

IRS AOD 2024 01: Relief for Taxpayers Facing § 6707A Penalties

Dentons Federal Tax Controversy Insights

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The IRS's recent Acquiescence Action on Decision ("AOD") 2024 01¹ marks a significant policy shift for taxpayers penalized under I.R.C. § 6707A, which targets failures to disclose reportable transactions. This new stance specifically affects those penalized because of guidance (such as a listing notice) that was issued without the required notice-and-comment procedures.

Background on Reportable Transactions and I.R.C. § 6707A

In March 2003, the Treasury released final regulations that required taxpayers to affirmatively disclose participation in "reportable transactions," of which "listed transactions" are a sub-category.² These transactions are considered tax avoidance transactions by the IRS.³ To help deter these types of tax avoidance schemes, Congress enacted § 6707A as part of the American Jobs Creation Act ("AJCA").⁴

Under § 6707A, taxpayers who do not disclose certain "reportable transactions" can face a penalty calculated as 75% of the tax benefit derived from these transactions. The penalties can range from \$5,000 for individuals⁵ to as much as \$200,000 for other taxpayers.⁶ The intent of these penalties was to help mandate transparency in complex transactions.

¹ *Green Rock LLC v. Internal Revenue Serv.*, 104 F.4th 220 (11th Cir. 2024), *action on dec.*, 2024-01 (Jan. 1, 2025) [hereinafter AOD 2024-01].

² Treas. Reg. § 1.6011-4.

³ Treas. Reg. § 1.6011-4(b).

⁴ American Jobs Creation Act § 811.

⁵ I.R.C. § 6707A(b)(3).

⁶ I.R.C. § 6707A(b)(2)(A).

To identify these transactions, the IRS used “notice, regulation or other form[s] of public guidance.”⁷ However, many of the IRS’s post-AJCA reportable transaction notices were not promulgated through the proper rulemaking procedures. Instead, the IRS generally identified reportable transactions through sub-regulatory guidance, which did not follow notice-and comment rulemaking procedures. Because this sub-regulatory guidance lacked notice-and-comment rulemaking procedures, several court decisions found that issuing these notices violated the Administrative Procedure Act.⁸

The Impact of AOD 2024 01

With AOD 2024 01, the IRS has effectively announced that it will no longer defend or enforce penalties based solely on these invalid post-AJCA guidance notices.⁹ For taxpayers who have paid or been assessed penalties under § 6707A because of such guidance, this policy shift has two major implications:

1. **Weakened Penalty Basis:**

Taxpayers penalized solely because of the invalid post-AJCA guidance now have a stronger basis to challenge those penalties. The IRS’s refusal to defend the underlying notices undermines the legal foundation for the penalties imposed under § 6707A.

2. **Potential for Relief:**

AOD 2024-01 suggests that penalties based solely on these notices may be automatically abated.¹⁰ Taxpayers might also be able to request a refund or apply for relief if they have already paid penalties. Additionally, material advisors—professional advisors involved with these transactions—may also be eligible for similar relief. Such refund requests are time-sensitive and should be discussed with your advisor at the earliest opportunity.

Practical Steps for Affected Taxpayers

If you believe you were penalized because of the disputed post-AJCA guidance, consider taking the following steps:

- **Review Your Records:**

Carefully examine any IRS correspondence or tax transcripts to determine whether your penalty results from guidance subject to AOD 2024 01.

- **Consult a Tax Professional:**

The complexities of reportable transaction rules and § 6707A penalties make professional advice crucial. A tax expert can help assess your situation and advise on the best course for requesting relief or abatement.

- **Prepare a Written Request:**

Although the IRS’s current policy hints at automatic abatement, formally requesting relief can ensure your case receives a full review. Cite relevant court decisions and AOD 2024-01 when preparing your submission. Most requests for abatement or refund are time-sensitive and should be presented to your advisor at the earliest opportunity.

- **Monitor IRS Communications:**

Stay updated on any further notices or clarifications regarding AOD 2024 01 and keep records of all communications for future reference.

⁷ Treas. Reg. § 1.6011-4(b)(2).

⁸ See *Green Rock LLC v. Internal Revenue Serv.*, 104 F.4th 220 (11th Cir. 2024); *Mann Constr. Inc. v. United States*, 27 F.4th 1138 (6th Cir. 2022); *Green Vally Investors, LLC v. Commissioner*, 159 T.C. 80 (2022).

⁹ AOD 2024-01, *supra* note 1, at 3 (“The Service will follow the Sixth and Eleventh Circuit and the Tax Court decisions in all circuits and will no longer defend post-AJCA reportable transaction notices. The Service will not . . . assert penalties under sections 6662A, 6707, 6707A.”)

¹⁰ *Id.* (“[T]he Service will concede or abate penalties asserted under sections 6662A, 6707, 6707A . . . in ongoing cases . . . resulting from identification of reportable transactions pursuant to post-AJCA notices that did not go through notice-and-comment rulemaking procedures.”)

Conclusion

AOD 2024 01 represents a welcome change for taxpayers burdened by § 6707A penalties resulting from improperly issued post-AJCA reportable transaction notices. By stepping away from defending these notices, the IRS is paving the way for affected individuals and advisors to challenge and overturn these penalties. As enforcement policies evolve, proactive engagement with a tax professional and careful review of your records remain essential to securing your tax position and ensuring compliance with updated IRS guidance.

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