No. _____

In The Supreme Court of the United States

ROCKWATER, INC., d.b.a
PEERLESS MANUFACTURING CO.
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This statutory interpretation case raises the primary question as to the plain (best) meaning of 26 U.S.C. § 7701(a)(48)(A)(i) and, in the context of the federal excise tax scheme under 26 U.S.C. § 4051(a), raises these four interrelated issues regarding the test for applying that statutory exception:

1) What role does the ability of a vehicle to transport a load over the highway play in the statutory inquiry under 26 U.S.C. § 7701(a)(48)(A)(i)?

2) Does the two-prong test under 26 U.S.C. § 7701(a)(48)(A)(i) require comparison of the vehicle in question to a traditional highway vehicle to identify the special design features and impairments or limitations?

3) Whether the phrase "specially designed for the primary function of transporting a particular type of load other than over the public highway…" as used in 26 U.S.C. § 7701(a)(48)(A)(i) requires consideration of the design elements of the entire vehicle or just particular components of the vehicle?

4) Does the phrase "substantially limited or impaired" as used in 26 U.S.C. § 7701(a)(48)(A)(i) require consideration of all forms of impairment or limitation?

RULE 14(b) STATEMENT

The parties to the proceeding are Petitioner/ Appellant, Rockwater, Inc. d.b.a. Peerless Manufacturing Co., and Respondent/ Appellee, the United States of America, by and through its Agent, the Commissioner of the Internal Revenue Service.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Rockwater, Inc. is wholly owned by two individuals. There are no parent, partner, or subsidiary corporations with an ownership interest in Rockwater, Inc. No publicly held companies own an interest in Rockwater, Inc. and Rockwater, Inc. holds no ownership interest in a publicly held company.

PROCEEDINGS BELOW

A list of all proceedings in trial and appellate courts directly related to this case is as follows:

Rockwater, Inc. d.b.a. Peerless Manufacturing Company v. United States of America, District Court for the Middle District of Georgia, Docket No. 4:21-cv-00125-CDL (April 10, 2023)

Rockwater, Inc. d.b.a. Peerless Manufacturing Company v. United States of America, By and Through Its Agent, The Commissioner of Internal Revenue, United States Court of Appeals for the Eleventh Circuit, No. 23-11893 (November 15, 2024)

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PETITION FOR A WRIT OF CERTIORARI

Rockwater, Inc., respectfully petitions for a writ of certiorari to review the opinion and judgment of the United States Court of Appeals for the Eleventh Circuit issued November 15, 2024.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The opinion of the Eleventh Circuit is published at 121 F.4th 1287 (11th Cir. 2024) and is reproduced in the Petition Appendix A ("Pet. App.") at pp. App. 1-App. 29. The April 10, 2023, Order of the District Court for the Middle District of Georgia is unpublished. It was entered at Docket No. 4:21-CV-125-CDL on April 10, 2023, and is reproduced at Pet. App. B, pp. App. 30-App. 43.

JURISDICTION

The Opinion of the Eleventh Circuit was entered on November 15, 2024. This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

STATUTES OR OTHER PROVISIONS INVOLVED

26 U.S.C. § 4051(a)

26 U.S.C. § 7701(a)(48)(A)

26 C.F.R. § 48.4061(a)-1(d)

Full text of the above-referenced statutes and regulation set out in Appendix C (App.44-52)

INTRODUCTION

This case represents the latest attempt by the IRS to usurp congressional authority through administrative repeal of 26 U.S.C. § 7701(a)(48)(A)(i). That provision provides a codified exception to certain federal excise taxes, including 26 U.S.C. § 4051(a), which imposes a 12-percent excise tax on the first retail sale of heavy highway vehicles. *See also* 26 C.F.R. § 145.4051-1(a)(2) (limiting application of the tax to highway vehicles). The IRS defines highway vehicles as "any self-propelled vehicle, or any trailer or semitrailer, designed to perform a function of transporting a load over public highways, whether or not also designed to perform other functions…" 26 C.F.R. § 48.4061(a)-1(d).

Congress imposed the excise tax:

> … to ensure that those entities which enjoy the use of the public roads pay for their upkeep. To put it differently, the tax forces those entities that cause the most damage to the public roads, and often benefit economically the most from them, to pay for the consequences of their use. *Worldwide Equipment v. United States*, 546 F. Supp. 2d 459, 468 (E.D. Ky. 2008), *vac'd in part on other grounds*, 605 F.3d 319 (6th Cir. 2010).

The tortured history of 26 U.S.C. § 7701(a)(48)(A)(i) traces back more than 80 years to 26 C.F.R. § 48.4061(a)-1(d). Like the now codified exception, the regulatory exception protected vehicles primarily designed for an off-highway function that possessed limited highway transportation utility.

In 2002, the IRS attempted to repeal some of the exceptions to the excise tax. *See* 67 Fed. Reg. 38913 at 4. In response, Congress codified the off-highway vehicle exception at 26 U.S.C. § 7701(a)(48)(A) as part of the American Jobs Creation Act of 2004, stating:

> A vehicle shall not be treated as a highway vehicle if such vehicle is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design such vehicle's capability to transport a load over the public highway is substantially limited or impaired.

In so doing, Congress made clear its intention:

> My intention in proposing [26 U.S.C. § 7701(a)(48)] was to confirm that Congress feels it is proper that vehicles which do not make use of, or make only very limited use of, the public highways should not be considered a "highway vehicle" for purposes of various excise tax sections. American Jobs Creation Act of 2004 – Conference Report, 150 Cong. Rec. S11191-08, at S11213 (2004) (Statement from U.S. Senator Jim Bunning)

Undeterred by the plain meaning of the codified exception and the clear congressional intent behind its enactment, the IRS urges an administrative repeal of the codified "off-highway" exception through a narrow interpretation of the statute focused solely on the ability of a vehicle to operate on the highway. It is the second time the IRS seeks to usurp the power of Congress to protect vehicles of limited highway utility.

The IRS attempts to repeal the now codified exception by promulgating a standard that focuses solely on the ability of a vehicle to touch the public highways. In short, it adopts the general highway vehicle definitional rule as the standard for defeating the exception through an narrow interpretation of 26 U.S.C. § 7701(a)(48)(A)(i). That interpretation contradicts the plain meaning of the statute, ignores the clear congressional intent of the codified exception, and creates a circuitous statutory scheme that writes the exception out of the code. While the District Court rejected that circular standard, the IRS found a willing partner in the Eleventh Circuit Court of Appeals to effectuate its administrative repeal.

In *Loper Bright Enterprises v. Raimondo*, 604 U.S. 369, 400 (2024) this Court expressed its continued commitment to the best reading of a statute. Here, the best reading of 26 U.S.C. § 7701(a)(48)(A)(i) lies in the plain language of that statute as confirmed by the clear congressional intent behind its codification and the broader statutory scheme that gives the exception context. The rule gives the exception meaning and an exception without meaning is no exception at all.

The IRS attempt to tax peanut drying wagons as if they were traditional highway haulers running 24/7, 365 despite the undisputed fact they spend less than 1 percent of their life on the road and sit dormant for 42 to 44 weeks out of the year, defies the statute and all logic. That attempt has real world consequences to this business and the entire peanut industry, As in *Loper Bright*, Rockwater asks this Court to give 26 U.S.C. § 7701(a)(48)(A)(i) its best meaning as opposed to the IRS attempt to render it meaningless.

STATEMENT OF THE CASE

Moisture threatens peanut crops more than any other source; it allows development of mold and aflatoxins that spoil harvests, threaten consumers, and spell financial ruin for farmers. For farmers, producers, and consumers, drying peanuts effectively and efficiently remains essential to industry viability.

In 1954, Rockwater's predecessor, Peerless Manufacturing Co., invented the first mechanical peanut drying system consisting of a stationary drying fan and a mobile peanut drying wagon specifically designed to transport peanuts to those drying fans to perform that essential peanut drying function. Over the decades, the peanut drying system has remained effectively the same, with the only difference arising from advancements in peanut cultivation: larger combines harvested more rows of peanuts at the same time, increasing the demand to dry more peanuts at the same time. In response to that need, Peerless increased the size of its peanut drying wagons to meet the increased volume demand from 14' boxes attached to wagons to 45' and 48' drying boxes affixed to a chassis capable of being pulled by a semi-truck.

In 2017, Rockwater began selling 45' and 48' peanut drying wagons comprised of an all-steel drying box affixed to an I-beam chassis. Rockwater employed an all-steel design to prevent moisture leeching risks associated with the aluminum/wood design of traditional semi-trailer-vans. The drying box consists of an 18-inch plenum with a 40 percent perforated floor at the top of the plenum. The plenum height and floor perforation were designed in consultation with the National Peanut Research Laboratory.

Rockwater uses 18-gauge sheet metal for the flooring supported by five additional steel trusses installed across the plenum. The drying box has an opening at one end of the plenum designed to hook up to a drying fan duct. The drying fan opening, plenum, and perforated floor allow warm air to pass under and up through the peanut load to facilitate effective drying of peanut loads.

The 18-inch plenum raises the center of gravity of the drying wagon when loaded, increasing the rollover risk. The perforated sheet-metal floor requires loads that disperse weight evenly, preventing it from hauling denser loads such as those on pallets or large packaging. The flooring cannot support the weight of those denser materials and prevents the use of forklifts or other vehicles to load/unload the vehicle.

