



TaxNewsFlash

United States



No. 2021-464
November 23, 2021

U.S. Tax Court: Determining “immediate supervisor” for approving penalty when revenue agent has two different supervisors

The U.S. Tax Court today issued an opinion concluding that the revenue agent’s “immediate supervisor” for purposes of approving a penalty assessment pursuant to section 6751(b)(1) was the IRS team manager who oversaw the revenue agent’s work on the examination.

The case is: *Sand Investment Co., LLC v. Commissioner*, 157 T.C. No. 11 (November 23, 2021). Read the [Tax Court opinion](#) [PDF 68 KB]

Summary

- The case concerns a charitable deduction claimed by the taxpayer (a limited liability company in South Carolina) for a conservation easement.
- The IRS opened an examination of the taxpayer’s tax return for 2015, and the case was assigned to a revenue agent (RA).
- During the examination, the RA was supervised by her team manager (TM1). TM1 oversaw all decisions that the RA made with respect to the examination of this taxpayer.
- In September 2018, before the examination concluded, the RA was promoted and transferred to a different team with a different team manager (TM2).
- Because the examination was ongoing, the RA was authorized to continue her examination under the supervision of TM1. Although TM2 became responsible for approving the RA’s timesheets and leave requests, TM1 continued to supervise her work on the examination.

- In September 2018, the RA made the decision to assert accuracy-related penalties against the taxpayer. She generated a penalty approval form, which TM1 signed on November 20, 2018.
- The RA on November 21, 2018, sent the taxpayer a packet of documents indicating (among other things) that penalties might be imposed.
- Two days later TM2 also signed the RA's penalty approval form.
- In February 2019, the IRS issued a notice of final partnership administrative adjustment (FPAA), disallowing the claimed charitable contribution deduction and determining penalties.

Section 6751(b)(1) requires that the initial determination of a penalty assessment be approved by the "immediate supervisor" of the person making that determination. The taxpayer filed a motion for partial summary judgment contending that TM2 was the RA's "immediate supervisor" and because TM2 approved the penalties after the RA mentioned them to the taxpayer, the approval by TM2 was untimely.

The IRS filed a cross-motion urging that TM1 was the RA's "immediate supervisor" and that his approval was timely because he approved the penalties before the RA mentioned them to the taxpayer. In any event, the IRS contended that the RA secured timely approval because TM1 and TM2 both approved the penalties before the IRS issued the FPAA.

The Tax Court today held that for purposes of section 6751(b)(1), the "immediate supervisor" is the individual who directly supervises the examining agent's work in an examination. In this matter, the court explained that at the relevant time, the RA had two different supervisors, and they oversaw distinct aspects of her day-to-day work. Also, noting that the relevant work that resulted in the penalty assessment was the examination by RA of the taxpayer and that because TM1 supervised the RA's work on this project, the court concluded that he was her "immediate supervisor." Thus, because TM1 timely approved the RA's penalty determinations, the court found that the IRS had satisfied the requirements of section 6751(b)(1).

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