

To: Members of the House Committee on Ways and Means
From: National Taxpayers Union
Date: September 16, 2025
Subject: NTU's views on September 17, 2025, Committee Markup

I. Introduction

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, we write to express our views on legislation slated for consideration before the House Committee on Ways and Means on September 17, 2025. NTU applauds the Committee for its continued efforts to reduce tax and regulatory burdens and support greater government efficiency. As such, **NTU strongly urges Committee members to support H.R. 5349 and H.R. 5346.**

II. Legislation

NTU is proud to support the following bills at the Committee's markup and encourages all members to move them to the House floor for further consideration.

H.R. 5349, The Tax Court Improvement Act from Reps. Nathaniel Moran (R-TX) and Terri Sewell (D-AL): The legislation facilitates a quicker resolution of disputes or settlements by permitting the court to issue third-party subpoenas prior to hearings and pre-trial conferences, with the goal of encouraging settlements. NTU believes that, in most instances, this change under Section 2 would work to the benefit of taxpayers, whose legal resources are far more limited than the government's. And while NTU supports the flexibility that Section 3 provides in allowing special trial judges to absorb some of the Tax Court's workload, we would urge Congress to explore in greater depth why this workload has grown so voluminous in the first place. NTU contends that it is the IRS's unreasonable positions against taxpayers—particularly in Section 170(h) and 831(b) cases—that have needlessly burdened the court with thousands of cases.¹

The legislation will also allow the Tax Court to waive deadlines in appropriate cases, just as any other court in America can.² The Tax Court is a crucial forum for taxpayers, for it is the only way a taxpayer can have an independent authority resolve a tax dispute without first having to pay all outstanding amounts, using expedited and less formal procedures. Otherwise, taxpayers must undertake the expense and time of filing full litigation in a federal district court.

The IRS unfortunately tries to keep cases out of Tax Court, using procedural points to block taxpayer cases. It has taken the unyielding position that taxpayers automatically lose if they are even one day late in filing. The IRS continues making these claims even after the Supreme Court ruled unanimously in 2022 that the 30-day deadline to stop a lien could be waived by the Tax Court in appropriate

¹ See Pete Sepp, "11 Taxpayer Questions for the IRS Chief Counsel Nominee," Sep. 2025, <https://www.ntu.org/publications/detail/11-taxpayer-questions-for-the-irs-chief-counsel-nominee> ("Between partnership conservation easement arrangements, which the IRS has audited at a near 100% rate, and small business captive insurance, which the IRS has treated with similar suspicion, over 2,500 cases sit on court dockets, some of them for years.").

² See *Young v. United States*, 535 U.S. 43, 49 (2002) (collecting cases on equitable tolling).

circumstances (equitable tolling).³ (The IRS was making its argument that deadlines cannot be waived at a time when it was months behind on a backlog of 5.9 million unprocessed individual tax returns and taking 260 days to respond even to identify theft correspondence.) Several cases are pending regarding the 90-day deadline to petition to Tax Court, and the IRS is again arguing that the Tax Court should dismiss all late taxpayer filings. Worse, any dismissal by the Tax Court is treated as definitive, blocking the taxpayer from suing for a refund in District Court.

This legislation would clarify both points: explicitly authorize the Tax Court to equitably toll the 90-day deadline and to allow taxpayers who do file late to sue for refund in District Court without the Tax Court dismissal blocking their ability to do so. Considering the IRS's routine assertions that tolling should never work to the government's detriment, even when the IRS behaves egregiously, Section 5 of this bill would bring welcome change. The changes would help taxpayers get their day in court, as well as resolve current litigation and conflicting court rulings on what the statute means.

H.R. 5346, The Fair and Accountable IRS Reviews Act from Rep. Glenn Grothman (R-WI): This legislation would protect taxpayers facing IRS penalties by clarifying in statute that IRS agents must receive approval from their immediate supervisor prior to imposing penalties. Included in the NTU-supported IRS Restructuring and Reform Act (RRA) of 1998, 26 U.S.C. § 6751(b)(1) requires that an IRS agent's "immediate supervisor" provide a signature of approval at the initial determination of a penalty. The purpose was not only to provide a pro-taxpayer safeguard to prevent the IRS from using penalties as bargaining chips, but also to create a trail of documentation that would benefit both taxpayers and the government in collection due process situations. However, a rule proposed under the Biden Administration and finalized at the eleventh hour before President Trump took office complicated the intent of this statute.

Instead of abiding by the statutory rule of "no supervisory signature, no penalties," the IRS proposed its supervisory signature rule to broadly interpret the definition of immediate supervisor as anyone who approves penalties and allow for supervisory approval to be obtained at any stage of the penalty process. Under this interpretation, IRS agents could propose a taxpayer penalty without their immediate supervisor's approval, then later obtain the signature approval of nearly any coworker as a rubber stamp. Unfortunately, it is clear based on circumstances leading to the release of the supervisory signature rule that the IRS intended for this regulation to greenlight deliberate avoidance of statute. Prior to the supervisory signature rule, the Tax Court frequently disallowed penalties assessed by the IRS citing failure to obtain approval from an immediate supervisor. The supervisory signature rule attempts to broaden both the definition of a supervisor and the timeline in which approval is needed merely to ensure that future penalties are upheld in court.

In response, this legislation admirably defines the timing of a penalty's approval as before the notice of intent is given to the taxpayer, and requires that it be "personally approved (in writing) by the immediate supervisor of the individual making such determination." Nonetheless, given the Service's checkered history with 6751(b), we urge Congress to instruct the IRS to develop a form, capable of

³ See *Boechler v. Commissioner*, 596 U.S. 199 (2022); Joe Bishop-Henchman, "Victory! IRS Loses Again 9-0 in Supreme Court Decision in 'One Day Late' Case," Apr. 2022, <https://www.ntu.org/foundation/detail/victory-irs-loses-again-9-0-in-supreme-court-decision-in-one-day-late-case>.

being signed electronically with identity verification and archived (similar to the attestation on a 1040) for supervisory approval of penalties.

III. Conclusion

Both H.R. 5346 and H.R. 5349 are largely embodied in the Taxpayer Assistance and Service Act, which the Senate Finance Committee drafted on a bipartisan basis and released early this year. NTU believes that it is vital for the House and Senate to continue working toward passage of additional taxpayer rights and tax administration reforms this year, whether as a package or as separate pieces of legislation. **H.R. 5346 and H.R. 5349 should be top priorities** in this regard.