Dueling Districts: Does IRS Assessment of a Penalty Without Jury Trial Violate the Seventh Amendment?

by Robert S. Horwitz

Two district court opinions issued days apart, *United States v. Sagoo*, WL 2689912 (N.D. Tex. September 19, 2025), and *HDH Group, Inc. v. United States*, 2025 WL 2711877 (W.D. Penn. September 23, 2025), reached opposite results to the question of whether the IRS assessment of penalties without a prior jury trial violates the Seventh Amendment. The basis for the decisions conflict, which is why they are dueling districts.

The Seventh Amendment states that "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." In *SEC v. Jarkesy*, 603 U.S. 109 (2024), the Supreme Court held that the assessment by the SEC of a civil monetary penalty for securities fraud without a prior jury trial violated the Seventh Amendment's right to jury trial. At common law, an action seeking to collect a monetary remedy for fraud could only be brought in a court of law and not an equity or admiralty court. The Supreme Court reasoned that the SEC antifraud provisions replicate common law fraud and that a proceeding to impose a monetary penalty for securities fraud was analogous to a common law action for fraud, for which a jury trial was guaranteed by the Seventh Amendment. Since the SEC was seeking a monetary penalty for fraud it had to institute suit in a district court prior to assessment, which provided Jarkesy an opportunity for trial by jury.

Sagoo

This brings us to Ms. Sagoo. She was a U.S. person who in 2011, 2012 and 2013 had foreign financial accounts in Kenya, England and India. The balance in the accounts was over $1 million in each year. She failed to file FBAR reports. In December 2022, the IRS assessed a $1,002,000 penalty against Ms. Sagoo for willful failure to file an FBAR. When she failed to pay the penalty, the U.S. filed a lawsuit to reduce the assessment to judgment. Ms. Sagoo filed a motion to dismiss for failure to state a claim under Rule 12(b)(6), Fed. R. Civ. Pro. The grounds asserted were that the assessment (a) violated the Seventh Amendment, (b) was made in violation of 31 U.S.C. §§5314 and 5321(a)(5); and (c) violated the Eighth Amendment prohibition against excessive fines. The district court granted the motion on the ground that the assessment violated the Seventh Amendment right to trial by jury.

In response to the motion to dismiss, the Government conceded that Ms. Sagoo is entitled to a jury trial. Its argument on the Seventh Amendment right to jury trial is that Ms. Sagoo had the right to a jury trial to determine liability but waived it by not requesting jury trial with her answer. The Government did not allege that the public rights exception applied. Public rights are "rights of the public-that is rights pertaining to claims brought by or against the United

States." *Granfinanciera, S. A. v. Nordberg*, 492 U. S. 33, 68-69. They are historically actions that could have been determined by the legislative or executive branch alone even if presented in a form that the judicial power was capable of acting on. One area that the courts have defined as falling in the public rights exception is taxation. The Government argued that since Ms. Sagoo has the right to a jury trial in district court to determine her liability *de novo*, the Seventh Amendment had not been violated. The Government's brief focused on Ms. Sagoo's other claims.

Citing *AT&T, Inc. v. FCC*, 135 F.4th 230, 242 (5th Cir. 2025), the district court pointed out that the Government did not point to any authority supporting the proposition that "the constitutional guarantee of a jury trial is honored by a trial occurring after an agency has already found the facts, interpreted the law, adjudged guilt, and levied punishment." The district court pointed to the Fifth Circuit holding in *AT&T, Inc. v. FCC* that a jury trial following the assessment of a civil penalty falls short of the constitutional guarantee.

The district court followed the Fifth Circuit's reasoning in *AT&T, Inc. v. FCC,* in determining that an after-the-fact jury trial does not protect a person's Seventh Amendment right. First, the agency has already adjudicated liability without a neutral factfinder. In determining Ms. Sagoo's liability, the IRS acted as prosecutor, jury and judge. Second, the administrative adjudication of civil penalties comes with "real life" consequences, including the threat of pay or get sued, reputational harm and administrative offsets. Third, the only opportunity Ms. Sagoo has to a jury trial on liability is if she fails to pay and the Government brings an action to collect the penalty. The district court therefore held, consistent with *AT&T, Inc. v. FTC*:

> Because the Government (1) adjudicated liability and levied civil penalties against Ms. Sagoo (2) that had real world consequences, and (3) an after-the-fact trial brought by the Government would be Ms. Sagoo's sole opportunity to appear before a jury, the Court holds that the Government violated Ms. Sagoo's Seventh Amendment right to a civil jury trial. Accordingly, the Court must DISMISS this action.

Footnote omitted.

As the district court noted in footnote 12, the Government's concession that Ms. Sagoo is entitled to a jury trial under the Seventh Amendment meant the court did not need to address the "threshold question" of whether there was a common law analogue to the FBAR willful penalty. The language of the Seventh Amendment, and the decisions of the Supreme Court in *Jarkesy* and the Fifth Circuit in *AT&T, Inc. v. FCC*, however, focused on whether there was a common law analogue to the penalty imposed. That the willful FBAR penalty requires concealment, or misrepresentation may make it analogous to common law fraud. But whether a court would hold that there is a common law analogue would require the Department of Justice not to concede the issue.

