

American College of Tax Counsel Files Amicus Brief with U.S. Supreme Court

ROCHESTER, NY, UNITED STATES, September 5, 2024 /EINPresswire.com/ -- The American College of Tax Counsel (the "College") announces the filing, on August 29, 2024, of an amicus brief with the United States Supreme Court in the case of John Paul Salvador v. United States (No. 24-108). The College filed the brief in support of Salvador's petition for a writ of certiorari. The issue in the



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Bahar Schippel, President of the American College of Tax Counsel

case is whether a late but otherwise correctly filed tax return constitutes a "return" for purposes of Section 523(a) of the Bankruptcy Code. The College's brief asks the Supreme Court to address the issue in order to bring uniformity and predictability to the question of whether tax debts related to late-filed returns are dischargeable in bankruptcy.

Background of the Case

Section 523(a)(1)(B)(i) of the Bankruptcy Code prevents a debtor from discharging a tax debt for which a return was not filed. Circuit courts and taxing authorities have

adopted at least four distinct approaches to determine whether tax debt related to a late-filed return is nondischargeable under the provision. The First, Sixth, Seventh, and Ninth Circuits apply the test established by the Tax Court in *Beard v. Commissioner* for what constitutes a valid return and maintain that a late return that is a reasonable attempt to comply with the tax law is a return for purposes of section 523(a)(1)(B)(i). The Eighth Circuit also applies the *Beard* test but looks no further than the face of the return and not to the circumstances surrounding its delinquency. If a return on its face constitutes a reasonable attempt to comply with the tax law, then according to the Eighth Circuit, it is a return regardless of how late it is. There is also the so-called "one-day rule" based on language added by Congress to the statute in 2005 that defines a return as one that meets the requirements of the applicable non-bankruptcy law, including tax return filing requirements. The First, Fifth, and Sixth Circuits interpret this language to mean that a return filed one day after the deadline is not a return. Still further, the Internal Revenue Service has adopted the position that a return filed after an assessment of the relevant tax does not count as a return.

The current patchwork application of section 523(a)(1)(B)(i) leaves millions of Americans who file for bankruptcy uncertain as to whether their tax debts will be discharged.

The College's Brief

The College's brief urges the Supreme Court to bring uniformity to this long-contested issue. The College explains that the Constitution requires uniform application of federal tax and bankruptcy laws. The Framers understood that the lack of uniformity erodes faith in government and bankruptcy and tax administration. The inconsistent application of section 523(a)(1)(B)(i) moreover negatively affects millions of Americans who file for bankruptcy as well as taxing authorities. Abigail Burke, Counsel to the College on the brief, noted that "the current patchwork application of the law serves no one, and this case presents an opportunity for the Court to finally bring uniformity to this intersection of bankruptcy and tax law." Bahar Schippel, President of the College, observed that "this amicus brief lines up squarely with our mission of supporting the fair and consistent application of tax laws, particularly on issues like this that affect such a large number of taxpayers."

About Amicus Briefs

A brief by Amicus Curiae ("friend of the court"), known familiarly as an amicus brief, allows a person or organization with a strong interest in or important views on the subject matter of a case to file a brief explaining those views and urging the court to rule in a manner consistent with those views. Amicus briefs are often filed in cases of broad public interest and are filed with the permission of the court and typically, as in this instance, with the consent of all the parties in the case. The College's brief in this case was submitted by its governing Board of Regents, represented by attorneys Andrew Weiner and Abigail Burke of Kostelanetz, LLP in Washington, D.C.

About the American College of Tax Counsel

The American College of Tax Counsel, founded in 1981, is a nonprofit association of tax attorneys in private practice, law, business, and graduate school teaching positions, and government, who are recognized for their excellence in tax practice and their substantial contributions and commitment to the legal profession. One of the chief purposes of the College is to provide a mechanism for input by tax attorneys into the development of U.S. tax laws and policy. A Board of nineteen Regents serves as the governing body of the College, with one regent drawn from each of the thirteen federal judicial circuits, plus two at-large positions. The Board is rounded out by the four members of its Executive Committee—President, Vice President, Secretary-Treasurer, and Immediate Past President. The College can be found online at <http://www.actconline.org>.

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