



# TaxNewsFlash

## United States

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### Tax Court: Jurisdiction to review penalty determination from partnership adjustment

The U.S. Tax Court today issued an opinion concluding that it had jurisdiction to review an IRS notice of determination in a “collection due process” case when the sole issue was an accuracy-related penalty that flowed from an adjustment of a partnership item that was excluded from deficiency procedures.

The case is: *McNeill v. Commissioner*, 148 T.C. No. 23 (June 19, 2017). Read the Tax Court’s [opinion](#) [PDF 67 KB]

#### Summary

The taxpayers invested in a tax shelter, and for 2003, claimed deductions for losses from the tax shelter. Following the issuance of a final partnership administrative adjustment (FPAA) that disallowed the losses and asserted an accuracy-related penalty under section 6662, the taxpayers made an estimated deposit of approximately \$4.88 million to satisfy the deficiency and interest liability, but this did not include any amount for a penalty asserted under section 6662. The IRS asserted the taxpayers owed a penalty of over \$1.5 million plus interest, and the IRS sent the taxpayers a notice and demand for payment.

The taxpayers challenged the penalty assessment, however, the IRS determined that the taxpayers could not raise the issue of their underlying tax liability. The taxpayers filed a petition with the Tax Court, seeking review of the IRS notice of determination to sustain the notice of federal tax lien filing and a proposed levy for the penalty amount. The only issue was whether the taxpayers were liable for the section 6662 penalty.

The Tax Court today concluded that under legislative changes made in 2006 to the appeal of collection due process determinations, there was jurisdiction for the court to review a determination as it relates to the asserted section 6662(a) penalty in this case. The court held that it has jurisdiction to review an IRS notice of determination

when the underlying tax liability consists solely of a penalty that relates to an adjustment to a partnership item excluded from deficiency procedures by section 6230(a)(2)(A)(i).

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