APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JOHN THOMAS MINEMYER,
Petitioner - Appellant/Cross-Appellee,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent - Appellee/Cross-Appellant.
Nos. 21-9006 & 21-9007
(CIR No. 22182-10)
(United States Tax Court)

ORDER AND JUDGMENT*

Before TYMKOVICH, PHILLIPS, and EID, Circuit Judges.

John Thomas Minemyer, proceeding pro se, appeals from a decision of the United States Tax Court holding him liable for income tax deficiencies for tax years 2000 and 2001, and for a civil fraud penalty for tax year 2000. The Commissioner of Internal Revenue (IRS) cross-appeals the tax court's determination that Mr. Minemyer was not liable for

a civil fraud penalty for tax year 2001 because the IRS failed to obtain written supervisory approval for the penalty as required by 26 U.S.C. § 6751(b)(1). In particular, the tax court held that § 6751(b)(1) requires such approval before any proposed civil fraud penalty is communicated to the taxpayer.

Exercising jurisdiction under 26 U.S.C. § 7482(a)(1), we affirm the tax court's decision holding Mr. Minemyer liable for the income tax deficiencies for 2000 and 2001, and for a civil fraud penalty for 2000. We reverse the tax court's holding that the IRS did not satisfy the approval requirement with respect to the 2001 civil fraud penalty, and hold that the IRS satisfies § 6751(b)(1) so long as written supervisory approval is obtained no later than the date the IRS issues the notice of deficiency formally asserting a penalty. Accordingly, we remand for the tax court to decide on the evidence whether Mr. Minemyer is liable for the civil fraud penalty for 2001.

I. Background

In 2008 Mr. Minemyer was indicted on two counts of tax evasion for the years 2000 and 2001. He pled guilty to the 2000 count and in exchange the government dismissed the 2001 count. Two years later the IRS sent Mr. Minemyer a notice of deficiency asserting income tax deficiencies and civil fraud penalties for 2000 and 2001. Mr. Minemyer petitioned the tax court to dispute the asserted deficiencies and penalties. The tax court granted summary judgment in favor of the IRS on the deficiencies for both years and the fraud penalty for 2000. After a trial, the tax court held the IRS had not met its burden of production for the 2001 fraud

penalty. Mr. Minemyer's appeal and the IRS's cross-appeal followed.

A. The Plea Agreement and Sentence

In connection with his guilty plea, Mr. Minemyer entered a plea agreement. Mr. Minemyer agreed "to pay restitution to the [IRS] in the amount of all taxes, interest, and penalties due and owing from the tax years 2000 and 2001." R. vol. 2.2 at 93. The plea agreement stated that "the Court shall enter a restitution order for the full amount of the IRS's loss," which the plea agreement calculated to be $200,918.22. *Id.* at 99. The concluding paragraph of the plea agreement contained an integration clause stating, *inter alia*, that "neither the [government] nor the defendant have relied, or are relying, on any terms, promises, conditions or assurances not expressly stated in this agreement." *Id.* at 101.

The district court sentenced Mr. Minemyer to one year in prison and three years of supervised release. It also ordered restitution in the amount of $200,918.22, which Mr. Minemyer paid at the time of his sentencing.

B. The Deficiency Notice and Fraud Penalties

In March 2010 a revenue agent visited Mr. Minemyer in prison and obtained his signature on a form proposing certain tax deficiencies and civil fraud penalties for 2000 and 2001. Those proposed penalties and deficiencies had not been approved by the agent's supervisor. Mr. Minemyer's signature evidenced his consent to the proposed amounts, but he later withdrew his consent. The IRS therefore

disregarded the form and in May 2010 sent Mr. Minemyer a letter, which the IRS calls a Letter 950 or a 30-day letter, proposing the same deficiencies and civil fraud penalties. That letter was approved by the revenue agent's immediate supervisor.

On August 19, 2010, the IRS sent Mr. Minemyer a deficiency notice determining a tax deficiency of $140,561 for 2000 and $56,944 for 2001.[1] R. vol. 2.1 at 51. It also determined civil penalties under 26 U.S.C. § 6663 in the amounts of $105,420.75 for 2000 and $42,708 for 2001. *Id.*

C. The Tax Court's Decision

Mr. Minemyer petitioned the tax court to dispute the deficiency notice. He argued he did not owe the deficiencies because they were already part of the restitution he had paid. He further argued he was not liable for the fraud penalties because a guilty plea does not prove fraud and because the plea agreement precluded any additional penalties.

The tax court rejected Mr. Minemyer's arguments in granting summary judgment to the government, holding that the plea agreement and conviction did not preclude the IRS from pursuing civil tax proceedings. The tax court therefore upheld the tax deficiencies for 2000 and 2001. The tax court further held that Mr. Minemyer's conviction for tax evasion on the 2000 count collaterally estopped him from challenging a civil fraud penalty for the same

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[1]The Commissioner assures us that the figures differ between the restitution amount in the plea agreement and the deficiency notice "because of computational adjustments irrelevant to this appeal." Principal and Resp. Br. at 14 n.2. Mr. Minemyer does not dispute this characterization.

year. Mr. Minemyer appeals from the tax court's summary judgment order.

The civil fraud penalty for 2001 went to trial, after which the tax court held that the IRS had not met its burden of production. The tax court interpreted 26 U.S.C. § 6751(b)(1) to require written supervisory approval of an initial determination of civil fraud penalties before that determination is formally communicated to the taxpayer. The court therefore held that because the March 2010 proposed deficiencies and penalties had been communicated to Mr. Minemyer without first being approved by a supervisor, the IRS had not complied with § 6751(b)(1). The IRS cross-appeals the tax court's interpretation of § 6751(b)(1).

II. Discussion

A. Standard of Review

"We review tax court decisions in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury." *Keller Tank Servs. II, Inc. v. Comm'r*, 854 F.3d 1178, 1195 (10th Cir. 2017) (internal quotation marks omitted). "Thus, like our review of a district court's grant of summary judgment, we review the Tax Court's grant of summary judgment de novo." *Id.* We review the tax court's interpretation of the plea agreement for clear error. *See United States v. Rockwell Int'l Corp.*, 124 F.3d 1194, 1199 (10th Cir. 1997). Finally, we review de novo the tax court's conclusions of law, including its statutory interpretations. *Roth v. Comm'r*, 922 F.3d 1126, 1131 (10th Cir. 2019).

