See also Perrin v. United States, 444 U.S. 37, 42 (1979) (establishing “Congress intends words in its enactments to carry their ordinary, contemporary, common meaning”); Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980) (holding that absent congressionally expressed intention, express language of statute controls).

\(^{41}\) See Holderer, *supra* note 4, at 1032 (employing TSCA as congressionally enacted statute and EPA as agency which regulates particular industry).

\(^{42}\) See id. (noting similarity of TSCA to other regulatory statutes in that it offers multitude of sanctions).

\(^{43}\) See 49 App U.S.C. §§ 1801-1812; 49 C.F.R. §§ 171-79 (outlining civil penalty proceedings under Hazardous Materials Transportation Act (“HMTA”). The HMTA will be used as a model statute for the purposes of the hypothetical penalty claim. *Id.* A review of the HMTA regulations reveals that administrative proceedings begin service of “notice of probable violation.” *Id.* Within thirty days after service of the notice, the party may either: (1) pay the proposed fine; (2) make an informal response; or (3) request a formal hearing. *Id.* Failure of a party to respond to the notice of violation triggers the agency’s right to assess an appropriate civil penalty. *Id.* If an informal response option is elected, then the party may submit material in support of its position and request a conference. 49 App. U.S.C. §§ 1801-1812; 49 C.F.R. §§ 171-79. Following the confer-
response.\textsuperscript{44} Suppose then, the parties tentatively agreed upon a penalty in 1993, but the agency never issued a final civil penalty assessment.\textsuperscript{45} Then in 1997 the agency, realizing the company still owed the civil penalty, brought a judicial enforcement action in federal district court. The company argues that Section 2462 bars the enforcement action because the government brought it more than five years after the violation date.\textsuperscript{46} Alternatively, the government agency argues that the action is not time barred because the enforcement action is brought within five years of the final penalty assessment.\textsuperscript{47}

IV. ANALYSIS

Presupposing Section 2462 applies to the hypothetical, it becomes necessary to interpret the statutory meaning.\textsuperscript{48} Most relevant is how courts have interpreted the phrases "an action, suit or proceeding," and

\begin{itemize}
  \item \textit{See} 49 App U.S.C.\S\S 1801-1812; 49 C.F.R. \S\S 171-79 (allowing company charged with violation to make informal response).
  \item \textit{See id.} (allowing agency and violator to enter into negotiations).
  \item \textit{See United States v. Core Lab., Inc., 759 F.2d 480, 481 (5th Cir. 1985) (requiring within Section 2462 that government brings enforcement claims within five years of violation).}
  \item \textit{See United States v. Meyer, 808 F.2d 912, 921 (1st Cir. 1987) (finding date final penalty assessment issued as accrual date).}
  \item \textit{See Mullican v. United States 952 F.2d. 920, 927 (6th Cir. 1991) (finding Congressional intent for precluding application of statute of limitations against 26 U.S.C.A. § 67001). It is imperative that a consideration of the underlying statute reveal that Congress did not intend to apply another statute of limitations. \textit{Id. See also Capozi v. United States 980 F.2d 872, 873 (2nd Cir. 1992) (ruling for Section 2462 to apply, must first consider if claim is for penalty recovery). The Capozi court ruled Section 2462 does not apply to 26 U.S.C.A. § 6700 because the statute does not call for a penalty action but rather a determination and recordation of the amount of taxes owed. \textit{Id. See also Securities and Exch. Comm'n v. Williams, 884 F. Supp. 28, 29 (D. Mass. 1995) (finding Section 2462 not applicable to government claims for equitable relief).}
\end{itemize}
"the date when the claim first accrued." Such interpretations are the subject of much debate among the courts.

A consideration of three influential decisions is necessary to achieve a clarification of Section 2462. The Fifth Circuit Court in Core and the First Circuit Court in Meyer provide examples of two conflicting interpretations of when a claim first accrues under Section 2462. The D.C. Circuit Court's decision in 3M Co. v. Browner, however, provides a competent interpretation of the statute's scope as well as the framework for applying the appropriate accrual date.

A. A Consideration of the Core and Meyer Decisions

The Core court applied Section 2462 to a civil penalty dispute arising under the Export Administration Act (EAA). Based on legislative intent, previous case law, and practical considerations, that court held the five-year limitation period begins on the date of the violation. Thus, under Core, a government agency must commence assessment proceedings, as well as any enforcement action within five years of the violation.

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49 28 U.S.C. § 2462 (1994). The statute provides in pertinent part: "Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued..." Id.

50 See Carroll supra note 1 and accompanying text (acknowledging inconsistent interpretations of Section 2462); Holderer, supra note 4, and accompanying text (recognizing inconsistent holdings of Core and Meyer).

51 See Holderer, supra note 4, at 1027 (recognizing Core, Meyer and 3M Co. as instrumental decisions).

52 United States v. Core Lab., Inc., 759 F.2d 480, 490 (5th Cir. 1985); United States v. Meyer, 808 F.2d 912, 920 (1st Cir. 1987).

53 17 F.3d 1453 (D.C. Cir. 1994).