Instead of traditional barn-style doors, the rear of the drying box has a top, horizontally hinged rear gate that starts approximately 24 inches below the top of the trailer. There are no hydraulics or other mechanisms to raise the rear gate. The drying box also has an open-top that allows for top-loading peanuts in the field. The rear gate and open top expose loads to the elements and prevent loading and unloading by forklift. Loads must be top-loaded and unloaded by raising the entire peanut drying wagon at an angle (like the rear of a dump truck) to allow gravity to unload the vehicle.

The drying box sits on a chassis which consists of a single I-beam that runs the length of the chassis. Two oversized sand feet are affixed to the I-Beam at one end. The sand feet provide greater stability than traditional feet in loose soil conditions found in farms and other off-highway sites.

Two-axles comprised of 4 wheels each are affixed to the other end of the chassis. The chassis is equipped with standard tires, lights, and brakes, as well as required DOT reflective striping.

The peanut harvest season runs for 8 to 10 weeks from September through November. Peanuts are harvested by a combine that pulls up the plant and flips it over to expose the peanuts to the sunlight. Peanuts must be adequately dried before storage to prevent development of mold and aflatoxins that render crops worthless.

The peanut drying wagons are hauled to a spot on the farm. The peanuts are picked up and top loaded into a peanut drying wagon in the field. Once full, the peanut drying wagon is hauled to a drying fan and hooked up to dry the peanuts for about 24 hours. Some farms have their own drying sheds, but most drying sheds are located at centralized peanut buying points run by farmer-owned co-ops. Typically, off-site buying points are within 20-miles of the farms.

Once dried, the peanut drying wagon is transferred to an inspection point and graded by federal state inspectors. Each buying point has its own inspection point on site. The peanuts are inspected for moisture content, debris, and overall quality. If they pass inspection, the peanut load is assigned a grade. If they fail inspection, the peanut load is sent for cleaning, re-drying, and re-inspection. Once the peanuts have been graded, the peanut drying wagon is placed on a large hydraulic lift that raises the entire peanut drying wagon at an angle to unload the peanuts into a warehouse. Most buying points have warehouses on site or nearby.

After unloading, the peanut drying wagon is hauled back to the farm for another load. During the 8-to-10-week harvest season, the peanut drying wagons make up to one trip per day, with most making trips every other day. Peanut drying wagons are only used to transport peanuts from the farm to the drying shed and around the buying point for drying, inspection, cleaning, and unloading. The peanut drying wagons serve no other purpose. The peanut drying wagons sit dormant for the remaining 42 to 44 weeks of the year.

Peanut drying wagons only touch public highways if the route between the farm and the buying point requires usage of such roads. They spend 97 percent of the 8-10 harvest season on farms, farm roads, and at buying points. The peanut industry utilizes traditional semi-trailer vans and hopper bottom trailers to transport peanuts over the highway. The industry utilizes these over the road haulers to transport peanuts over the highway from the warehouses to the producers (shellers) because peanut drying wagons are not suitable as over the road haulers due to their limitations. Because of those limitations, peanut drying wagons spend 99 percent of their life in a non-highway transportation function (either off-highway transportation or sitting dormant).

The Internal Revenue Service (IRS) asserted excise taxes against Rockwater under 26 U.S.C. § 4051(a) on the determination that the peanut drying wagons were highway vehicles. That 12 percent excise tax is imposed on each sale of a highway vehicle. The IRS asserted the excise tax against Rockwater for the first three quarters of 2017.

Rockwater paid the excise taxes with respect to the second quarter of 2017 under protest and filed a claim for refund under 26 U.S.C. § 6511(a) as required by 26 U.S.C. § 7422(a). Rockwater then waited the required six months under 26 U.S.C. § 6532(a)(1) before suing the IRS in the District Court for the Middle District of Georgia. Jurisdiction was conferred upon the District Court under 28 U.S.C. §§ 1340 and 1346(a)(1). The Middle District of Georgia was the proper venue under 28 U.S.C. § 1402(a)(2) because Rockwater is a corporation with a principal place of business in Shellman, Georgia.

Prior to trial, Rockwater and the Department of Justice filed competing Motions for Summary Judgment with respect to the application of 26 U.S.C. § 4051(a) to the peanut drying wagons manufactured and sold by Rockwater. The District Court, Judge Land, issued an order granting summary judgment in favor of Rockwater on the finding that the peanut drying wagons met the exception under 26 U.S.C. § 7701(a)(48)(A) for "off-highway" vehicles. The IRS appealed that order to the Eleventh Circuit Court of Appeals. Following briefing and oral argument, the Eleventh Circuit Court of Appeals issued an order reversing the District Court and granting summary judgment in favor of the IRS.

Rockwater files this Petition for a Writ of Certiorari to respectfully request this Court bring much needed clarity and uniformity to this statutory excise tax scheme and to prevent the administrative repeal of the exception codified by Congress in 26 U.S.C. § 7701(a)(48)(A) that would result from the Circuit Court opinion below.

REASONS FOR GRANTING THE PETITION

This case involves fundamental questions as to the limits of agency power to impose unfounded statutory interpretations that render codified exceptions meaningless. At the heart of that attempt is a question about the best meaning of a federal statute – 26 U.S.C. § 7701(a)(48)(A)(i).

Beyond the attempted agency repeal of the codified exception that raises separation of powers questions akin to *West Virginia v. Environmental Protection Agency*, 597 U.S. 697 (2022), the history of the exception is marred by inconsistent applications and conflicting opinions across and among the federal circuit courts of appeals (and district courts). As Judge Land found below, the history of the exception is wrought with confusion caused by the regulatory process undertaken by the IRS and attempts by the courts to ascertain the meaning of the applicable language. Pet. App. B at App. 36. *See also, e.g.*, *Worldwide Equipment, Inc. v. United States*, 605 F.3d 319, 324-26 (6th Cir. 2010) (defining the test as an "*ex ante* analysis that examines a vehicle's primary design" that permits more than incidental highway use); *Hostar Marine Transport Systems, Inc. v. United States*, 592 F.3d 202, 212-213 (1st Cir. 2010) (road use focused test that rendered off-highway functionality irrelevant). One need look no further than the two opinions issued in this case - and the vastly different conclusions – to ascertain the confusion wrought by the lack of a thorough interpretation of the provisions contained within the exception. A thorough analysis and clear standard benefits the Courts, congress, and taxpayers in a number of agricultural, mining, oil and gas, and other industries facing similar questions.

The confusion wrought extends to whether the entire vehicle design should be factored into the primary design/function prong. (c*ompare GLB Enterprises, Inc. v. United States*, 232 F.3d 965, 967-69 (8th Cir. 2000) (analyzing the entire vehicle), *with Hostar*, 592 F.3d at 212-13 (focused on wheels, tires, etc.)) and whether the substantial impairment prong considers actual usage of the vehicle by those that know its limits best (*compare GLB Enterprises*, 232 F.3d at 967 (considering usage), *with Florida Power & Light Co. v. United States*, 56 Fed. Cl. 328, 333 (2003) (extreme weather use was irrelevant). It also persists in whether economic and physical limits should be construed along with legal limits. *See Big Three Indus. Gas & Equipment Co. v. United States*, 329 F. Supp. 1273, 1278 (S.D. Tex. 1971), *aff'd per curiam*, 459 F.2d 1042 (5th Cir. 1972). The exception begs for clarity by giving the statute its best meaning.

But this statutory interpretation case does not live in the abstract. The seven+ year attempt by the IRS to repeal the codified exception has taken a direct toll on Rockwater who saw an 80 percent drop in sales as a result of the 12 percent surcharge. For an employer in an area with little economic opportunity, the company may never recover from the long-running impact of the surcharge. For the larger industry, increased costs pressure thin margins. Those concerns extend to other industries affected by the IRS' improper interpretation. More insulting, underlying all of this is the belief that the IRS knows better what a vehicle can do than the people who utilize it every day. Usurp Congress; usurp logic; usurp an industry; usurp the rule of law.

A. Congress Sought to Protect Vehicles of Limited Highway Utility – Not Tax Them Like 24/7, 365 Highway Hauler.

Congress made clear its intention to protect vehicles that make limited use of the public highways. *See* American Jobs Creation Act of 2004 – Conference Report, 150 Cong. Rec. S11191-08, at S11213 (2004) (Statement from U.S. Senator Jim Bunning, author of the off-highway exception). The plain meaning of the statutory language, buttressed by the broader statutory excise tax scheme, reflects that intention. 26 U.S.C. § 4051(a) and 26 C.F.R. § 145.4051-1(a)(2) set the rule –a 12 percent excise tax will be imposed on the first retail sale of a highway vehicle, defined as

> …any self-propelled vehicle, or any trailer or semitrailer, ***designed to*** perform a function of ***transporting a load over public highways, whether or not also designed to perform other functions***… (Emphasis added).

Congress codified the "off-highway" exception to that broad definition through 26 U.S.C. § 7701(a)(48)(A)(i):

> A vehicle shall not be treated as a highway vehicle if such vehicle is ***specially designed*** for the ***primary function*** of ***transporting*** a ***particular type of load other than over the public highway*** and because of this special design such ***vehicle's capability to transport*** a load over the public highway is ***substantially limited or impaired***. (Emphasis added).

In *Worldwide Equipment, Inc. v. United States*, 605 F.3d 319, 324 (6th Cir. 2010), the Sixth Circuit noted:

> The structure of the statute supports that the off-highway exception comes into play only with respect to vehicles that are designed, at least to some extent, for both on-and off-highway use.