B. Mr. Minemyer's Appeal

Mr. Minemyer challenges the tax court's summary judgment determination that he is liable for income tax deficiencies for tax years 2000 and 2001, and for a civil fraud penalty for tax year 2000.[2] He contends that his plea agreement and the district court's restitution order precluded the IRS from pursuing civil tax proceedings. We reject his arguments.

As an initial matter, Mr. Minemyer appears to argue that his criminal conviction and payment of restitution extinguishes the IRS's right to pursue income tax deficiencies and fraud penalties in this case. He is incorrect. First, "any amounts paid to the IRS as restitution must be deducted from any civil judgment IRS obtains to collect the same tax deficiency." *United States v. Tucker*, 217 F.3d 960, 962 (8th Cir. 2000). Second, it is well settled that a conviction for tax evasion does not preclude a later civil proceeding for the remedial purpose of determining, assessing, and collecting tax deficiencies from the same taxpayer for the same years. *See Helvering v. Mitchell*, 303 U.S. 391, 399 (1938); *Creel v. Comm'r*, 419 F.3d 1135, 1140 (11th Cir. 2005); *United States v. Helmsley*, 941 F.2d 71, 102 (2d Cir. 1991). Third, "the government does not surrender its right to seek civil fraud penalties by undertaking a criminal tax prosecution."[3] *Morse v.*

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[2] We liberally construe Mr. Minemyer's pro se filings, but we do not assume the role of advocate. *See Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

[3] Mr. Minemyer cites *Creel v. Commissioner* in arguing that his restitution payments extinguished his civil tax liabilities. *Creel* recognized the "general rule [that] the government can recover criminal penalties from an individual in a criminal prosecution

Comm'r, 419 F.3d 829, 834 (8th Cir. 2005). Thus, we reject Mr. Minemyer's contention that either his criminal conviction or payment of restitution precluded further civil tax proceedings.

Mr. Minemyer also contends that his plea agreement forecloses any civil liabilities exceeding his restitution payments, because his understanding of the plea agreement was that the district court would order restitution in the full amount of the government's losses. "A court applies a two-step process in interpreting the terms of a plea bargain: first, the court examines the nature of the government's promise; second, the court investigates this promise based upon the defendant's reasonable understanding at the time the guilty plea was entered." *Rockwell*, 124 F.3d at 1199. There are two problems with Mr. Minemyer's contention. First, the plea agreement contains an integration clause, which bars Mr. Minemyer from offering extrinsic evidence to prove his understanding. *See id.* ("the second-step reasonableness inquiry is severely limited" by the presence of an integration clause in a plea agreement). Second, the plea agreement contains no language prohibiting the IRS from assessing civil fraud penalties. The only promises made by the government were that it would file no other federal criminal charges based on matters then known to it and that Mr. Minemyer would receive a

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and can recover additional civil penalties in a civil proceeding." 419 F.3d at 1140. But it held that under "the unique facts and the nuances" of the case, the restitution amount ordered by the district court specifically included the civil penalties. *Id.* By contrast, here the district court ordered restitution of $200,918 without incorporating or otherwise mentioning additional, undetermined civil penalties.

one-level reduction in his offense level for purposes of calculating his sentence.

Mr. Minemyer also focuses on paragraph 3 of the plea agreement, which states: "The defendant agrees to pay restitution to the [IRS] . . . in the amount of all taxes, interest, and penalties due and owing from the tax years 2000 and 2001." R. vol. 2.2 at 93. From this, he argues that the district court's subsequent restitution order necessarily included "all" penalties owed and that therefore the IRS was precluded from pursuing additional civil fraud penalties. But the plea agreement simply recited what Mr. Minemyer agreed to; it did not obligate the district court to order any specific amount of restitution. *See, e.g.*, *Morse*, 419 F.3d at 834 ("[T]he district judge enjoys considerable discretion as to whether [to] order restitution, and if so, as to the amount." (brackets and internal quotation marks omitted)). In addition, plea agreements must be considered as a whole, *United States v. Jordan*, 853 F.3d 1334, 1341 (10th Cir. 2017), and other provisions of the plea agreement demonstrate that the restitution order did not include penalties. For example, paragraph 19.J of the plea agreement states that "the Court shall enter a restitution order for the full amount of the IRS's loss," R. vol. 2.2 at 99. Elsewhere the plea agreement states that the IRS's loss was $200,918—the amount comprising Mr. Minemyer's under-reported tax liability for 2000 and 2001—and the district court ordered restitution in that amount. In short, Mr. Minemyer's reliance upon paragraph 3 of the plea agreement is misplaced.

Mr. Minemyer's remaining arguments include: (1) the Tax Court was biased against him; (2) various Justice Department and IRS manuals mandate that plea agreements include a stipulation that the defendant must agree to civil liabilities exceeding restitution; and (3) the government committed fraud by not disclosing to him that his guilty plea could result in the assessment of civil fraud penalties. We reject each of these arguments and affirm the tax court's decision holding him liable for income tax deficiencies for tax years 2000 and 2001, and for civil fraud penalties for tax year 2000.[4]

C. The IRS's Cross-Appeal

Concerning the imposition of civil tax penalties, 26 U.S.C. § 6751(b)(1) imposes an approval requirement:

> No penalty . . . shall be assessed unless the initial determination of such assessment is personally approved (in writing) by [an] immediate supervisor of the individual making such determination . . . .

