

TaxNewsFlash

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U.S. Tax Court: IRS does not have statutory authority to assess penalties for willful failure to file Form 5471

The U.S. Tax Court today reaffirmed its prior decision, holding that the IRS did not have statutory authority to assess penalties under section 6038(b) against a taxpayer who willfully failed to file Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*.

The case is: *Mukhi v. Commissioner*, 163 T.C. No. 8 (November 18, 2024). Read the Tax Court's [opinion](#)

Summary

In this case, the U.S. Tax Court addressed the issue of whether the IRS had the authority to assess penalties under section 6038(b)(1) for the taxpayer's failure to file Forms 5471 for the tax years 2002 through 2013. The IRS had assessed \$120,000 in penalties and initiated collection actions, which the taxpayer challenged.

Initially, the Tax Court decided in the taxpayer's favor, citing *Farhy v. Commissioner*, which held that the IRS lacked authority to assess such penalties. [Read TaxNewsFlash](#)

However, the D.C. Circuit later reversed the *Farhy* decision, asserting that the penalties were assessable. [Read TaxNewsFlash](#)

Despite the D.C. Circuit's reversal, the U.S. Tax Court today reaffirmed its original decision, holding that the IRS still lacked statutory authority to assess the penalties under section 6038(b)(1), explaining that the petitioner's appeal lies with the Eighth Circuit, which has not yet issued an opinion about whether the 6038(b)(1) penalty is assessable. The court emphasized that section 6038(b)(1) did not explicitly grant the IRS authority to immediately assess the penalties and that the proper mode of recovery for these penalties would be through a civil action in a district court, not through assessment by the IRS. Consequently, the Tax Court held that the IRS could not proceed with the collection actions against the taxpayer for these penalties. The Tax Court also rejected the government's policy and administrative burden arguments, noting the FBAR penalties are routinely enforced through the Department of Justice and that requiring a civil lawsuit for the collection of section 6038(b)(1) penalties would limit the IRS's systemic assessment—and frequent abatement—of these penalties.

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