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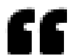
American College of Tax Counsel Files Amicus Brief with U.S. Tax Court

ROCHESTER, NY, UNITED STATES, September 16, 2024 /EINPresswire.com/ -- The American College of Tax Counsel (the “College”) announces the filing of an amicus brief with the United States Tax Court on September 6, 2024, in the case of Sunil S. Patel & Laurie M. McAnally Patel, et al. v. Commissioner (Nos. 24344-17, 11352-18 and 25268-18).



> The amicus brief filed in the Patel case addresses an issue of first impression that could impact a broad range of taxpayers, fitting squarely with our mission of supporting sound tax administration.”
>
> *Bahar Schippel, President of the American College of Tax Counsel*

The College filed the brief in support of Petitioners. This brief was filed in response to the Court’s July 19, 2024 Order (as modified by the Court’s August 22, 2024 Order) to address the issues of: (1) whether section 7701(o) of the Internal Revenue Code (the “Code”) requires a threshold relevancy determination; and (2) when the economic substance doctrine may be “relevant” under section 7701(o).

The College’s brief urges the Court to recognize the need for a threshold relevancy determination under section 7701(o) and the need to exclude statutes enacted by Congress to influence taxpayers’ behavior (“tax incentive statutes”) from the application of the economic substance doctrine.

Background of the Case

The economic substance doctrine allows courts, in certain circumstances, to disregard a transaction—although technically compliant with the Code—that is undertaken solely for tax purposes or tax avoidance. In this case, Petitioners reported deductions on their income tax returns for insurance premiums paid on a micro-captive insurance arrangement. The Internal Revenue Service (the “Service”), following examination, disallowed the deductions and imposed numerous accuracy-related penalties, including under section 6662(b)(6), asserting that the transaction giving rise to the deductions lacked economic substance under section 7701(o).

Enacted in 2010, section 7701(o) clarified the longstanding judicial doctrine of economic substance, which courts had developed (with significant variability) since the seminal Supreme Court decision in Gregory v. Helvering in 1935. The same act that codified section 7701(o) also established in section 6662(b)(6) a strict liability accuracy-related penalty attributable to any

disallowed tax benefits for a transaction lacking economic substance. Section 7701(o)(1) provides that "[i]n the case of any transaction to which the economic substance doctrine is relevant, such transaction shall be treated as having economic substance only if (A) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position, and (B) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction" (emphasis added).

Section 7701(o)'s legislative history, guidance published by the Treasury Department and the Service and pre-enactment case law all support the statute's express language that the doctrine requires a threshold determination of "relevance" before the two-part test is applied.

However, in this case, the Commissioner maintains that a threshold relevancy determination is unnecessary, effectively arguing that the economic substance doctrine is applicable to all transactions. Such a position represents an unsupported and unwarranted expansion of section 7701(o) that could severely impair ordinary tax planning for small and large taxpayers alike, and effectively nullify incentives provided by Congress to undertake specified activities.

The College's Brief

The College's brief urges the Court to recognize the need for a threshold relevancy determination under section 7701(o) and the need to exclude tax incentive statutes from the application of the economic substance doctrine. As explained in the College's brief, the plain text of the statute, legislative history, cases interpreting the pre-enactment common law doctrine and published guidance all support these conclusions.

Refusing to apply a threshold relevancy determination renders language within the statute, specifically section 7701(o) subsections (1) and (5)(C), meaningless and, taken to its logical conclusion, could expose all transactions to scrutiny under the economic substance doctrine. Absent this initial relevancy inquiry, no transaction would withstand scrutiny unless taxpayers in all events first turned a blind eye to the tax consequences of their economic decisions.

Further, the Code is replete with examples in which Congress has explicitly allowed tax benefits to flow from incentivized activities.

From investments in education, retirement savings, and opportunity zones, to deductions for home mortgages and charitable contributions, to tax credits—including those for research and development, low-income housing, and alternative energy—Congress regularly and routinely enacts statutes to use the Code to influence taxpayers' behavior. Applying the economic substance doctrine to tax incentive statutes would render these incentives ineffective and contrary to Congress's goals. Section 7701(o) cannot properly add substantive requirements beyond those already imposed by a tax incentive statute.

Thus, the College's brief respectfully requests that the Court determine that a relevancy

determination must be made as a threshold matter before the economic substance doctrine can be applied and that, in the case of tax incentive statutes, the Court decline to apply the doctrine. Bahar Schippel, President of the College, noted that “the amicus brief filed in the Patel case addresses an issue of first impression that could impact a broad range of taxpayers, fitting squarely with our mission of supporting sound tax administration.”

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 Miriam L. Fisher, Jean A. Pawlow, Molly C. Harding and Elizabeth A. Kanyer of Latham & Watkins 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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