As we explained in *Roth v. Commissioner*, 922 F.3d 1126 (10th Cir. 2019), an "assessment" as used in this statute "is the formal recording and establishment of a taxpayer's liability, fixing the amount owed by the taxpayer." *Id.* at 1131 (internal

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[4] The IRS argues that with respect to the civil fraud penalties for the year 2000, Mr. Minemyer waived the argument that the IRS failed to comply with 26 U.S.C. § 6751(b)(1). We need not address that argument in light of our resolution of the IRS's cross-appeal, in which we hold that with respect to the year 2001, the IRS did not fail to comply with the requirements of § 6751(b)(1). The same reasoning would apply to the 2000 civil fraud penalties.

quotation marks omitted). "In essence, [an assessment] is the last of a number of steps required before the IRS can collect" on a liability. *Chai v. Comm'r*, 851 F.3d 190, 218 (2d Cir. 2017); *accord Roth*, 922 F.3d at 1131 (same). "Before a liability related to a deficiency or penalty may be assessed, the Commissioner must determine whether one exists in the first place." *Roth*, 922 F.3d at 1131 (internal quotation marks omitted). Once the Commissioner makes that determination—often, as in this case, in the form of proposed deficiencies and penalties sent to the taxpayer—a notice of deficiency may then be sent to the taxpayer. *Id.* If the taxpayer does not file a tax court petition challenging the notice within 90 days, "the deficiency . . . shall be assessed." 26 U.S.C § 6213(c). If the taxpayer does file a tax court petition, the IRS may not make an assessment until the tax court's decision is final. § 6213(a).

With this background, we turn to the issue presented in the IRS's cross-appeal. The United States Tax Court has interpreted § 6751(b)(1) to require supervisory approval *before* the IRS communicates an "initial determination of such assessment" to a taxpayer. *See Frost v. Comm'r*, 154 T.C. 23, 32 (2020). In this case, a revenue agent gave Mr. Minemyer a form proposing civil penalties. That form had not been approved by the agent's supervisor prior to its being handed to Mr. Minemyer. Because the form was never introduced into evidence, the tax court held that it could not assess whether the form was an "initial determination" within the meaning of § 6751(b)(1) and therefore the IRS had not carried its burden of showing it complied with the statute's requirements.

The IRS argues that the tax court imposed a requirement that appears nowhere in the text of the statute. That position is supported by two recent circuit court decisions, from the Ninth and Eleventh Circuits, which have examined the plain language of § 6751(b)(1) and concluded that it is not ambiguous and does not require supervisory approval before an initial determination of an assessment is communicated to the taxpayer. *Kroner v. Comm'r*, 48 F.4th 1272, 1276-81 (11th Cir. 2022); *Laidlaw's Harley Davidson Sales, Inc. v. Comm'r*, 29 F.4th 1066, 1070-74 (9th Cir. 2022). The courts in *Kroner* and *Laidlaw's* found nothing in the text of the statute to support the timing requirement imposed by the tax court here. *See Kroner*, 48 F.4th at 1278 ("nothing in the text . . . requires a supervisor to approve penalties at any particular time"); *Laidlaw's*, 29 F.4th at 1072-73 ("[t]he statute does not make any reference to the communication of a proposed penalty to the taxpayer"). We agree with these assessments of § 6751(b)(1) and hold that its plain language does not require approval before proposed penalties are communicated to a taxpayer.[5]

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[5] In *Roth*, we held that a phrase in § 6751(b)(1), "the initial determination of such assessment," is ambiguous. 922 F.3d at 1132. That holding has no bearing on this case. We were required to interpret that phrase in *Roth* because the IRS had sent the taxpayer multiple notices with penalties of different amounts. *Id.* at 1130, 1133. We therefore had to determine which notice was the operative "initial determination." *See id.* at 1133. In other words, the case involved the *what* of the statute, not the *when*. The meaning of the phrase "initial determination of such assessment" is not implicated here, because although the IRS gave Mr. Minemyer three notices of civil fraud penalties, he concedes the penalties were identical in each instance. The question of which notice was the operative

That does not end our inquiry, however, for there remains the question whether § 6751(b)(1) imposes a timing requirement of any kind. The Second Circuit has observed that "[i]f supervisory approval is to be required at all, it must be the case that the approval is obtained when the supervisor has the discretion to give or withhold it." *Chai*, 851 F.3d at 220. The court reasoned that supervisory approval would be meaningless if the statute were construed to allow such approval *after* the supervisor lost the authority to prevent the penalty from being assessed. *See id.* At 220-21. The court further observed that the last moment that a supervisor still has discretion to give or withhold approval is the IRS's issuance of the notice of deficiency, *id.* at 221, because after a notice of deficiency is issued the IRS loses the discretion not to assess penalties. *See* 26 U.S.C. § 6213(c) ("the deficiency . . . shall be assessed" if the deadline for seeking tax court review expires); § 6215(a) (if taxpayer petitions the tax court, then the tax court determines the deficiency and penalties, which "shall be assessed" once the tax court's decision becomes final). Accordingly, the Second Circuit held "that § 6751(b)(1) requires written approval of the initial penalty determination no later than the date the IRS issues the notice of deficiency . . . asserting such penalty." *Chai*, 851 F.3d at 221.

We are persuaded by the Second Circuit's reasoning and hold that with respect to civil

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"initial determination" is therefore not material. To the extent *Roth* declares the entirety of § 6751(b)(1) ambiguous, we regard that declaration as dicta as to the specific issue presented here, which is *when* written supervisory approval must be obtained.

penalties, the requirements of § 6751(b)(1) are met so long as written supervisory approval of an initial determination of an assessment is obtained on or before the date the IRS issues a notice of deficiency.[6] In this case, it is undisputed that the proposed penalties received written supervisory approval three months before the IRS issued the notice of deficiency to Mr. Minemyer. That is all that § 6751(b)(1) required. We therefore reverse the holding of the tax court denying a civil fraud penalty for 2001 and remand for the tax court to decide on the evidence whether Mr. Minemyer is liable for the civil fraud penalty for 2001.

III. Conclusion

The tax court's decision is affirmed as to the income tax deficiencies for 2000 and 2001 and the civil fraud penalty for 2000. The decision is reversed and remanded as to Mr. Minemyer's liability for the 2001 civil fraud penalty. We deny Mr. Minemyer's motion to supplement the record.

Entered for the Court

Timothy M. Tymkovich

Circuit Judge

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[6] The Ninth Circuit in *Laidlaw's* agreed "that a supervisor cannot truly approve of a penalty determination without also possessing discretion to withhold approval," and that "a supervisor [therefore] cannot always satisfy § 6751(b)(1) by waiting to provide written approval until just before the moment of assessment." 29 F.4th at 1071. Only the Eleventh Circuit maintains that § 6751(b) is satisfied "so long as a supervisor approves a penalty before the assessment is made; there is no need to set an earlier deadline." *Kroner*, 48 F.4th at 1279.

