

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

CLC

JAY SILMAN, )  
)  
Petitioner(s), )  
)  
v. ) Docket No. 6526-17SL.  
)  
COMMISSIONER OF INTERNAL REVENUE, )  
)  
Respondent )

**ORDER**

This case is calendared for trial on the January 29, 2018, New York, New York trial calendar of the Court. On November 30, 2017, respondent filed a Motion for Summary Judgment (respondent's motion) and accompanying declarations by the settlement officer and counsel for respondent in support of respondent's motion. On December 21, 2017, respondent filed a First Supplement to Declaration of Counsel Byron M. Huang in Support of Motion for Summary Judgment. Respondent contends that the Court should affirm the determination of the Internal Revenue Service Office of Appeals sustaining the proposed levy to collect I.R.C. section 6695(g) penalties for petitioner's taxable year 2012. Petitioner's Opposition to Motion for Summary Judgment was filed December 26, 2017.

On December 20, 2017, the Court issued its opinion in Graev v. Commissioner, 149 T.C. No. 23 (December 20, 2017) (Graev III). Consistent with the Court of Appeals for the Second Circuit, we held that the Commissioner's burden of production for certain penalties under I.R.C. section 7491(c) includes establishing compliance with the supervisory approval requirement of I.R.C. section 6751(b). See Graev III, slip op. at 14.

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One question before us is how Graev III might affect this case and the pending motion. The Court will schedule respondent's motion for hearing. Counsel for respondent should be prepared to address the issue of respondent's position with respect to the effect of I.R.C. section 6751(b) on this case, in light of the Court's recent opinion in Graev III.

Premises considered, it is hereby

ORDERED that respondent's Motion for Summary Judgment is scheduled for hearing at the trial session of the Court scheduled to commence on January 29, 2018, in New York, New York.

**(Signed) Peter J. Panuthos**  
**Special Trial Judge**

Dated: Washington, D.C.  
January 17, 2018