54 See id. at 1455-62 (defining Section 2462's scope and finding accrual date is date of underlying violation).

55 Core Lab., Inc., 759 F.2d at 480-81.

56 See id. at 481-83 (rejecting holding in United States Dep't of Labor v. Old Ben Coal Co., 676 F.2d 259 (7th Cir. 1982)). The court found the date of the underlying violation is the proper accrual date. Id. The court held the Seventh Circuit's decision in Old Ben is unconvincing because it did not recognize the abundance of case law applying pre-Section 2462 statutes. Id.

57 See Core Lab., Inc., 759 F.2d. at 482-83.
In *Core*, the defendant violated the EAA in 1978.\(^\text{58}\) The Commerce Department subsequently charged the defendant for such violations, and administrative proceedings ensued in 1979.\(^\text{59}\) In 1983, the government imposed an $81,300.00 civil penalty.\(^\text{60}\) Following the defendant's refusal to pay the penalty, the government initiated a judicial enforcement proceeding in 1984.\(^\text{61}\) Core defended the action by asserting that Section 2462 barred the judicial enforcement action.\(^\text{62}\) The government argued that an enforcement action does not accrue until the completion of an administrative assessment proceeding and the issuance of a final assessment.\(^\text{63}\)

In finding the limitations period begins to run on the date of the underlying violation, the *Core* court relied on earlier decisions applying statutes that preceded Section 2462.\(^\text{64}\) The court noted that Section 2462's predecessor statutes produced a considerable number of decisions accepting the violation date as the proper accrual date.\(^\text{65}\) The court applied these decisions with the statute's underlying legislative intent and practical considerations to support its holding.\(^\text{66}\) The court noted that the "progress of administrative proceedings is largely within the control of the government" and that "a limitation period that began to run only after the government concluded its administrative proceedings would thus

\[^{58}\text{Id.}\]
\[^{59}\text{Id. at 481.}\]
\[^{60}\text{Id.}\]
\[^{61}\text{Id.}\]
\[^{62}\text{Core Lab., Inc., 759 F.2d at 481.}\]
\[^{63}\text{Id.}\]

\[^{64}\text{See id. (refusing to consider other statutes when considerable case law applies Section 2462 or its predecessors).}\]
\[^{65}\text{See id. (citing United States v. Athlone Indus., Inc., 746 F.2d 977, 982 n. 1 (3rd Cir. 1984)); Western Pac. Fisheries, Inc. v. S.S. President Grant, 730 F.2d 1280, 1287 (9th Cir. 1984); United States v. Witherspoon, 211 F.2d 858, 861 (6th Cir. 1954); Lancashire Shipping Co. v Durning, 98 F.2d 751, 753 (2nd Cir. 1938).}\]
\[^{66}\text{See Core Lab. Inc., 759 F.2d at 483 (referring to certain legislative history regarding amendment to EAA to support its decision); H.R. Rep. No. 434, 89th Cong., 1st Sess. 5, (1965). The House report provides in pertinent part:}\]

\text{The bill does not prescribe any period following an offense within which the civil penalty must be imposed. It is intended that the general five year limitation imposed by Section 2462 of Title 28 shall govern. Under this Section, the time is reckoned for the commission of the act giving rise to the liability, and not from the time of imposition of the penalty, and it is applicable to administrative as well as judicial proceedings.}\]

\text{H. Rep. No. 434, 89th Cong., 1st Sess. 5, (1965) (emphasis added). Such legislative history, of course, would only be applicable to an action under the EAA.}\]
amount in practice to little or none." In rejecting the government's argument that the administrative proceedings toll the limitations period, the court reasoned that the tolling contradicts the general purpose of a statute of limitations: a citizen's right to be free of stale claims.68

\textit{Meyer}, decided more than two years after \textit{Core}, specifically rejected the reasoning proposed in \textit{Core}.69 The First Circuit Court in \textit{Meyer} found the accrual date to be the date the government issued a final civil penalty assessment.70 The court essentially ruled that although administrative proceedings must be initiated within five years of the violation date, Section 2462 provides an additional five years after the proceedings to bring a judicial enforcement action.71 Under this interpretation, the statute of limitations for an "enforcement" action does not begin to run until an agency assesses its final civil penalty.72

\begin{quote}
\textbf{67} \textit{Core Lab. Inc.}, 759 F.2d at 482. \textit{See also} Federal Election Comm'n v. Nat'l Republican Senatorial Comm., 877 F. Supp. 15, 20 (D.D.C. 1995) (finding date of violations as proper accrual date). The \textit{Federal Election Commission} court reasoned if the accrual date is the date on which administrative proceedings conclude it would encourage government to drag out its proceedings, thus obstructing the general purpose against open-ended penalties. \textit{Id.} at 19. \textit{See also} United States v. Graham, No. 87-1843, 1989 WL 248111 * 3 (W.D. Pa. July 20, 1989) (following \textit{Core} reasoning). The \textit{Graham} court held that penalty proceedings should be brought within five years of the original notice of violation because they are largely within the government's control. \textit{Id.} Further, in \textit{Graham}, the statute from which the penalty claim arose did not require assessment proceedings as a prerequisite to a judicial enforcement action. \textit{Id.} \textit{See infra}, notes 131-44 and accompanying text (discussing tolling of statute of limitations when administrative assessment proceeding prerequisite to enforcement action).

