United States Tax Court

T.C. Memo. 2026-86

PHILIP G. GROVES,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 9974-22L. Filed September 16, 2026.

Guinevere M. Moore and *Ajay Gupta*, for petitioner.[1]

Alexander S. McCormick, *Kathryn E. Kelly*, and *Mayer Y. Silber*, for respondent.

MEMORANDUM OPINION

ARBEIT, *Judge*: Petitioner contests respondent's attempt to collect a penalty under section 6707[2] for failure to furnish information regarding a tax shelter. While the Petition challenges respondent's Notice of Determination on several grounds, on one narrow ground petitioner now moves for summary judgment (Motion).

Petitioner claims that the penalty assessment was not valid because respondent failed to include with Form CP15, Notice of Penalty Charge (Penalty Notice), a computation pursuant to section 6751(a). For that reason petitioner asserts that, when the Internal Revenue Service

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[1] Brief amicus curiae was filed by *Andrew Weiner*, *Megan L. Brackney*, and *Maxwell W. Brown* as attorneys for the Center for Taxpayer Rights.

[2] Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C. (Code), in effect at all relevant times, and Rule references are to the Tax Court Rules of Practice and Procedure.

Served 09/16/26

[*2] (IRS) Independent Office of Appeals (Appeals) sustained the collection action, Appeals abused its discretion as a matter of law.

We disagree. Petitioner has long had all the information necessary to understand how the section 6707 penalty was calculated. Even if the IRS failed to include a computation with the Penalty Notice, the omission is only a procedural error. Because petitioner does not assert, and the record does not reflect, that petitioner suffered any prejudice from the omission, we decline to find that the penalty assessment is invalid. Further we decline to hold that Appeals abused its discretion by concluding that the IRS "fully complied" with section 6751(a). Accordingly petitioner is not entitled to judgment as a matter of law, and we will deny his Motion. The case remains for trial.

Background

The following facts are derived from the parties' pleadings, Motion papers, and associated filings. *See* Rule 121(c). The facts are stated solely for the purpose of ruling on petitioner's Motion and not as findings of fact in this case. *See Sundstrand Corp. v. Commissioner*, 98 T.C. 518, 520 (1992), *aff'd*, 17 F.3d 965 (7th Cir. 1994).

When he filed the Petition, petitioner resided in Illinois. Absent stipulation to the contrary, appeal of this case would lie to the U.S. Court of Appeals for the Seventh Circuit. *See* § 7482(b)(1)(G), (2).

I. *Notice of the Penalty*

On September 24, 2013, respondent sent petitioner (through his then counsel, Thomas Cullinan) Form 5701, Notice of Proposed Adjustment (NOPA); Form 886–A, Explanation of Items; and related exhibits. In the NOPA respondent asserted that (1) petitioner was a tax shelter organizer under section 6111 because he participated in the organization and sale of so-called distressed asset debt transactions; (2) petitioner was required to register the transactions as tax shelters; and (3) for failing to register them petitioner was liable for penalties under section 6707. The NOPA proposed a penalty for taxable year 2001 of $5,831,197. The Form 886–A showed the computation of the penalty as one percent of $583,119,708, the aggregate amount invested in connection with the transactions. The related exhibits included a spreadsheet showing the computation.

The distressed asset debt transactions involved many people, not only petitioner, all of whom were jointly and severally liable for the

[*3] $5,831,197 penalty. While petitioner contested the penalty on the merits, others settled with the IRS and made payments towards the penalty, thus reducing the balance.

On March 30, 2016, Mr. Cullinan met officers from the IRS Large Business and International Division and Appeals. A PowerPoint presentation prepared for the meeting showed how the IRS computed a reduced penalty of $4,351,138: The original penalty of $5,831,197 was reduced by payments made by others involved in the same transactions. Shortly after the meeting, on April 4, 2016, respondent issued the Penalty Notice, assessing the section 6707 penalty in the reduced amount of $4,351,138.

II. *Collection Action and CDP Hearing*

On June 28, 2016, respondent mailed Letter 3172, Notice of Federal Tax Lien Filing and Your Right to a Hearing, with respect to the $4,351,138 penalty. Petitioner appealed the lien filing. On Form 12153, Request for a Collection Due Process or Equivalent Hearing, petitioner checked the box for "Other" and left boxes for collection alternatives unchecked. In the accompanying cover letter, petitioner's then counsel challenged the underlying tax liability and made other arguments but did not raise noncompliance with section 6751(a).

After years of agreed postponements, petitioner (represented by his present counsel, Ms. Moore) had his CDP hearing on April 23, 2020. At this time petitioner first raised noncompliance with section 6751(a), arguing that "[the Penalty Notice] does not include a penalty computation." Petitioner also asserted that the IRS had not provided any details on "how amounts paid by others were calculated or credited," immediately concluding that "[s]uch failure renders the assessment invalid under the statute." In her Case Activity Record in the entry for December 28, 2021, however, Settlement Officer Atterberry stated:

> The IRS fully complied with IRC 6751(a), as they provided computation of the penalty via F886-A and exhibits. The penalty in this case was one percent of the total of several different client investments after reduction for the portions of the penalty for amounts paid by others. The penalty was properly calculated.

