



# TaxNewsFlash

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## U.S. Tax Court: Written supervisory approval for penalty required before first formal communication to taxpayer

The U.S. Tax Court today granted the taxpayer's motion for summary judgment, finding that the IRS had not complied with the requirements under section 6751(b)(1) that written supervisory approval for imposing a section 6707A penalty must be obtained before the IRS's first formal communication to the taxpayer of its determination to assess the penalty under section 6707A.

The case is: *Laidlaw's Harley Davidson Sales, Inc. v. Commissioner*, 154 T.C. No. 4 (January 16, 2020). Read the Tax Court's [opinion](#) [PDF 108 KB]

### Summary

The IRS determined that the taxpayer corporation had failed to timely disclose its participation in a listed transaction when it filed its Form 1120, *U.S. Corporation Income Tax Return*, for the tax year ending May 31, 2008.

The IRS revenue agent responsible for examining the May 2008 return issued a 30-day letter that proposed to assert a penalty under section 6707A for the failure to disclose reportable transaction information with the tax return. The 30-day letter afforded the taxpayer the right to appeal to the IRS Office of Appeals. Approximately three months after the 30-day letter, the revenue agent's immediate supervisor approved the penalty assertion and signed a Form 300, *Civil Penalty Approval Form*.

The taxpayer requested a conference with IRS Appeals to contest the proposed section 6707A penalty. IRS Appeals sustained the penalty proposal, and the IRS assessed the penalty. After the IRS sent a levy notice to collect the penalty liability, the taxpayer requested a collection due process (CDP) hearing before Appeals. This was followed by Appeals issuing a notice of determination sustaining the levy action.

The taxpayer filed a Tax Court petition challenging the notice of determination, and the Tax Court issued an order in October 2015, remanding the case to IRS Appeals for further development of certain

arguments raised by the taxpayer. A supplemental CDP hearing was conducted, and IRS Appeals once again sustained the levy notice.

The taxpayer then filed a motion for summary judgment asserting that the IRS failed to comply with the requirements for written supervisory approval under section 6751(b)(1) in determining the section 6707A penalty.

The Tax Court today granted the taxpayer's motion for summary judgment, finding that:

- The written supervisory approval requirement of section 6751(b)(1) applies to the assessable penalty imposed by section 6707A for a failure to disclose reportable transaction information.
- The proposal of an assessable penalty under section 6707A in the 30-day letter to the taxpayer was an "initial determination" for purposes of section 6751(b)(1), and thus required written supervisory approval.
- IRS Appeals "abused its discretion" in determining that the IRS had satisfied the statutory requirements because, as the court found, the IRS had failed to comply with section 6751(b)(1) when written supervisory approval for the section 6707A penalty was given only after the revenue agent issued the 30-day letter proposing to assert the penalty.

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