In other words, "[i]f a vehicle is not designed for highway use, it would fall outside the regulatory definition of a highway vehicle and would not be subject to the 12% excise tax." *Id.* at n. 2. The Sixth Circuit based that conclusion, in part, because "[v]arious IRS general counsel memoranda support that conclusion. *See* I.R.S. G.C.M. 37833, at 5, 1979 WL 52699 (Jan. 26, 1979) (noting that 'only vehicles with no or negligible utility for transporting loads on public highways fail to meet the design test in the general definition of highway vehicle,' and '[t]he exceptions are provided to exclude vehicles that should not be taxed, but which meet the design test.')" *Id.* No rule; no exception.

Here, the IRS advocates an administrative repeal of this exception for dual purpose vehicles through an interpretation of 26 U.S.C. § 7701(a)(48)(A)(i). By narrowly defining the term "transport" and the phrase "other than over the public highway", the IRS excludes 99 percent of the peanut drying wagon design, its clear primary function, and the substantial limitations that cause the peanut industry – those who best know the limits of the vehicle – to park the vehicle for 42-to-44 weeks out of the year. Instead, the IRS insists the focus should remain with the ability of the vehicle to operate on the public highways.

That advocacy effectively eliminates the exception, ignores the statutory scheme, contradicts the plain language of the statute, and usurps the clear intention of Congress. As the Sixth Circuit noted, the statutory scheme only invokes the exception in the context of dual-use vehicles. That is, the exception only comes into consideration if a vehicle can perform a highway transportation function in the first instance. Highway transportation function constitutes a condition precedent to the 26 U.S.C. 7701(a)(48)(A)(i) inquiry.

The plain language of the statute confirms that duality. The term "primary function" means the exemption contemplates application to multi-function vehicles and turns on the "primary" function served by the vehicle. This Court defined "primary" as of the utmost importance. *Malat v. Riddell*, 383 U.S. 569, 571-72 (1966). That requires an identification and ordering of those functions.

The term "function" means "the action for which a person or thing is specially fitted or use or for which a thing exists." *Function*, Merriam Webster Dictionary (6th ed. 2004). The term "primary function" must then mean the most important reason/use for the existence of the vehicle. Coupled with the "specially designed" inquiry, the test must focus on those items that make the vehicle special: what separates it from the traditional semi-trailer van (or other highway vehicle) that serves a known primary (if not exclusive) highway transportation function. The IRS insistence on ignoring the primary function – the reason the peanut drying wagons exist – contradicts that plain meaning of the statute to create a circuitous statutory scheme the would tax 100 percent of highway vehicles.

B. The Statute Requires Comparison of the Vehicle to Traditional 24/7, 365 Over-the-Road Haulers.

The required duality of the vehicles that fit in the statutory scheme requires comparison of the vehicle with traditional highway vehicles designed to haul loads over the public highways all day every day. No doubt exists as to those vehicles being the target of the excise tax regime due to their outsized benefit from the federally funded highway infrastructure. The exception, on the other hand, looks to protect those vehicles that, while sharing common characteristics with those traditional highway vehicles, make limited use of the federal highways because of their design.

The primary design prong[1] invokes that comparison from the start:

> …vehicle is ***specially designed*** for the ***primary function*** of transporting a particular type of load other than over the public highway… 26 U.S.C. § 7701(a)(48)(A)(i).

The term "specially designed" necessarily invokes a comparison to a standardized version of the vehicle to distinguish between what is special and what is not. *See Gateway Equipment Corp. v. United States*, 247 F. Supp. 2d 299, 307 (W.D. N.Y. 2003) (noting the term necessitates the comparison).

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[1] The Courts have traditionally broken the statutory language into a two-prong test: (i) the primary design prong that focuses on the physical design elements of the vehicle; and (ii) the substantial impairment/limitation prong that focuses on the capabilities (or lack thereof) of the vehicle.

We give common terms their common meaning. Merriam Webster defines "specially" as "in a special manner" and "special" as "uncommon, noteworthy." *Special* and *Specially*, Merriam Webster Dictionary (6th ed. 2004). Thus, special requires something else be ordinary; the exception needs a rule.

The second prong of the exception similarly invokes a comparison. By looking to "substantial impairments or limitations" the plain language of the statute invokes a comparison between the vehicle in question and the traditional highway vehicle to set the backdrop. To consider an impairment or limitation "substantial," we must take into consideration what the unimpaired and unlimited highway vehicle can do.

Traditional semi-trailer vans – the ones we all picture when we think of semi-trailers – have a clear primary design function. They facilitate the transport of goods across the public highways. They do it rain or shine, day and night, weekends, holidays, etc. They run 24/7, 365. They provide the baseline from which we compare the Rockwater peanut drying wagons.

The IRS urges a focus on those elements that remain similar between the two sets of vehicles – tires, wheels, lights, and DOT required striping – while simultaneously ignoring the things that make the peanut drying wagon unique. But none of those elements are "specially designed." Rather, they set the baseline for the highway vehicle definition that first ensnares the peanut drying wagon into the statutory scheme. By focusing on those elements and casting aside the clear primary function and special design elements, the IRS eliminates the exception.

The special design elements of the Rockwater peanut drying wagons include the all-steel design, the 18-inch plenum, the additional trusses, the 40 percent perforated floor, the drying fan opening, the top-hinged rear door, the I-beam chassis, the open-top, and the oversized sand-feet. All those special design elements facilitate its primary function of transporting peanuts from field to buying point.

Traditional semi-trailer vans contain none of those elements. Traditional semi-trailers are made from lighter aluminum and wood framing, do not contain a plenum, and have a solid floor without additional trusses. They are enclosed on all sides and have a roof. They utilize barn-style rear doors to facilitate loading and unloading. The traditional, smaller feet and axles are attached directly to the body as opposed to an I-beam.

The IRS ignores those special design elements and focuses squarely on the standard tires, wheels, rear lights, and DOT striping. Those elements merely allow the peanut drying wagons to legally operate on the highway. The Department of Transportation (both federal and state) sets out requirements for vehicles that must be met before they are allowed to operate on highways. If the Rockwater peanut drying wagons employed non-approved tires, wheels, lights and/or did not attach the required reflective striping, they would not be allowed on the highways at all – they would not be designed for highway use and, therefore, not meet the general definition of a highway vehicle. That is, they would not need to meet the exception because the peanut drying wagons would not meet the rule. The IRS logic eliminates the exception.

C. The Primary Design Prong Requires Analysis of the Entire Vehicle – Not Just the Parts That Touch the Road.

The primary design prong focuses the inquiry on the primary function of "transporting a particular type of load other than over the public highway." The focus on a particular type of load harks back to the specially designed requirement as compared to general over-the-road vehicles. The term "transporting" means "to carry or convey (a thing) from one place to another." *Transporting*, Black's Law Dictionary (12th ed. 2024). "Carry" means to "sustain the weight or burden of; to hold or bear." *Id.* "Convey" means to transfer or deliver (something, such as a right or property) to another…" *Id.*

Finally, "other than over the public highway" can only be read to mean just that: the vehicle was not primarily designed to function as an over the highway hauler. To put a finer point on it: by describing the qualifying transportation function in the negative (other than), the exception encapsulates vehicles specially designed for a transportation function other than those primarily designed to serve as highway-haulers (like traditional highway vehicles that make the most use of the highways). There is no doubt that the peanut drying wagons were specially designed for the primary function of carrying peanuts and conveying them from field to buying point (and then around the buying point for drying, inspection, and unloading) – i.e., other than as an over-the-road-highway-hauler. Every physical design component of a peanut drying wagon that makes the peanut drying wagon unique points to that undeniable conclusion.

Inexplicably, the IRS justifies ignoring the "specially designed" and "primary function" terms on the disingenuous decree that the peanut drying functionality is merely stationary. Casting that primary function aside as stationary – non-transportation – ignores the definition of the term transport. Moreover, it impermissibly restricts the statutory "other than over the public highway" to a private road/public highway inquiry.

The statute does not ask whether the vehicle is primarily designed to transport loads over the highways or over private roads. Rather, read as a whole, the primary design prong protects those vehicles specially designed for a primary function of transporting cargo other than as a highway cargo hauler. The primary design prong asks whether the vehicle was designed to primarily serve as a highway cargo hauler or specially designed to serve some other transportation need. That is, a highway vehicle remains what we know a highway vehicle to be – a vehicle that functions primarily to move goods and people over the public highways. Those highway vehicles primarily benefit from federally funded infrastructure – the very vehicles targeted by the excise tax scheme – as opposed to those vehicles that make limited use of the public highways – those vehicles protected by Congress. It does not mean, as the IRS presses, that every vehicle that can touch the road remains a highway vehicle. To hold otherwise would render the statutory exception meaningless because every vehicle must first be capable of operating on the highway (legally and physically) before the exception can be invoked. The condition precedent cannot set the standard for the exception.

Here, the IRS presses a test that ignores the carry and emphasizes the convey by focusing on the parts of the vehicle that cause it to move – i.e. the wheels, tires, breaks, etc. – and casting the remaining elements as stationary. The carry function remains essential to the ability to transport a load. It is akin to claiming that a running back's feet are solely responsible for transporting the football into the endzone – the hands and body have no transportation function according to the IRS. That interpretation rewrites the statute and eliminates the exception by ensnaring every vehicle capable of touching the highways in the first instance.

