

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

PA

PATIENTS MUTUAL ASSISTANCE)
COLLECTIVE CORPORATION D.B.A.)
HARBORSIDE HEALTH CENTER, ET AL.,)
)
Petitioner(s),)
)
v.) Docket No. 29212-11, 30851-12,
) 14776-14.
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)
)
)
)

ORDER

These consolidated cases were tried in San Francisco, California in June 2016, and the parties finished briefing in January of last year. The Commissioner now moves to reopen the record to admit penalty-approval forms that he says show he complied with I.R.C. § 6751(b)(1) for the accuracy-related penalties that he determined against petitioner. Petitioner objects, and it filed a compelling response about all the ways it might be prejudiced if we were to reopen the record to admit the penalty-approval forms.

This has all the trappings of a *Chai* ghoul, see *Chai v. Commissioner*, 851 F.3d 190 (2d Cir. 2017), *aff'g in part, rev'g in part* 109 T.C.M. 1206, and *Graev v. Commissioner (Graev III)*, 149 T.C. ___ (Dec. 20, 2017), *supplementing* 147 T.C. 460 (2016), but looks can be deceiving. Petitioner is a C corporation, and that means the Commissioner doesn't have the burden of production here for showing compliance with § 6751. See *Dynamo Holdings Ltd. P'ship v. Commissioner*, 150 T.C. ___, ___-___ (slip op. at 12-13) (May 7, 2018) (citing *NT, Inc. v. Commissioner*, 126 T.C. 191, 195 (2006)). Petitioner also never argued as a defense to penalties that the Commissioner failed to comply with § 6751(b)(1) -- not in its petitions or amended petitions, at trial, or on brief. The Commissioner doesn't need to show compliance with § 6751 to win on penalties here, and the

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penalty-approval forms thus would not change the outcome of the case. *See Butler v. Commissioner*, 114 T.C. 276, 287 (2000), *abrogated on other grounds by Porter v. Commissioner*, 132 T.C. 203 (2009).

It is therefore

ORDERED that respondent's June 14, 2018 motion to reopen the record is denied.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
July 23, 2018