APPENDIX B

T.C. Memo. 2020-99

UNITED STATES TAX COURT

JOHN THOMAS MINEMYER,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No. 22182-10. **Filed July 1, 2020.**

MEMORANDUM FINDINGS OF FACT AND OPINION

KERRIGAN, Judge: Respondent determined deficiencies of $140,651 and $56,944 and penalties of $105,421 and $42,708 under section 6663 for 2000 and 2001, respectively.[7] Unless otherwise indicated, all section references are to the 1Respondent also determined, in the alternative, that petitioner was liable for [*2] Internal Revenue Code in effect at all relevant times, and all Rule references are to the

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[7] [1]Respondentalso determined, in the alternative, that petitioner was liable for accuracy-related penalties under sec. 6662(a) for 2000 and 2001. Respondent has conceded the accuracy-related penalty for 2001.

Tax Court Rules of Practice and Procedure. All monetary amounts are rounded to the nearest dollar.

Respondent moved for partial summary judgment on the 2000 and 2001 deficiencies and on the section 6663 penalty for 2000, and we granted respondent's motion. The issue remaining for our consideration is whether petitioner is liable for a fraud penalty pursuant to section 6663(a) for tax year 2001.

FINDINGS OF FACT

Some facts have been stipulated and some facts have been deemed stipulated pursuant to Rule 91(f). The stipulated facts and attached exhibits are incorporated in our findings by this reference. When the petition was timely filed, petitioner was incarcerated in Colorado and claimed residency in Wyoming.

In July 1998 petitioner and a business associate, John Breaker, formed Lozon, LLC (Lozon), to provide a molded polymer coupler--a device that connects pipes that hold underground fiber optic cables--to the telecommunications [*3] industry. Lozon was organized as an LLC and taxed as a partnership, with petitioner as a 50% member.

On April 8, 2008, the United States filed an indictment against petitioner in the U.S. District Court for the District of Colorado charging him with two counts of income tax evasion under section 7201, the first count for 2000 and the second count for 2001. The indictment accused petitioner of filing false and fraudulent income tax returns for 2000 and 2001, alleging that he had substantially understated his income by knowingly omitting passthrough

income from Lozon. On February 4, 2009, petitioner pleaded guilty to income tax evasion for 2000.

Pursuant to the plea agreement, petitioner pleaded guilty to count 1 for 2000 and the United States dismissed count 2 of the indictment for 2001. Petitioner paid respondent $200,918 in restitution consistent with the plea agreement at the time he was sentenced to prison.

On March 4, 2010, a revenue agent visited petitioner in prison and provided him a Form 4549, Income Tax Examination Changes, for 2000 and 2001. No letter from respondent was attached to the report. Petitioner signed the Form 4549 agreeing to deficiencies and penalties but later requested that the agreement be withdrawn.

[*4] Upon petitioner's request, respondent withdrew and disregarded the Form 4549 that petitioner signed on March 4, 2010. On May 17, 2010, a Letter 950, commonly referred to as a 30-day letter, was sent to petitioner. Leland Deering, the immediate supervisor of the revenue agent, signed the 30-day letter as group manager. A Form 4549-A, in which respondent asserted that petitioner was liable for a section 6663 fraud penalty of $42,708 for 2001, was included with the 30- day letter. The Form 4549-A included the words "corrected report" at the top of both pages of the form. The revenue agent signed the Form 4549-A, dated May 7, 2010. Above the revenue agent's signature the following statement was included: "This Report supersedes the report issued 3/4/2010."

Respondent issued petitioner a notice of deficiency on August 19, 2010, determining deficiencies in income tax and section 6663 fraud

penalties for tax years 2000 and 2001. On August 11, 2010, the revenue agent's immediate supervisor, Mr. Deering, executed a Civil Penalty Approval Form which approved the fraud penalty pursuant to section 6663.

OPINION

The Commissioner's burden of production under section 7491(c) with respect to the section 6663 fraud penalty includes introducing sufficient evidence to establish compliance with the supervisory approval requirement of section [*5] 6751(b)(1). See Graev v. Commissioner, 149 T.C. 485, 493 (2017), supplementing and overruling in part 147 T.C. 460 (2016).. Section 6751(b)(l) provides that "[n]o penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate." We have interpreted this provision to require approval before the penalty determination is communicated to the taxpayer. Palmolive Bldg. Inv'rs, LLC v. Commissioner, 152 T.C. 75, 84, 89 (2019).

In Clay v. Commissioner, 152 T.C. 223,249 (2019), we held that the "initial determination" occurs no later than "when those proposed adjustments are communicated to the taxpayer formally as part of a communication that advises the taxpayer that penalties will be proposed and giving the taxpayer the right to appeal them with Appeals". Recently, in Belair Woods, LLC v. Commissioner, 154 T.C. _,_(slip op. at 24-25) (Jan. 6, 2020), we concluded that the "initial determination" of the

penalty assessment "is embodied in the document by which the Examination Division formally notifies the taxpayer, in writing, that it has completed its work and made an unequivocal decision to assert penalties."

[*6] Section 6751(b) does not require approval by a specific person or in a particular manner. See Palmolive Bldg. Inv'rs, LLC v. Commissioner, 152 T.C. at 85-86. Rather, the statute provides that the initial determination of a penalty assessment must be approved in writing "by the immediate supervisor of the individual making such determination". Sec. 6751(b)(l); see also Belair Woods, LLC v. Commissioner, 154 T.C. at_ (slip op. at 25). In Carter v. Commissioner, T.C. Memo. 2020-21, at *31, we concluded that an examination report and accompanying Letter 5153 instructing the taxpayers to respond to the report by either paying the tax, calling to discuss payment options, or agreeing to extend the period of limitations on assessment communicated to the taxpayers an "initial determination" of a penalty.

Respondent contends that section 6751(b) requires supervisory approval for the "initial determination" of a penalty and not a preliminary determination.

