

**DESCRIPTION OF H.R. 5346,  
THE “FAIR AND ACCOUNTABLE IRS REVIEWS ACT”**

Scheduled for Markup  
by the  
HOUSE COMMITTEE ON WAYS AND MEANS  
on September 17, 2025

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



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## INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup for September 17, 2025, of H.R. 5346, the “Fair and Accountable IRS Reviews Act.” This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of this bill.

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 5346, the “Fair and Accountable IRS Reviews Act”* (JCX-39-25), September 15, 2025. This document can also be found on the Joint Committee on Taxation website at [www.jct.gov](http://www.jct.gov). All section references in the document are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

## A. Reform Penalty Assessment Procedural Requirements

### Present Law

The Code includes multiple provisions governing the proper application of penalties and additions to tax. Under those provisions are rules specifying the procedures and limitations applicable to assertion of such additions to tax and penalties. The Secretary of Treasury (“Secretary”) and Internal Revenue Service (“IRS”) publish guidance for the public and IRS employees on the administration of penalties consistent with the statute and in support of encouraging voluntary compliance, and by adherence to long-standing policy that penalties be administered based on the merits and with fairness to the taxpayer.<sup>2</sup>

These penalties are categorized into two types: additions to tax and additional amounts (“additions to tax”), and assessable penalties. The additions to tax penalties related to taxes otherwise subject to deficiency proceedings are also generally subject to deficiency proceedings and include delinquency penalties, failure by individuals to pay estimated income tax, failure by corporations to pay estimated income tax, failure to make deposit of taxes, accuracy-related penalties,<sup>3</sup> and the fraud penalty,<sup>4</sup> and may be waived under certain circumstances, including a showing of reasonable cause. In contrast, assessable penalties can be assessed without restrictions (and thus without the opportunity for preassessment judicial review) applicable in deficiency cases, although they may also be eligible for waiver due to reasonable cause in administrative proceedings.

Section 6751(b), added by the IRS Restructuring and Reform Act of 1998, states, “No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.”<sup>5</sup> No definition of “initial determination” is provided, nor does the Act specify when the requisite supervisory approval must be signed. The provision provides that the immediate supervisor of the person initially determining the penalty as the party whose approval is required, although it does not

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<sup>2</sup> Sec. 6751, generally, and Internal Revenue Manual, 1.2.1.12.1 Policy Statement 20-1, *Penalties are used to enhance voluntary compliance* (June 29, 2004), available at <https://www.taxnotes.com/research/federal/internal-revenue-manual/1.2.1>, (last visited September 14, 2025), outlining the obligations of managers and employees in evaluating assertion of penalties, noting, “This means that penalties are not a ‘bargaining point’ in resolving the taxpayer’s other tax adjustments. Rather, the imposition of penalties in appropriate cases serves as an incentive for taxpayers to avoid careless or overly aggressive tax reporting positions.”

<sup>3</sup> Sec. 6662 (a penalty equal to 20 percent of the underpayment of tax that is attributable to any of several enumerated types of error or negligence, in the absence of reasonable cause; the penalty may increase to 40 percent in certain other specified circumstances).

<sup>4</sup> Sec. 6663 (a penalty of 75 percent of any portion of an underpayment of tax resulting from fraud).

<sup>5</sup> Sec. 6751(b)(1); IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, Title III, sec. 3306(2), July 22, 1998, as amended by Pub. L. No. 106-554, Title III, sec. 302(b). The provision applies to notices issued and penalties assessed after June 30, 2001. A special rule provided a brief transition rule under which the provision was considered to have been met with respect to penalties that were subject of notices issued prior to July 1, 2003, if such notices included a telephone contact and number at which a taxpayer could obtain a record of the assessment and payment history regarding that penalty.

define “immediate supervisor” and authorizes the Secretary to designate a higher-level official to provide the requisite approval.

Two groups of penalties are outside the scope of the requirement for prior written supervisory approval. First, several delinquency penalties as well as two accuracy related penalties are specifically identified as exempt from the requirement.<sup>6</sup> Second, those penalties “automatically calculated through electronic means” are also exempt from the requirement of prior supervisory approval. The United States Tax Court (“Tax Court”) has held that such standard is met if a penalty or addition is determined by a computer program without human review, including accuracy-related penalties under section 6662(a) and (b).<sup>7</sup>

Assessment of tax generally refers to the formal recording of a tax liability for a specific taxable period of a specific taxpayer, and time and manner of assessment is generally prescribed by regulations to the extent not specified in statute.<sup>8</sup> In proceedings to determine deficiencies, further restrictions on assessment apply.<sup>9</sup> A separate provision contemporaneously enacted with the supervisory approval requirement imposes a burden of production on the Secretary with respect to his compliance with assertion of penalties against individuals.<sup>10</sup>

In resulting litigation over the restrictions of section 6751(b), the Tax Court established varying benchmarks as the point at which an “initial determination” occurs that could require the Secretary to produce evidence of compliance with the supervisory approval requirement, even if the Secretary does not bear the burden of proof as to the merits of the penalty.<sup>11</sup> These rules have been applied by the Tax Court without regard to efforts made to comply with standards as

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<sup>6</sup> Sec. 6751(b)(2), specifically excepts sections 6651, 6654 and 6655 (delinquency penalties for failure to pay tax and estimated taxes) and accuracy related penalties under section 6662(b)(9) (overstatement of charitable deduction under section 170(p)); and section 6662(b)(10) (disallowance of charitable deduction under section 170(h)(7)).