\textit{68} \textit{See Core Lab. Inc.}, 759 F.2d at 482-83 (reasoning legislative intent to protect citizens from stale claims supersedes government's right to prosecute). The court found no authority in support of the government's argument that the statute is tolled during the administrative proceedings. \textit{Id.} The court did note, however, that it might be able to use its equity powers to toll the statute of limitations if, for example, the defendant's "dilatory tactics" caused the untimeliness of the government's lawsuit. \textit{Id.}

\textit{69} \textit{Compare} United States v. Meyer, 808 F.2d 912, 913 (1st Cir. 1987) (rejecting \textit{Core} decision) with \textit{Core Lab. Inc.}, 759 F.2d at 480 (rendering decision in 1985).

\textit{70} \textit{See Meyer}, 808 F.2d at 918.

\textit{71} \textit{See id.} at 913-20. The court interpreted Section 2462 as requiring the government to bring administrative penalty actions within five years of the violation date. \textit{Id.} at 913. \textit{See also} Lancashire Shipping Co. v. Durning, 98 F.2d 751, 753 (2nd Cir. 1938) (interpreting Section 2462's predecessor, 28 U.S.C. § 791, as being satisfied upon commencement of administrative proceeding).

\textit{72} \textit{See Meyer}, 808 F.2d at 910 (finding five-year limitations period for administrative proceedings followed by five years for enforcement actions).\end{quote}
In *Meyer*, the EAA violations occurred in 1978, while administrative proceedings were not initiated until 1981. As part of the proceedings, an Administrative Law Judge (ALJ) presided over the hearings on the matter. Upon the culmination of the hearings in 1983, the ALJ imposed a civil penalty for the violations. The respondent unsuccessfully protested the decision, and the court affirmed the penalty in 1984. By December 31, 1985, the respondent had not paid the penalty, prompting the government to initiate a judicial enforcement action more than five years after the infractions occurred.

In interpreting Section 2462, the *Meyer* court emphasized the EAA's requirement of mandatory administrative proceedings prior to bringing a judicial enforcement action, a fact not addressed by the court in *Core*. The *Meyer* court recognized that the EAA effectively prohibited a judicial enforcement action until the government assessed a civil penalty that the respondent failed to pay. The court found the EAA

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73 Id.
74 Id. The inclusion of an ALJ in administrative proceedings evidence the adjudicatory nature of the proceedings required by the EAA. Id.
75 Id. at 913.
76 Id. The court distinguished adjudicatory administrative proceedings from "prosecutorial determinations." Id.
77 See *Meyer*, 808 F.2d at 913 (recognizing administrative proceedings as condition precedent to bringing judicial enforcement action under EAA).
78 See id. at 914 (recognizing EAA requires administrative proceedings before imposition of penalty). The court held that a penalty cannot be "enforced" as defined by Section 2462 until the penalty comes into existence. Id. The court further reasoned that a penalty assessed under the EAA does not come into existence until the administrative proceedings are completed. Id. See also *Lins v. United States*, 688 F.2d 784, 786 (Ct. Cl. 1982) (recognizing suits subject to mandatory administrative proceedings do not accrue until proceedings conclude). But see *United States v. Core Lab. Inc.*, 759 F.2d 480, 481-83 (5th Cir. 1985) (neglecting EAA requirement of administrative proceedings in analysis). The *Meyer* court refused to follow the cases relied upon in the *Core* decision. See *Meyer*, 808 F.2d at 914 (noting parties in cases used in *Core* decision could bring enforcement actions without initially seeking administrative remedies).
79 See *Meyer*, 808 F.2d at 914. The court recognized that EAA language restricts the introduction of a civil suit "until the appropriate administrative authority has imposed a sanction which the respondent has thereafter refused to satisfy." Id. "In the event of the failure of any person to pay a penalty imposed pursuant to the anti-boycott provisions of the EAA, a civil action for the recovery thereof may... be brought in the name of the United States." 50 U.S.C. App. § 2410(f). See also *United States Dep't of Labor v. Old Ben Coal Co.*, 676 F.2d 259, 265 (7th Cir. 1982) (finding claim accrues after administrative proceeding ends and respondent fails to pay penalty). But see *Unexcelled Chem. Corp. v. United States*, 345 U.S. 59, 66(1953) (finding enforcement action accrued at moment of violation).
requirements consistent with its interpretations of Section 2462. The court read the accrual language in Section 2462 to propose that a claim accrues only when a suit can be maintained. Thus, the court reasoned, when applying Section 2462 to the EAA, that an agency cannot maintain an enforcement claim until there is a penalty to enforce (after assessment proceedings) and the respondent refuses to pay.

