

Defeating the IRS at Trial: Lessons from the Taxpayer Victory in *Ankner v. United States*

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After successfully trying *Ankner v. United States* and defeating a multi-million-dollar promoter-penalty assessment, Matthew S. Reddington analyzes what the verdict means for the government's burden of proof under IRC § 6700—and for taxpayers and advisors facing promoter investigations.

In *Ankner v. United States*, a federal jury rejected the Internal Revenue Service's attempt to impose approximately \$4 million in promoter penalties under IRC § 6700 against a captive insurance manager. [Janine Campanaro](#) and I served as trial counsel for the taxpayer and successfully tried the case to verdict in the United States District Court for the Middle District of Florida. The decision offers an important reminder for businesses, advisors, and professionals facing promoter-penalty investigations: even in industries the IRS has publicly targeted, the government must still prove each statutory element of § 6700 at trial. When the government cannot meet that burden, the penalties cannot stand.

As the trial record and jury verdict in *Ankner* illustrate, promoter-penalty disputes frequently turn not on sweeping policy debates about the legitimacy of an industry, but on far more specific evidentiary questions. The government must prove that materially false statements were made regarding the tax benefits of the transaction and that the alleged promoter knew or had reason to know those statements were false. When those elements are carefully examined through witness testimony, documentary evidence, and expert analysis, the government's theory does not always hold.

§ 6700 Promoter Penalties Require the Government to Prove Specific Elements

Internal Revenue Code 6700 authorizes the IRS to impose substantial penalties on individuals or businesses that promote abusive tax shelters. The statute permits penalties equal to 50% of the gross income derived from the promotional activity, which can quickly result in multi-million-dollar assessments.

Despite the severity of the penalty, the government must still establish specific statutory elements when the penalty is challenged in court.

In particular, the government must prove:

- **A False or Fraudulent Statement**

The promoter made false or fraudulent statements regarding the tax benefits of a transaction.

- **Knowledge or Reason to Know**

The promoter **knew, or had reason to know**, that the statements were false.

In practice, the knowledge requirement frequently becomes the most contested issue in promoter-penalty litigation.

A Federal Jury Found the Government Failed to Meet That Burden in Ankner

Ankner v. United States arose from the government's investigation of a captive insurance manager who assisted small businesses in forming insurance companies intended to qualify under IRC § 831(b).

Rather than focusing exclusively on promotional statements regarding tax benefits, the government argued that the underlying captive insurance arrangements did not constitute legitimate insurance companies. Based on that premise, the government asserted that the captive manager and related entities made false statements regarding the tax consequences of participating in the arrangements.

After paying a portion of the assessed penalties permitted in promoter-penalty disputes, the taxpayer filed suit challenging approximately \$4 million in penalties related to tax years 2010 through 2016.

Following the trial, the jury concluded that the government failed to carry its burden of proof, and the taxpayer was not liable for the penalties.

Although jury verdicts are necessarily fact-specific, the case underscores an important point: even in areas the IRS has identified as enforcement priorities, the government must still prove each element of § 6700.

Traditional Promoter-Penalty Cases Often Involved Clear Tax-Avoidance Schemes

Historically, many litigated § 6700 cases involved blatantly abusive tax-avoidance schemes, where the government's evidentiary burden was comparatively straightforward.

For example, in *United States v. Schulz*, the defendants promoted materials instructing taxpayers how to stop withholding and paying federal income taxes. The court concluded that the promoters knowingly advanced positions repeatedly rejected by the courts.

Similarly, in *United States v. RaPower-3 LLC*, the government successfully pursued promoter penalties against a company marketing solar-energy technology that was incapable of producing electricity. Participants were promised tax benefits tied to equipment that never functioned as represented.

In *Tarpey v. United States*, the Ninth Circuit affirmed an \$8.5 million promoter penalty related to a timeshare-donation scheme, emphasizing the broad scope of § 6700 when determining the gross income derived from the promotional activity.

These cases involved clear factual records demonstrating knowingly false representations.

By contrast, more recent promoter-penalty investigations increasingly involve legitimate industries and complex transactions, where the relevant facts and legal standards are far more nuanced.

The IRS Is Expanding the Use of Promoter Penalties Across Multiple Industries

The significance of *Ankner* must also be viewed against the backdrop of expanding IRS enforcement initiatives.

In recent years, the IRS has increasingly relied on promoter penalties as a mechanism to deter activity in industries it believes involve aggressive tax planning. Current enforcement efforts have focused on areas such as:

- Micro-captive insurance arrangements
- Syndicated conservation easements

- Employee Retention Credit (“ERC”) promotions
- Certain partnership basis-adjustment transactions

The IRS’s Office of Promoter Investigations has become particularly active in these matters, and promoter-penalty assessments are frequently pursued alongside broader civil or criminal investigations.

Given the scale of potential penalties, these disputes can carry significant financial and reputational consequences for businesses and advisors.

For Taxpayers and Advisors Facing § 6700 Investigations, Litigation Strategy Matters

For taxpayers, captive managers, tax advisors, and other professionals facing promoter-penalty investigations, *Ankner* highlights an important strategic point: § 6700 cases ultimately turn on proof of statutory elements—not simply the IRS’s view of the underlying transaction.

Promoter-penalty disputes often begin with extensive government investigations that focus heavily on the perceived legitimacy of the transaction itself. While those issues may form part of the broader context, the government must ultimately prove far more specific facts at trial—namely, that false statements were made and that the alleged promoter knew, or had reason to know, those statements were false.

In practice, those evidentiary requirements can present meaningful challenges for the government.

Because promoter-penalty cases frequently involve complex industries, expert testimony, and extensive factual records, early strategic guidance is critical. Decisions made during the investigative stage—often long before litigation begins—can substantially influence how the case develops if it proceeds to court.

For that reason, businesses and advisors confronting potential § 6700 exposure should consider engaging counsel with significant experience litigating complex tax disputes through trial. Promoter-penalty cases are not merely technical tax controversies; they are fact-intensive litigation matters that require careful development of the evidentiary record and a disciplined focus on the government’s burden of proof.