On April 6, 2022, Appeals issued a Notice of Determination stating that the settlement officer verified that all legal and

[*4] administrative requirements were met, concluded that the penalty assessment was valid, and sustained the filing of the federal tax lien.

III. *Tax Court Proceeding*

On May 4, 2022, petitioner filed his Petition, assigning many errors to respondent's determinations, including that respondent failed to comply with section 6751(a). On November 10, 2023, petitioner moved for summary judgment.

Discussion

I. *Summary Judgment Standard*

Summary judgment may be granted when the moving party shows there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 121(a)(2); *see also Sundstrand Corp.*, 98 T.C. at 520. Facts are viewed in the light most favorable to the nonmoving party. *Dahlstrom v. Commissioner*, 85 T.C. 812, 821 (1985).

II. *Legal Background*

A. *Section 6707 Penalty*

Section 6707 imposes a penalty on a tax shelter organizer who fails to register a tax shelter. *See* § 6707(a); *see also* § 6111(c) (defining a tax shelter), (e)(1) (defining a tax shelter organizer). Where multiple tax shelter organizers are involved in the same transactions, the IRS imposes joint and several liability for the section 6707 penalty, such that each person is liable for the entire penalty but in aggregate the IRS collects that amount no more than once. *See Larson v. United States*, No. 16-CV-00245, 2016 WL 7471338, at *1 (S.D.N.Y. Dec. 28, 2016) (citing I.R.S. Non-Docketed Serv. Adv. Review 20032901F, 2003 WL 22205991 (July 18, 2003)), *aff'd*, 888 F.3d 578 (2d Cir. 2018).

B. *Inclusion of Penalty Computation with Notice of Penalty*

Section 6751(a) provides: "The [IRS] shall include with each notice of penalty under [the Code] information with respect to the name of the penalty, the section of [the Code] under which the penalty is imposed, and a computation of the penalty." Section 6751(a) does not specify any consequence for noncompliance. *See Graev v. Commissioner*,

[*5] 147 T.C. 460, 475 (2016), *supplemented and overruled in part*, 149 T.C. 485 (2017).

C. *Verification Requirement and Abuse of Discretion*

In deciding whether to sustain a collection action, an Appeals officer must follow certain statutory requirements, including verifying "at the [CDP] hearing . . . that the requirements of any applicable law or administrative procedure have been met." *See* § 6330(c)(1), (3)(A); *see also, e.g.*, *Chavis v. Commissioner*, 158 T.C. 175, 182 (2022). The parties agree that Appeals officers have a duty to verify compliance with section 6751(a) under section 6330(c)(1) and (3)(A). To dispose of the Motion, we accept their position. *See generally Besicorp Grp., Inc. v. Commissioner*, 180 F.4th 402, 405, 411 (2d Cir. 2026) (holding that section 6751(b)(1) supervisory approval requirement is a requirement "encompassed by Section 6330(c)(1)" and reviewing verification for abuse of discretion); *Blackburn v. Commissioner*, 150 T.C. 218, 223 (2018) ("We review the verification requirement for abuse of discretion."). The question before us then is whether as a matter of law Appeals abused its discretion by verifying that the IRS "fully complied" with section 6751(a). *See generally Goza v. Commissioner*, 114 T.C. 176, 182 (2000).

III. *Effect of Noncompliance with Section 6751(a)*

Petitioner contends that the assessment of the section 6707 penalty is invalid because respondent failed to include a computation of the reduced amount in the Penalty Notice. We disagree.

The Court has addressed this issue before. In *Graev*, 147 T.C. at 473–74, the taxpayers challenged the assessment of an alternative accuracy-related penalty under section 6662(a) on the basis of alleged noncompliance with the requirements of section 6751(a) and (b). After finding that the IRS did comply with section 6751(a), the Court held that, even if the taxpayers were correct that the IRS failed to include a computation as required by section 6751(a), such a failure would not invalidate the notice of a challenged penalty. *See Graev*, 147 T.C. at 474–75. Rather "procedural errors or omissions are not a basis to invalidate an administrative act or proceeding unless there was prejudice to the complaining party." *See id.* at 474. Furthermore, in another context the Supreme Court has held "that if a statute does not specify a consequence for noncompliance with [a statutory provision], the federal courts will not in the ordinary course impose their own coercive sanction." *Id.* at 475

[*6] (alteration in original) (quoting *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 63 (1993)).