The Meyer court deduced that if it adopted the Core rationale the statute of limitations for the enforcement of a civil penalty could run before the government even had the right to initiate such a suit. The court considered this unreasonable in light of its view that administrative proceedings were largely beyond the government's control, a point directly in conflict with Core. The Meyer court also noted that a party charged with violating the EAA enjoyed the right to a "full panoply of discovery devices" as well as the right to an appeal. The Meyer court found it unreasonable to require an administrative agency to discover a

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80 See Meyer, 808 F.2d at 914.
81 See id. at 913 (defining "date when claim first accrued" as date when suit may be maintained). The Meyer court reasoned, within the context of its interpretation of Section 2462, that an "enforcement" action could not accrue until there was a penalty to enforce. Id. The court interpreted the "enforcement action" to mean an action brought to compel a penalty already in existence. Id. But see 3M Co. v. Browner, 17 F.3d 1453, 1457 (D.C. Cir. 1994) (interpreting "enforcement action" to mean action imposing penalty). Unlike the Core decision, the decision in Meyer did not rely on the legislative intent of the Section 2462 or its predecessors. Meyer, 808 F.2d at 914. The Meyer court elected to base its decision on a plain language interpretation and supporting case law. Id. The Meyer court reasoned, "where the words of a statute are clear and unambiguous, courts should be extremely hesitant to search for ways to interpose their own notions of Congress's intent." Id. The court held that Section 2462 is open to one reasonable interpretation and thus, reliance on Congressional materials is improper. Id.
82 See Meyer, 808 F.2d at 913 (reiterating enforcement action cannot "accrue" until after issuance of penalty following assessment proceedings).
83 See id. at 918-19. The court reasoned that, in the absence of explicit Congressional intent to the contrary, the deduction that a statute of limitations could render an enforcement suit voidable before it has accrued is unreasonable. Id. The court followed the maxim that "legislation should be interpreted to avoid . . . unreasonable results whenever possible." Id.
84 See id. at 912. The court noted that after an agency issues a charging letter, the prerequisites of the Administrative Procedures Act (APA) control, and the timing of the case is beyond the management of the agency. Id. But see United States v. Core Lab., Inc., 759 F.2d 480, 483 (5th Cir. 1985) (finding administrative proceedings largely within government's control).
85 See Meyer, 808 F.2d at 919. The court found, within the context of the EAA, that administrative proceedings were similar to judicial adjudications, complete with interrogatories, depositions, subpoenas and other protections implemented by the APA. Id.
violation, conduct an investigation, issue a notice of violation, and then proceed through an often lengthy administrative proceeding and subsequent appeal within a five year period.  

The *Meyer* court relied upon the Supreme Court's holding in *Crown Coat Front Co. v. United States* in reaching its decision. Similar to a suit brought under the EAA, the statute in *Crown Coat* required an exhaustion of all administrative remedies prior to bringing a judicial enforcement action. The Supreme Court held in *Crown Coat*, within the context of 28 U.S.C. § 2401, a right to bring a civil action matures only after the mandatory administrative decision is issued.

**B. Issue revisited by the Browner Court**

The decision in *Browner* renders intelligible the conflicting interpretations of Section 2462, yet does not signify a clear explanation of the statutory application. Specifically, the *Browner* court established that under Section 2462, an "action, suit or proceeding for the enforcement of a civil fine" included administrative proceedings. The court also inter-

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86 See *id.*
87 386 U.S. 503 (1967).
88 *Meyer*, 808 F.2d at 916. In *Crown Coat*, a private party brought an action under 28 U.S.C. § 2401 to adjust a government contract. *Crown Coat Front Co.*, 386 U.S. 504-05. The plaintiff in *Crown Coat* brought the action more than six years after the occurrence of the underlying events of his claim but less than six years after the administrative decision of his claim. *Id.* at 511-14.
90 See *id.* (finding, under Section 2401, "right of action" does not exist until completion of administrative proceedings). But see *Unexcelled Chem. Corp. v. United States*, 345 U.S. 59, 64 (1953) (finding two year statute of limitations runs from violation date). The *Unexcelled* court held, within the context of the Walsh Healey Act, that a limitations period begins when the violation occurs. *Id.* But see *Meyer*, 808 F.2d at 916 (distinguishing *Unexcelled* decision). The *Meyer* court distinguished the ruling in *Unexcelled* on the basis that, unlike suits brought under the EAA, the government in *Unexcelled*, could file a judicial action at any time with or without prior administrative proceedings. *Id.*
91 See 3M Co. v. Browner, 17 F.3d 1453, 1457 (D.C. Cir 1994) (recognizing no clear interpretation of Section 2462's accrual date or applicability to administrative proceedings). The *Browner* decision held that the proper accrual date is the date of the underlying violation. *Id.* The court however, did not explain Section 2462's application in cases where administrative proceedings are a prerequisite to enforcement proceedings. *Id.*
92 See *id.* at 1455 (quoting language of Title 28 U.S.C. § 2462).
interpreted the accrual date as the date of the underlying violation. The Browner court, however, mitigated the latter finding when applied to collection proceedings that follow administrative liability proceedings and do not question the validity of the penalty imposed, but rather only seek to enforce the penalty.

