

House Ways & Means Committee Advances Two Tax Procedure Bills to Revise Penalty Approval and Tax Court Powers



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On September 17, 2025, the House Committee on Ways and Means advanced two bipartisan tax-procedure measures, by unanimous roll-call vote, to the full House of Representatives:

- H.R. 5346, the “Fair and Accountable IRS Reviews Act” – favorably reported 44-0; and
- H.R. 5349, the “Tax Court Improvement Act” – favorably reported 40-0.

Both bills propose technical reforms aimed at reducing procedural friction in federal tax administration and litigation. Each proposal addresses recurring controversies that have divided courts and frustrated taxpayers and practitioners alike.

H.R. 5346 – Fair and Accountable IRS Reviews Act

CURRENT LAW BACKDROP

The existing I.R.C. § 6751(b) provides that no civil tax penalty may be assessed unless “the initial determination of such assessment” receives written approval from the “immediate supervisor” of the IRS employee proposing the penalty prior to assessment. The ambiguity of this provision has led to a series of Tax Court decisions and a circuit split resulting from appeals that have engendered uncertainty about the precise moment at which an “initial determination” occurs and, in turn, precisely when written supervisory approval must be obtained. Additionally, although the statute authorizes the Secretary of the Treasury to designate a higher-level official to provide the requisite approval, it does not define an “immediate supervisor.” Taxpayers have successfully challenged penalties where the government could not demonstrate timely approval and the IRS has been sanctioned in a case, *LakePoint Land II LLC v. Commissioner*, where a supervisor backdated her signature on a penalty approval form.

KEY PROVISIONS OF H.R. 5346

- **Approval Timing Clarified.** Under the bill, supervisory approval is timely only if obtained before any written communication to the taxpayer with respect to the penalty. This bright-line rule eliminates the current fact-intensive inquiry into whether a specific scenario is a “consequential moment” in forming the IRS’s position on asserting a

penalty. The proposal also limits the potential for examiners to use the threat of penalties not yet approved to exert pressure on taxpayers, a key policy goal underlying § 6751(b).

- **“Immediate Supervisor” Defined.** The bill defines the term as the person to whom the IRS employee making the determination reports, while preserving Treasury’s authority to designate a higher-level official.

The new rules would apply to notices issued and penalties assessed after the date of enactment. If passed, practitioners can expect to spend less time on motions devoted solely to the timing of supervisory approval. As a bonus, the staff of the Joint Committee on Taxation estimates the bill to have a positive effect on the Federal budget over a ten-year period, to the tune of \$120 million.

H.R. 5349 – Tax Court Improvement Act

BACKGROUND

As described by its sponsor Representative Moran, himself a former county judge, the goal of H.R. 5349 is to “ensure[] that taxpayers are not denied their day in court because of red tape, technicalities, or conflicts of interest” and “make[] commonsense reforms to our Tax Court system, removing burdensome barriers and streamlining processes for individuals and small businesses alike.”

Specifically highlighted by Mr. Moran are four areas slated for reform:

- Subpoena limits that prevent judges from requiring key documents early.
- Limits that restrict the authority of special trial judges who handle many cases.
- Judicial recusal standards that are not aligned with other federal courts.
- Rigid, jurisdictional filing deadlines that can deny taxpayers a right to a hearing.

KEY PROVISIONS OF H.R. 5349

- **Expanded Subpoena Authority.** Current law under I.R.C. § 7456(a), as interpreted by the Tax Court, limits Tax Court subpoenas compelling third-party document production to a scheduled hearing or deposition, but not otherwise in the course of pretrial discovery. The proposal authorizes the Tax Court to issue third-party subpoenas compelling production during pretrial discovery, mirroring practice under Federal Rule of Civil Procedure 45. This change allows parties to obtain critical documents earlier, promoting settlement and narrowing issues for trial. Notably, this proposed expansion of subpoena power also matches legislative recommendations long recommended by the Taxpayer Advocate.
- **Enhanced Role of Special Trial Judges.** Current law under I.R.C. § 7433A provides that the chief judge of the Tax Court is authorized to appoint special trial judges to hear certain enumerated types of cases, or any other proceedings. However, with respect to such proceedings which are not among those enumerated, a special trial judge may not independently render the Tax Court’s decision. The requirement that one of the presidentially appointed judges adopt the special trial judge’s recommendations may be partially to blame for a slower resolution of cases in the Tax Court. The proposal would authorize the special trial judges to hear any proceeding within the Tax Court’s jurisdiction and independently render a decision, if the parties consent. The proposal would also grant special trial judges authority to order punishment for contempt of the court, although such punishment is not to exceed the maximum fine or prison term for a Class C misdemeanor.
- **Statutory Recusal Requirement.** Presently, no statute or Tax Court rule specifically requires Tax Court judges or special trial judges to recuse themselves in any particular situations. The bill would conform the Tax Court’s recusal obligations to those codified for district and appellate judges under 28 U.S.C. § 455. Judges and special trial judges would therefore be required to recuse themselves when their “impartiality might reasonably be questioned” or when specified conflicts (e.g., financial interests, prior involvement) exist.
- **Equitable Tolling in Deficiency Cases.** Reacting to the Supreme Court’s 2022 *Boechler* decision permitting equitable tolling in collection due process cases, the bill expressly authorizes the Tax Court to toll statutory filing

periods (e.g., the 90- to 150-day deficiency deadline) where equitable considerations warrant. Since the Tax Court follows the relevant precedent of the U.S. Court of Appeals to which the taxpayer's case would be appealable, under current law, the Tax Court will only consider a motion for equitable tolling if appeal lies with the Second, Third, or Sixth Circuits, and otherwise treats the statutory filing periods as jurisdictional. The Taxpayer Advocate has also recommended this change, noting that treating the deadlines as jurisdictional can lead to harsh and unfair results when extenuating circumstances such as a medical emergency prevent a taxpayer from timely filing a petition with the Tax Court. Moreover, many petitioners in the Tax Court are unrepresented and may be unaware that electronically filing their case even a minute later than the 12:00 AM Eastern time zone deadline may result in automatic dismissal, depending on their circuit of residence.

The proposals would generally be effective on the date of enactment, or for petitioners filed on the date thereafter. Taken together, the staff of the Joint Committee on Taxation estimates the bill's proposals would increase Federal receipts by \$6 million over ten years.

Takeaway

The Fair and Accountable IRS Reviews Act and the Tax Court Improvement Act represent bipartisan, technical refinements to federal tax procedure. While neither bill overhauls substantive tax liability rules, each promises to streamline dispute resolution, enhance judicial efficiency, and provide clearer guardrails for both taxpayers and the government. Tax professionals should track the bills' progress and prepare to adjust audit, litigation, and compliance strategies accordingly.

For further information or to discuss how these changes may affect your organization, please contact any member of Winston's [Tax Controversy](#) group.

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