

American College of Tax Counsel Files Amicus Brief with Eleventh Circuit

ROCHESTER, NY, UNITED STATES, July 14, 2025 /EINPresswire.com/ -- The American College of Tax Counsel (the "College") announces the filing on July 9, 2025 of an amicus brief with the United States Court of Appeals for the Eleventh Circuit, in the case of BankUnited, Inc. v. United States of America, No. 25-10775. The case raises important questions about jurisdiction in tax refund cases and a taxpayer's duty of consistency.

Background

BankUnited sought a refund for its 2019 tax year, but the district court held that it lacked subject matter jurisdiction. In particular, the court held that BankUnited's claim, in essence, was a claim for refund of taxes paid in prior, barred tax years, because the 2019 refund claim involved an inquiry into facts and circumstances arising in those earlier years. In the College's view, that holding, if sustained, risks turning the jurisdictional analysis in refund cases into an unpredictable and premature inquiry into the merits: tax claims often are determined by events occurring in years prior to the refund claim year, but this does not convert them into refund claims for those prior years. The district court also held that BankUnited had violated the duty of consistency doctrine because it changed its position following the government's change in regulations. The district court reached that conclusion without making any finding of prejudice to the government, which, in the College's view, is a prerequisite for the duty of consistency doctrine to apply.

The College's Brief

In its amicus brief filed in the United States Court of Appeals for the Eleventh Circuit, the College asserts that the district court's decision, if upheld, could adversely affect the refund litigation process by misconstruing the timeliness of refund claims and misapplying the duty of consistency. Both issues are of significant importance to our tax system.

The College's brief in this case was submitted on behalf of its governing Board of Regents. The brief was prepared and filed for the College by the law firm of Miller & Chevalier Chartered, and was authored by Michael Desmond, Kevin Kenworthy, and Jaclyn Roeing. Framing the key issue in the case, Mr. Kenworthy asserted that "the district court ignored decades of settled case law that permits a court to review important events in earlier years to determine the proper amount of tax due in a later year. The BankUnited case was a timely filed refund action that should not

have been dismissed for lack of jurisdiction.”

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.

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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