In Browner, the court applied Section 2462 to a penalty action brought under 15 U.S.C. § 2615(a)(2)(A). The defendant committed several violations of the Toxic Substance Control Act (TSCA) between 1980 and 1986. Under Section 2615(a)(2)(A), the TSCA requires the government to assess civil penalties for violations of the statute only after the completion of a hearing on the violations. The TSCA, however, contains no provision limiting the time within which the government must bring an administrative action. 3M argued that the government's claim was time barred because Section 2462 applied to administrative assessment proceedings brought under the TSCA. The ALJ presiding over the proceedings and subsequent appeal rejected 3M's argument and ruled Section 2462 does not apply to administrative assessment proceedings.

In repudiating the ALJ decision, the Browner court identified no substantial distinction between an agency's assessment adjudication and the judicial process. The court found agency proceedings to be analo-
gous to the judicial process in that complaints are brought, motions are answered, depositions are taken, discovery pursued, and a hearing is held where evidence is introduced before an impartial trier of fact. The court acknowledged that the administrative proceedings leading to the imposition of a civil penalty mitigate the concern that "after the passage of time evidence has been lost, memories have faded, and witnesses have disappeared." The court further noted that assessment proceedings under TSCA seek to impose civil penalties and are thus proceedings for the "enforcement" of penalties consistent with Section 2462.

The Browner court rejected the "discovery of violation" argument in ruling the accrual date under Section 2462 is the date of the underlying violation. In making its determinations, the court considered predecessor statutes to Section 2462 and legislative intent. The court noted

(1st Cir. 1987) (distinguishing administrative proceedings from prosecutorial determinations). See Holderer, supra note 4, at 1025 (discussing Congressional committee reports indicating Section 2462 applies to administrative proceedings). The indirect history of Section 2462 indicates that Congress intended the five year limitations period be applicable to assessment proceedings. Id.

See Browner, 17 F.3d at 1456 (referring to aspects of administrative assessment process under TSCA). The Browner court noted that the APA recognizes the administrative assessment process as a "proceedings." Id. at 1457.

See id. at 1457 (quoting Order of R.R. Telegraphers v. Railway Express Agency, 321 U.S. 342, 349 (1944)).

See id. at 1457 (rejecting EPA's argument). The EPA argued Section 2462 should be interpreted so that "enforcement" refers to collection actions for penalties already imposed and not for administrative assessment actions. Id. In rejecting the argument, the court held that if the EPA's argument were accepted, a party would not be protected against stale claims. Id. The court also noted that the term enforcement was added to the statute as part of the 1948 legislative revision that was not intended to affect the substance of the act. Id. But see Meyer, 808 F.2d at 914-21 (finding an "enforcement action" refers to claims to compel civil penalties already in existence).

See Browner, 17 F.3d at 1460 (rejecting argument that because of difficulties in discovering violations accrual date should be discovery date). The court declined the "discovery of violation" argument because a penalty claim had nothing to do with a latent injury, the basis of the discovery rule. Id. The court noted the action was a penalty action, and liability attaches at the moment of the violation, thus the moment of the violation should be the time when the claim "first accrued." Id. See also Unexcelled Chem. Corp. v. United States, 345 U.S. 59, 61 (1953) (rejecting "discovery of violation" rule and holding enforcement claim accrues on date of violation); Johnson v. Securities and Exchange Comm'n., 87 F.3d 484, 486 (U.S. App. D.C. 1996) (acknowledging Section 2462 application to assessment proceedings).

See Browner, 17 F.3d at 1460. The court established that an interpretation of pre Section 2462 statutes is relevant because subsequent amendments to such statutes were merely changes in phraseology that did not change the original statutory purpose. Id. at 1458.
that Congress did not intend the word "accrued" to mean the date that the violation was discovered when it first used the word in the 1839 version of Section 2462. The court acknowledged that history has consistently interpreted the word "accrued" as intending that the limitations period be measured from the actual violation date. Despite finding the violation date as the appropriate accrual date, the court noted that in situations where administrative assessment proceedings are a prerequisite to a judicial enforcement action, other courts have interpreted the date of the final assessment as the proper accrual date.

V. THE ANALYTICAL FRAMEWORK FOR THE PROPER APPLICATION OF SECTION 2462

Notwithstanding their inconsistent holdings, the Browner, Meyer, and Core decisions provide the foundation for the proper application of Section 2462 to civil penalty cases. More recent courts have applied these decisions to penalty claims brought under a myriad of statutes and achieved equitable results. The decisions often tend to be inconsistent when applied between differing statutes. To correctly determine if

107 See id. at 1462 (noting discovery rule not used in 1839).
108 See id. (explaining holdings of cases applying predecessor statutes of Section 2462).
109 See id. at 1458, n.8 citing Crown Coat Front Co. v. United States, 386 U.S. 503, 512 (1967); United States v. Meyer, 808 F.2d 912, 914 (1st Cir. 1987); United States Dep't. of Labor v. Old Ben Coal Co., 676 F.2d 259, 261 (7th Cir. 1982). The Browner court only made reference to the cited cases and did not follow or explain their decisions. Id. The above cited cases recognize that where administrative proceedings are a prerequisite to a judicial action the claim does not accrue until the final penalty is imposed. Old Ben Coal Co., 676 F.2d at 261; Crown Coat Front Co., 386 U.S. at 503; Meyer, 808 F.2d at 912.
110 Compare Browner, 17 F.3d at 1461, with United States v. Core Lab., Inc., 759 F.2d 480, 487 (5th Cir. 1985) and Meyer 808 F.2d at 915. See also supra notes 55-109 (analyzing Core, Meyer and Browner decisions).
112 See Great Am. Veal, Inc., 998 F. Supp. at 422 (holding that limitations period begins to run upon culmination of assessment proceedings). But see National Republi-
Section 2462 precludes the hypothetical penalty claim, it is necessary to consider both the statute under which it is brought, as well as relevant case law.113

