

IRS Wins Round Two on Penalty Assessments

May 10, 2024



On May 3, 2024, the DC Circuit Court ruled the IRS has the statutory authority to assess penalties for failing to report control of foreign businesses, overturning a 2023 decision by the Tax Court.

The Tax Court had previously ruled that the IRS could not assess penalties against a taxpayer for their failure to file Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*, because unlike other provisions Congress had not explicitly authorized the IRS to assess these penalties.

The Circuit Court disagreed and stated that Congress specifically enacted the provision to address “difficulties experienced in applying” a percentage-based penalty and that a fixed amount (i.e., a \$10,000 missed reporting penalty) would be simpler and more consistently collected. The Circuit Court ruled that Congress clearly meant for the reporting violation penalties to be assessable through the IRS’s administrative process. The Circuit Court noted the Tax Code gives authorization to the IRS rather than a District Court to evaluate a taxpayer’s defense to penalties imposed upon them under the Code.

In addition to Form 5471, the Circuit Court’s opinion should also apply to various other foreign informational returns, namely: Forms 5472, 8938, 926, 8858, and

8992, and some disclosures associated with Form 3520.

What should taxpayers do now if they believe this could affect them?

Outstanding assessments

If a taxpayer has been assessed penalties for failing to disclose foreign assets on one or more of the above-referenced forms and has yet to pay them, they would be wise to seek advice as to alternative steps to mitigate such penalties now that the Tax Court's ruling was overturned.

Currently delinquent with foreign informational returns

Should it come to your attention that foreign informational reporting applies to your specific scenario and there is a need to amend or file these forms, you may consider doing so as expeditiously as possible. The IRS does have programs in place that may permit the abatement of the missed foreign reporting penalties in certain circumstance.

Protective Claim

If a taxpayer has previously filed a protective claim for refunds of previously assessed and paid penalties based on the prior ruling of the Tax Court, they may wish to reach out to their advisor. Their claim might now be rejected since the Circuit Court has deemed these penalties assessable.

The Tax Advisory teams at Anchin can provide you the support and guidance needed to navigate the next steps and help minimize penalty exposure should this latest ruling impact your tax compliance. For further information, contact [Alan Goldenberg](#), Principal and Leader of the Tax Controversy and State and Local Tax Groups, [Kevin Brown](#), Principal of the International Tax and Private Client Groups, or your Anchin Relationship Partner.