UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Besicorp Group, Inc., et al. v. Commissioner of Internal Revenue

Besicorp · No. 23-296(L), 23-299 (Con), 23-302 (Con), 23-321 (Con), 23-353 (Con), 23-359 (Con) · Decided June 29, 2026

SUMMARY

The United States Court of Appeals for the Second Circuit considers whether an IRS Appeals Officer conducting a collection due process hearing must verify compliance with the supervisory-approval requirement for penalties under 26 U.S.C. § 6751(b)(1). The court holds that this requirement is an applicable law or administrative procedure covered by the verification mandate in 26 U.S.C. § 6330(c)(1), even where the underlying liabilities and penalties were previously adjudicated. The court reverses the relevant Tax Court orders and remands for further proceedings.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Carney, Circuit Judge; Leval, Circuit Judge; Sullivan, Circuit Judge
JURISDICTION	United States Court of Appeals for the Second Circuit
DECIDED	June 29, 2026
DOCKET	23-296(L), 23-299 (Con), 23-302 (Con), 23-321 (Con), 23-353 (Con), 23-359 (Con)
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeals from the United States Tax Court's orders granting the Commissioner's motions for summary judgment and sustaining collection actions involving federal tax liens and proposed levies.
STANDARD OF REVIEW	The court reviewed the Tax Court's grant of summary judgment de novo and reviewed the Appeals Office's determinations for abuse of discretion.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Besicorp Group, Inc., Day Stores, Inc., Humboldt Shelby Holding Corporation, The Markell Company, Inc., Vance Finance and Holding Corporation, Seashore Broadcasting Corporation v. Commissioner of Internal Revenue

TOPICS

tax collection · tax liens · tax court procedure · statutory interpretation · appellate procedure

PRACTICE AREAS

federal taxation · tax collection · administrative law · appellate procedure

QUESTIONS PRESENTED

1. Whether 26 U.S.C. § 6330(c)(1) requires an Appeals Officer conducting a collection due process hearing concerning a tax lien or proposed levy to verify compliance with the written supervisory-approval requirement in 26 U.S.C. § 6751(b)(1), even when the underlying penalties and liabilities were previously adjudicated.
2. Whether the Appeals Officer's failure to perform or establish that verification invalidated the approval of liens and proposed levies used to collect the penalties.
3. Whether res judicata, claim-preclusion principles, or harmless-error considerations excused the failure to verify supervisory approval.

HOLDINGS

1. When § 6751(b)(1) applies to penalties that are the subject of IRS collection efforts, § 6330(c)(1) requires the Appeals Officer conducting a collection due process hearing concerning a lien or proposed levy to verify that the required written supervisory approval was obtained.
2. The Appeals Officer's failure to verify compliance with § 6751(b)(1) invalidated the Appeals Office's approval of the liens and proposed levies used to collect the penalties, but did not invalidate the underlying penalties or overall tax liabilities.
3. The prior adjudication of the taxpayers' underlying liabilities did not preclude their challenge to the Appeals Officer's compliance with the independent verification obligation in § 6330(c)(1).

KEY QUOTATIONS

> *“We interpret these provisions literally, as we are required to do, and hold that Section 6751(b)’s supervisory approval requirement is a “requirement[] of . . . applicable law or administrative procedure” encompassed by Section 6330(c)(1).”* (3)

> *“Our decision affects only the use of Code-authorized liens and levies.”* (23)

> *“We therefore conclude that, where Section 6751(b)(1) applies to the penalties that are the subject of the IRS’s collection efforts, Section 6330(c)(1) requires the Appeals Officer conducting a CDP hearing with respect to a lien or proposed levy to verify that Section 6751(b)(1)’s supervisory approval requirement was met.”* (27-28)

FACTUAL BACKGROUND

The six taxpayer entities participated in intermediary tax-shelter transactions from 1999 to 2003. The IRS determined that they owed millions of dollars in tax deficiencies, penalties, and accrued interest, and the Tax

Court adjudicated or accepted those liabilities in earlier proceedings. After the taxpayers failed to pay, the IRS filed liens and issued proposed levies; during collection due process hearings, the Appeals Officer sustained the collection actions but did not verify or document compliance with the written supervisory-approval requirement for penalties under 26 U.S.C. § 6751(b)(1).

PROCEDURAL HISTORY

The IRS assessed the taxpayers for deficiencies, penalties, and interest arising from tax-shelter transactions, and the Tax Court previously adjudicated or accepted those underlying liabilities. After the taxpayers failed to pay, the IRS issued notices of federal tax liens and intent to levy, and an Appeals Officer sustained the collection actions after collection due process hearings. The Tax Court ultimately granted the Commissioner's motions for summary judgment, holding that the Appeals Officer did not need to verify compliance with the supervisory-approval requirement in 26 U.S.C. § 6751(b)(1) because the penalties had previously been adjudicated. The Second Circuit reversed the relevant portions and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including consideration of the Appeals Officer's failure to verify compliance with § 6751(b)(1) and the resulting authority to use liens and proposed levies to collect the penalties.

CASES CITED

- United States v. Bisceglia, 420 U.S. 141, 145 (1975)
- Our Country Home Enterprises, Inc. v. Commissioner, 855 F.3d 773, 779-80 (7th Cir. 2017)
- Iames v. Commissioner, 850 F.3d 160, 162, 165-67 (4th Cir. 2017)
- Humboldt Shelby Holding Corp. & Subs. v. Commissioner, 606 F. App'x 20, 21 (2d Cir. 2015)
- Warner Enterprises, Inc. v. Commissioner, 124 T.C.M. (CCH) 98, 2022 WL 3584090, at *4-5 (T.C. 2022)
- Williams v. Commissioner, 718 F.3d 89, 91-92 (2d Cir. 2013)
- Bartenwerfer v. Buckley, 598 U.S. 69, 74 (2023)
- Republic of Iraq v. Beaty, 556 U.S. 848, 856 (2009)
- United States v. Gonzales, 520 U.S. 1, 5 (1997)
- Dinino v. Commissioner, 98 T.C.M. (CCH) 559, 2009 WL 4723652, at *7 (T.C. 2009)
- Ron Lykins, Inc. v. Commissioner, 133 T.C. 87, 97 (2009)
- Hoyle v. Commissioner, 131 T.C. 197, 200 (2008)
- Pfetzer v. Commissioner, 122 T.C.M. (CCH) 395, 2021 WL 6143712, at *4-5 (T.C. 2021)
- ATL & Sons Holdings, Inc. v. Commissioner, 152 T.C. 138, 144, 148-54 (2019)
- Chai v. Commissioner, 851 F.3d 190, 219, 221-23 (2d Cir. 2017)

- Hoyle v. Commissioner, 136 T.C. 463, 468 (2011)
- Rivas v. Commissioner, 113 T.C.M. (CCH) 1268, 2017 WL 1224708, at *4 (T.C. 2017)
- Commonwealth of Puerto Rico v. Franklin California Tax-Free Trust, 579 U.S. 115, 130 (2016)
- Jeffers v. Commissioner, 992 F.3d 649, 655 (7th Cir. 2021)

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