

Tax Insights | April 12, 2023  
**Tracking Tax News,  
You Need to Know**



### **IRS Cannot Assess Penalties in Foreign-Owned Corporation Dispute**

The U.S. Tax Court [held](#) that the IRS cannot assess penalties on a taxpayer with unreported business interests under Section 6038 because no provision in the code authorizes it. The IRS assessed penalties against a taxpayer owning foreign corporations for failing to report ownership interest in the corporations under Section 6038(b). The Tax Court agreed with the taxpayer, holding that Congress explicitly authorized assessment with respect to penalty provisions in the code but not for Section 6038(b) penalties.

### **FedEx Wins Over IRS Regulation in Tax Case**

FedEx Corporation won a federal district court [case](#) in which the company argued that it was blocked hundreds of millions of dollars in foreign tax credits by an IRS regulation. The U.S. District Court for the Western District of Tennessee invalidated the IRS regulation forbidding credits for foreign tax credits paid on certain earnings that were offset by losses. FedEx sought more than \$89 million, and the court granted a partial summary judgment motion over the invalidity of the regulation.

### **Treasury Proposes Rules for Supervisory Approval of Penalties**

The Treasury Department and the IRS released proposed [rules](#) on supervisory approval of penalties assessed by the IRS. The rules detail penalty approval requirements under Section 6751(b). The rules adopt three rules for timing of supervisory approval: penalties subject to pre-assessment review in the Tax Court, penalties raised in the Tax Court after a petition and penalties not subject to pre-assessment review in the Tax Court.



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