NO. 25-719

IN THE
Supreme Court of the United States

STANLEY BATTAT, et ux.,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

REPLY BRIEF

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REPLY

I. THE ISSUE IS CRITICAL TO THE INTEGRITY OF FEDERAL TAX ADMINISTRATION AND PENALTY PROCEDURES SHOULD NOT DEPEND ON WHAT CIRCUIT TAXPAYERS LIVE IN.

As the Government notes, "[o]ur Nation's income taxes are 'based on a system of self-reporting,' which 'depends upon the good faith and integrity of each potential taxpayer.'" G.Br. at 1 (quoting *United States* v. *Bisceglia*, 420 U.S. 141, 145 (1975)).

But it is a two-way street: "Self-reporting is based on voluntary compliance, and it is an axiom of tax administration that taxpayer trust in the system is critical to maintaining and increasing voluntary compliance." *Ctr. for Taxpayer Rts. v. Internal Revenue Serv.*, 2025 WL 3251044, at *39 (D.D.C. Nov. 21, 2025) (cleaned up).

The Tax Court has noted that the IRS itself recognizes this principle:

> According to the Internal Revenue Manual (IRM), "The Appeals Mission is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer and in a manner that will enhance voluntary compliance *and public confidence in the integrity* and efficiency of the Service." IRM pt. 8.1.1.1(1) (Oct. 23, 2007).

Tucker v. Comm'r of Internal Revenue, 135 T.C. 114, 166 (2010), *aff'd sub nom. Tucker v. Comm'r*, 676 F.3d 1129 (D.C. Cir. 2012) (emphasis added).

And "public confidence in the integrity" of the IRS erodes when its failure to abide by the law gets condoned by courts. Section 6751 is not optional nor even burdensome, and "[i]f men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them." *Niz-Chavez v. Garland*, 593 U.S. 155, 172 (2021).

Indeed, for a time, the IRS's Internal Revenue Manual instructed its own personnel to follow the Tax Court's accurate interpretation as follows:

"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."

I.R.M. 20.1.1.2.3.1(1), *Timing of Supervisory Approval* (10-19-2020) (emphasis in original).

Applying that rule is far from confusing or difficult, and complies with the text of Section 6751(b), as the Tax Court properly understands it. And the IRS easily implemented it in its internal guidelines.

But the Circuits have confusingly dismantled that straightforward application, instead, applying interpretive contortionism that rejects the statutory text for administrative convenience, and have taken inconsistent positions, none more drastic than the Eleventh Circuit. That has broadly offended basic tenets of statutory interpretation and left taxpayers in Circuits where the Tax Court's position is not controlling subject to uncertain and varying results, contrary to the words Congress enacted.

The Eleventh Circuit's outright rejection of "the Tax Court's communication-based pre-assessment deadline for supervisory approval" reflects its fundamental disagreement with the Second Circuit's "underst[anding that] Section 6751(b)'s purpose [is] about policing *pre-assessment* settlement negotiations." *Kroner v. Comm'r of Internal Revenue*, 48 F.4th 1272, 1279, 1280 (11th Cir. 2022) (emphasis in original).[1] But that is exactly what Section 6751 *is* about; once a penalty *is assessed*, the statute's remedial preclusion on assessment has either failed or been violated.

Indeed, the more thoroughly the Government's position is analyzed, the more it breaks down and becomes unworkable. Accordingly, this Court should intervene to establish a universally applicable standard, which should be the Tax Court's position, because it properly and straightforwardly applies the words of the statute—all of them—no more, no less.

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[1] *See also* G.Br. at 11 (noting "[t]he Eleventh Circuit's abstract disagreement with the Second Circuit's interpret[ation]").

II. NEITHER THE GOVERNMENT NOR THE CIRCUITS HAVE ADVANCED A CONCRETE INTERPRETATION AND THE ELEVENTH CIRCUIT'S DEVIATES FURTHEST FROM THE STATUTORY TEXT.

One bright signal that the Circuits' broad rejection of the Tax Court's application is wrong is that it raises more questions than answers. While deciding cases on the circumstances presented, Circuit Courts have advanced conceptual ideas about how the statute should operate without explaining how they will apply in a variety of other contexts.

For instance, the Circuits broadly agree that approval requires discretion, thus, if a manager lacks discretion when providing written approval then it is not timely. But when does a manager lose discretion?

While leaving open the question of when discretion is no longer maintained by the supervisor in *Kroner*, here, the Eleventh Circuit gave little credence to Petitioners' explanation that the IRS stated that penalties have been determined and requested consent to assess and payment of them in the Revenue Agent Report ("RAR") prior to written approval. Had Petitioners acquiesced, those penalties would have been assessed without the statutorily required written approval; however, the Eleventh Circuit said since that did not happen here, it makes no difference. *Battat v. Comm'r of Internal Revenue*, 2025 WL 2652443, at *6 (11th Cir. 2025); App. 16a.

Does that mean if Petitioners had paid in response to the RAR, Section 6751(b) *would* have been

violated? The decision below implies that a taxpayer's choice affects whether the IRS complies with the statutory requirements; but it does not.

