

## **Collection Due Process Triggers Tax Court Review of Section 6707A Penalties.**

Section 6707A imposes significant penalties for the failure to report on the taxpayer's return any listed or reportable transactions, which are transactions that the IRS has determined are tax shelters. The penalty is significant, seventy-five percent of the tax reduction associated with the undisclosed tax shelter. I.R.C. § 6707A(b)(1).

To make matters worse, the Tax Court has ruled that it does not have jurisdiction to redetermine the penalty because it does not fit the definition of a deficiency and can be assessed and collected without a notice of deficiency. *Smith v. Comm'r*, 133 T.C. 424, 429 (2009).

Recently, the court addressed another method of invoking its jurisdiction: a petition following a collection due process hearing. The court concluded that it had jurisdiction to consider the penalties if their validity was raised in a collection due process action. *Yari v. Comm'r*, 2014 U.S. Tax Ct. LEXIS 38, slip op. at \*10 (Sept. 15, 2014).

Usually, when a taxpayer requests a collection due process hearing in response to a notice of levy or a notice of federal tax lien, the underlying merits of the tax liability is off limits. As the court noted in *Yari*, however, there is an exception: the underlying tax liability can be challenged at the collection due process hearing "if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability." I.R.C. § 6330(c)(2)(B). Since the petitioner in *Yari* had challenged the underlying liability for the Section 6707A penalty at the collection due process hearing, the Tax Court had jurisdiction to review that issue. *Yari v. Comm'r*, 2014 U.S. Tax Ct. LEXIS 38, slip op. at \*10.

This gives someone subject to the penalty an alternative to consider in lieu of paying the penalty and then suing for a refund.

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