



# Current Federal Tax Developments

October 30, 2023

Kaplan Financial Education

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## This Week We Look At:

Taxpayers can't rely on paid preparer as reasonable cause for late filing, even when using electronic filing

IRS could assert negligence penalty (and obtain supervisory approval) after failing to obtain approval for substantial underpayment penalty

IRS makes "temporary" electronic signature program permanent by moving it into the Internal Revenue Manual

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## Appeals Court Confirms that Boyle Standard Applies to Efiling



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- *Lee v. United States*, CA11, Case No. No. 22-10793, October 24, 2023
  - In the case of *United States v. Boyle*, 469 U.S. 241, SCOTUS ruled that “reliance on an agent” to file a tax return is not, by itself, reasonable cause for late filing
  - In 2019, the Fifth Circuit noted, in passing, that this was still an open question for electronically filed return (*Haynes v. United States*, 760 F. App'x 324, CA5, 2019)
  - Trial courts had applied *Boyle*, but no Circuit Court had yet ruled on the issue

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/eleventh-circuit-affirms-boyle-rule-applies-to-e-filed-returns/7hh7v>

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- *Lee v. United States*, CA11, Case No. No. 22-10793, October 24, 2023
  - Eleventh Circuit takes the matter on this case
  - The taxpayer had hired a CPA to prepare his returns from 2014-2016
  - Taxpayer reviewed the returns and signed the filing authorization, all before the due date
  - Had large refund each year so applied refund to estimated taxes for the following year
  - But the CPA never filed any of these returns

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“Lee submitted the tax returns for 2014 through 2016 in December 2018. The lookback period for calculating Lee’s credits therefore began in June 2015. See 26 U.S.C. §6511(b)(2)(A) (describing how a taxpayer may claim a credit only for payments made within the three years and six months preceding the filing of a return). But Lee made no 2014 tax payments after April 2015, so the agency disallowed his 2014 overpayment of \$288,409. **Unable to benefit from the 2014 overpayment, Lee owed taxes for 2015 and 2016, as well as over seventy thousand dollars in failure-to-file and failure-to-pay penalties.** In August 2019, Lee paid the IRS \$289,183.14, which settled the outstanding tax liability and penalties.”

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- *Lee v. United States*, CA11, Case No. No. 22-10793, October 24, 2023
  - Sued for a refund of taxes paid, arguing reasonable cause for the late filing of the return - District Court disagreed
  - Took the case up on appeal and had three arguments
    - He had exercised reasonable cause
    - *Boyle* does not apply to efiled returns
    - IRS improperly assessed the penalties

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/elevanth-circuit-affirms-boyle-rule-applies-to-e-filed-returns/7hh7v>



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- *Lee v. United States*, CA11, Case No. No. 22-10793, October 24, 2023
  - *Boyle* and electronic filing
    - Argued that Form 8879 is fundamentally different from a paper filed return
    - *Boyle*, the taxpayer said, had authorized preparing but the return was prepared before Form 8879 was filed
    - Nothing left for taxpayer to do once he signed the Form 8879

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- *Lee v. United States*, CA11, Case No. No. 22-10793, October 24, 2023
  - *Boyle* and electronic filing
    - CA11 disagreed - *Boyle* still applies
    - Form 8879 merely *authorizes* the tax preparer to sign the return for the taxpayer and submit it - but that's the same as having it filed merely by signing that form
    - Still had a duty to supervise the filing and assure that it happened

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- *Lee v. United States*, CA11, Case No. No. 22-10793, October 24, 2023
- Due to the fact it was e-filed, the taxpayer had exercised proper reasonable care to assure it was filed - again, CA11 disagrees
  - Does look at the duties of an ERO

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“An electronic return originator (ERO) is an authorized e-file provider and “begins the process of electronic submission of a return to the IRS” after receiving authorization (e.g., Form 8879) from the taxpayer. IRS Pub. 3112, IRS E-File Application & Participation, 15 (Oct. 2022). **An ERO may also perform tax preparation services, but the IRS considers preparation and origination distinct activities. Id.** at 2. For most taxpayers e-filing their returns, “[t]he ERO is usually the first point of contact.” Id. at 15. An ERO can originate an e-filed return in several ways, including by “[e]lectronically sending the return to a Transmitter that will transmit the return to the IRS” or by “[d]irectly transmitting the return to the IRS.” Id. **EROs must not “stockpile” returns, which the IRS defines as “waiting more than three calendar days to submit returns to the IRS after the [ERO] has all the necessary information for origination of the electronic return.”** IRS Pub. 1345, supra, at 22, 48

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- Due to the fact it was e-filed, the taxpayer had exercised proper reasonable care to assure it was filed - again, CA11 disagrees
  - Taxpayers argues these duties transferred responsibility to file the return to the CPA
  - Court notes first, he was not required to work with an agent - at the very least could have asked for paper returns and filed those with the IRS