The Government says, "until the notice of deficiency, the revenue agent's super-visor typically retains discretion to approve (or disapprove) the proposed penalties." G.Br. at 7. But no authority is cited to support that conclusory assertion, because there is none. Even so, it would have been easy for Congress to have said that a penalty assertion in a notice of deficiency requires written approval prior to issuance.

The Government further asserts that "circuits have agreed that the first major event that impacts such discretion is the issuance of a notice of deficiency." G.Br. at 5 (cleaned up). However, "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." G.Br. at 2-3 (citing *Kroner*, 48 F.4th at 1280).

Accordingly, Section 6751(b) explicitly applies to assessable penalties that are not subject to deficiency procedures, *i.e.*, for which no notice of deficiency ever issues. Force fitting the statutory language that does not mention a notice of deficiency and applies where there is never a notice of deficiency defies logic—and the statutory text. Why wouldn't Congress identify the notice of deficiency, or the applicable statutory notices for assessable penalties, or say the assessment or even the determination

requires written approval rather than the *initial* determination?

All these questions are answered by the Tax Court's position, which still applies to taxpayers subject to appeal in Circuits that have not passed on the issue, and is faithful to the statutory text and common sense to boot. It is because Congress was not addressing any specific statutorily required notice but, rather, the actual practices of the IRS.

A dissenting opinion in the Ninth Circuit explained that same readily apparent observation in the context of an assessable penalty:

> It is to me substantially more likely that the form letter used in this case is indicative of how the Internal Revenue Service actually operates. That is, the agency *does* treat initial determinations such as the one presented in the 30-day letter as automatically effective unless objected to. The agency's practice thus informs the meaning of the statute, which, carefully read, does not clearly have the unlikely meaning the majority adopts.

Laidlaw's Harley Davidson Sales, Inc. v. Comm'r of Internal Revenue, 29 F.4th 1066, 1075 (9th Cir. 2022) (Berzon, *J.*, dissenting) (emphasis in original).

The Eleventh Circuit's interpretation by far diverges the most from the proper analysis adopted by the Tax Court and supported by the statute's plain

language. As the Government describes it, the Eleventh Circuit holds that "[a]n IRS supervisor must therefore approve the penalties before 'assessment'—*i.e.*, before the formal recording of penalty liability in the IRS's books." G.Br. at 5.

But what does initial determination mean? The Eleventh Circuit would impose only the following under 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)…."

Neither the Government nor the Eleventh Circuit has articulated the meaning of "initial determination" or even attempted to.

> Nor does the statute say that the *assessment* must be personally approved or even that the *determination* of the assessment must be personally approved. It says the "*initial* determination" of such assessment by "the individual making *such determination*" must be personally approved in writing by a supervisor. "Such determination" refers back to the "initial determination." So *that* determination, not the final determination, is what must be approved by a supervisor. The letter sent to the taxpayer in this case is illustrative of a "determination of an assessment" made

> by a subordinate, who signed the determination.

Laidlaw's, 29 F.4th at 1075-76 (Berzon, *J.*, dissenting) (cleaned up, emphasis added in source).

Indeed, Congress did not require written approval of the *assessment* or the *final* determination, and the use of the word "initial" necessarily means there can be (and implies there often is) more than one determination. Obviously, "Congress must have used the phrase '*initial* determination' for a reason. The canon against surplusage requires a court, if possible, to give effect to each word and clause in a statute." *Id.* at 1076 (Berzon, *J.*, dissenting) (cleaned up, emphasis added in source, citing, *inter alia Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001)). The Eleventh Circuit's interpretation does not do that.

The Government contends that, under the Tax Court's view and as asserted by Petitioners, "the revenue agent's November 28, 2011 letter and report [i]s 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." G.Br. at 7 (emphasis in original). That is wrong and misconstrues the *actions* that Congress targeted in the statute.

The IRS's determinations are found in their written communications *when* they are sent to taxpayers and *by virtue* of being sent. If, for instance, an IRS agent decided a penalty should apply, drafted a report asserting the penalty and requesting

payment, but never sent it, that would not be a determination. In contrast, "[p]roviding the opportunity to consent to assessment of tax and penalty is … an 'initial determination' for purposes of section 6751(b)(1)." *Battat v. Comm'r*, T.C. Memo. 2021-57, 2021 WL 1885931, at *2 (2021) (cleaned up); App. 38a. Accordingly, the Tax Court "treats the 'initial determination of such assessment' as referring to *the action of the IRS official* who first proposes that a penalty be asserted." *Graev v. Comm'r of Internal Revenue*, 149 T.C. 485, 500 (2017) (Lauber, *J.*, concurring) (emphasis added).

The Government asserts "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." G.Br. at 7 (cleaned up). That argument renders the word "initial" meaningless. For instance, if the notice of deficiency is the final determination and a supervisor provides written approval prior to its issuance, saying that determination relates back to all prior instances where the IRS notified a taxpayer that penalty was going to apply means any number of prior determinations could have been presented to a taxpayer without ever being approved in writing without any consequence. In other words, it would require written approval of the *final* determination but not the *initial* determination.