Indeed, drawing a distinction between the body of the vehicle and the chassis to ignore the body contradicts the plain language of the underlying federal excise tax. 26 U.S.C. § 4051(a) applies the federal excise tax to both semi-trailer "chassis" and "bodies". That is, the excise tax statute draws a distinction between the two so that it might tax either one, if, for example the first retail sale involves a new body attached to a used chassis that was already subject to a first retail sale excise tax.

The physical design elements of the Rockwater peanut drying wagon – the things that make the drying wagon unique – clearly reflect a primary function of transporting peanuts from field to buying point to facilitate the drying, inspection, grading, and unloading of those peanuts. That is, they were specially designed to carry and convey peanuts for a purpose other than purely transporting peanuts over the public highways.

D. The Plain Language of the Substantial Impairment Prong Encapsulates More Than What Is Legal or Possible.

The plain language of the substantial limitation/impairment prong focuses on the capabilities of the vehicle to perform highway transportation functions. Black's Law Dictionary defines "limit" as a restriction or restraint. *Limit*, Black's Law Dictionary (12th ed. 2024). Merriam Webster defines "impaired" to mean "diminished in function or ability." *Impaired*, Merriam Webster Dictionary (6th ed. 2004). Random House Unabridged Dictionary 1897 (2d ed.1993) defines "substantial" as "of ample or considerable amount quantity, size." *Gateway*, 247 F. Supp. 2d at 311. Again, the term substantially limited or impaired requires a comparison to the traditional highway vehicle that does not suffer from such limitations or impairments.

The draft 1979 regulations which birthed 26 U.S.C. § 7701(a)(48)(A) stated "the underlying principle is that such vehicles are so designed that they will spend most of their functional time off the highway performing tasks unrelated to highway transportation, although they are capable of operating on and will make occasional use of, the public highways." *Gateway*, 247 F. Supp. 2d at 311. (citing I.R.S. G.C.M. 37833 at 4, dated January 26, 1979). The focal point of the inquiry must be read in the context of that underlying principle. The point of the exception remains to protect those vehicles that have little to no utility as a traditional highway hauler – that a customer would not buy it for that purpose.

26 U.S.C. § 7701(a)(48)(iii) provides examples of factors that "may be taken" into account in determining substantial impairment or limitation of the vehicle, including whether it requires special licensing, can operate at highway speeds, or poses a risk for being too tall, etc. But that list does not constitute an exclusive list of considerations. It does not limit or impair the practical inquiry into the capabilities of the subject vehicle. Nor does it attempt to promote any factor as controlling or determinative.

Here, the IRS presses the non-binding, non-exhaustive list as the only factors that should be considered in determining the limitations or impairments (and whether they meet the substantial threshold). That defies the permissive language of 26 U.S.C. § 7701(a)(48)(iii). If Congress had intended for that list to be binding or exhaustive, it knows how to make it so.

Rather, the practical inquiry looks not just to limits on the legal ability to operate the vehicle (licensing, size limits, etc.), but to the physical (highway speed, practical loading/unloading) and the economic (efficiency). Moreover, while actual usage plays no role in the primary design prong, the actual usage of a vehicle can be used to inform the substantial limitation or impairment inquiry. *See Myles Lorentz, Inc. v. Commissioner*, 138 T.C. 40, 48-49 and n.17 (2012) (substantial impairment prong permits consideration of other relevant considerations including the use of the vehicle). The customers that purchase and use these vehicles in their day-to-day businesses know the limits of those vehicles better than anyone.

Here, the Rockwater peanut drying wagons remain substantially limited and/or impaired in their ability to operate as traditional over-the-road haulers. The open-top and top-hinged rear door limit the ability to practically load and unload any load. Even if you could top-load the goods needing transport, you could only unload them at a site with a hydraulic lift large enough to fit the entire drying wagon and dump the contents out of the back. The open top also means that it cannot protect from the elements.

The perforated flooring means no pallets or dense loads. The all-steel design, additional trusses, I-beam, and oversized sand feet essential to the peanut drying transportation function add substantial weight to the vehicle compared to the traditional semi-trailer. That means the vehicle makes up a greater percentage of gross vehicle weight limits on public highways. The ability to carry less and increased fuel costs from added weight render the peanut drying wagon economically inefficient.

Here, the use confirms those limitations. *See Halliburton Co. v. United States*, 611 F. Supp. 1118, 1124-30 (N.D. Tex. 1985) (substantially impaired vehicles spent 2/3rds of their time on the jobsite, off-highway); *GLB Enterprises*, 232 F.3d at 967 (cotton retrievers transporting cotton modules up to 100 miles over public highways qualified for the off-highway exception); *Gateway*, 247 F. Supp. at 314 (allocation of a vehicle's functional time is a factor in the substantial limitation/impairment assessment). Those who know the peanut drying wagon best employ a second vehicle to act as a highway hauler of peanuts – no one buys two vehicles when one would do the job.

CONCLUSION

The best meaning of a statute is one which gives it actual meaning; one that fulfills its purpose. The IRS ought not be permitted to repeal a statute by advancing an interpretation that gives that statute no meaning. For these reasons, we respectfully submit that the petition for writ of certiorari should be granted.

Respectfully submitted,

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February 13, 2025

APPENDIX

APPENDIX

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Appendix A

121 F.4th 1287
United States Court of Appeals, Eleventh Circuit.

ROCKWATER, INC., d.b.a. Peerless Manufacturing Company, Plaintiff-Appellee,
v.
UNITED STATES of America, BY AND THROUGH Its Agent, the COMMISSIONER OF INTERNAL REVENUE, Defendant-Appellant.

No. 23-11893
|
Filed: 11/15/2024

Synopsis

Background: Taxpayer, a manufacturer of trailers that dried and transported peanuts from farm fields to off-site buying points, brought tax refund action alleging that it was entitled to off-highway vehicle exception to federal retail excise tax. The United States District Court for the Middle District of Georgia, No. 4:21-cv-00125-CDL, Clay D. Land, J., 2023 WL 2868931, granted taxpayer's motion for summary judgment and denied United States' cross-motion for summary judgment. United States appealed.

Holdings: The Court of Appeals, Hull, Circuit Judge, held that:

trailers were not specially designed to transport peanuts off-highway, and

design of trailers did not substantially limit or impair their on-highway capability.

Affirmed in part, reversed in part, and remanded with instructions.

Luck, Circuit Judge, filed opinion concurring in part and dissenting in part.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

***1289** Appeal from the United States District Court for the Middle District of Georgia, D.C. Docket No. 4:21-cv-00125-CDL

Attorneys and Law Firms

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Before William Pryor, Chief Judge, and Luck and Hull, Circuit Judges.

Opinion

HULL, Circuit Judge:

This appeal requires us to decide whether specially designed peanut trailers that dry and transport peanuts from farm fields to off-site buying points on public roads are "off-highway transportation vehicles" that are exempt from a 12 percent excise tax that applies to the first retail sale of "[t]ruck trailer and semitrailer chassis" and "[t]ruck trailer and semitrailer bodies." 26 U.S.C. §§ 4051(a)(1)(C), (D), 7701(a)(48)(A)(i).

An Internal Revenue Service ("IRS") audit determined that Plaintiff-Appellee Rockwater, Inc., doing business as Peerless Manufacturing Company, owed excise taxes on the sale of three peanut-drying trailers. Rockwater paid the taxes, statutory interest, and penalties but filed a claim for a refund from the IRS. Rockwater then filed this lawsuit against the United States, the Defendant-Appellant, for a full refund and attorney's fees. The district court granted summary judgment in favor of Rockwater as to its refund request for the excise taxes, statutory interest, and penalties, but denied Rockwater's request for ***1290** attorney's fees. The United States appealed.

After review, and with the benefit of oral argument, we conclude that the district court erred in concluding that Rockwater's peanut-drying trailers are "off-highway transportation vehicles" that are exempt

from the tax. *Id.* § 7701(a)(48)(A)(i). We reverse in part the grant of summary judgment to Rockwater and remand with instructions to enter final judgment for the United States for taxes and statutory interest. Given the government did not appeal the penalties, we affirm the district court's ruling that Rockwater is not required to pay penalties.

I. BACKGROUND

A. The Peanut Harvesting Process

Nearly half of the United States' peanuts are produced in Georgia, where farmers harvest the crop each fall. At the start of the eight-to-ten-week harvest, farmers dig up the peanuts from the ground and leave them in the fields for a few days to dry in the sun. Drying is a critical stage in the process. Failing to dry the peanuts within a few hours of harvesting can cause them to develop mold and produce harmful aflatoxins.

Peanuts contain over 25 percent moisture at harvest and must contain no more than 10.49 percent moisture to be safe and salable. Thus, sun drying alone is insufficient. To finish drying the peanuts, most commercial farmers use mechanical peanut-drying trailers and wagons that transport the peanuts off-site to be dried with fans.

B. Rockwater's Peanut-Drying Trailers

The relevant facts about Rockwater's trailers are not disputed. In 1954, Peerless designed the first mechanical peanut-curing system, which consisted of a drying box affixed on wheeled axles and connected to a drying fan. In 2016, after Rockwater acquired Peerless, David Rogers and David Peeler purchased Rockwater and reengineered the trailers. In 2017, Rockwater began manufacturing and selling 45- and 48-foot peanut-drying trailers under the Peerless name.

