



TaxNewsFlash

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U.S. Tax Court: IRS written supervisory approval required, trust fund recovery penalty under section 6672

The U.S. Tax Court today held that the trust fund recovery penalty under section 6672 is a “penalty” within the meaning of section 6751(b)(1) and thus requires written supervisory approval be obtained for the “initial determination of such assessment.” In this case, the IRS satisfied this requirement for written supervisory approval when such approval was obtained on the same day as a letter sent to the taxpayer informing him of the IRS’s initial determination to assert the trust fund recovery penalty.

The case is: *Chadwick v. Commissioner*, 154 T.C. No. 5 (January 21, 2020). Read the Tax Court’s [opinion](#) [PDF 85 KB]

Summary

The taxpayer was the sole member of two limited liability companies (LLCs), and each LLC failed to pay employment taxes with respect to its employees’ wages.

The IRS assigned different revenue officers to investigate these matters, and they concluded that the taxpayer was a “responsible person” of each LLC and was thus required to collect and pay over its employment taxes. The revenue officers each completed a Form 4183, *Recommendation re: Trust Fund Recovery Penalty Assessment*, recommending that trust fund recovery penalties be assessed against the taxpayer. Each revenue officer’s supervisor approved the recommendation in writing on the Form 4183.

On the same days as the Forms 4183 were signed, the IRS issued Letters 1153, Trust Fund Recovery Penalty Letter, notifying the taxpayer of the IRS determinations to assess trust fund recovery penalties and offering an opportunity to appeal those determinations. The taxpayer did not appeal, and the IRS assessed the trust fund recovery penalties. The IRS mailed a levy notice in an effort to collect the unpaid liabilities, and the taxpayer timely requested a collection due process hearing. At the hearing, the taxpayer’s representative requested that the account be placed into “currently not collectible” (CNC) status. The IRS settlement officer advised that for the account to be considered for CNC status,

the taxpayer would need to file delinquent tax returns and submit pertinent financial information. This was not done.

The IRS issued a notice of determination sustaining the levy, and the taxpayer timely petitioned the Tax Court.

Today, the Tax Court held:

- The trust fund recovery penalty is a “penalty” within the meaning of section 6751(b)(1) and thus is subject to the requirement that written supervisory approval be secured for the “initial determination of such assessment.”
- The “initial determination” of each penalty assessment was embodied in the Letter 1153 formally communicating the IRS’s definite decision to assert the trust fund recovery penalty against the taxpayer.
- The IRS thus satisfied the requirements of section 6751(b)(1) because written supervisory approval of the penalties was secured on each Form 4183 on the same date the Letter 1153 was mailed to the taxpayer.

KPMG observation

This is the fourth opinion issued by the Tax Court in 2020 concerning the supervisory approval requirement under section 6751(b)(1). This is an area of law that will continue to take shape as more cases are litigated in the Tax Court and possible appeals are filed. Taxpayers that are or may become subject to penalty assessments by the IRS need to continue to monitor developments in this area.

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