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5 Things to Know About the IRS Proposed Regulations for Supervisory Approval of Penalties

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On April 11, 2023, the IRS issued proposed regulations concerning IRC § 6751(b). The statute requires that specific civil penalties must be personally approved (in writing) by the immediate supervisor of the individual making the determination or such higher-level official as the Secretary may designate. After having struggled in the courts regarding compliance with the approval requirements, the IRS states that the proposed regulations “are necessary to address uncertainty regarding various aspects of supervisory approval that have arisen due to recent judicial decisions.” (REG-121709-19; 88 Fed. Reg. 21564 (April 11, 2023)). Here are some key points about the proposed regulations:

1. Timing of Supervisory Approval

The proposed regulations set out three timing rules for obtaining supervisory approval for penalties covered by IRC § 6751(b).

Scenario	
Penalties included in a pre-assessment notice that is subject to the Tax Court's jurisdiction upon timely petition, such as a statutory notice of deficiency.	Any the
Penalties that the IRS raises in an answer, amended answer, or amendment to the answer to a Tax Court petition.	Any req the
Penalties assessed without prior opportunity for review by the Tax Court.	Any

2. Definitions of Several Statutory Terms

The IRS proposes the following definitions for terms in IRC § 6751(b)(1).

- **Immediate supervisor** – Any individual with responsibility to approve another individual's proposal of penalties without the proposal being subject to an intermediary's approval. The term is not limited to a single individual.
- **Higher level official** – Any person who has been directed by the Internal Revenue Manual or other assigned job duties to approve

another individual's proposal of penalties before they are included in a pre-assessment notice prerequisite to US Tax Court jurisdiction, an answer, amended answer, or amendment to a Tax Court petition, or are assessed without need for such inclusion, is designated as a higher level official authorized to approve the penalty for purposes of IRC 6751(b)(1).

- **Personally approved (in writing)** – Any writing, including in electronic form, made by the writer to signify the writer's assent. No signature or particular words are required, so long as the circumstances of the writing reflect it was intended as approval. The supervisor does not have to follow any specific procedure in determining whether to approve the penalty.
- **Automatically calculated through electronic means** – Proposed by an IRS computer program without human involvement.

3. Examples Demonstrate the Proposed Rule's Application

The proposed regulations contain five examples illustrating how the IRC § 6751(b) penalty approval requirements would be satisfied under the regulations. The examples concern what constitutes written consent, timely approval, and who has authority to give approval in fact situations that taxpayers are likely to encounter.

4. The Regulations Would Not be Retroactive

The proposed regulations state that they would apply to penalties assessed on or after the date of publication of the final regulations.

5. Deadline for Comments

Public comments and requests for a public hearing are due by July 10, 2023.

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