Respondent further contends that the 30-day letter satisfies respondent's burden of production. However, we cannot conclude from the evidence that the 30-day letter was the "document by which the Examination Division formally notifie[d] the taxpayer, in writing, that it ha[d] completed its work and made an unequivocal decision to assert

penalties". Belair Woods, LLC v. Commissioner, 154 T.C. at (slip op. at 24-25).

[*7] In Frost v. Commissioner, 154 T.C. _,_(slip op. at 21-22) (Jan. 7, 2020), we held that "the Commissioner's introduction of evidence of written approval of a penalty before a formal communication of the penalty to the taxpayer is sufficient to carry his initial burden of production under section 7491(c) to show that he complied with the procedural requirement of section 6751(b)(l)." As in Frost, respondent here introduced evidence of written approval of the penalty before a formal communication (i.e., the 30-day letter). Also as in Frost, petitioner has not claimed that there was a prior initial penalty determination. Unlike Frost, our record does support the conclusion that respondent may have formally communicated his initial penalty determination to petitioner before the 30-day letter. Cf. Frost v. Commissioner, 154 T.C. at_ (slip op. at 23) ("[P]etitioner has not claimed, nor does the record support a conclusion, that respondent formally communicated his initial penalty determination to petitioner before the date that the examining agent's manager signed the Civil Penalty Approval Form." (Emphasis added.)).

When the revenue agent visited petitioner in prison, he provided petitioner a Form 4549, which petitioner signed. Petitioner contends that he was under duress to sign the Form 4549 and for that reason he withdrew his consent. During respondent's counsel's opening statement at trial he contended that petitioner [*8] received a preliminary form before the formal communication in the 30-day letter and that petitioner signed it, agreeing to the fraud

penalty for 2001. This statement is an acknowledgment that the Form 4549 communicated an intention to impose a penalty.

Respondent did not offer this Form 4549 into evidence. Therefore, we cannot determine whether the Form 4549 or the 30-day letter was the initial determination for the purpose of section 6751(b). Without the Form 4549 we cannot determine whether that form clearly reflected the revenue agent's conclusion that petitioner should be subject to a penalty. See Carter v. Commissioner, at *30. If the Form 4549 was the initial determination of the fraud penalty for 2001, there is no evidence of its timely written approval.

Accordingly, we conclude respondent has not met the burden of production for the determination of the section 6663(a) fraud penalty for 2001. Therefore, petitioner is not liable for the fraud penalty for 2001.

To reflect the foregoing,

An appropriate decision will be entered.

APPENDIX C

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JOHN THOMAS MINEMYER,

Petitioner,

V.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 22182-10.

ORDER
Filed February 25, 2019

In this deficiency case where petitioner seeks redetermination of Federal

income tax deficiencies and civil fraud penalties pursuant to section 6663[8][1] asserted against him for the 2000 and 2001 taxable years (years at issue), pending before the Court are respondent's motion for partial summary judgment, filed November 19, 2014, and petitioner's motion for summary judgment, filed December 17, 2014, pursuant to Rule 121.

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[8] Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the years at issue, and all Rule references are to the Tax Court Rules of Practice and Procedure. Some monetary amounts are rounded to the nearest dollar.

Respondent moves for partial summary adjudication in his favor upon the issues of whether petitioner is liable for (1) the Federal income tax deficiencies asserted against him for the years at issue and (2) the section 6663 civil fraud penalty asserted against him for 2000. In support of his motion respondent contends that petitioner does not dispute the asserted deficiencies; rather, because as part of a plea agreement he was ordered to pay restitution to the Internal Revenue Service (IRS) for the years at issue, petitioner merely wants to ensure that any restitution payments are credited against those deficiencies. With respect to the section 6663 civil fraud penalty for 2000, respondent contends that petitioner is collaterally estopped from denying liability for this penalty because, as part of the plea agreement, he pleaded guilty to willfully attempting to evade or defeat tax under section 7201 for 2000.

Petitioner's primary contention in support of summary adjudication in his favor of the entire case is that the IRS is taking a "second bite" of the proverbial apple by asserting Federal income tax deficiencies and section 6663 civil fraud penalties against him after he pleaded guilty to income tax evasion under section 7201 for 2000. In other words, petitioner contends that his plea agreement bars the IRS from assessing and collecting the asserted Federal income tax deficiencies and section 6663 civil fraud penalties for the years at issue.

As explained below, we grant partial summary judgment for respondent and deny petitioner's motion.

Background

The facts set forth herein are not in dispute and are derived from the parties' pleadings, motion papers, and supporting materials attached to the motion papers. See Rule 121(b).

On April 8, 2008, petitioner was indicted on two counts of willfully attempting to evade or defeat tax under section 7201, count one for 2000 and count two for 2001, in the U.S. District Court of the District of Colorado (District Court). Petitioner pleaded guilty to count one of the indictment (and the Government dismissed count two of the indictment). Petitioner signed and dated the plea agreement on January 5, 2009; his attorney and the Government's representative (an Assistant U.S. Attorney (AUSA)) signed and dated the plea agreement on February 24, 2009, the date that the agreement was filed with the District Court.

As part of the plea agreement, petitioner agreed to (1) pay a special monetary assessment of $100 applicable to count one at or before the time of sentencing, (2) "pay restitution to the Internal Revenue Service ('IRS') in the amount of all taxes, interest, and penalties due and owing from the tax years 2000 and 2001", and (3) file complete and accurate Federal income tax returns for the years at issue. The Government agreed that (1) it would not file any other Federal criminal charges against petitioner based upon matters then known to it and (2) petitioner should receive a certain reduction under the Federal sentencing guidelines for acceptance of responsibility.

Paragraph 8 of the plea agreement set forth the elements of income tax evasion under section 7201. According to that paragraph petitioner understood that in order to prove his guilt as to count one, the Government had to prove beyond a reasonable doubt that (1) he owed substantial income tax in addition to the tax liability which he reported on his 2000 Federal income tax return, (2) he intended to evade and defeat the payment of that additional tax, (3) he committed an affirmative act in furtherance of his intent to evade or defeat the payment of that additional tax, and (4) he acted willfully. As part of the plea agreement petitioner and the Government agreed that there was no dispute as to the material elements establishing a factual basis for the offense of conviction.