Rockwater's trailers consist of a steel drying box welded to a chassis. The chassis comprises an I-beam that runs the length of the chassis. At one end of this I-beam are two oversized sand feet, which provide additional stability while the trailers are in the fields. At the other end are two axles with four wheels on each axle. The steel drying box has eight-foot-tall side walls, an open top, a raised 40 percent perforated floor, and an 18-inch-tall gap, or "plenum," that runs the length of the trailer below the perforated floor, where the drying fan connects and blows warm air that rises through the peanuts and out the open top. Other features of the drying box are its horizontally-hinged rear door, which allows peanuts to be unloaded by hydraulically lifting the trailer at an angle for the peanuts to empty out the back. The trailers can carry about 20 to 23 tons of peanuts. Here is a picture of Rockwater's peanut trailer.

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Farmers ordinarily use Rockwater's trailers in the following manner. The farmers load the harvested peanuts into the trailers' open tops and drive the trailers to a drying shed that usually is located at an off-site buying point (collectively, "buying point").[1] The "typical[ ]" distance from the field to the buying point is about 20 miles. Approximately two-thirds of those 20 miles are on public roads. The trailers make an average of two to three trips each week from the fields to the buying points.

It is necessary to move the trailers to the drying sheds because the drying fans that attach to the trailers require gas and electricity, which are unavailable in the fields. The fans run continuously for about a day on average, after which the peanuts are emptied from the trailers and the trailers are returned to the fields to begin the process again.

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[1] The parties do not dispute that although some farms have their own drying sheds, most drying sheds are located at centralized peanut-buying points.

The trailers are not conducive to all-purpose transportation needs. Their all-steel construction makes the trailers heavier than most other trailer types, and the 18-inch plenum raises the trailers' center of gravity, which increases the rollover risk. The perforated flooring cannot support dense loads. Nor can the trailer be loaded from the back because the rear door is hinged horizontally to allow for gravitational unloading when the trailer is lifted at an angle.

Still, several design features facilitate the trailers' trips from the fields to the drying sheds by public road. The trailers "operate by road speed limits." Although the trailers can safely travel 55 miles per hour, Rockwater provides no maximum speed recommendation. The trailers ordinarily are not designated oversize or overweight, so they do not require special markings or special permits to operate on the public roads. The trailers use standard semitrailer tires because Rockwater "d[id] ***1292** not want to burden [its] customers with specialized tires." The trailers also come with standard brakes, lights, and reflective stripes that comply with federal and state law for public roadway operation. And before a sale, the trailers undergo a Department of Transportation ("DOT") inspection and receive vehicle identification numbers.

In addition, Rockwater's online advertisement for the trailers provides a bulleted list of the trailers' features. The first bullet point states that placing the stress of the load on the chassis and not the body "allows the

safest most reliable method for handling your crop from the field to the buying point."

C. Procedural History

The IRS audited Rockwater for failing to file a quarterly federal excise tax return for its sale of three trailers in the second quarter of 2017. After the IRS determined that the 12 percent tax applied to the trailer sales, Rockwater paid $37,031.76 in excise taxes, penalties, and interest.

Rockwater then filed a claim for a refund with the IRS. Rockwater then filed this lawsuit challenging the application of the excise tax to its trailer sales and requesting a refund and attorney's fees. In its complaint, Rockwater alleged that its trailers were exempt from the excise tax on the first retail sale of highway vehicles because the trailers are "off-highway transportation vehicles." *See* 26 U.S.C. §§ 4051(a)(1)(C), (D), 7701(a)(48)(A)(i). The first retail sale means the first time a trailer is sold. *See id.* § 4051(a)(1). The excise tax does not apply to resales of the same trailer thereafter. *See id.*

After discovery, Rockwater and the United States filed cross-motions for summary judgment. The district court granted summary judgment in favor of Rockwater as to the taxes. The district court also ruled that "[e]ven if it were determined that Rockwater owed the tax, it still had reasonable cause not to pay it initially" and so neither statutory interest nor penalties were appropriate.

The United States appealed as to the taxes and statutory interest but not as to the penalties. As the government argues, and Rockwater now does not dispute, the Internal Revenue Code (the "Code") provides that penalties are subject to a "reasonable cause" exception, *see* Code § 6651(a)(1), but statutory interest is not, *see id.* §§ 6601(a), 6621. So the statutory interest depends on whether Rockwater owed the excise taxes or whether its peanut-drying trailers are exempt. That is the legal issue we examine.

II. STATUTORY AND REGULATORY OVERVIEW

A. Standards of Review

We review the statutory interpretation and application of the Code *de novo. C.I.R. v. Driscoll*, 669 F.3d 1309, 1311 (11th Cir. 2012). We also review a grant of summary judgment *de novo. Thai Meditation Ass'n of Ala. v. City of Mobile*, 83 F.4th 922, 926 (11th Cir. 2023).

In tax refund lawsuits, the IRS Commissioner's assessment has "the support of a presumption of correctness." *Welch v. Helvering*, 290 U.S. 111, 115, 54 S.Ct. 8, 78 L.Ed. 212 (1933). "[E]xemptions from taxation are to be construed narrowly." *Mayo Found. for Med. Educ. & Rsch. v. United States*, 562 U.S. 44, 59-60, 131 S.Ct. 704, 178 L.Ed.2d 588 (2011) (citation and quotation marks omitted).

B. Federal Excise Tax on "Highway Vehicles"

The Code imposes a 12 percent tax on the first retail sale of "[t]ruck trailer and semitrailer chassis" and "[t]ruck trailer ***1293** and semitrailer bodies." 26 U.S.C. § 4051(a)(1)(C), (D). The Code does not define those terms. But Congress authorized the Secretary of the Treasury to pass rules and regulations to enforce the Code. *Id.* § 7805(a).

In turn, the relevant Treasury Regulations clarify that a chassis and body are taxable under Code § 4051(a) "only if such chassis or body is sold for use as a component part of a highway vehicle." Treas. Reg. § 145.4051-1(a)(1)(ii), (a)(2) (emphasis added). The Treasury Regulations also define "highway vehicle" as "any trailer or semitrailer, designed to perform a function of transporting a load over public highways, whether or not also designed to perform other [functions]." *Id.* § 48.4061(a)-1(d)(1). A "public highway" includes "any road (whether a Federal highway, State highway, city street, or otherwise)" which is not a private roadway. *Id.*

The Treasury Regulations further provide that "in determining whether a vehicle is a 'highway vehicle,' it is immaterial that the vehicle is designed to perform a highway transportation function for only a particular kind of load." *Id.* Examples of a "highway vehicle" are "passenger automobiles, motorcycles, buses, and highway-type trucks, truck tractors, trailers, and semi-trailers." *Id.* A vehicle that is not a "highway vehicle" is a "nonhighway vehicle." *Id.*

Here, Rockwater's trailers are sold as a component part of a highway vehicle, which standing alone would make them taxable. The focus of Rockwater's appeal is on another provision in the Code that exempts "off-highway transportation vehicles" from the 12 percent excise tax. We turn to that provision.

C. Exemption for Off-Highway Transportation Vehicles

In the Code, Congress has defined types of "off-highway transportation vehicles" to which the § 4051(a) tax does not apply. 26 U.S.C. § 7701(a)(48). Section 7701(a)(48)(A)(i) provides that "[a] vehicle shall not be treated as a highway vehicle" under § 4051(a) if these two special design requirements are met:

> (1) the "vehicle is specially designed for the primary function of transporting a particular type of load other than over the public highway and"
>
> (2) because "of this special design such vehicle's capability to transport a load over the public highway is substantially limited or impaired."

Id. § 7701(a)(48)(A)(i).[2] The next statutory subsection also provides that "a vehicle's design is determined solely on the basis of its physical characteristics." *Id.* § 7701(a)(48)(A)(ii).

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[2] Section 7701(a)(48)(B) adds another exception. It provides that nontransportation trailers and semitrailers, which function only as enclosed stationary shelters, also are exempt. 26 U.S.C. § 7701(a)(48)(B). This exception is not involved in this case.

Finally, Code § 7701(a)(48)(A) provides that we may consider several factors in assessing whether the vehicle's capability to transport a load over a public highway is "substantially limited or impaired": (1) "the size of the vehicle"; (2) "whether such vehicle is subject to the licensing, safety, and other requirements applicable to highway vehicles"; and (3) "whether such vehicle can transport a load at a sustained speed of at least 25 miles per hour." *Id.* § 7701(a)(48)(A)(i), (iii).

With this background, we turn to the parties' arguments.

III. DISCUSSION

The parties do not dispute that because Code § 7701(a)(48)(A)(i) uses "and" to connect ***1294** the two requirements, Rockwater's trailers must satisfy both criteria to be exempt from taxation as "off-highway transportation vehicles." *See Schlumberger Tech. Corp. & Subsidiaries v. United States*, 55 Fed. Cl. 203, 220 (2003) ("The off-highway use exception is a two-part, conjunctive test."). In other words, we must reverse if Rockwater's trailers fail to satisfy either of Code § 7701(a)(48)(A)(i)'s criteria.

A. The Trailers Are Not Specially Designed to Transport Peanuts Off-Highway

The initial issue is whether Rockwater's trailers meet the first requirement of being "specially designed for the primary function of transporting" peanuts "other

than over the public highway." 26 U.S.C. § 7701(a)(48)(i). This special design requirement asks whether the vehicle is specially designed for the primary function of transporting a load off public highways. *See id.* The statutory requirement does not ask about the type of load being carried or non-transportation features of the vehicle. *See id.* Instead, this first requirement focuses on the primary, special transportation design of the vehicle, instead of the non-transportation purposes it might also serve. *See id.*

The physical characteristics that Rockwater cites do not establish that the primary transportation purpose of its trailers is off-highway use. Rockwater points to features like (1) the I-beam and oversized sand feet providing greater stability in the field, (2) the perforated floor and plenum allowing for drying fans to blow warm air up through the peanuts, and (3) the open top and the hinged rear gate facilitating the loading and unloading of the peanuts.

