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## **CHADWICK V. COMM'R**

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# CHADWICK V. COMM'R

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 May 2, 2021

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## A RESPONSIBLE PERSON:

A person or group of people who has the duty to perform and the power to direct the collecting, accounting, and paying of trust fund taxes.

- ✓ An officer or an employee of a corporation
- ✓ A member or employee of a partnership
- ✓ A corporate director or shareholder
- ✓ A member of a board of trustees of a nonprofit organization
- ✓ Another person with authority and control over funds to direct their disbursement
- ✓ Another corporation or third party payer
- ✓ Payroll Service Providers (PSP) or responsible parties within a PSP
- ✓ Professional Employer Organizations (PEO) or responsible parties within a PEO
- ✓ Responsible parties within the common law employer (client of PSP/PEO)



Source: <https://www.communitytax.com/trust-fund-recovery-penalty/>.

## ABSTRACT

**Case Name:** Chadwick v. Comm'r of Internal Revenue, 154 T.C. 84 (Jan. 21, 2020).

**Jurisdiction:** U.S.T.C.

**Petitioner:** David J. Chadwick

**Respondent:** Commissioner of the Internal Revenue Service.

**Concepts:** Penalties and Addition Tax; Trust Fund Recovery Penalty; Summary Judgement; & Judicial Standard of Review.

**Nature of Case:** Whether written supervisor approval is required for trust fund recovery penalties to be collected against a responsible person required to submit employment taxes when penalties assessment recommendation forms were submitted by IRS revenue officers?

## INTRODUCTION

In 2016, David Chadwick was the sole member of two limited liability companies (LLC), Integrated Communications Network, LLC (ICN) and Netcast BPO Staffing, LLC (Netcast) in California. *Chadwick v. Comm'r of Internal Revenue*, 154 T.C. 85 (2020). Both companies failed to pay employment taxes collectively for five calendar quarters, which resulted in assessed trust fund recovery penalties in the amount of the owed taxes, totaling \$113,783. *Id.* at 86.

In 2017, the IRS mailed Mr. Chadwick a Notice of Intent to Levy and Notice of Your Right to a Hearing. *Id.* at 86-7. Mr. Chadwick timely requested a hearing and indicated that he could not pay the balance of the penalties assessed against him. *Id.* at 87. Mr. Chadwick was provided a conditional opportunity to settle his case or be provided with other collection alternatives if he complied with submission of his tax return for the 2015-2017 taxable years and submitted other requested documents. *Id.* Mr. Chadwick did not comply. *Id.*

The IRS Settlement Officer issued a notice of determination to sustain a levy to collect the unpaid taxes that were assessed as a penalty against him as the only responsible person to pay the employment taxes for the two LLCs. *Id.* at 88. The IRS filed a motion for summary judgement, which Mr. Chadwick failed to respond to. *Id.* Even though the Tax Court could have entered a decision against Mr. Chadwick for that reason alone, the Court issued a judgement in favor of the IRS based on the merits of the motion. *Id.* at 89.

## BACKGROUND

IRS was permitted to speed up litigation and avoid needless, pricey, time-consuming trials by filing a motion for summary judgement. Under Rule 121(b), the Tax Court “may grant summary judgement when there is no genuine dispute of material facts and a decision may be

rendered as a matter of law.” *Id.* at 88. Here, there was no dispute as to the material facts because Mr. Chadwick did not avail himself of the opportunities set forth for him by the IRS to dispute his case. *Id.* Thus, Mr. Chadwick did not properly challenge the underlying tax liability at the Collection Due Process Hearing resulting in levy of trust fund recovery penalties assessed by the IRS Settlement Officer. *Id.* at 89.