Consider, for example, *Scott v. Commissioner*, T.C. Memo. 2007-91, slip op. at 22–24, *aff'd*, 262 F. App'x 597 (5th Cir. 2008), in which the Court reviewed whether the assessment of interest was invalid because of the omission of a computation in a notice as required by section 6631. The Court held that, in the absence of prejudice, noncompliance with section 6631 did not invalidate the interest assessment. *See Scott*, T.C. Memo. 2007-91, slip op. at 23–24. Sections 6631 and 6751(a) are similar in structure and content, were enacted at the same time, and are both without a statutory mandate on noncompliance. *See Scott*, T.C. Memo. 2007-91, slip op. at 21–22. We find *Scott* instructive. *See also Nestor v. Commissioner*, 118 T.C. 162, 167 (2002) (considering whether taxpayer was prejudiced when Commissioner failed during a CDP hearing to provide him with a copy of the record assessment); *Rochelle v. Commissioner*, 116 T.C. 356, 358–60 (2001) (considering whether taxpayer was prejudiced when Commissioner omitted from notice of deficiency the due date for filing a timely petition with the Court), *aff'd per curiam*, 293 F.3d 740 (5th Cir. 2002).

One final point. Congress enacted section 6751(a) to ensure that taxpayers receive an explanation of penalties imposed on them. *See* S. Rep. No. 105-174, at 65 (1998). But that does not mean that every dispute about the calculation of a penalty is a violation of that provision. *See Green 1993 Dynasty Tr. v. Commissioner*, T.C. Memo. 2025-100, at *14–16 (holding that Commissioner complied with section 6751(a) and that taxpayers' objection was substantive).

IV. *Procedural Errors and Prejudice*

While the NOPA included a computation of the original penalty, the Penalty Notice failed to include a computation of the reduced penalty. The omission was a procedural error. *See Graev*, 147 T.C. at 473–74. The only question is whether petitioner suffered any prejudice.

Petitioner does not even allege that he did. Rather he contends: "Because compliance with section 6751(a) is an element of . . . [the] penalty case and part of Respondent's burden of production, Respondent's insistence on a showing of 'prejudice to the complaining party' is simply unavailing." Petitioner's argument, however, is contrary to our caselaw. *See id.* at 474–75; *Scott*, T.C. Memo. 2007-91, slip op.

[*7] at 23–24. Furthermore, regardless of who bears the burden of production *at trial*, petitioner bears the burden of demonstrating that he is entitled to summary judgment *now*. *See Sundstrand Corp.*, 98 T.C. at 520.

Petitioner's failure to allege prejudice is not so surprising. There does not appear to be uncertainty about how the penalty was calculated. The NOPA clearly showed the basis for the original penalty of $5,831,197 and an attached spreadsheet included a computation. Because of payments by others liable for the same penalty, the IRS determined that petitioner was liable for only a reduced penalty of $4,351,138. At the 2016 Appeals conference, the IRS explained the computation for the reduced penalty. When issued shortly thereafter, the Penalty Notice reflected the reduced amount. Even if the Penalty Notice did not include a computation, petitioner never seems to have asked for an explanation. He had no need to. As respondent states:

> Petitioner has been actively arguing the merits of this case since September 24, 2013, and . . . only recently began arguing the applicability of section 6751(a). . . . Thus, even if respondent failed to provide an updated penalty computation, petitioner and petitioner's counsel have always been aware of respondent's justification for asserting the section 6707 penalty and have repeatedly attacked the underlying merits of this case with specificity.

Petitioner has never alleged that he was prejudiced and does not ever seem to have been. We cannot rule in his favor.

V. *Verification Requirement*

Settlement Officer Atterberry verified that the IRS "fully complied" with section 6751(a). Her explanation in the Case Activity Record suggests that her view, like ours, was that petitioner had all the information necessary to understand how the penalty was calculated. If under section 6330(c)(1) Appeals must verify compliance with section 6751(a), then we find that Settlement Officer Atterberry did so here.[3]

[3] If instead she had failed to verify whether the IRS had complied with section 6751(a), but subsequent inquiry showed that in fact the IRS had done so (or that there was no prejudice to the taxpayer from any failure), the IRS could be permitted to cure its verification error on remand and eventually to use liens and levies to collect the penalties. *See generally Besicorp Grp., Inc. v. Commissioner*, 180 F.4th at 417 (first citing *Hoyle v. Commissioner*, 136 T.C. 463, 468 (2011), *supplementing* 131 T.C. 197

[*8] VI. *Conclusion*

Petitioner has long had all the information necessary to understand how the section 6707 penalty was calculated. Even if the IRS failed to include a computation with the Penalty Notice, the omission is only a procedural error. Because petitioner does not assert, and the record does not reflect, that petitioner suffered any prejudice from the omission, we decline to find that the penalty assessment is invalid. Further we decline to hold that Appeals abused its discretion by concluding that the IRS "fully complied" with section 6751(a). Accordingly petitioner is not entitled to judgment as a matter of law, and we will deny his Motion. The case remains for trial.

To reflect the foregoing,

An appropriate order will be issued.

(2008); and then citing *Rivas v. Commissioner*, T.C. Memo. 2017-56, at *11). Where there "is not the slightest uncertainty as to the outcome," however, there is no need to remand. *See Estate of Insinga v. Commissioner*, 149 F.4th 709, 721 (D.C. Cir. 2025) (quoting *Calcutt v. FDIC*, 143 S. Ct. 1317, 1321 (2023)).