As part of the plea agreement petitioner and the Government also agreed that, for purposes of sentencing and restitution, the conduct involved for both counts of the indictment should be included as relevant conduct. Petitioner and the Government further agreed that the Government's evidence would be, inter alia, that (1) petitioner intentionally and willfully filed false Federal income tax returns for 2000 and 2001; (2) petitioner was a 50% partner in a company known as Lozon, LLC (Lozon); (3) petitioner earned substantial partnership income from Lozon that he intentionally and willfully did not report on his 2000 and 2001 Federal income tax returns; (4) petitioner hid his share of partnership income by using Lozon's bank account to pay for his personal expenses and by using a series of offshore financial transactions; (5) petitioner diverted a substantial amount of Lozon's gross receipts directly

to an account in the name of a nominee Nevada corporation called Lozon Solutions, Inc. (Lozon Solutions); (6) Lozon Solutions sent petitioner's partnership income offshore where the money was used in part to purchase sham life insurance policies; (7) by the end of 2003, much of petitioner's partnership income was brought back into the U.S. through another nominee Nevada corporation called Mountain West Financial, Inc.; (8) in 2000 and 2001, petitioner paid for his personal expenses directly out of the Lozon bank account and did not report this money as income on his 2000 and 2001 Federal income tax returns; (9) petitioner failed to report his share of partnership income of $355,176 on his 2000 Federal income tax return, which resulted in an underreported Federal income tax liability of $140,561; (10) petitioner failed to report his share of partnership income of $174,087 on his 2001 Federal income tax return, which resulted in an underreported Federal income tax liability of $60,357; and (11) the combined tax loss for the years at issue was $200,918.

The last paragraph of the plea agreement contained a so-called integration clause, providing the following:

This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings or assurances, express or implied. In entering this agreement, neither the United States nor the defendant have relied, or are relying, on any terms, promises, conditions or assurances not expressly stated in this agreement.

On October 8, 2009, the District Court entered a judgment in petitioner's criminal case, sentencing petitioner to a 12-month prison term (plus a 3-year supervised release term thereafter) and ordering him to pay a special assessment of $100, a fine of$25,000, and restitution to the IRS of$200,918.

On August 19, 2010, the IRS sent petitioner a notice of deficiency, determining that petitioner was liable for (1) an income tax deficiency of $140,561 for 2000, arising from his distributive share of unreported partnership income from Lozon of $355,176, (2) an income tax deficiency of $56,944 for 2001, arising from his distributive share of unreported partnership income from Lozon of $174,087, and (3) civil fraud penalties under section 6663 of $105,421 and $42,708 for 2000 and 2001, respectively (2010 notice of deficiency).[9]

Petitioner timely petitioned this Court for redetermination of the deficiencies and the penalties.

Discussion

I. Summary Judgment

The purpose of summary judgment is to expedite litigation and avoid unnecessary and expensive trials. Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted

[9] The 2010 notice of deficiency also reflects some minor computational adjustments and the IRS' determination that petitioner is liable for accuracy-related penalties under section 6662 as an alternative to the civil fraud penalties under section 6663 for the years at issue.

where the moving party shows,

through "the pleadings, * * * admissions, and any other acceptable materials,

together with the affidavits and declarations, if any, that there is no genuine dispute of as to any material fact and that a decision may be rendered as a matter of law." Rule 121(b); see also Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), affd, 17 F.3d 965 (7th Cir. 1994). The party moving for summary judgment bears the burden of showing that there is no genuine dispute as to any material fact; consequently, factual inferences will be viewed in a light most favorable to the party opposing summary judgment. Dahlstrom v. Commissioner, 85 T.C. 818, 821 (1985); Jacklin v. Commissioner, 79 T.C. 340, 344 (1982). The parties agree that there is no genuine dispute as to any material fact. Thus, we may render a decision as a matter of law.

II. The Plea Agreement Does Not Bar the IRS From Asserting Federal Income Tax Deficiencies and Section 6663 Civil Fraud Penalties

A Federal court, when sentencing a defendant convicted (or having pleaded guilty) to a criminal offense, may order as a criminal penalty that the defendant make restitution to victim(s) harmed by their criminal conduct; in criminal tax cases, the IRS is considered the victim. 18 U.S.C. sec. 3663; see Cantrell v. Commissioner, T.C. Memo. 2017-170, at *17. Generally, the sentencing court bases the amount of criminal restitution on the taxpayer's estimated civil tax liability, but this does not constitute a determination of the taxpayer's civil tax liability; the IRS or this Court may find upon further

review that a taxpayer's civil liability is more or less than the amount he has agreed to pay in restitution. See Rozin v. Commissioner, T.C. Memo. 2017-52, at *5-*6; Schwartz v. Commissioner, T.C. Memo. 2016-144, at *11; see, e.g., Senyszyn v. Commissioner, 146 T.C. No. 9 (Mar. 31, 2016) (determining that taxpayer has no civil tax liability despite criminal conviction and restitution order). Rather, while the IRS will credit restitution payments that the taxpayer makes against his civil tax liability, the IRS must separately determine and assess the civil tax liability before it can do so. See United States v. Helmsley, 941 F.2d 71, 102 (2d Cir. 1991) ("Restitution is in fact and law a payment of unpaid taxes."); Rozin v. Commissioner, at *5, *7-*8 (and cases cited thereat). Moreover, as to section 6663 civil fraud penalties, in general "the government does not surrender its right to seek civil fraud penalties by undertaking a criminal tax prosecution." Morse v. Commissioner, 419 F.3d 829, 834 (8th Cir. 2005), aff g T.C. Memo. 2003-332.