The district court arguably erred in stating that:

> Ms. Sagoo only has access to an Article III court with a jury *after* the penalty has been assessed. And even after the penalty is assessed, Ms. Sagoo does not have the opportunity to exercise her Seventh Amendment rights unless she refuses to pay the penalty and the Treasury chooses to bring an action to convert the penalty into a judgment.

In fact, Ms. Sagoo could have paid $1 toward the assessment and sued in district court under the Little Tucker Act, 28 U.S.C. §1346. The Government would have filed a counterclaim for the unpaid balance and Ms. Sagoo could then have requested trial by jury.

HDH Group, Inc

This brings us to *HDH Group*. HDH operated a captive insurance program. Determining that HDH was a promoter of an abusive tax avoidance structure, the IRS assessed $6.564 million in promoter penalties against it under IRC §6700 on November 13, 2023. Under IRC §6703, a person against whom a promoter penalty is assessed can, within 30 days after notice and demand, pay 15% of the penalties and file a refund claim. Within 30 days after the claim for refund is denied (or within 30 days after the end of 6 months from the date the claim was filed) the person may then file a refund suit in district court. If this procedure is filed, the IRS is prohibited from taking any action to collect the remainder (other than filing a counterclaim) until the refund suit is resolved. Following these procedures, HDH paid $989,000 and filed a refund claim within 30 days of notice and demand. The IRS disallowed the claim for refund and HDH filed its refund suit. The Government counterclaimed for the unpaid balance. HDH moved to dismiss the counterclaim and moved for summary judgment on its refund claim. The ground for both motions was that assessment of the promoter penalties without a prior jury trial violated the Seventh Amendment. The district court denied both motions, holding that the assessment did not violate the Seventh Amendment.

According to the district court, the Government argued that HDH had a statutory right to bring a refund suit in district court to contest the assessment and have a jury determine liability. The Government focused on a separation of powers arguments: in tax matters, Congress' formula is assessment, administrative review, and payment all occurring before judicial review. The court stated whether the statutory scheme violated the constitution requires a two-step analysis: step one is to determine whether the Seventh Amendment is implicated; step two is to determine if the statutory scheme falls under the public rights exception. As we will see, the second step was never reached.

The district court looked at three Supreme Court cases involving the Seventh Amendment and then looked to recent Third Circuit cases. *Atlas Roofing Co. v. Occupational Safety & Health Rev. Comm'n*, 430 U.S. 442, involved a statutory scheme under OSHA that allows for administrative imposition of civil penalties for violating statutory duties regarding workplace conditions. An employer can challenge the proposed penalties administratively before an OSHA administrative law judge (ALJ) and can appeal an unfavorable decision to a court of appeals. In any appeal the ALJ's findings of fact are conclusive if supported by "substantial evidence." The Supreme Court held that the Seventh Amendment was not violated because the statutory scheme fell under the public rights exception. In doing so, the Supreme Court stated:

> Thus, taxes may constitutionally be assessed and collected together with penalties, with the relevant facts in some instances being adjudicated only by an administrative agency.

The next case discussed was *Gianfinanciera SA v. Nordberg*, 492 U.S. 33, which clarified the extent to which a jury trial may be circumvented consistent with the Seventh Amendment. It involved a challenge to the Bankruptcy Code provision that allowed a bankruptcy court to decide trustee suits to void fraudulent transfers and award damages without a jury. The Supreme Court examined the cause of action to determine whether it was analogous to a common law cause of action ordinarily decided by English law courts rather than equity or admiralty courts. To determine whether the statutory scheme implicated the Seventh Amendment, the Supreme Court formulated a two-step analysis:

> First, we compare the statutory cause of action to 18^{th}-century actions brought in courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature.

The Supreme Court held that the fraudulent transfer action was legal in nature, thus implicating the Seventh Amendment. The Supreme Court then turned to whether the public rights exception applied, stating:

> Congress' power to block application of the Seventh Amendment to a cause of action has limits. Congress may only deny trials by jury in actions at law … in cases where 'public rights' are litigated: "Our prior cases support administrative factfinding in only those situations involving 'public rights,' *e.g.* where the Government is involved in its sovereign capacity under an otherwise

> valid statute creating enforceable public rights. Wholly private tort, contract and property cases, as well as a vast range of other cases, are not all implicated.

The fraudulent transfer action involved private, rather than public, rights and thus required jury trial.

The district court next turned to *Jarkesy*. It noted the that matters involving private rights may not be removed from Article III courts. A lawsuit concerns private rights if it "is made of the stuff of traditional actions at common law tried by courts at Westminster in 1789." Cases involving public rights, on the other hand, could be determined by the legislative or executive branches even if presented in a form that a court could act upon it. In such cases, an Article III court is not required in the initial determination.

