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U.S. Tax Court: Initial determination of penalties, after IRS supervisory approval was obtained

The U.S. Tax Court today released a memorandum opinion concluding that the “initial determination” of penalties was appropriately and timely made—that is, after the examining agent secured approval from her IRS supervisor.

The case is: *Oxbow Bend LLC v. Commissioner*, T.C. Memo 2022-23 (March 21, 2022). Read the [T.C. Memo opinion](#) [PDF 113 KB]

Summary

A charitable contribution deduction of over \$12 million was claimed for a conservation easement granted on land in Alabama. The IRS challenged the claimed deduction and in 2019 issued a notice of final partnership administrative adjustment (FPAA) disallowing the charitable contribution deduction and determining penalties.

The matter ended up before the Tax Court, with both parties filing motions for partial summary judgment on the question whether the IRS had complied with section 6751(b)(1) with respect to the assessment of penalties. Section 6751(b)(1) requires that the “initial determination” of a penalty assessment must be personally approved (in writing) by the immediate supervisor of the person making that determination.

The IRS asserted that the “initial determination” of the penalties was communicated in the FPAA that was issued two months after the examining agent secured approval from her IRS supervisor. Specifically, the examining agent’s immediate supervisor signed the penalty-related document on February 11, 2019. The definite decision to assert penalties was formally communicated to the taxpayer two months later, in the FPAA dated April 10, 2019.

The taxpayer countered that supervisory approval came too late because the “initial determination” occurred five months earlier, when the examining agent mentioned the penalty recommendations during a telephone call with the taxpayer’s representative.

The Tax Court concluded that the IRS had “the better argument,” and granted the IRS’s motion for partial summary judgment.

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