In the 2010 notice of deficiency, the IRS determined deficiencies in petitioner's Federal income tax for the years at issue that essentially total the same amount that the District Court ordered petitioner to pay in restitution, together with section 6663 civil fraud penalties.[10] Petitioner claims that his Federal income tax and section 6663 civil fraud penalties for the years at issue were fully settled by the plea agreement. More specifically, petitioner contends that the plea agreement is

[10] 3Due to various adjustments, the total of the deficiencies that the IRS determined is $3,413 less than the amount the District Court ordered petitioner to pay in restitution.

between himself and the U.S. Government; he understood that the District Court was to order restitution for the full amount of the IRS' losses; there was no disclosure of additional penalties, which could have changed his mind with respect to pleading guilty; he has already been assessed for the deficiencies, penalties and interest through the District Court's judgment and therefore he cannot be assessed again for the same debt; the IRS is barred from a second collection action for the same debt as it would violate his payment plan with the U.S. Department of Justice; and section 6663 civil fraud penalties cannot be assessed because they were already adjudicated pursuant to the plea agreement.

Petitioner, however, is mistaken in his contentions. It is well-settled that plea agreements are contractual in nature and courts will resort to traditional principles of contract law when interpreting and enforcing the promises in a plea agreement. United States v. Rockwell Int'l Corp., 124 F.3d 1194, 1199 (10th Cir. 1997); see also United States v. Brumer, 528 F.3d 157, 158 (2nd Cir. 2008); United States v. Williams, 510 F.3d 416,422 (3rd Cir. 2007); United States v. Jordan, 509 F.3d 191, 195 (4th Cir. 2007); United States v. Sanchez, 508 F.3d 456,460 (8th Cir. 2007); United States v. Newbert, 504 F.3d 180, 185 (1st Cir. 2007); United States v. Lewis, 476 F.3d 369, 387 (5th Cir. 2007); United States v. Morris, 470 F.3d 596,600 (6th Cir. 2006); United States v. Speelman, 431 F.3d 1226, 1229 (9th Cir. 2005); United States v. Lockwood, 416 F.3d 604, 607 (7th Cir. 2005); United States v. Rubbo, 396 F.3d 1330, 1334 (11th Cir. 2005); United States v. Ahn, 231 F.3d 26, 35-36 (D.C. Cir. 2000). To

that end, courts apply a two-step process in interpreting the terms of a plea agreement: courts first examine the nature of the Government's promise and then, second, investigate this promise based upon the defendant's reasonable understanding at the time the guilty plea was entered. Rockwell Int'l Corp., 124 F.3d at 1199 (citing Cunningham v. Diesslin, 92 F.3d 1054, 1059 (10th Cir. 1996)).

However, the second-step reasonableness inquiry is severely limited when a plea agreement contains an integration clause. Rockwell Int'l Corp., 124 F.3d at 1199 (citing Blackledge v. Allison, 431 U.S. 63, 75 n.6 (1977)). "The parol evidence rule bars the court from considering evidence of terms outside of an integrated written agreement * * *. Under it, extrinsic evidence may not be admitted to contradict the terms of a binding integrated agreement or to add to the terms of a binding and completely integrated agreement." Id.

Petitioner's plea agreement was executed by him, his attorney, and an AUSA. The agreement contains an integration clause and there are no provisions in the agreement whatsoever stating that the IRS is prohibited from asserting and later assessing Federal income tax deficiencies and section 6663 civil fraud penalties against petitioner for the years at issue. Indeed, the only promises the AUSA made to petitioner were that (1) no other Federal criminal charges would be filed against him based upon matters then known to the Government and (2) petitioner should receive a certain reduction in sentencing for acceptance of responsibility.

Petitioner fails to point to any evidence that the AUSA agreed that the IRS would not assert Federal income tax deficiencies and section 6663 civil fraud penalties against him for the years at issue.

The parol evidence rule bars petitioner from introducing and relying on any extrinsic evidence of what he understood the plea agreement to mean (i.e., it was his reasonable understanding that the plea agreement contained additional terms, to wit, that the IRS is barred from asserting Federal income tax deficiencies and section 6663 civil fraud penalties against him for the years at issue). See Rockwell Int'l Corp., 124 F.3d at 1200. Accordingly, petitioner's plea agreement does not bar the IRS from asserting, assessing, and collecting Federal income tax deficiencies and section 6663 civil fraud penalties against petitioner for the years at issue. Indeed, the IRS' actions here are to fix petitioner's civil tax liabilities for the years at issue, which will ensure that petitioner's restitution payments are properly applied against those liabilities, precisely the relief petitioner seeks here.

III. Summary Adjudication of the Deficiencies

The Federal income tax deficiencies asserted against petitioner for the years at issue relate strictly to the unreported income from Lozon in the same amounts set forth in the plea agreement. Petitioner acknowledges that he "does not dispute the deficiencies as determined in the Plea Agreement as set forth in the restitution order." Accordingly, as a matter of law, petitioner is liable for the asserted deficiencies.

IV. Summary Adjudication of the Civil Fraud Penalties

In general, the Government may collect criminal penalties, such as restitution, pursuant to a criminal case and the IRS may collect additional civil penalties in a later civil proceeding. Helvering v. Mitchell, 303 U.S. 391, 399 (1938). Section 6663(a) imposes a 75% civil penalty on any portion of an underpayment of tax required to be shown on a return that is attributable to fraud. The IRS bears the burden of proving fraud by clear and convincing evidence. Sec. 7454(a); Rule 142(b).

However, a conviction under section 7201 (and a guilty plea is as much a conviction as a conviction following a jury trial), Gray v. United States, 708 F.2d 243, 246 (6th Cir. 1983), collaterally estops a taxpayer from challenging section 6663 civil fraud penalties that the IRS asserts for the years for which the taxpayer is so convicted, Klein v. Commissioner, 880 F.2d 260,262 (10th Cir. 1989), affg T.C. Memo. 1984-392; Anderson v. Commissioner, T.C. Memo. 2009-44, slip op. at 38 (and cases cited thereat), aff d, 698 F.3d 160 (3rd Cir. 2012); Christians v. Commissioner, T.C. Memo. 2008-220, slip op. at 10-11 (and cases cited thereat). Specifically, a conviction under section 7201 indicates that either a court has found or a taxpayer has admitted to intentionally underreporting his income for the specific purpose of evading tax, which is the exact definition of fraud for purposes of section 6663. See Petzoldt v. Commissioner, 92 T.C. 661,698 (1989); Anderson v. Commissioner, slip op. at 38.