The district court then discussed two Third Circuit cases involving the public rights exception: *Axalta v. FAA*, 144 F.4th 467, and *Sun Valley Orchards v. Department of Labor*, 148 F.4th 121. Axalta involved a civil penalty assessed by the FAA for improperly packing paint for transportation, where the Third Circuit held the public rights exception applied. *Sun Valley Orchards* held that civil penalties and a back wages order imposed by the Department was not a public right and thus a jury trial was required.

Turning to the case at hand, the district court stated that the §6700 penalty elements were closely related to the elements of common law fraud.[1] Thus, the Seventh Amendment was implicated. The district court stated that if HDH was not deprived of its right to a jury trial, there was no need to determine whether the public rights exception applies. The statutory framework of the promoter penalty permits de novo review of the assessment, with the burden of proof on the Government, and allows for jury trial. The district court found this to be in “stark contrast” to the statutory schemes in the cases it analyzed, where the administrative determination of liability was not subject to de novo review and the facts

---

[1] In *Stone v. White*, 301 U.S. 532, the Supreme Court likened tax refund suits to equitable actions in assumpsit and stated:

> The statutes authorizing tax refunds and suits for their recovery are predicated upon the same equitable principles that underlie an action in assumpsit for money had and received. *United States v. Jefferson Electric Co.,* 291 U. S. 386, 291 U. S. 402. Since, in this type of action, the plaintiff must recover by virtue of a right measured by equitable standards, it follows that it is open to the defendant to show any state of facts which, according to those standards, would deny the right, *Moses v. Macferlan, supra,* 2 Burr. 1005 at 1010; *Myers v. Hurley Motor Co.,* 273 U. S. 18, 273 U. S. 24; *cf. 6 U. S.* v. *Hackley,* 2 Cranch 342, even without resort to the modern statutory authority for pleading equitable defenses in actions which are more strictly legal, Jud.Code, § 274b, 28 U.S.C. § 398.

found by the agency were binding on the court if supported by the record. The court concluded:

> Not so here. Once HDH initiated a refund action, it began with a clean slate. As in any civil action, the burden is placed on the IRS to prove HDH's liability in this Court in the ordinary course of federal litigation. HDH has not been deprived of its right to a jury trial under the Seventh Amendment.
>
> In each of the cases discussed above, the respective court was required to examine whether the administrative proceedings at issue were encompassed by the Seventh Amendment's public rights exception because there was no available jury trial. This case is different. Because the Court holds that HDH has not been deprived of the right to a jury trial, the Seventh Amendment has not been violated. It is not necessary for the Court to decide whether the IRC § 6700 penalty falls under the public rights exception to the Seventh Amendment.

Note that this is directly contrary to the *Sagoo* opinion, which rejected the Government's claim that since defendant had a right to jury trial post assessment there was no Seventh Amendment violation.

One month before the opinions in *Sagoo* and *HDH Group, Inc*., the Tax Court in *Silver Moss Properties, LLC v. Commissioner*, 165 T.C. No. 3, held that the Seventh Amendment does not apply to the civil fraud penalty under IRC §6663. We blogged about that case: https://www.taxlitigator.com/wp-content/uploads/2025/08/Silver-Moss-Blog.pdf. Based on the Tax Court's analysis in *Silver Moss Properties*, the Tax Court would probably hold that the Seventh Amendment does not apply to the accuracy-related penalties contained in IRC §§6662 and 6662A.

We now have three opinions on whether penalty assessments by the IRS require jury trials pre-assessment. The opinions are in not completely reconcilable. In *Sagoo* the Government's entire argument was that the taxpayer had the right to a jury trial on liability post-assessment and nothing more was required, which the district court rejected. In *HDH* the court held that a jury trial on liability post-assessment is consistent with the Seventh Amendment, noting that HDH did not claim that requiring a 15% payment to sue violated the Seventh Amendment. The court did not reach the Government's argument that the public rights exception applied. The courts in both *Sagoo* and *HDH* determined that the suit involved an action that was analogous to a common law fraud action. In *Silver Moss Properties* the Tax Court held that a suit for fraud against the Government is not comparable to a suit by a private party alleging fraud, and thus there was no right to jury trial.

We can expect to see more cases in the coming months involving the claim that penalties assessed by the IRS are illegal because they were made without a prior jury trial. It may be years before we have an answer to the question of whether the Seventh Amendment right to jury trial applies to penalties assessed by the IRS.

Robert S. Horwitz *is a Principal at Hochman Salkin Toscher Perez P.C., former Chair of the Taxation Section, California Lawyers Association, a Fellow of the American College of Tax Counsel, a former Assistant United States Attorney and a former Trial Attorney, United States Department of Justice Tax Division. A graduate of Northwestern University School of Law, he represents clients throughout the United States in federal and state administrative civil tax disputes and tax litigation as well as defending clients in criminal tax investigations and prosecutions. He received the 2022 Joanne M. Garvey Award for lifetime achievement in and contribution to the field of tax law from the Taxation Section of the California Lawyers Association.*