

UNITED STATES TAX COURT
WASHINGTON, DC 20217

SANDRA D. HALLMON,)	
)	
Petitioner,)	
)	
v.)	Docket No. 19008-19S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case is calendared for trial at the October 5, 2020, Philadelphia, Pennsylvania, Trial Session of the Court.

On July 21, 2020, the Court directed respondent to file a status report demonstrating compliance with section 6751(b)(1)¹ or notifying the Court that he was conceding the section 6662(a) accuracy-related penalty unless the parties filed a decision document that stated there is not any section 6662(a) penalty due from petitioner.

On August 18, 2020, respondent filed a Status Report indicating that the notice of deficiency upon which this case is based was issued on August 26, 2019, by the Correspondence Examination Automation Support (CEAS) program, which determined petitioner was liable for an accuracy-related penalty pursuant to section 6662(a) for tax year 2017. Respondent attached to his status report as Exhibit A a CEAS Case Summary.

Respondent further states that a 30-day letter was issued to petitioner by the CEAS program on June 24, 2019, proposing certain changes to petitioner's 2017 tax return. Respondent states that petitioner did not respond to this letter and the CEAS program issued the notice of deficiency to petitioner. Because the petitioner did not respond to the 30-day letter, respondent asserts that no Service employee

¹ Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, in effect for the year in issue.

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was involved in the assertion of the penalty. Instead, respondent argues that the CEAS program automatically calculated and proposed the penalty.

Section 7491(c) generally provides that “the Secretary shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty.” If a taxpayer challenges respondent’s penalty determination, respondent must come forward with evidence of penalty approval as part of his initial burden of production under section 7491(c). Frost v. Commissioner, 153 T.C. __, __ (slip. op. at 20) (Jan. 7, 2020). Once respondent makes that showing, the taxpayer must provide contrary evidence. Id.

Under section 6751(b)(1), such penalties shall not be assessed unless personally approved in writing by the immediate supervisor of the individual making such determination prior to sending the taxpayer an initial determination to assert such penalties. Supervisory approval is not required for “any * * * penalty automatically calculated through electronic means.” Sec. 6751(b)(2)(B).

Contrary to respondent’s assertion that no Service employee was involved in the assertion of the penalty, the Case Summary includes the name “SHEA PATRICIA” under Examiner Name. Based on the record in this case, the Court would find it helpful to receive an additional response from respondent explaining why the Case Summary includes a name of an examiner and how he has concluded that the penalty was automatically calculated if there was an examiner assigned to this case.

Upon due consideration, it is

ORDERED that, on or before September 9, 2020, respondent shall file a response to this Order, addressing the concerns of the Court as noted above.

**(Signed) Diana L. Leyden
Special Trial Judge**

Dated: Washington, D.C.
August 25, 2020