A. Hypothetical Statute's Administrative Process could be regarded as "proceedings."

Presupposing that the hypothetical statute proposed in the previously referenced fact pattern does not contain an express limitations period or Congressional intent that no limitations period should apply, a consideration of whether the administrative proceedings under the statute are consistent with Section 2462 is relevant.114 In one form or another, the hypothetical statute requires an agency to conduct an assessment adjudication before it initiates a judicial enforcement proceeding.115 Whether the type of adjudication chosen is a "proceeding" or merely a "prosecutorial determination," however, requires resolution.116

\[\textit{can Senatorial Comm.}, 877 \text{ F. Supp. at 20} \text{ (finding date of underlying violation as appropriate accrual date).}\]

\[\textit{113 See} \text{ Mullikin v. United States 952 F.2d 920, 927 (6th Cir. 1991) (finding Congressional intent for precluding application of Section 2462 against 26 U.S.C.A. § 67001). Section 2462 includes qualifying language, "except as otherwise provided by act of Congress" which precludes its application where congressional intent is found. \textit{Id.} at 929. It is imperative that a consideration of the underlying statute reveal that Congress did not intend to apply another statute of limitations. \textit{Id. See also} \text{ Capozzi v. United States 980 F.2d 872, 873 (2nd Cir. 1992) (ruling for Section 2462 to apply must first consider if claim is for penalty recovery). Congressional intent for another statute of limitations to apply to particular statute precludes Section 2462. \textit{Capozzi}, 980 F.2d at 873. If the statute under which the claim is brought requires administrative proceedings prior to enforcement action, case law indicates the accrual date is different than when no proceedings are required. \textit{Compare Old Ben Coal Co.}, 676 F.2d at 261 (ruling collection action for penalty previously imposed administratively accrues after administrative assessment proceeding has ended) \textit{with} \text{ Lueking}, 125 B.R. at 515 (holding violation date is proper accrual date unless administrative assessment proceedings are prerequisite).}\]


\[\textit{115 See id. (describing procedure under HMTA model used for hypothetical statute). The hypothetical administrative procedure requires a party to either (1) pay the fine proposed, (2) make an informal response, or (3) request a formal hearing. \textit{Id.}}\]

\[\textit{116 See 3M Co. v. Browner, 17 F.3d 1453, 1458 (D.C. Cir. 1994) (defining requirements for administrative adjudication to be "proceedings" within language of Section 2462).}\]
Relying on the analysis proposed in Browner, an administrative assessment process is categorized as a "proceeding" if the process is an "adversarial adjudication." Specifically, administrative measures are "proceedings" when they consist of a hearing before an impartial trier of fact, complete with the introduction of evidence, the questioning of witnesses and the determination of ultimate liability. An enforcement action, subsequent to this type of administrative adjudication, would not question the validity of the penalty imposed. This type of adjudication ensures the satisfaction of the statute of limitation's objectives. A simple test is whether the adjudication ensures fairness for the party and promotes judicial efficiency.

Alternatively, "prosecutorial determinations" constitute nothing more than decisions to bring a civil penalty suit. In such instances there is no forum to "adjudicate liability." Mere determinations to impose a civil penalty do not contain the elements of a judicial proceeding that ensures fairness to the defending party.

In the hypothetical penalty case, the company chose to make an informal response. The company had an opportunity to question the

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117 See id. (describing elements of valid proceeding).
118 See id. at 1459 n. 11 (recognizing term "proceeding" implies some type of adversarial adjudication). Compare Capozzi, 980 F.2d at 873 (finding IRS assessment of penalty is an ex parte act not adversarial adjudication) with Browner, 17 F.3d at 1458 (holding administrative assessment proceedings under TSCA are adversarial adjudications).
119 See Browner, 17 F.3d at 1458 (recognizing subsequent action as "collection action").
120 See id. at 1456 (finding objectives of statutes of limitations apply equally to administrative and judicial proceedings).
121 See Holderer, supra note 4, at 1026-27 (outlining statute of limitation's objectives to include fairness to parties and promoting judicial efficacy).
122 See United States v. Meyer, 808 F.2d 912, 919-20 (describing "prosecutorial determinations" as non-adjudicative). The Meyer court recognized that "prosecutorial determinations" fall entirely within the control of the government, whereas adjudicatory administrative proceedings are outside the government's control. Id.
123 See id. (noting under prosecutorial determination party has no right to adjudicate liability)
124 See id. (recognizing prosecutorial determinations as mere decision to impose a civil penalty); Browner, 17 F.3d at 1457-59 (describing elements of administrative proceeding).
125 See 49 App. U.S.C. §§ 1801-1812; 49 C.F.R. §§ 171-79 (allowing company charged with violation to make informal response). Under HMTA (model for hypothetical) defendant company can either: (1) pay the fine imposed; (2) make an informal response; (3) request a formal hearing. Id.
validity of the agency's allegations but chose to provide materials to the agency in hopes of negotiating a settlement. If the informal negotiations culminated with the agency assessing an agreed upon penalty, one could argue that the company in effect waived its right to a formal adjudication. Despite the fact that an informal negotiation does not resemble an "adversarial adjudication," the process did achieve the statutory objectives: fairness was attained, and the efficiency of the judicial system promoted.