Although the oversized sand feet lend the trailers stability when stationary, the sand feet serve no purpose during transport. And in considering the transportation function of these trailers, it is immaterial whether the top is open or the floors are perforated or the rear door is hinged. What matters is that these design features serve the purpose of drying peanuts primarily in stationary locations like buying points. They do not establish a primary purpose of transporting peanuts.

As the government points out, the trailers are outfitted with standard highway equipment that allows the trailers to operate at 55 miles per hour. Although the trailers are specially designed to facilitate the drying of peanuts, their special peanut-drying design has nothing to do with off-highway transportation.

Let's consider a similar challenge brought in the Sixth Circuit involving the application of the same highway vehicle tax, *id.* § 4051(a), to a coal-hauler dump truck. *See Worldwide Equip., Inc. v. United States*, 605 F.3d 319, 321 (6th Cir. 2010). In *Worldwide*, a heavy truck dealer challenged the application of the tax to its coal-hauler dump trucks. *Id.* To haul coal in the muddy, gravelly Appalachian coal fields, the coal-hauler dump trucks were outfitted with (1) a special engine, transmission, and rear axle combination; (2) an oversized steel dump body; and (3) special off-road tires. *Id.* at 327-28. Evidence reflected that the rear axles and special tires would overheat if the truck was operated at or above 35 to 40 miles per hour for any length of time. *Id.* at 328. Holding that sufficient evidence precluded summary judgment for the government on the special design prong, the Sixth Circuit explained that the evidence suggested that the coal-hauler dump trucks were specially designed to haul coal off-road in the coal fields. *Id.* at 326-27, 331. The Sixth Circuit noted that this special design for off-highway transportation was apparent from the coal-hauler dump trucks' special frames, engines, ***1295** transmissions, and off-road tires and the need for special permits to operate the trucks on the highway due to their size and weight. *Id.* at 326-28.

Unlike in *Worldwide*, the special features that Rockwater calls our attention to are specific to peanut drying, not transporting the peanuts. *See id.* Indeed, the physical characteristics relevant to assessing the trailers' transportation design are its standard tires, its ability to operate by road speed limits, and its DOT-compliant brakes, lights, and reflective stripes, all of which support Rockwater's advertisement that the trailers are the "safest most reliable method for handling your crop from the field to the buying point." (Emphasis added). In fact, Rockwater's advertisement reveals that the trailers' ability to transport peanuts from fields to buying points, which almost always requires travel over public roads, is the primary goal of its transportation design. The presence of these highway transportation features coupled with the absence of specific features for off-highway transportation establish that the trailers were not specially designed for the primary purpose of moving peanuts off-highway. And without specific off-highway transportation design features, the fact that the trailers are capable of being towed in the fields does not, without more, establish that off-highway transportation is a special design, much less the primary function. *See Fla. Power & Light Co. v. United States*, 56 Fed. Cl. 328, 333 (2003) (holding that vehicles designed for extreme weather conditions for use by a utility company were not off-highway vehicles because their design for frequent off-road use was not the same as being primarily designed for off-road use).

The First Circuit rejected an argument like Rockwater's when it held that hydraulic boat trailers

were not off-highway vehicles. *See Hostar Marine Transp. Sys., Inc. v. United States*, 592 F.3d 202, 212-13 (1st Cir. 2010). The First Circuit explained that although the hydraulic boat trailers exhibited some special design features, those features either were irrelevant to their "on-versus off-highway function" or supported their "on-highway function." *Id.* at 213. For example, the First Circuit considered the boat trailers' open-center frames, hydraulic components, and stub axles, but concluded that no evidence supported the inference that the features were related to the roads on which the trailers traveled instead of the boats that they hauled. *Id.* The First Circuit also pointed to several features that "emphatically point[ed] towards their special design for *on*-highway transportation," such as DOT-compliant brakes, lighting, tires, and wheel coverings and the ability to travel at normal highway speeds. *Id.*

Likewise, the transportation features of Rockwater's peanut-drying trailers, including its DOT compliance and ability to travel by normal road speed limits on public highways without special permits or markings, evince that their primary transportation design was for use on public roads. Without this design, no matter the peanut-drying features on the trailers, the peanuts would be marooned in the fields, unable to reach the critical drying fans at the buying points.

Based on the first requirement in § 7701(a)(48)(A)(i), the peanut-drying trailers do not meet the statutory definition of "off-highway transportation vehicles," and the district court's grant of summary judgment to Rockwater must be reversed. Nevertheless, we also

consider the trailers' ability to meet the second requirement below.

B. The Trailers' On-Highway Capability is Not Substantially Limited or Impaired

The next issue is whether the trailers' capability to carry cargo over the public ***1296** highways is substantially limited or impaired. Code § 7701(a)(48)(A)(iii) provides several factors to consider in assessing whether a vehicle's capability is substantially limited or impaired, including the size of the vehicle, its safety and licensing features, and its ability to travel over 25 miles per hour. *See* 26 U.S.C. § 7701(a)(48)(A)(iii). All these factors weigh in the government's favor.

First, the trailers are not designated as oversize or overweight. This means that the trailers do not require special permits to operate. Second, the trailers go through DOT inspection before sale and have DOT-compliant brakes, lights, and reflective stripes. The trailers also are marketed as safe to handle loads of peanuts from the fields to the buying points, which Rockwater acknowledges almost always requires travel on public roads. The trailers can travel by "road speed limits" of 55 miles per hour, too, well above the 25-mile-per-hour threshold.

Notably, all the statutory factors concern physical characteristics of the vehicle. *See id.* § 7701(a)(48)(A)(ii), (iii). This is why Rockwater's arguments about the trailers' economic feasibility and the short duration of the harvest season are

unpersuasive. As the Court of Federal Claims explained, the "words 'substantially limited or substantially impaired' are [not] synonymous with impaired efficiency of vehicle operation." *Fla. Power & Light Co.*, 56 Fed. Cl. at 333-34 (rejecting the argument that the utility vehicles' designs, which made them heavier, slower, and less fuel-efficient, did not substantially limit or impair their use on public highways). Moreover, Rockwater relies on evidence about the type of cargo that its trailers are designed to carry, instead of evidence that the trailers are substantially less capable of traveling on public roads. It argues that its trailers' raised center of gravity increases the rollover risk, but this is not dispositive. Despite the increased rollover risk, which is not unique to these trailers, the trailers remain capable of safely operating by road speed limits and do not need special markings or permits for highway travel.

Because Rockwater failed to establish that its trailers were off-highway transportation vehicles, 26 U.S.C. § 7701(a)(48)(A)(i), that are exempt from taxation, *id.* § 4051(a)(1), the government was entitled to summary judgment on the taxes and statutory interest.

IV. THE DISSENT

A. Excise Taxes

The dissent agrees Rockwater owes the excise taxes. While the Court identifies two independent reasons why, the dissent joins only the reason in Part III.A. As

to the second reason in Part III.B, our dissenting colleague argues there is a jury issue. But this ignores that the parties' cross-motions for summary judgment agreed that no material facts were in dispute and, on appeal, the parties did not argue that a jury question exists on any issue. We properly decide the legal issues that the parties identified and litigated.

B. Statutory Interest

The Code provides for mandatory statutory interest on the taxes owed here. *See* 26 U.S.C. § 6601. Because Rockwater owes taxes, it automatically owes interest. Yet our dissenting colleague would have us rule that Rockwater does not owe interest. This is a nonsensical result that no one asks for. As set forth below, Rockwater has never argued that it did not have to pay interest on taxes owed by Rockwater.

Starting in the district court, the parties litigated over whether Rockwater owed the excise taxes and penalties. Even if it owed ***1297** the taxes, Rockwater argued that penalties are subject to a reasonable cause defense. [3] However, Rockwater never argued that reasonable cause would supply a defense to the mandatory statutory interest.

The district court's summary judgment order held that Rockwater did *not* owe the excise taxes. As a brief alternative ruling, the district court concluded that

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[3] Failing to file a tax return at all incurs a penalty "unless it is shown that such failure is due to reasonable cause and not willful neglect." 26 U.S.C. § 6651(a)

even if Rockwater owed the taxes, it had reasonable cause not to pay them initially and did not owe the penalties.

That section of the order, entitled "Penalties," cited only the penalty statute and cases about reasonable cause in the context of owing penalties. The order did not cite the mandatory interest statute, or any interest cases, or discuss interest at all. Yet in that Penalties section the district court *sua sponte* and mistakenly lumped interest in its reasonable cause ruling, even though that exception applies *solely* to penalties.

Given the district court's *sua sponte* and elementary mistake, the United States argued on appeal that the district court's order "should not be interpreted to hold that its 'reasonable cause' finding exempts Rockwater from statutory interest" because the Code provides that *penalties* are subject to a "reasonable cause" exception, *see* Code § 6651(a)(1), but statutory interest is not, *see id.* §§ 6601(a), 6621. Indeed, the government succinctly cited the relevant law: "*Compare* I.R.C. § 6651(a) (penalty is subject to a reasonable cause exception) *with* I.R.C. § 6621 (interest is not)." As the government said at oral argument, "There's not much more to say than that." Given the instant context of mandatory, statutory interest, the government's argument did everything necessary to explain the elementary legal error by the district court. Notably, too, Rockwater does not claim the government abandoned or failed to preserve the interest error on appeal; only our dissenting colleague does.