The Tax Court reviewed the IRS’ determination for abuse of discretion for sustaining the proposed levy under section 6330(c)(3), by considering whether the Settlement Officer complied with the following elements of the rule: (1) accurately verify that administrative procedures and applicable laws are satisfied; (2) take into consideration issues raised by petitioner; and (3) evaluate whether collection actions are no more intrusive than necessary for collection of taxes. *Id.* at 90. The Tax Court held that the Settlement Officer properly executed his responsibilities under section 6330(c)(3). *Id.*

Each relevant applicable law and administrative procedure were evaluated by the Tax Court, and the IRS challenged the Court, even though, the Court’s judgements were in their favor. *Id.* at 90. Under section 6751(b)(1), no penalty shall be assessed unless the initial determination receives written approval by the immediate supervisor of the person making such determination. *Id.* The issue for the Tax Court was whether the trust fund recovery penalty (TFRP) was a statutory tax or a penalty. *Id.* Section 6751(b)(1) requires that approval for penalties be timely secured since “the statute requires that written supervisory approval be obtained for the initial determination of such assessment.” *Id.* at 94. “The Internal Revenue Manual (IRM) requires that supervisory approval of TFRPs precede issuance of Letter 1153,” which is the first letter sent to employment tax violators to communicate the IRS’s decision to assert TFRPs. *Id.* At which point, petitioners may dispute the TFRPs or make a request for collection alternatives. *Id.* at 95.

## CASE DESCRIPTION

Under section 6751(b)(1), the IRS contended that the approval requirements did not apply to the TFRPs because section 6672, which authorizes the assessment of TFRPs, imposes a tax rather than a penalty. *Id.* at 90. However, the Tax Court determined that the plain text of section 6672(a) indicates that a TFRP is a “penalty.” *Id.* 90-1. Furthermore, the Court determined that Congress intended section 6672 to address “assessable penalties,” which are

penalties “the IRS may assess without regard to deficiency procedures.” *Id.* at 91. Also, it would be inconsistent of Congress to exempt section 6672 penalties from the scope of the aforementioned rules. *Id.* at 92. But, the IRS argued that a TFRP is in essence a tax liability because section 6672 operates to shift liability for unpaid taxes from the employer to the responsible person. *Id.* at 92. But, the Tax Court determined that since “the IRS never collects more than 100% of the tax, a TFRP in a practical sense may be viewed as shifting the employer’s unpaid tax liability to any responsible person who incur liability.” *Id.* at 93. Moreover, from the standpoint of the “responsible person,” whom TFRPs are imposed, the penalty is a sanction for failing to do something; willfully failing to satisfy the Federal tax obligation on behalf of the employer. *Id.* at 93.

Next, the Tax Court determined that the IRS timely secured supervisory approval of the TFRP as required by the IRM. *Id.* at 94. The IRM requires that supervisory approval of TFRPs precede issuance of Letter 1153. *Id.* at 94. For each Letter 1153 that was sent to Mr. Chadwick, a Revenue Officer completed form 4183 prior to and on the same day that Letter 1153 was sent out. *Id.* Form 4183 shows that the supervisor of each Revenue Officer approved the recommendation by affixing an electronic signature. *Id.*

Lastly, Mr. Chadwick raised the issue of alternative collection due to his inability to pay the tax. *Id.* at 95. Specifically, he requested that his account be placed in currently not collectible (CNC) status. *Id.* at 88, 95. But, he failed to supply the requested forms, financial information, and delinquent income tax returns for 2015-2017, even after an additional 30 days was granted per his request. *Id.* at 88. The Tax Court held that an IRS Appeals Officer does not abuse his discretion in denying a CNC status when the taxpayer has not complied by submitting necessary financial documents. *Id.* at 95. Thus, the Tax Court granted the IRS’ motion for summary judgement and sustained the collection action. *Id.* But, the Court noted that the Mr. Chadwick could submit a proposed collection alternative supported by his financial information to the IRS for consideration and possible acceptance. *Id.*

## CONCLUSION

For the IRS Revenue Office (RO) to assert trust fund recovery penalties against a responsible person for willfully failing to pay employment taxes, the RO’s supervisory must provide approval of Letter 1153. Letter 1153 is the first letter sent to employment tax violators to

communicate the IRS's definite decision to assert TFRPs. Section 6672 affirms that TFRPs are assessable penalties which require timely approval. The responsible person may dispute the TFRPs and or request for collection alternative if his tax returns and other financial documents support such a determination. Here, Mr. Chadwick failed to comply so a motion for summary judgement was granted against him.

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