No. 25-719

In the Supreme Court of the United States

STANLEY BATTAT AND ZMIRA BATTAT, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Section 6751(b)(1) of the Internal Revenue Code, 26 U.S.C. 6751(b)(1), 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 [of the Treasury] may designate."

The question presented is:

Whether supervisory approval must be obtained before the Internal Revenue Service formally communicates a proposed penalty to the taxpayer.

PARTIES TO THE PROCEEDING

Petitioners (petitioners-appellants below) are Stanley Battat and Zmira Battat.

Respondent (respondent-appellee below) is the Commissioner of Internal Revenue.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is available at 2025 WL 2652443. The order of the tax court (Pet. App. 20a-35a) is unreported.

JURISDICTON

The judgment of the court of appeals was entered on September 16, 2025. The petition for a writ of certiorari was filed on December 15, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Our Nation's income taxes are "based on a system of self-reporting," which "depends upon the good faith and integrity of each potential taxpayer." *United States* v. *Bisceglia*, 420 U.S. 141, 145 (1975). If a taxpayer underpays his taxes due to "[n]egligence" or the "substantial understatement of income tax," a 20% penalty applies. 26 U.S.C. 6662(a), (b)(1), and (2). The Secretary

of the Treasury is authorized "to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by" the Internal Revenue Code, 26 U.S.C. 1 *et seq.* 26 U.S.C. 6201(a). "[A]ssessment" is a ministerial function: It refers to "the calculation or recording of a tax liability," which triggers various methods to collect the tax. *United States* v. *Galletti*, 541 U.S. 114, 122 (2004); see 26 U.S.C. 6203.

Some tax penalties, including the ones here, are subject to the Code's deficiency procedures. See, *e.g.*, 26 U.S.C. 6211-6215, 6665(a). Under those procedures, when the Internal Revenue Service (IRS) determines that a taxpayer owes more tax than he reported—*i.e.*, that there is a "deficiency," see 26 U.S.C. 6211—it may "send notice of such deficiency to the taxpayer," 26 U.S.C. 6212(a). A taxpayer may seek redetermination of the deficiency in the tax court. 26 U.S.C. 6213(a). If the taxpayer does so, the deficiency "shall be assessed" once the tax court's decision becomes final. 26 U.S.C. 6215(a). If the taxpayer does not do so, the deficiency "shall be assessed" 90 days after the notice of deficiency. 26 U.S.C. 6213(a) and (c).

The Code imposes a supervisory-approval requirement on the assessment of most penalties. With exceptions not relevant here, "[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 [of the Treasury] may designate." 26 U.S.C. 6751(b)(1). Section 6751(b)(1)'s supervisory-approval requirement applies both to penalties that are subject to the Code's deficiency procedures and to those that

are not. *Kroner* v. *Commissioner*, 48 F.4th 1272, 1280 (11th Cir. 2022).

2. In 2011, an IRS revenue agent audited petitioners and determined that they had underpaid their taxes for 2008 by over $1.7 million. Pet. App. 2a, 38a. On November 28, 2011, the agent sent petitioners a letter and report informing them of the deficiency and her recommendation that they be assessed a 20% accuracy-related penalty. *Id.* at 38a. The report invited petitioners to "consent to the immediate assessment and collection of any increase in tax and penalties." *Ibid.* An enclosure informed petitioners of their right to an administrative appeal and to "request an immediate meeting with the examiner's supervisor to explain [their] situation." *Id.* at 39a. Ten days later, on December 8, 2011, the revenue agent's acting supervisor formally approved the proposed penalties in writing. *Ibid.* On April 23, 2012, the IRS mailed petitioners a notice of deficiency including the 20% penalty. *Id.* at 2a-3a.

3. In the tax court, petitioners challenged the IRS's determination of the deficiency and penalty. Pet. App. 2a. In May 2021, the court initially granted petitioners' motion for partial summary judgment as to the penalty. *Id.* at 37a-42a. In a previous case, the court had held that Section 6751(b)(1) requires an IRS supervisor to approve a penalty before "the IRS formally communicates to the taxpayer the Examination Division's determination to assert a penalty and notifies the taxpayer of his right to appeal that determination." *Belair Woods, LLC* v. *Commissioner*, 154 T.C. 1, 8 (2020). The court applied that precedent here, holding that the revenue agent's letter and report were sufficiently formal that they needed the supervisor's prior approval and that the subsequent approval was thus untimely. Pet. App. 41a.

