

Litigant: IRS Used Backdated Doc to Win Ruling on Penalty Approval

POSTED ON APR. 25, 2023

By

KRISTEN A. PARILLO

[Contact Author](#)

The IRS perpetrated a fraud on the Tax Court by failing to alert the court that it had submitted a backdated penalty approval form and false declarations to win a ruling on [section 6751\(b\)](#) compliance, according to the petitioner in an easement case.

The petitioner detailed the IRS's alleged misconduct in a [motion for reconsideration](#) and a [motion to impose sanctions](#), both filed with the Tax Court April 18 in *Lakepoint Land II LLC v. Commissioner*.

The IRS filed its own [motion for reconsideration](#) on April 19, asserting that the penalties were properly approved despite the “factual inaccuracies” contained in its earlier court filing.

The dispute relates to Lakepoint Land II LLC's Tax Court challenge of a March 2017 IRS notice of final partnership administrative adjustment disallowing two conservation easement deductions that Lakepoint claimed on its 2013 and 2014 tax returns. The FPAA asserted various penalties for both tax years.

In August 2022 the IRS filed a motion for partial summary judgment that all penalty assertions complied with [section 6751\(b\)](#), which states that the IRS may not assess a penalty unless the initial determination is approved in writing by the immediate supervisor of the employee who made it.

In a [March 24 order](#) granting the IRS's motion, Tax Court Judge Christian N. Weiler concluded that a July 15, 2016, penalty consideration lead sheet completed by the revenue agent who handled the exam constituted the “initial determination” to assert penalties for [section 6751\(b\)](#) purposes.

All penalty assertions were approved by the agent's supervisor on July 16, 2016, Weiler said, citing a copy of the lead sheet supplied by the IRS and a declaration filed by the supervisor stating that she signed the lead sheet on that date. Weiler held that because written supervisory approval was obtained before

the FPAA was issued in March 2017, the IRS complied with [section 6751](#)'s procedural requirements.

Backdating

In its April 18 motion for reconsideration, Lakepoint asserted that the lead sheet supplied to the court wasn't signed by the supervisor on July 16, 2016 — rather, it was signed by the supervisor on February 10, 2017, after the agent told her via email that she had failed to get written approval for a separate lead sheet asserting gross valuation and substantial valuation penalties.

The failure was discovered in early February 2017 when an IRS Office of Chief Counsel attorney wrote a memo stating that those two penalties should be asserted “but only after approval in writing by the supervisor.”

According to Lakepoint, the supervisor backdated the February 2017 version of the lead sheet as July 16, 2016, and handwrote her signature so that there was no software-generated time stamp showing when she actually signed it.

Lakepoint said that after receiving a draft of the IRS's partial summary judgment motion and supporting documents in early August 2022, it alerted the chief counsel attorneys on the case that the filing appeared to contain inaccurate or incorrect information. In response, the supervisor signed a sworn declaration stating that she signed the lead sheet on July 16, 2016. The IRS filed its motion with the declaration shortly after.

Lakepoint sought to learn more about the penalty approval timeline by issuing discovery requests to the IRS, but the agency didn't directly respond to the more pointed questions or produce relevant emails and attachments. The partnership said it was only after the court granted its motion to compel on February 2 that the IRS produced the emails showing the February 2017 backdating of the lead sheet. The documents had been in the chief counsel attorneys' possession since at least November 2022, according to Lakepoint.

“Worse, Respondent's counsel did not inform this Court of the false evidence before it,” the motion for reconsideration says. “This Court then relied on that false evidence to grant Respondent's motion for partial summary judgment.”

Meeting With IRS

According to the motion, Lakepoint’s legal team met with IRS Deputy Chief Counsel (Operations) Drita Tonuzi and other chief counsel attorneys on April 3 to discuss what they had uncovered. At the end of the meeting, Lakepoint suggested that the partnership and the IRS work together to inform the court about the situation.

“Later that week, on Friday, April 7, 2023, Ms. Tonuzi informed Petitioner’s counsel that Respondent agreed that the Backdated Penalty Lead Sheet had not been signed in July 2016, and that Respondent would take prompt steps to correct the record,” the motion says.

Declining to work jointly with Lakepoint, the IRS informed Weiler in an April 10 status report that the partnership’s counsel had alerted it to “possible factual inaccuracies” in its partial summary judgment motion and declarations. The IRS said it might file a motion for reconsideration of findings.

In both its motion for reconsideration and motion for sanctions, Lakepoint urged Weiler to vacate his March 24 order granting the IRS partial summary judgment; to resolve the [section 6751\(b\)\(1\)](#) penalty approval issue against the IRS, an action that Lakepoint said is authorized by Tax Court Rule 123(b) “and by virtue of the Court’s authority to address fraud on the Court”; and to award the partnership reasonable expenses, including attorney’s fees, it has incurred because of the IRS’s misconduct.

IRS Motion

In its own motion for reconsideration, the IRS asserted that it had met the requirements of [section 6751\(b\)\(1\)](#) but that “factual inaccuracies” in its motion “resulted in the Court relying on inaccurate facts in its ruling in favor of respondent.”

The motion says that after reviewing the matter, the IRS “now agrees with petitioner” that its factual representations that July 16, 2016, was the date the IRS complied with [section 6751\(b\)](#) were incorrect.

“Respondent expresses his contrition and apologizes to the Court and to petitioner for this error and the inconvenience it has caused,” the motion says. But it asserts that the IRS still complied with [section 6751\(b\)](#) because the supervisor on July 21, 2016, signed a notice of proposed adjustment that listed all penalties later asserted in the FPAA.

Lakepoint dismissed that argument in its motion for reconsideration, pointing out that Weiler's March 24 order had concluded that the agent's preparation of the lead sheet on July 15, 2016, was the initial determination for [section 6751\(b\)](#) purposes.

"That determination logically precludes a finding" that the agent's July 13, 2016, signing of the notice of proposed adjustment was the "initial determination," Lakepoint said.

The petitioner in *Lakepoint Land II LLC v. Commissioner*, No. 13925-17, is represented by attorneys with Chamberlain, Hrdlicka, White, Williams & Aughtry; Todd Welty of Todd Welty PC; and attorneys with Skadden, Arps, Slate, Meagher & Flom LLP.