



TaxNewsFlash

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D.C. Circuit: IRS has statutory authority to assess penalties under section 6038(b) for willful failure to file Form 5471; Tax Court reversed

The U.S. Court of Appeals for the District of Columbia Circuit today reversed the Tax Court's holding that the IRS did not have statutory authority to assess penalties under section 6038(b) against a taxpayer who willfully failed to file Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*.

The case is: *Farhy v. Commissioner*, No. 23-1179 (9th Cir. May 3, 2024). Read the D.C. Circuit's [decision](#)

Summary

Section 6038(a) requires U.S. persons to file information returns (i.e., Form 5471) reporting their control of any foreign business.

The taxpayer acknowledged that he violated that statutory obligation when he failed to report to the IRS his ownership of Belizean corporations and thus owes nearly \$500,000 in penalties under section 6038(b), which imposes a fixed-dollar penalty for failure to comply with the requirements of section 6038(a). The taxpayer argued, however, that the IRS lacked statutory authority to assess and administratively collect section 6038(b) penalties and that the IRS was required to sue him in federal district court to collect what he owes under section 6038(b).

The Tax Court agreed, concluding that the IRS does not have statutory authority to assess and administratively collect section 6038(b) penalties. Read [TaxNewsFlash](#)

The D.C. Circuit reversed the Tax Court, holding that the text, structure, and function of section 6038 demonstrate that Congress authorized assessment of penalties imposed under subsection (b).

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