

American College of Tax Counsel Files Amicus Brief with Eleventh Circuit

ROCHESTER, NY, UNITED STATES, October 28, 2025 /EINPresswire.com/ -- The American College of Tax Counsel (the "College") announces the filing on October 23, 2025 of an amicus brief in the United States Court of Appeals for the Eleventh Circuit, in the case of Scott L. Shleifer and Elena Shleifer v. United States, No. 25-12719, in support of the plaintiffs-appellants.



The brief provides essential perspective for the Court of Appeals on the importance of ensuring access to judicial review in tax disputes through proper framing of the substantial variance doctrine."

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of the American College of Tax
Counsel*

Background

The case raises important questions about the proper scope and application of the substantial variance doctrine in federal tax refund cases. In broad terms, this judicial doctrine provides that the grounds and facts relied on by taxpayers in an administrative claim for refund of overpaid taxes may not vary from the grounds and facts relied upon in a later suit for refund. Courts apply this doctrine in appropriate contexts so that the United States Internal Revenue Service (the "IRS") has a fair opportunity to evaluate the stated grounds and facts supporting a refund before the dispute proceeds to court.

In granting summary judgment to the government and dismissing the case, the District Court for the Southern District of Florida held that the substantial variance doctrine barred the tax refund sought by the Shleifers because their administrative refund claim (an IRS Form 1040-X) reported a depreciation deduction on Schedule C rather than on Schedule E as an unreimbursed partnership expense. In particular, the District Court found that this error was fatal to the Shleifers' refund suit, which centered on the eligibility for these deductions as unreimbursed partnership expenses.

The College's Brief

In its amicus brief, the College noted that the District Court's decision applied the substantial variance doctrine in a formalistic manner that was not consistent with the history and purpose of the doctrine. The amicus brief asserted that the District Court's application of the doctrine was inconsistent with prior decisions of the Eleventh Circuit and of its predecessor court, and that the District Court erred by affording insufficient consideration to the IRS's course of conduct

and the administrative record.

The College urged the Eleventh Circuit to clarify the substantial variance doctrine so that district courts in the Circuit can apply it in a manner consistent with its history and purpose. The College also urged the Eleventh Circuit to reverse the District Court's grant of summary judgment in favor of the Government. Michael Desmond, President of the College, commented that "the amicus brief provides essential perspective for the Court of Appeals on the importance of ensuring access to judicial review in tax disputes through proper framing of the substantial variance doctrine."

The College's brief was authored by Robert S. Horwitz and Melissa Briggs of Hochman Salkin Toscher Perez P.C. and by Kathleen M. Pakenham and Stephen A. Josey of Vinson & Elkins LLP.

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.

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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