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- *Lee v. United States*, CA11, Case No. No. 22-10793, October 24, 2023
- Due to the fact it was e-filed, the taxpayer had exercised proper reasonable care to assure it was filed - again, CA11 disagrees
  - The IRS electronic filing document the taxpayer relies upon notes an electronic return is not considered filed until the IRS acknowledges acceptance of the return
  - Only state law action against CPA for damages for failing to transmit the returns and assure they are accepted

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  - Did not find the matters were “beyond the taxpayer’s control” due to electronic filing
  - That would give every taxpayer a waiver of having to file on time due to the complexity of electronic filing - and that’s not what the law intends

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  - Note - this implies taxpayers must understand the need to obtain the efilng acceptance confirmation to assure the return was filed
  - Attempted to raise the issue that the IRS could not impose the penalty under IRC §6651(a)(2) if it disallows a credit after the return is filed - but had not raised that at the trial court level so barred on appeal

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/eleventh-circuit-affirms-boyle-rule-applies-to-e-filed-returns/7hh7v>



## Multiple Penalties Exist in IRC §6662 for Supervisory Approval Standard



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- *Kelley v. Commissioner*, T.C. Memo. 2023-126, October 23, 2023
  - Was a return filed asserting various discredited arguments - but the IRS initially refunded all taxes
  - Later automated reported system issued a notice of deficiency and added a substantial underpayment penalty under IRC §6662(a), (b)(2)
  - Did not obtain necessary supervisory approval under IRC §6751(b)(1) - so agreed could not collect that penalty

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/irs-properly-asserted-penalties-in-answer-to-petition/7hh5k>



## Multiple Penalties Exist in IRC §6662 for Supervisory Approval Standard



Photo by [Andrew Wulf](#) on [Unsplash](#)

- *Kelley v. Commissioner*, T.C. Memo. 2023-126, October 23, 2023
  - But in the Answer that conceded the §6662(b)(2) penalty, now asserted a §6662(b)(1) penalty (negligence/disregard of the rules penalty), which also references IRC §6662(a)
  - Taxpayer argues the IRS cannot substitute a §6662(b)(1) (negligence) penalty when the agency fouls up on a §6662(b)(2) penalty because both are §6662 penalties

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/irs-properly-asserted-penalties-in-answer-to-petition/7hh5k>





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- *Kelley v. Commissioner*, T.C. Memo. 2023-126, October 23, 2023
  - Supervisory approval must be obtained before first formal communication with the taxpayer that a decision has been made to assert the penalty
  - Taxpayers argue that failing to get approval for a penalty under the broad umbrella of §6662(a) taints an attempt to use an alternative cause

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/irs-properly-asserted-penalties-in-answer-to-petition/7hh5k>



## Multiple Penalties Exist in IRC §6662 for Supervisory Approval Standard



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- *Kelley v. Commissioner*, T.C. Memo. 2023-126, October 23, 2023
  - Court does not agree
    - Their interpretation would allow the IRS to assert additional causes for a §6662 penalty after getting approval only for one
    - That could even be the enhanced 40% penalty for gross valuation misstatements under IRC §6662(b)(3)
    - Therefore, each of the 8 causes under IRC §6662 is a separate penalty for approval purposes

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/irs-properly-asserted-penalties-in-answer-to-petition/7hh5k>

## IRS Makes Permanent E-Signature Program Started in COVID-19 Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- IRM 10.10.1 IRS Electronic Signature (e-Signature) Program, October 17, 2023
  - IRS decided to officially extend a program which began in August 2020, with more forms added in November 2021 when it was extended again
  - The temporary program was extended through October 2021
  - Temporary list added at IRM Exhibit 10.10.1-2 Deviation from Handwritten Signature Requirement for Limited List of Tax Forms Memorandum

[https://www.irs.gov/irm/part10/irm\\_10-010-001](https://www.irs.gov/irm/part10/irm_10-010-001)

<https://www.taxnotes.com/tax-notes-today-federal/tax-system-administration/irs-decides-extend-e-signature-perk-permanently/2023/10/23/7hh1j>

<https://www.taxnotes.com/tax-notes-today-federal/return-preparation/memo-allows-temporarily-use-e-signatures-some-forms/2020/08/31/2cwxw>

## IRS Makes Permanent E-Signature Program Started in COVID-19 Pandemic



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- IRM 10.10.1 IRS Electronic Signature (e-Signature) Program, October 17, 2023
  - Exhibit states that “Electronic and digital signatures appear in many forms when printed and may be created by many different technologies. No specific technology is required for these forms.”
  - Does not specify whether or not Knowledge Based Authentication required for these forms (does require some form of authentication)

[https://www.irs.gov/irm/part10/irm\\_10-010-001](https://www.irs.gov/irm/part10/irm_10-010-001)

<https://www.taxnotes.com/tax-notes-today-federal/tax-system-administration/irs-decides-extend-e-signature-perk-permanently/2023/10/23/7hh1j>

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