It's obvious why Congress worded Section 6751 how it did—it was targeting the actual practices of the IRS. That's why it uses "initial determination" and not a term of art, nor statutorily defined action. Rather, it

was meant to be a broad prophylactic measure that could not be easily sidestepped by the IRS changing the specific means of, or precise language in, its correspondence. While, unlike a notice of deficiency, there is no statutory requirement for a "[a] signed, completed RAR sent with a Letter 4121[, its substance] provides the requisite definiteness and formality to constitute an 'initial determination' for purposes of section 6751(b)(1)." *Battat*, 2021 WL 1885931, at *2 (cleaned up); App. 38a. Therefore, in cases of penalties subject to deficiency procedures, "[a]n 'initial determination' occurs the earlier of when the Commissioner issues a notice of deficiency or formally communicates a decision to determine penalties." *Aldridge v. Comm'r*, T.C. Memo. 2024-24, 2024 WL 714143, at *15 (2024).

Moreover, while claiming no ambiguity exists in the statute to bring to bear such canons as the rule of lenity or justify looking to the legislative history. G.Br. at 8, the Government cannot even identify with any level of certainty *what an initial determination is*. Neither the Government nor the Eleventh Circuit has even attempted to define "initial determination," and it has not received consistent treatment outside of the Tax Court's articulation.

It follows that there are only two possibilities: either 1) the statute is not ambiguous, and the Tax Court accurately identified the meaning of initial determination; or 2) the statute is ambiguous and additional tools of statutory interpretation can be properly applied. Either scenario compels the same outcome because applying the canons of strict

construction[2] and the rule of lenity[3] as well as looking to the legislative history requires precisely the application that the Tax Court arrived at.

Indeed, "by requiring supervisory approval the first time an IRS official introduces the penalty into the conversation, the [Tax] Court's interpretation is faithful to Congress' purpose by affording maximum protection to taxpayers against the improper wielding of penalties as bargaining chips." *Graev*, 149 T.C. at 500–01 (Lauber, *J.*, concurring).

Ultimately,

> the statute means what it says: a supervisor must personally approve the "initial determination" of a penalty by a subordinate, or else no penalty can be assessed based on that determination, whether the proposed penalty is objected to or not. 26 U.S.C. § 6751(b)(1). That meaning is consistent with Congress's purpose of preventing threatened penalties never approved by supervisory personnel from being used as a "bargaining chip" by lower-level staff.…

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[2] *See Miller v. Standard Nut Margarine Co. of Fla.*, 284 U.S. 498, 508 (1932) ("[d]oubts must be resolved against the government and in favor of taxpayers.").

[3] *See Comm'r v. Acker*, 361 U.S. 87, 91 (1959) (cleaned up) (including for a "taxing Act which imposes a penalty, … one is not to be subjected to a penalty unless the words of the statute plainly impose it.").

Laidlaw's, 29 F.4th at 1076 (Berzon, *J.*, dissenting) (quoting S. Rep. No. 105-174, at 65 (1998), and citing *Chai v. Commissioner*, 851 F.3d 190, 219 (2d Cir. 2017)).

> Written laws are meant to be understood and lived by. If a fog of uncertainty surrounded them, if their meaning could shift with the latest judicial whim, the point of reducing them to writing would be lost. That is why it's a "fundamental canon of statutory construction" that words generally should be interpreted as taking their ordinary, contemporary, common meaning at the time Congress enacted the statute.

Wisconsin Cent. Ltd. v. United States, 585 U.S. 274, 284 (2018) (cleaned up).

Here, one need only take the IRS's word for it: penalties had "been determined" by the issuance of the RAR for each taxable year at issue. Tax Ct. Doc. # 74 (Motion for Patial Summary Judgment) Exhibit 1 p. 9 (2008), p. 20 (2009), p. 30 (2010). It wasn't until "ten days later" that a supervisor provided written approval to make a penalty determination. G.Br. at 7. Because the initial determination occurred without written approval, "[n]o penalty … shall be assessed" under the statute. 26 U.S.C. § 6751(b)(1).

It hardly gets clearer than that.

CONCLUSION

Section 6751(b) was enacted as a broad means of taxpayer protection. "Congress was concerned about the bigger picture: It desired to prevent rogue IRS personnel from using penalties as leverage to extract concessions from taxpayers." *Graev*, 149 T.C. at 500 (Lauber, *J.*, concurring).

And Congress's use of ordinary words that are not statutorily defined was faithfully applied by the Tax Court.

> If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the people's representatives. And we would deny the people the right to continue relying on the original meaning of the law they have counted on to settle their rights and obligations.

Bostock v. Clayton Cnty., Georgia, 590 U.S. 644, 655 (2020).

But that is exactly what the Eleventh Circuit has done.

Therefore, and for the foregoing reasons, the petition should be granted.

Respectfully submitted,

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