In the hypothetical fact pattern, however, the parties agreed to a tentative penalty, and the agency never issued a final penalty. Therefore, after the completion of the informal negotiations, the company never had the opportunity to request a formal hearing because the agency never issued its final assessment. The informal negotiations were merely preliminary discussions which, if not to the company's liking, were to be followed by an administrative hearing adjudicating liability. In effect, the company could argue that by not issuing the final penalty assessment, the agency wielded a threat of an open-ended penalty. Consistent with this argument, the company could assert that the negotiation process was largely within the government's control and that the delay in issuing the final penalty assessment is inequitable.

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126 See id. Under HMTA (model for hypothetical), one could argue that a defendant party waived there right to formal hearing by choosing informal response option. Id.

127 See id.


129 See Federal Election Comm'n v. National Republican Senatorial Comm. 877 F. Supp. 15, 18 (D.D.C. 1995) (acknowledging that preventing government from yielding open ended penalties is statute of limitations objective). It could be argued, consistent with the Core decision that the administrative proceedings were within the control of the agency. United States v. Core Lab., Inc., 759 F.2d 480, 483 (5th Cir. 1985)(holding that accrual date is date of violation because proceedings are within government's control).

130 See United States v. Graham, 1989 WL 248111 *4 (W.D. Pa. 1989) (finding proceedings are within government's control and should be brought within notice of violation). In essence, the agency waited four years after the culmination of the informal negotiations to assess its final penalty. Id.
B. Administrative Proceedings and Judicial Enforcement Actions are Two Separate Claims in Regards to Section 2462.

The informal response option chosen by the company in the hypothetical cannot be regarded as a "proceeding" consistent with the language of Section 2462. Thus, the five year limitation period in the hypothetical began on the date of the underlying violation. In the hypothetical, initiation of the administrative process began within five years of the date of the violations. The judicial enforcement action, however, was initiated six years after the violations occurred. In this hypothetical fact pattern there was no adjudication, either administrative or judicial, which determined liability. The basic rule taken from rele-

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131 See 3M Co. v. Browner, 17 F.3d 1453, 1458 (D.C. Cir. 1994) (noting that "proceedings" must include adversarial adjudication). Where administrative assessment adjudication is not a prerequisite to a judicial enforcement action the date of the underlying violation is the proper accrual date. See id. (recognizing Section 2462 objectives are not satisfied without assessment adjudication). If the company had chosen a formal hearing, and the hearing included an adversarial adjudication of liability, then one could argue the accrual date for the enforcement claim is the date the final penalty was assessed. See Crown Coat Front Co. v. United States, 386 U.S. 503, 508 (1967) (ruling that statute of limitations applies to both administrative assessment proceeding and subsequent enforcement claim). A statute of limitations very similar to Section 2462 was applied in Crown Coat. Id. The Crown Coat Court ruled that administrative proceedings that include a determination of liability do not preclude the statute of limitations from applying to subsequent collection claims. Id.

132 See supra notes 42-47 and accompanying text (outlining hypothetical fact pattern).

133 See supra, notes 42-47 and accompanying text (describing the hypothetical fact pattern).

134 See supra, notes 42-47 and accompanying text (describing hypothetical fact pattern).

135 See supra note 42-47 and accompanying text (describing hypothetical fact pattern); Browner, 17 F.3d at 1457-59 (establishing that "proceeding" within context of Section 2462 requires adversarial adjudication and determination of liability). In regards to the hypothetical, the government agency could theorize that by choosing the informal response in hopes of negotiating a settlement, the company accepted liability and waived its right to an adjudication that determines liability. The agency could further argue that the company understood the penalty imposed and simply failed to pay it. Conversely, the defendant company could rebut that despite the informal negotiations the company had no way of knowing the specific penalty imposed until the final assessment was issued. Further, by failing to impose the final penalty the agency neglected the companies right to a hearing.
vant case law seems to be that an adjudication determining liability must be commenced within five years of the violation date.\footnote{See e.g. United States v. Meyer, 808 F.2d 912, 913 (1st Cir. 1987) (recognizing "any administrative action aimed at imposing civil penalty must be brought within five years of alleged violation"); Browner, 17 F.3d at 1455-58 (asserting administrative adjudications are "proceedings" that must be brought within five years of violation date); United States v. Great Am. Veal, Inc., 998 F. Supp. at 422-25 (finding judicial enforcement actions receive additional five years where administrative assessment proceedings come first); supra note 115-124 and accompanying text (discussing tolling of statute of limitations where administrative proceedings are adjudicatory).}

