



# TaxNewsFlash

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## U.S. Tax Court: First formal communication of “initial determination” asserting civil fraud penalty lacked prior supervisory approval

The U.S. Tax Court today granted the taxpayers’ motion for partial summary judgment, on a finding that the IRS failed to secure timely written supervisory approval under section 6751(b)(1) of a civil fraud penalty under section 6663(a).

The case is: *Beland v. Commissioner*, 156 T.C. No. 5 (March 1, 2021). Read the Tax Court’s [opinion](#) [PDF 71 KB]

### Summary

After the IRS started its examination of the joint return filed by the taxpayers, the IRS revenue agent met with the taxpayers’ certified public accountant (CPA) and then with the CPA and the taxpayers. Following the initial meeting with the CPA, the revenue agent and her immediate supervisor referred the taxpayers’ case to an IRS fraud technical advisor (FTA). The IRS Criminal Investigation Division and the FTA then requested that the revenue agent issue an administrative summons to the taxpayers for interviews.

Following a postponement of the summons interviews, the IRS sent a letter to the taxpayers stating that “[l]egal proceedings may be brought against you in the United States District Court for not complying with [the] summons.” The taxpayers then appeared with their CPA at an in-person meeting that constituted the “closing conference.” The IRS presented the taxpayers with the “revenue agent report” that included a fraud penalty with a stated amount and reflected the revenue agent’s electronic signature.

The taxpayers declined to sign the revenue agent report and they also declined to sign a consent to extend the limitations period on assessment. The revenue agent informed the taxpayers that they would forgo their appeal rights, their examination case file would be closed, and the IRS would issue a notice of deficiency.

The revenue agent then sent the examination case file and civil penalty approval form containing the fraud penalty, as well as an alternative assertion of an accuracy-related penalty pursuant to section 6662(a), for approval by her supervisor (who signed the civil penalty approval form that same day).

The Tax Court granted the taxpayers' motion for partial summary judgment, agreeing that the revenue agent report coupled with the context surrounding its presentation to the taxpayers was the first formal communication of the "initial determination" by the revenue agent regarding the assertion of the civil fraud penalty, and this had required prior supervisory approval under section 6751(b)(1).

The taxpayers did not challenge the accuracy-related penalty in their motion for partial summary judgment.

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