After the tax court's grant of partial summary judgment, the Eleventh Circuit decided *Kroner*, *supra*. There, the Eleventh Circuit rejected the tax court's view that Section 6751(b)(1) requires a revenue agent to obtain her supervisor's approval before communicating proposed penalties to the taxpayer. *Kroner*, 48 F.4th at 1276. Instead, the Eleventh Circuit held, "the IRS satisfies Section 6751(b) so long as a supervisor approves an initial determination of a penalty assessment before it assesses those penalties." *Ibid.* As the court explained, the text makes approval "a condition precedent" to *assessment*; it "'does not make any reference to the communication of a proposed penalty to the taxpayer.'" *Id.* at 1278 (quoting *Laidlaw's Harley Davidson Sales, Inc.* v. *Commissioner*, 29 F.4th 1066, 1072 (9th Cir. 2022)). At the same time, the court left open whether the statute's use of "'approve'" might require the supervisor to retain discretion since one "cannot 'approve' something after she has lost the discretion to disapprove it." *Id.* at 1279 n.1.

After *Kroner*, the IRS moved to vacate the grant of partial summary judgment in this case. Pet. App. 20a. The tax court granted that motion, deeming *Kroner* "squarely on point" and controlling because this case could be appealed to the Eleventh Circuit. *Id.* at 33a.

4. The court of appeals affirmed in an unpublished per curiam opinion, holding that petitioner's challenge to the penalty is indeed "foreclosed by *Kroner*." Pet. App. 12a. Petitioners noted that *Kroner* left open whether a supervisor's approval must come when he retains discretion to disapprove the penalties. *Id.* at 15a. And they contended that the supervisor lacked such discretion because the revenue agent's letter invited them to consent to the assessment of penalties. *Ibid.*

The court of appeals assumed for purposes of this case that the supervisor must retain discretion to disapprove the proposed penalties. Pet. App. 16a. But, the court observed, other circuits "have agreed that the first major event that impacts such discretion is the issuance of a notice of deficiency." *Ibid.* (citing *Laidlaw's*, 29 F.4th at 1071 & n.4; *Swift* v. *Commissioner*, 144 F.4th 756, 769-771 (5th Cir. 2025), petition for cert. pending, No. 25-680 (filed Dec. 9, 2025); and *Chai* v. *Commissioner*, 851 F.3d 190, 221 (2d Cir. 2017)). Here, the approval came long before the notice of deficiency, and therefore at a time when other circuits have recognized that supervisors retain discretion. *Id.* at 17a. Even if the supervisor could have theoretically lost discretion earlier had petitioners consented to the penalties, they had not done so. *Ibid.* The court therefore held that the IRS complied with Section 6751(b)(1). *Ibid.*

ARGUMENT

Petitioners contend (Pet. 10-15) that 26 U.S.C. 6751(b)(1) requires an IRS agent to obtain her supervisor's approval before she formally communicates proposed penalties to the taxpayer. The court of appeals correctly rejected that contention, and its decision is consistent with those of every court of appeals to address the question. This Court recently denied a petition for a writ of certiorari raising the same question. *Minemyer* v. *Commissioner*, 144 S. Ct. 182 (2023) (No. 23-4).* Further review is also unwarranted here.

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* Another pending petition for a writ of certiorari raises the same question. See *Swift* v. *Commissioner*, No. 25-680 (filed Dec. 9, 2025).

1. The court of appeals correctly held that the IRS complied with Section 6751(b)(1)'s supervisory-approval requirement.

a. Section 6751(b)(1) 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." 26 U.S.C. 6751(b)(1). By its text, that provision "regulates the process of assessing tax penalties." *Kroner* v. *Commissioner*, 48 F.4th 1272, 1276 (11th Cir. 2022). No penalty "shall *be assessed* unless" a supervisor approves the initial determination of "*such assessment*." 26 U.S.C. 6751(b)(1) (emphases added). An IRS supervisor must therefore approve the penalties before "assessment"—*i.e.*, before the formal recording of penalty liability in the IRS's books. *United States* v. *Galletti*, 541 U.S. 114, 122 (2004).