Where the adjudication is adversarial and is a prerequisite to a judicial enforcement action, an additional five years should be afforded to the latter claim.\footnote{See Crown Coat Front Co., 386 U.S. at 503 (applying statute of limitations to both assessment claim and subsequent collection claim); Meyer, 808 F.2d at 916-21 (holding accrual date is date of final assessment because of administrative proceedings); Federal Election Comm’n v. National Republican Senatorial Comm., 877 F. Supp. 15, 20 (D.C. Cir. 1995) (finding Section 2462 tolls limitation period only when administrative proceedings constitute adversarial adjudication).} In such a situation, the two proceedings should be regarded as entirely separate claims.\footnote{See Meyer, 808 F.2d at 916-21 (finding Section 2462 applicable to both administrative proceedings that determine liability and subsequent enforcement actions); United States v. Noble Oil Co. 1988 WL 109727, *2 (D.N.J. 1988) (finding administrative and judicial penalty actions are two separate proceedings)} An enforcement action that follows an administrative adjudication is merely an action to collect a penalty already imposed.\footnote{See Crown Coat Front Co., 386 U.S. at 503-12; Meyer, 808 F.2d at 916-2 (holding no enforcement actions until penalty assessment).} The Attorney General brings enforcement actions, not the government agency that imposes the penalty.\footnote{See Noble Oil Co., 1988 WL 109727, *2. (noting under TSCA, assessment and collection proceedings are separate, with Attorney General initiating collection action).} In such actions, courts will not question the validity of the penalty (no de novo review).\footnote{See id. (noting in collection action, "validity, amount and appropriateness" of penalty is not reviewed).} Therefore, there is no need for memories to be fresh or witnesses to be available. The fairness considerations of the statutes of limitation have been satisfied through the formalities of the antecedent administrative proceeding.\footnote{See Holderer, supra note 4 and accompanying text (discussing statute of limitation objectives); Burnett v. New York Central R.R. Co., 380 U.S. 424, 428 (1965) (acknowledging right to be free of stale claims); Order of R.R. Telegraphers v. Railway Express Agency, 321 U.S. 342, 349 (1944) (recognizing need to preserve witnesses, evidence and memories).}
Where, however, the administrative process does not include the common elements of an adversarial adjudication, the judicial action must be brought within five years of the violation date. Administrative assessment procedures that effectuate nothing more than "prosecutorial determinations" do not satisfy the statute of limitation's objectives. In such a situation any lengthy delay caused by the agency would be detrimental to the fair resolution of a controversy. This is evident in the hypothetical penalty claim. By the time the agency issued its final assessment, four years passed since the culmination of the negotiations and six years passed since the actual violations. Therefore, if the company had opted for a hearing consistent with statute, there would have been faded memories and lost witnesses. The agency in this situation has only its own indecision to blame.

VI. CONCLUSION

Based upon the ambiguity surrounding Section 2462, a clarification of its application to civil penalty cases is needed. In an age where government regulation plays an increasingly important role in society it is essential to the maintenance of an equitable judicial system that Section 2462 have a clear and unambiguous role. It is unjust for the government to use a body of inconsistent federal case law as a tool for keeping penalty claims actionable in perpetuity. Conversely, it is also unjust for a party to violate a statute, have a penalty imposed, refuse to

143 See 3M Co. v. Browner, 17 F.3d 1453, 1458–62 (D.C. Cir. 1994) (finding violation date as proper accrual date). The Browner court did note that courts have given an additional five years to claims brought under statutes which require assessment proceedings as prerequisites to enforcement actions. Id.

144 See Meyer 808 F.2d at 920 (distinguishing "prosecutorial determinations" from administrative proceedings).

146 See Holderer, supra note 4 (discussing statute of limitation objectives and legislative intent for equitable judicial system).

148 See supra notes 42-47 and accompanying text (outlining hypothetical fact pattern).

147 See supra notes 42-47 and accompanying text (outlining hypothetical fact pattern).

149 See Holderer, supra note 4 (acknowledging statute of limitation objectives).

150 See Carroll, supra note 1 and accompanying text (recognizing inconsistent application of section 2462).
pay that penalty, and then avoid satisfying the penalty on a technicality such as Section 2462.

In summary, application of Section 2462 to a penalty claim would be intensely fact specific. It would require an in-depth analysis into the administrative procedures of the particular statute under which the claim is brought. If the statute requires administrative assessment adjudication as a prerequisite to a judicial enforcement action, it is necessary to determine whether the adjudication is a "proceeding" within the definition of Section 2462. If the adjudication is a "proceeding" as defined by Section 2462, then the government should be afforded five years from the date of the violation to commence the required administrative assessment proceeding. In such a situation, the agency would also have an additional five years to bring a judicial enforcement action. Where, however, the administrative process entails mere "prosecutorial determinations," an agency must bring a judicial enforcement action within five years of the violation date.

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