<sup>7</sup> *Walquist v. Commissioner*, 152 T.C. No. 3 (February 25, 2019).

<sup>8</sup> Secs. 6201–6207.

<sup>9</sup> See secs. 6211–6216.

<sup>10</sup> Sec. 7491(c), added by Pub. L. 105–206, title III, §3001(a), July 22, 1998, 112 Stat. 726.

<sup>11</sup> *Chai v. Commissioner*, T.C. Memo. 2015-42, rev’d 851 F.3d 190 (2d Cir. 2017); *Graev v. Commissioner*, 149 T.C. 485, 492–93 (2017), supplementing and overruling in part 147 T.C. 460 (2016) (supervisory approval could occur at any point before the assessment was made); *Clay v. Commissioner*, 152 T.C. 223, 249–50 (2019) (section 6751(b) requirement was not satisfied because approval was not obtained before a communication that advised the taxpayer that penalties would be proposed and gave the taxpayer the right to appeal them with Appeals), appeal on other issues aff’d, 990 F.3d 1296 (11th Cir. 2021); and *Belair Woods, LLC v. Commissioner*, 154 T.C. 1, 15 (2020) (IRS letter and summary report, setting forth the tentative proposed adjustments and inviting taxpayer to a conference to discuss them, was not the initial determination of a penalty that required prior supervisory approval; instead the 60-day letter was the initial determination of the penalties and the IRS satisfied sec. 6751(b)(1) for three of the penalties asserted by obtaining written supervisory approval for the penalties before the 60-day letter was issued).

they existed at the time of the examination of years before the Court.<sup>12</sup> Because the Tax Court is a court of national jurisdiction, Tax Court decisions have been appealed to multiple circuit courts of appeals based on residence of the taxpayer in the case, with the result that there is a split of authority among the Circuits.<sup>13</sup>

### **Description of Proposal**

Under the proposal, the supervisory approval of a penalty required under section 6751(b)(1) is timely only if the IRS employee proposing such penalty obtains such approval in writing prior to any written communication to the taxpayer with respect to such penalty. The written approval must be provided by the immediate supervisor of the person proposing the penalty or such other higher supervisory person as the Secretary may identify.

The proposal defines the term “immediate supervisor” for purposes of section 6751(b) to be the person to whom the IRS employee making the determination reports.

### **Effective Date**

The proposal applies to notices issued, and penalties assessed, after the date of enactment.

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<sup>12</sup> See Chief Counsel Notice 2018-006 (June 6, 2018), discussing various scenarios in which the provisions of section 6751(b) could be at issue. See *Beland v. Commissioner*, 156 T.C. 80 (2021) (granting taxpayer’s motion for partial summary judgment that a fraud penalty was not timely where the supervisory approval was signed August 21, 2015, after a revenue agent report was provided to the taxpayer during a summons administration conference convened on August 19, 2015, citing the standards first articulated in *Chai* and *Graev, supra*, in 2017).

<sup>13</sup> Contrast the Second Circuit opinion in *Chai v. Commissioner*, 851 F.3d at 220–21 (referring to the task of determining whether a specific scenario is a “consequential moment” in forming IRS position on asserting a penalty) with *Kroner v. Commissioner*, 48 F.4th 1272 (11th Cir. 2022) (holding that approval is timely if provided before the penalty is assessed, interpreting “initial determination” to describe what is subject to approval, not a timing requirement) and with *Laidlaw’s Harley Davidson Sales, Inc. v. Commissioner*, 29 F.4th 1066 (9th Cir. 2022) (holding that the statute requires approval before the assessment of a penalty or, if earlier, before the relevant supervisor loses discretion whether to approve the penalty assessment).

## B. Estimated Revenue Effects of the Proposal

The staff of the Joint Committee on Taxation estimates the bill to have the following effect on Federal fiscal year budget receipts for the period 2026 through 2035:

Fiscal Years [Millions of Dollars]										
<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>2032</u>	<u>2033</u>	<u>2034</u>	<u>2035</u>	<u>2026-35</u>
4	9	11	13	13	14	14	14	15	15	120

NOTE: Details do not add to totals due to rounding. The date of enactment is assumed to be October 1, 2025.