The concept of supervisory "approval" also suggests that the supervisor must have "the discretion to give or withhold" approval. *Swift* v. *Commissioner*, 144 F.4th 756, 770 (5th Cir. 2025) (quoting *Chai* v. *Commissioner*, 851 F.3d 190, 220 (2d Cir. 2017)), petition for cert. pending, No. 25-680 (filed Dec. 9, 2025). A supervisor cannot meaningfully "approve" something that she lacks discretion to disapprove. In cases subject to the Code's deficiency procedures, the line that terminates the supervisor's discretion is generally the issuance of the notice of deficiency. At that point, the taxpayer may seek review in the tax court within 90 days. 26 U.S.C. 6213(a). If the taxpayer does so, the tax court—not the IRS—will determine the amount of the deficiency (including penalties), 26 U.S.C. 6214(a), that "shall be assessed," 26 U.S.C. 6215(a). And if the taxpayer does not seek the tax court's review, the amount in the notice of

deficiency "shall be assessed." 26 U.S.C. 6213(c). But until the notice of deficiency, the revenue agent's supervisor typically retains discretion to approve (or disapprove) the proposed penalties.

In petitioners' case, the supervisor retained that discretion when he acted. He signed the penalty-approval form on December 8, 2011—only ten days after the revenue agent's letter and over four months before the notice of deficiency issued. Pet. App. 4a. Because the supervisor approved the penalties before assessment, at a time when he retained discretion, the court of appeals correctly held that the IRS satisfied Section 6751(b)(1).

b. Petitioners contend (Pet. i; see Pet. 10-15) that supervisory approval must come before the first "formal written communication from the IRS informing a taxpayer that penalties have been determined to apply." As the court of appeals previously explained, that test has "no basis in the text of the statute." *Kroner*, 48 F.4th at 1278 (quoting *Laidlaw's Harley Davidson Sales, Inc.* v. *Commissioner*, 29 F.4th 1066, 1072 (9th Cir. 2022)). Section 6751(b)(1) requires approval before assessment, and it "does not make any reference to the communication of a proposed penalty to the taxpayer." *Ibid.* (quoting *Laidlaw's*, 29 F.4th at 1072).

Petitioners note (Pet. 10) that Section 6751(b)(1) requires the supervisor to approve the "initial determination" of the penalty. But that phrase refers to "*what* must be approved," not when the approval must occur. *Kroner*, 48 F.4th at 1279. Here, petitioners view (Pet. 11) the revenue agent's November 28, 2011 letter and report as the relevant initial determination. But even assuming those documents could be described as a "determination," the supervisor approved *that* determination when he signed the penalty form ten days later.

See Pet. App. 17a. The supervisor thus "personally approved" "the initial determination" before the penalty was "assessed," as the statutory text requires. 26 U.S.C. 6751(b)(1). Nothing in the text supports petitioners' position that the supervisor must also have given his approval before the revenue agent first communicated with the taxpayers about the revenue agent's recommended penalty.

Petitioners appeal to putative legislative purpose, which they say reflects Congress's desire to avoid the use of penalties "as bargaining chips." Pet. 13 (citation omitted); see Pet. 11. But supervisory approval also provides a check against "the imposition of erroneous penalties" before assessment, and it "disincentivizes agents from proposing improper penalties solely for the sake of negotiations" because they know that their work will be checked. *Kroner*, 48 F.4th at 1279-1280; see *id.* at 1281-1282 (Newsom, J., concurring). Regardless, no statute "pursues its stated purpose at all costs." *Stanley* v. *City of Sanford*, 606 U.S. 46, 58 (2025) (citation omitted). The court of appeals properly applied the statute that Congress wrote.

Finally, petitioners posit (Pet. 12) that tax-penalty statutes should be strictly construed. Even assuming that lenity-like considerations are relevant to a purely civil statute governing the IRS's internal procedures, petitioners identify no grievous ambiguity in Section 6751(b)(1) to which any such canon would apply. See *Wooden* v. *United States*, 595 U.S. 360, 377 (2022) (Kavanaugh, J., concurring).

2. Petitioners assert (Pet. 4-9) that the decision below conflicts with decisions of the Second, Ninth, and Tenth Circuits. That contention is incorrect. As the Fifth Circuit recently underscored, "every circuit to ad-

dress the issue has adopted" the same rule: "Supervisory approval is required before assessment, or if earlier, before the supervisor loses discretion." *Swift*, 144 F.4th at 769.

