

Court Upholds IRS Authority to Certify Employer Shared Responsibility Penalties

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Supreme Linen Services, Inc. v. U.S., 2026 WL 1220078 (S.D. Fla. 2026)

An employer sued the federal government seeking a refund of an employer shared responsibility penalty assessed by the IRS for failure to offer minimum essential coverage as required by the Affordable Care Act (ACA). As background, penalties may be assessed only after an applicable large employer has received certification that at least one full-time employee has enrolled in a qualified health plan. In this case, the employer filed with the IRS for a refund, arguing that because neither HHS nor an Exchange had issued a certification before the IRS assessed the penalty, the assessment was invalid. However, the IRS denied the employer's refund claim, asserting that IRS Letter 226-J, which initially proposed the penalty assessment, constituted the required certification. The employer sued, relying on an earlier federal trial court's ruling that the ACA gives certification authority exclusively to HHS, not the IRS. That earlier ruling also set aside as void and unenforceable an HHS regulation that gave the IRS authority to provide the certification before assessing a penalty.

Disagreeing with the earlier ruling, the court held that the IRS has the authority to issue the certification. The court reasoned that administration of the Code rests with the IRS absent an express delegation of authority to another agency, and that no such express delegation existed here. The court further determined that the HHS regulation that the earlier court set aside does not establish that HHS is responsible for issuing the certification. Concluding that Letter 226-J satisfied the certification requirement, the court ruled without a trial in favor of the government and denied the employer's refund claim.

EBIA Comment: This decision creates a split at the trial court level on the question of whether the IRS or HHS has the authority to issue the certification required before an employer shared responsibility penalty can be assessed. Employers and advisors should continue their compliance efforts while closely monitoring further developments, including any appeals in both cases. For more information, see EBIA's Health Care Reform manual at Sections XXVIII.D ("Assessable Payment (Penalty Tax) When Coverage Not Offered to Enough Full-Time Employees and Dependents (the 'Subsection (a) Penalty')") and XXVIII.H ("Payment of Premium Tax Credits, Notification From Exchange, and Assessment of Employer Penalties"). See also EBIA's Form 1094/1095 Workbook at Section XV.A ("IRS's Process for Assessing Penalties").

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