And importantly, Rockwater also has never claimed that even if it owed the taxes, it did not owe interest.

At oral argument, the United States clarified that it did not challenge the reasonable cause penalty ruling, but it maintained that no reasonable cause defense applies as to the mandatory statutory interest. Rockwater did not dispute this either during oral argument or in its response brief. The record before us is clear that both parties have always understood that Rockwater's liability for interest is automatic if it is required to pay the excise taxes. That's the way the tax law works.

What this means is that everyone but our dissenting colleague recognizes that the mandatory, statutory interest has and continues to rise and fall solely on the issue of the excise taxes. And because we do not represent one party or the other, we decline to litigate an "issue" and affirm an alternative ruling that yields an illogical result that *no* party has requested either in the district court or on appeal.

V. CONCLUSION

We **REVERSE** the grant of summary judgment to Rockwater, **REMAND** for entry of final judgment in favor of the United States on Rockwater's complaint as to the excise taxes and statutory interest, and **AFFIRM** the finding that Rockwater is not required to pay penalties.

REVERSED IN PART AND AFFIRMED IN PART.

Luck, Circuit Judge, concurring in part and dissenting in part:

The district court granted summary judgment for Rockwater, Inc. and ordered ***1298** that the company be refunded three separate pots of money: (1) excise taxes that Rockwater paid to the government; (2) interest that the government imposed for the delay in paying the excise taxes; and (3) penalties the government imposed for delaying payment on the taxes. On appeal, the government raised only "one issue" related to the first pot of money—the excise taxes refund.

But the government did not argue that the district court erred in ordering the refund for the second pot of money—interest. The word interest did not appear in the issue section of the government's initial brief. It did not appear in the summary of the argument. And it did not appear in the argument section. Not "plainly and prominently," as we require to preserve an issue for appeal. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) (quotation omitted). Not at all in those sections of the initial brief. That means the interest refund issue has been abandoned. *See United States v. Willis,* 649 F.3d 1248, 1254 (11th Cir. 2011) ("A party seeking to raise a claim or issue on appeal must plainly and prominently so indicate.... Where a party fails to abide by this simple requirement, he has waived his right to have the court consider that argument." (quotation, citation, and brackets omitted)); *Access Now, Inc. v. Sw. Airlines*

Co., 385 F.3d 1324, 1330 (11th Cir. 2004) ("Any issue that an appellant wants [us] to address should be specifically and clearly identified in the brief.... Otherwise, the issue—even if properly preserved at trial—will be considered abandoned."); *Marek v. Singletary,* 62 F.3d 1295, 1298 n.2 (11th Cir. 1995) ("Issues not clearly raised in the briefs are considered abandoned." (citation omitted)).

The government's only substantive reference to interest was in a footnote in the statement-of-the-case section of the initial brief. But the footnote was not enough to preserve sufficiently for appeal the interest refund issue. *See Tallahassee Mem'l Reg'l Med. Ctr. v. Bowen*, 815 F.2d 1435, 1446 n.16 (11th Cir. 1987) ("In this case, the single footnote in the Secretary's initial brief did not sufficiently preserve the mootness issue."); *see also Asociacion de Empleados del Area Canalera v. Panama Canal Comm'n*, 453 F.3d 1309, 1316 n.7 (11th Cir. 2006) ("[T]hat argument is waived because it appears only in a footnote in their initial brief and is unaccompanied by any argument." (citation omitted)); *Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 (11th Cir. 1989) ("Although Greenbriar refers to the district court's dismissal of its amendment in its Statement of the Case in its initial brief, it elaborates no arguments on the merits as to this issue in its initial or reply brief. Accordingly, the issue is deemed waived."). And if the footnote wasn't enough to preserve the issue, then the citations hidden at the end of the buried footnote in the statement-of-the-case section of the brief certainly were not enough either. Nobody points to any case holding otherwise.

Even if the lone reference in the statement-of-the-case footnote was enough to preserve the interest refund issue, the government did not argue that the district court erred in ordering the interest refund. Instead, sans citations, the two-sentence footnote said: "The [district] court also held that to the extent Rockwater was not liable for the tax, it was not liable for the interest on the tax. The court should not be interpreted to hold that its 'reasonable cause' finding exempts Rockwater from statutory interest."

But there is no other way to interpret the district court's order. The district court found that "Rockwater had reasonable cause for any delay in paying the tax." And then the district court applied that ***1299** finding to order the interest refund: "Because Rockwater does not owe the tax, and alternatively because it otherwise had reasonable cause for its delay in paying it, neither penalties nor interest are appropriate." The only way to read what the district court wrote is that the "reasonable cause" finding applied to Rockwater's request for a penalty refund *and* an interest refund. Because the government didn't raise the interest refund issue, and because, even if it did, the government is wrong in its statement-of-the-case footnote, I would affirm that part of the district court's order.

The majority opinion comes to a contrary conclusion because, it says, Rockwater never argued or claimed on appeal that it was due an interest refund. But this turns the preservation rules on their head. Rockwater is the appellee. It won the three specific pots of money

in the district court, including a refund on the interest it paid to the government because there was reasonable cause for the delay in payment. Rockwater had no obligation to challenge an issue it won below. None. Besides, Rockwater did argue that the government "did not address," and therefore "abandoned," any argument that the district court erred in finding reasonable cause. Not just me.

The only party with the obligation to raise on appeal any errors with the district court's order was the government as the appellant. If the government really believed, as the majority opinion does, that the district court erred in awarding interest based on the reasonable cause finding, then it should have plainly and prominently raised the issue on appeal, as every other appellant is required to do. But not only did the government fail plainly and prominently to raise the interest refund issue, it failed even to mention the word interest in the argument section of its brief. Not one time, which means we must affirm.

That result is neither illogical nor nonsensical. Instead, it flows naturally from an appellant's failure to challenge a specific pot of money awarded by the district court. Affirming is what we have done in countless appeals where the appellant has not sufficiently preserved an issue, and it is what we would do in any other appeal where the appellant does not plainly and prominently raise an issue. That is as true for the government as it is for any other party-appellant.

* * * *

For the other pots of money—the refunds for the excise taxes and the penalties—I concur in the judgment. As the majority opinion explains, there were two requirements that Rockwater had to meet to qualify for the off-highway transportation vehicle exemption to the excise tax. Rockwater had to show that: (1) its peanut wagon "is specially designed for the primary function of transporting a particular type of load other than over the public highway"; and (2) because "of this special design such vehicle's capability to transport a load over the public highway is substantially limited or impaired." 26 U.S.C. § 7701(a)(48)(A)(i). In Part III.A., the majority opinion elegantly and comprehensively explains why there's no genuine dispute that Rockwater did not meet the first requirement. I happily join that part of the opinion.

We could have ended there because, as the majority opinion explains, Rockwater's peanut wagon "must satisfy both criteria to be exempt from taxation as 'off-highway transportation vehicles.' " Because the peanut wagon clearly didn't meet the first requirement, the company was not exempt from the excise tax. But the majority opinion, in Part III.B., then goes on to decide that there's no genuine dispute that Rockwater ***1300** did not meet the second exemption requirement.

I wouldn't reach the second requirement because, to me, whether there's a genuine dispute that the special design of the peanut wagon substantially limited or impaired the wagon's capability to transport a load over the public highway is a harder call and an unnecessary one. The majority opinion is right that

the statutory factors weigh in the government's favor. But the statutory factors are not exclusive, and other factors weigh in favor of Rockwater.

Rockwater's peanut wagon, for example, had an all-steel design, oversized sand feet, an open top, a top-hinged lift gate, and a perforated floor that is raised eighteen inches higher than a normal trailer's floor. The all-steel design and oversized sand feet increased the peanut wagon's weight, which hindered its capability to transport loads economically over the public highways. The open top exposed the load to the elements, the top-hinged lift gate disallowed traditional loading and unloading, and the perforated floor was far weaker than a normal one. Those features made it difficult, if not impossible, to transport anything other than peanuts. And the raised floor raised the wagon's center of gravity, which increased the rollover risk during transport.

With similar evidence, two of our sister circuits have affirmed jury verdicts finding a substantial limitation under the second requirement. *See GLB Enters. v. United States*, 232 F.3d 965 (8th Cir. 2000); *Flow Boy, Inc. v. United States*, No. 82-1823, 1984 WL 15513 (10th Cir. Jan. 20, 1984). In *Flow Boy*, for example, the Tenth Circuit affirmed the jury's verdict finding that the specialized cement trailers' capability to transport a load over public highways was substantially limited because it was not economically efficient to operate the loaded cement trailers on the public highway. *See* 1984 WL 15513, at **1–2. The Tenth Circuit explained that the jury's finding was supported by credible evidence showing that the cement trailers were too

heavy to carry optimal loads over the public highway, hindering the trailers' economic efficiency. *See id.*

Similarly, in *GLB Enterprises*, the Eighth Circuit affirmed a jury's verdict finding that the specialized cotton trailers' capability to transport a load over public highways was substantially limited because it was less safe to operate the loaded cotton trailers on the public highway. *See* 232 F.3d at 967. There, the cotton trailers' special design features—that significantly increased its weight (which impaired braking) and changed its center of gravity (which increased rollover risk)—made the trailers dangerous enough that a special permit was necessary to operate the trailers over public highways when loaded at a certain capacity. *Id.* at 968. Even though the peanut wagon here did not require a special permit to operate over the public highways, its special design features, which increased the wagon's weight and rollover risk, raised similar economic and safety concerns as *Flow Boy*'s cement trailers and *GLB Enterprises*'s cotton trailers.

