

No. 23-1322

IN THE
Supreme Court of the United States

JAMES W. TINDALL,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**PETITION FOR REHEARING OF
DENIAL OF WRIT OF CERTIORARI**

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PETITION FOR REHEARING

Now comes Petitioner pursuant to Rule 44 and respectfully submits this Petition for Rehearing of the October 7, 2024, Order of this Court denying Petitioner's petition for a writ of certiorari, which requested that this Court vacate and remand the lower courts' orders dismissing Petitioner's efforts to seek review by the U.S. Tax Court (the "Tax Court") of Respondent's tax whistleblower determinations despite the clear and broad language of 26 U.S.C. §7623(b)(4) granting Petitioner the right to judicial review where it states that "*any determination regarding an award under paragraph (1), (2) or (3) may . . . be appealed to the Tax Court*".

The undersigned attaches the certification required by this Court's Rule 44.2.

RULE 44 STANDARD

The standard for granting a petition for rehearing "*shall be limited to intervening circumstances of a substantial or controlling effect*". Rule 44.2.

This standard is easily met in the current dispute, because on March 18, 2024, Petitioner filed his Petition for Writ of Certiorari to review the lower courts' conclusions that the Tax Court lacked subject matter jurisdiction to review Respondent's determinations specific to Petitioner's 26 U.S.C. §7623(b) claims.

After that filing, on July 2, 2024, this Court vacated the U.S. Court of Appeals' decision in *Lissack v. Comm'r of Internal Revenue*, 68 F.4th 1312 (D.C. Cir. 2023) (vacated

by Supreme Court Case No. 23-413) and remanded it for further reconsideration “*in light of Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024)”.

That vacated lower appellate court decision improperly deferred to Respondent’s narrowed interpretation of the broad statutory grant of subject matter jurisdiction by the Tax Court when reviewing 26 U.S.C. §7623(b) tax whistleblower claims.

Quite simply, this Court’s order, dated July 2, 2024, vacating and remanding the Court of Appeals’ decision in *Lissack v. Comm’r of Internal Revenue*, 68 F.4th 1312 (D.C. Cir. 2023) (vacated by Supreme Court Case No. 23-413) for further reconsideration on the issue of the subject matter jurisdiction by the Tax Court when reviewing tax whistleblower determinations is an ‘intervening circumstance of controlling effect’ on the issue of the Tax Court’s subject matter jurisdiction – consistent with the standard in Rule 44.2.

GROUND FOR REHEARING

On December 7, 2022, the Tax Court issued its Order of Dismissal for Lack of Jurisdiction concluding that it did not have subject matter jurisdiction to review Respondent’s determinations specific to Petitioner’s 26 U.S.C. §7623(b) tax whistleblower claims (App. 4-9).

On October 12, 2023, the U.S. Court of Appeals for the District of Columbia Circuit (“Court of Appeals” or “lower appellate court”) affirmed the Tax Court’s order of dismissal relying on *Lissack v. Comm’r of Internal Revenue*, 68 F.4th 1312 (D.C. Cir. 2023) (vacated by

Supreme Court Case No. 23-413) as support for the erroneous legal standard to be applied to determine subject matter jurisdiction by the Tax Court when reviewing tax whistleblower cases (i.e., the Court of Appeals had erroneously applied the *Chevron* doctrine and accepted Respondent's narrowed interpretation of the broad statutory grant of subject matter jurisdiction to the Tax Court under 26 U.S.C. §7623(b)(4)) (App. 2).

On March 18, 2024, Petitioner identified the standard of subject matter jurisdiction by the Tax Court as one of the questions presented to this Court for consideration, review and correction (Petition, pages ii and 42-44).

On July 2, 2024, this Court vacated the Court of Appeals' decision in *Lissack v. Comm'r of Internal Revenue*, 68 F.4th 1312 (D.C. Cir. 2023) (vacated by Supreme Court Case No. 23-413) and remanded it back to the Court of Appeals for further reconsideration “*in light of Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024)”.

The determination of the Tax Court's subject matter jurisdiction in tax whistleblower disputes is the foundational issue currently between the parties. Because the interpretation of that standard (as applied to Petitioner's claims by the lower courts in 2022 and 2023) has now been vacated, the basis for the lower courts' orders granting and affirming the dismissal of Petitioner's claims no longer applies and Petitioner's claims should be reinstated until such time as the lower courts can apply the corrected standard of subject matter jurisdiction by the Tax Court for reviewing tax whistleblower claims.

In effect, *Lissack v. Comm'r of Internal Revenue*, 68 F.4th 1312 (D.C. Cir. 2023) (vacated by Supreme Court Case No. 23-413) was vacated by this Court for every tax whistleblower except Petitioner, creating a situation where there is not a consistent application of law to all similarly situated parties, which is an anathema to the U.S. Constitution.

This change in judicial precedent is a controlling determinant in whether the Tax Court has subject matter jurisdiction over Petitioner's tax whistleblower claims or not. Whatever the standard for subject matter jurisdiction is ultimately determined to be is the standard that should be applied by the Tax Court in this dispute to determine if it did, indeed, have jurisdiction to review Respondent's determinations specific to Petitioner's 26 U.S.C. §7623(b) tax whistleblower claims.

As such, until such time as the standard for subject matter jurisdiction by the Tax Court in tax whistleblower cases has been determined, it is impossible for any court to determine whether that standard has been met (or not) based on Petitioner's facts.

CONCLUSION – RELIEF SOUGHT

For the reasons set forth above and in Petitioner's Petition, dated March 18, 2024, the Court of Appeals' order, dated October 12, 2023, affirming the Tax Court's order granting dismissal, dated December 7, 2022, contradicts the clear and broad grant of subject matter jurisdiction under 26 U.S.C. §7623(b)(4) by improperly narrowing the broad statutory definition of "any determination" for

subject matter jurisdiction by the Tax Court, contradicts this Court's order vacating the judicial authority relied upon by the lower courts in applying that standard (i.e., *Lissack v. Comm'r of Internal Revenue*, 68 F.4th 1312 (D.C. Cir. 2023) (vacated by Supreme Court Case No. 23-413)) and reaches those legal conclusions on a factual record that was not before the Tax Court (Petition 20-23). As such, the petition for writ of certiorari should be granted.

Alternatively, the Court should grant certiorari, vacate the decision below, and remand with instructions requiring the Tax Court to apply the to-be-determined standard for subject matter jurisdiction under 26 U.S.C. §7623(b)(4) to Petitioner's tax whistleblower claims after Respondent files the administrative record with the Tax Court and provides a copy of the same to Petitioner for his review.

Respectfully submitted this the 23rd day of October, 2024,

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RULE 44.2 CERTIFICATE (Combined)

Petitioner hereby certifies that this petition for rehearing is restricted to the grounds specified in Rule 44.2 of the Supreme Court and is presented in good faith and not for delay.



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