

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

RELIABLE COMPUTER SERVICES, INC., ET )  
AL., )  
 )  
Petitioners, ) **ALS**  
 )  
v. ) Docket No. 24302-15S, 24303-15S  
 )  
COMMISSIONER OF INTERNAL REVENUE, )  
 )  
Respondent. )

**ORDER**

One of the issues presently before the Court in these cases for the redeterminations of deficiencies is whether petitioners are liable for section 6662(a)<sup>1</sup> penalties. In relevant part, section 6751(b) provides that a section 6662(a) penalty, among others, shall not be assessed absent written supervisory approval. Given the literal language of section 6751(b), as of the date of trial it was reasonable to proceed as though the provisions of that section had no effect on respondent's burden in a proceeding such as this one. Instead, compliance with the statute was held to be required preliminary to the subsequent assessment of any deficiency so redetermined. See Graev v. Commissioner (Graev II), 147 T.C. \_\_\_ (Nov. 30, 2016). After this case was tried and as relevant here, it was established that the provisions of section 6751(b) must be complied with not later than the issuance of a notice of deficiency. See Chai v. Commissioner, 851 F.3d 190 (2d Cir. 2017), aff'g in part, rev'g in part T.C. Memo. 2015-42; Graev v. Commissioner (Graev III), 149 T.C. \_\_\_, (slip op. at 13-15) (Dec. 20, 2017), supplementing 147 T.C. (Nov. 30, 2016).

At trial, respondent failed to offer any evidence of compliance with section 6751(b) to support the imposition of the section 6662(a) penalties here in dispute. These cases are now before the Court on respondent's motion to reopen the record, filed February 7, 2018, in order to introduce evidence of that compliance. The declaration of William R. Steinbrenner submitted in support of respondent's

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<sup>1</sup>Section references are to the Internal Revenue Code of 1986, as amended.

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motion references three Civil Penalty Approval Forms, copies of which are attached as exhibits 1, 2 and 3 to the declaration.

Taking into account the submissions of the parties and the manner in which the construction of section 6751(b) evolved, it would not be unfair to allow for the relief requested in respondent's motion. That being so, it is

ORDERED that respondent's motion is granted, and the trial record in this case is reopened pending further action by the Court. It is further

ORDERED that the above-referenced declaration, along with its exhibits, are treated as offered into evidence by respondent. It is further

ORDERED that the Clerk of the Court mark the above-referenced declaration with its attached exhibits as respondent's exhibit 26-R for identification, and as the date of this Order, amend the records of the Court to show the proffered evidence. It is further

ORDERED that the Clerk of the Court attach a copy of respondent's exhibit 26-R for identification to the copy of this Order served upon petitioners. It is further

ORDERED that petitioners' objection, if any, to exhibit 26-R shall be noted in their written response to this Order, due on or before May 21, 2018.

**(Signed) Lewis R. Carluzzo**  
**Special Trial Judge**

Dated: Washington, D.C.  
May 3, 2018