The Second Circuit first confronted the question in *Chai*, *supra*. There, the court recognized 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. For cases subject to the Code's deficiency procedures, the court observed, "the truly consequential moment of approval is the IRS's issuance of the notice of deficiency." *Id.* at 221. In a deficiency case, the court thus "h[e]ld that § 6751(b)(1) requires written approval of the initial penalty determination no later than the date the IRS issues the notice of deficiency." *Ibid.*

As petitioners recognize (Pet. 8-9), the Ninth and Tenth Circuits apply the same rule. The Ninth Circuit has "h[e]ld that § 6751(b)(1) requires written supervisory approval before the assessment of the penalty or, if earlier, before the relevant supervisor loses discretion whether to approve the penalty assessment." *Laidlaw's*, 29 F.4th at 1074. The penalty in that case was not subject to the Code's deficiency procedures, see *id.* at 1071, so the Ninth Circuit stated its holding in terms of the supervisor's discretion and not vis-à-vis the notice of deficiency. But the court recognized that "a notice of deficiency * * * could limit a supervisor's discretion to prevent the assessment of a penalty." *Id.* at 1072.

Likewise, the Tenth Circuit has "h[e]ld that with respect to civil 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."

Minemyer v. *Commissioner*, No. 21-9006, 2023 WL 314832, at *5 (Jan. 19, 2023), cert. denied, 144 S. Ct. 182 (2023). Although petitioners do not mention it, the Fifth Circuit also applies the same rule. *Swift*, 144 F.4th at 769.

The Eleventh Circuit's position is consistent with all of those decisions. In *Kroner*, the court of appeals held "that the IRS satisfies Section 6751(b) so long as a supervisor approves an initial determination of a penalty assessment before [the IRS] assesses those penalties." 48 F.4th at 1276. *Kroner* left open whether approval might need to come earlier if the supervisor loses discretion to disapprove the penalties before assessment, because it was undisputed in that case that the supervisor had such discretion. *Id.* at 1279 n.1.

The decision below took the same approach. The court of appeals assumed for the sake of argument that other circuits are correct that approval must occur while the supervisor retains discretion to disapprove the penalties. Pet. App. 16a. But the court held—in reliance on many of the same cases petitioner invokes—that such discretion existed when supervisory approval occurred in petitioners' case because the notice of deficiency had not yet issued. *Id.* at 16a-17a. That tracks the rule in every other circuit: Supervisory approval is timely when the supervisor retains discretion, which—in cases subject to the Code's deficiency procedures—generally exists until the notice of deficiency.

Petitioners point (Pet. 8) to *Kroner*'s criticism of the Second Circuit's heavy reliance on legislative history and statutory purpose. See 48 F.4th at 1279-1281. But while *Kroner* criticized aspects of the Second Circuit's reasoning, the bottom-line holdings are consistent. Both courts permit penalties in the circumstances here (*i.e.*, where approval comes before the notice of defi-

ciency and therefore before assessment). See *id.* at 1276; *Chai*, 851 F.3d at 220. The Eleventh Circuit has not resolved what happens when approval comes *between* the notice of deficiency and assessment, see *Kroner*, 48 F.4th at 1279 n.1, but this case does not present that fact pattern. The Eleventh Circuit's abstract disagreement with the Second Circuit's interpretive methodology does not evidence a circuit conflict.

Given the uniformity in the circuits, petitioners heavily rely (Pet. 4-6, 9) on the tax court's adherence to its view that supervisory approval must occur before the IRS formally communicates the proposed penalty to the taxpayer. This Court does not typically grant review to resolve disagreements between the tax court and the courts of appeals, any more than it resolves disagreements between the courts of appeals and the district courts. See Sup. Ct. R. 10(a) (identifying a conflict between the "United States court[s] of appeals" as a potential basis for certiorari). Congress subjected the tax court's decisions to de novo review on legal questions by the courts of appeals, just like district-court decisions in civil bench trials. See 26 U.S.C. 7482(a)(1). Here, that process has worked as intended as the courts of appeals have uniformly rejected the tax court's (and petitioners') view about the timing of supervisory approval. Given the absence of any circuit conflict, there is no need for this Court's intervention.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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