Petitioner pleaded guilty to count one of the indictment for income tax evasion under section 7201 for 2000. The District Court dismissed count two of the indictment for income tax evasion under section 7201 for 2001. Consequently, petitioner is estopped from denying liability for the section 6663 civil fraud penalty asserted against him for 2000, but is not estopped from denying liability for the section 6663 civil fraud penalty asserted against him for 2001.

Petitioner contends that collateral estoppel cannot apply here because the issue of section 6663 civil fraud penalties is not "identical in all respects" to any issue resolved in his criminal case and that his admissions in the plea agreement were not "actually * * * litigated" in the criminal case. We have repeatedly rejected such arguments and do so again here; a criminal plea agreement has the same effect as a determination by trial, and the elements of fraud necessary for a criminal conviction under section 7201 are identical in all respects (other than the Government's burden of proof) to those necessary for section 6663 civil fraud penalties.[11] See, e.g.,

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[11] Petitioner's reliance on three cases--Peck v. Commissioner, 90 T.C. 162 (1988), Acme Steel Co. v. Commissioner, T.C. Memo. 2003-118, and Barrow v. Commissioner, T.C. Memo. 2008-264--is misplaced. Peck and Acme Steel Co. do not involve the imposition of the sec. 6663 civil fraud penalty following a conviction under sec. 7201 and therefore are not applicable. Although Barrow involved the imposition of the sec. 6663 civil fraud penalty after a conviction under sec. 7201, that case does not help petitioner either. In Barrow, the Court first recognized the general rule that a taxpayer is collaterally estopped from denying the sec. 6663 civil fraud penalty for the same tax year that he was convicted under sec. 7201. The Court recognized,

Anderson v. Commissioner, slip op. at 38; Christians v. Commissioner, slip op. at 10-12.

Accordingly, the Court finds as a matter of law that petitioner is liable for the section 6663 civil fraud penalty asserted against him for 2000. One issue thus will remain for possible trial: whether petitioner is liable for the section 6663 civil fraud penalty for 2001.

Premises considered, it is hereby

ORDERED that respondent's motion for partial summary judgment, filed November 19, 2014, is granted. It is further

ORDERED that petitioner's motion for summary judgment, filed December 17, 2014, is denied. It is further

ORDERED that jurisdiction of this case is no longer retained by this Division of the Court.

(Signed) Tamara W. Ashford Judge
Dated: Washington, D.C.
February 25, 2019

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however, that the IRS' procedural missteps might have barred him from succeeding on a collateral estoppel argument; the problem in Barrow was that the IRS had failed to plead collateral estoppel (an affirmative defense) in his answer pursuant to Rule 39. The Court ultimately determined that the IRS did not waive the defense because it was raised in his pretrial memorandum. Here, however, respondent has raised the affirmative defense of collateral estoppel in his answer.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JOHN THOMAS MINEMYER,
Petitioner - Appellant/Cross-Appellee,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent - Appellee/Cross-Appellant.

Nos. 21-9006 & 21-9007
(CIR No. 22182-10)
(United States Tax Court)

ORDER (Filed April 3, 2023)

Before **TYMKOVICH**, **PHILLIPS**, and **EID**,
Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court
CHRISTOPHER M. WOLPERT, Clerk

APPENDIX E

Constitutional Provisions and Statutes

Constitutional Provisions

US Constitution, 5th Amendment

US Constitution, 14th Amendment

Statutes

Crimes and Criminal Procedure (18 U.S.C.):

§ 3663(a)(3)

The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.

Federal Rules of Criminal Procedure (18 U.S.C.)

the plea agreement may specify that an attorney for the government will:

Rule 11(c)(1)(A)

not bring, or will move to dismiss, other charges

Rule 11(c)(1)(B)

recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court)

Rule 11(c)(1)(C)

agree that a specific sentence or sentencing

> range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

Internal Revenue Code of 1986 (26 U.S.C.):

§ 6751(b)(1)

> No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.

§ 6751(c)

> For purposes of this section, the term "penalty" includes any addition to tax or any additional amount.

§ 7491(c)

> Notwithstanding any other provision of this title, the Secretary shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount imposed by this title.

United States Sentencing Commission:

§ 2T1.1

> Application Note 1 – "The tax loss does not include interest or penalties, except in willful evasion of payment cases under 26 U.S.C. § 7201 ..."

§ 5E1.1(a)(1)

> enter a restitution order for the full amount of the victim's loss, if such order is authorized under 18 U.S.C. § 3663;

Internal Revenue Manual

4.19.13.7.1 (04-06-2022) - Supervisory Approval of Penalties(1)(B):

> In general, the initial determination to assess the penalty must be personally approved, in writing, by the immediate supervisor of the individual making the initial determination, prior to any written communication of penalties to a taxpayer that offers an opportunity to sign an agreement or consent to assessment or proposal of penalty.

20.1.1.2.3.1 (10-19-2020) - Timing of Supervisory Approval (1):

> For all penalties subject to IRC 6751(b)(1), written supervisory approval required under IRC 6751(b)(1) must be obtained **prior to** issuing any written communication of penalties to a taxpayer that offers the taxpayer an opportunity to:
>
> - Sign an agreement, or
> - Consent to assessment or proposal of the penalty.

Canons of Construction

Acquiescence Rule:

> Congress implicitly endorsed existing judicial precedent on an issue or a matter or statutory interpretation

Agency Interpretations:

> Agency interpretation of a statute may not conflict with legislative intent.

Grammar Canon:

> Words are to be given the meaning that proper grammar and usage would assign them.

Mandatory / Permissive Canon:

> Mandatory words impose a duty; permissive words grant discretion.

Ordinary Meaning Canon:

> Words are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense.

Rule of Lenity:

> Ambiguity in a statute defining a crime or imposing a penalty should be resolved in the defendant's favor.

Strict Construction of Revenue Provisions:

> Tax laws to be strictly construed against the state and for the taxpayer.

Surplusage Canon:

> If possible, every word and every provision is to be given effect. None should be ignored. None should needlessly be given an

interpretation that causes it to duplicate another provision or to have no consequence.

Whole-Text Canon:

The text must be construed as a whole.