The majority opinion doesn't address some of these contrary facts or the caselaw from our sister circuits because, it says, "the parties' cross-motions for summary judgment agreed that no material facts were in dispute and, on appeal, the parties did not argue that a jury question exists on any issue." But whether the peanut wagon's special design substantially limited or impaired its capability to transport a load over the public highway was very much in dispute, as it was in *Flow Boy* and *GLB Enterprises*. Indeed, the dispute takes up an entire section of the government's

initial brief. In any event, the majority ***1301** opinion misses the point. We should not go out of our way to reach an alternative ground (whether it's a judge question or jury question) where there's some doubt whether we're right. Better to decide only one ground where we're clearly right than to stretch to decide a second unnecessary alternative ground where we're not.

Because the majority opinion is so clearly right about the first exemption requirement in Part III.A., I would resolve the excise tax refund issue on that ground without getting into the more complicated conflicting evidence on the second exemption requirement.

All Citations

121 F.4th 1287, 134 A.F.T.R.2d 2024-6113, 30 Fla. L. Weekly Fed. C 1660

Appendix B

2023 WL 2868931
United States District Court, M.D. Georgia,
Columbus Division.

ROCKWATER, INC. d/b/a Peerless Manufacturing Company, Plaintiff,
v.
UNITED STATES of America, Defendant.

CASE NO. 4:21-CV-125 (CDL)
|
Signed April 10, 2023

Attorneys and Law Firms

Jasen D. Hanson, I, David DeCoursey Aughtry, Atlanta, GA, for Plaintiff.

Margaret Elizabeth Sheer, Jikky Thankachan, Washington, DC, for Defendant.

ORDER

CLAY D. LAND, UNITED STATES DISTRICT COURT JUDGE

***1** This tax refund action presents the issue of whether peanut drying semitrailers ("drying trailers") designed and sold by Plaintiff Rockwater, Inc.

("Rockwater") are subject to the 12% federal excise tax applicable to heavy trucks and trailers sold at retail. Rockwater argues that its drying trailers are specially designed for the primary function of transporting peanuts for drying purposes in a manner other than over the public highway and that this special design substantially limits or impairs the drying trailers' capability to transport the peanuts over the public highway. Accordingly, it maintains that these drying trailers are not subject to the excise tax. The Government responds that the drying trailers are designed for use on the public highway and that the design does not substantially limit or impair such use; thus they are subject to the tax.

Pending before the Court are the parties' cross-motions for summary judgment. As discussed in the remainder of this Order, the Court finds as a matter of law that the drying trailers are specially designed for the primary function of transporting peanuts for drying purposes in a manner other than over the public highway and that the special design substantially limits or impairs the drying trailers' capability to transport the peanuts over the public highway. Therefore, they are not subject to the excise tax. Consistent with this holding, the Court further finds that Rockwater had a good faith basis for contesting the tax and delaying payment; consequently, it is not liable for penalties and interest. Accordingly, Rockwater's motion for summary judgment (ECF No. 15) is granted and the Government's motion (ECF No. 16) is denied.

SUMMARY JUDGMENT STANDARD

Summary judgment may be granted only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In determining whether a *genuine* dispute of *material* fact exists to defeat a motion for summary judgment, the evidence is viewed in the light most favorable to the party opposing summary judgment, drawing all justifiable inferences in the opposing party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A fact is *material* if it is relevant or necessary to the outcome of the suit. *Id.* at 248. A factual dispute is *genuine* if the evidence would allow a reasonable jury to return a verdict for the nonmoving party. *Id.*

FACTUAL BACKGROUND

I. The Peanut Harvesting Process and Rockwater's Role in It

Many of the material facts in this action are undisputed. Almost half of all peanuts produced in the United States are harvested in Georgia between September and early November. During this eight to ten week harvesting season, peanuts must be properly dried, or their quality and price may decline substantially. The drying process begins when the farmer digs up the peanut plants from the ground using a combine and thereby exposes the peanuts to sunlight for one to two days. Next, the farmer loads them on specialized equipment—here, Rockwater's

drying trailers—for transport offsite for further drying. The drying trailers are primarily designed to facilitate the drying of the peanuts, but they also accommodate the transporting of the peanuts short distances from the field to the site where the drying process is completed.

***2** Typically, the loaded drying trailers travel approximately twenty miles from the field to the drying site. On average, two-thirds of the trip is made on a public highway. The drying trailers are designed to be hooked up directly to a dryer at the drying site so that the peanuts can be dried for an additional twenty-one to twenty-four hours. The design of the drying trailers allows them to then be loaded onto a specialized dock that is raised at an angle to allow the peanuts to fall by gravity out of a top-hinged door at the back of the drying trailers. The peanuts are then unloaded into warehouse containers and transported to shellers, processors, and end users in a traditional cargo-hauling semitrailer. The empty drying trailer travels back to the field and the process repeats until the end of peanut harvesting season. After harvesting season ends, the drying trailers sit idle for the next forty-two to forty-four weeks. The drying trailers spend approximately 3% of the harvest season and 1% of their lives on the public road.

II. The Special Design of Rockwater's Semitrailers

Rockwater designed its drying trailers to facilitate the peanut drying process. They consist of a drying box welded to a chassis. The drying trailers all have drying

boxes that are 8 feet tall. Further, Rockwater built each drying trailer with either a 45-foot or 48-foot chassis repurposed from a used Department of Transportation-ready chassis. Dykes Dep. 30:19–21, ECF No. 15-5; Def.'s Mot. Summ. J. Ex. E, Chart, ECF No. 16-7 (rows 4, 5, and 6). Each drying trailer has a gross vehicle weight rating of 61,900 pounds.

Rockwater's drying trailers are different from traditional semitrailers that are designed to haul cargo. First, unlike traditional semitrailers—usually made of wood and aluminum—Rockwater's drying trailers are made of steel. The steel prevents moisture from sticking to the peanuts, but adds substantial weight to the drying trailers, thus impairing their use as a cargo trailer on public highways. Second, unlike traditional semitrailers, Rockwater's drying trailers have an open top. The open top permits the top-loading of peanuts into the drying box in the field and allows moisture to escape while the peanuts dry. Rockwater's drying trailers also have a special design feature that includes a top-hinged door at the back that can only be opened by raising the drying trailer at an angle. To support the enlarged drying box and provide greater stability in the field, Rockwater designs each drying trailer with a modified chassis from a traditional semitrailer to include oversized sand feet, an I-beam, and steel horizontal braces. These chassis modifications, which add substantial weight to the trailer, would never be feasible for semitrailers designed for regular public highway use. Another special design feature provides for a custom drying box with a 40% perforated floor on which the peanut load rests and through which air flows to dry

the peanuts. Under the perforated floor, an 18-inch plenum, or chamber, runs the length of the bottom of the box. That plenum raises the drying box's center of gravity, which increases the risk of rollover at higher speeds. At the end of the plenum is a vent to which the dryer attaches and into which the dryer pumps hot air to continue the drying process. Knowing that the nature of peanut harvesting will typically require the peanuts to be transported on a public road for short distances from the field to a drying site, Rockwater designs its drying trailers to comply with applicable highway regulations.

III. The Tax Refund Action

In the second quarter of 2017, Rockwater sold three peanut drying trailers—each extending to 8 feet in heighth and built on a used chassis stretching either 45 feet or 48 feet in length. Rockwater did not pay the excise tax on any of those drying trailers in 2017 or report the sales to the IRS. After an audit, the IRS determined that the heavy highway vehicle excise tax applied to the drying trailers and assessed $29,880 in excise taxes against Rockwater for the second quarter of 2017 as well as failure to file penalties. Rockwater paid the IRS $37,031.76 in excise taxes, penalties, and interest. Rockwater subsequently filed a claim for refund with the IRS followed by this present complaint.

DISCUSSION

I. "Special Rule" for Off-Highway Transportation Vehicles

***3** The Internal Revenue Code (the "Code") imposes a 12% excise tax on the first retail sale of heavy (i.e., exceeding 26,000 pounds) "truck trailer and semitrailer chassis and bodies." 26 U.S.C. § 4051(a)(1), (3). Congress did not define "truck trailer and semitrailer chassis" or "truck trailer and semitrailer bodies." Instead, it left it to the IRS to do so through Treasury regulations. *Id.* § 7805(a); *id.* § 4051. This regulatory process has created confusion over the years with the repeal and revision of the applicable regulations. The courts have sometimes added to the confusion as they attempted to ascertain the applicable language which they struggled to interpret in light of regulatory guidance and often conflicting case law. In an attempt to make sense of the mess, the Court begins with the statute enacted by Congress followed by a discussion of the applicable regulations.

The plain language of the statute, when read in isolation, provides that any trailer chassis or body weighing over 26,000 pounds that is sold for the first time at retail shall be subject to a 12% federal excise tax. *Id.* § 4051(a)(1), (3). Congress authorized the IRS to put meat on the bones of this bare statute through the promulgation of Treasury Regulations. *Id.* § 7805(a); *id.* § 4051. Those regulations establish a "special rule" applicable to trailer chassis and bodies. According to the regulations, chassis and bodies are taxable "only if such chassis or body is sold for use as

a component part of a highway vehicle." Treas. Reg. § 145.4051-1(a)(2) (as amended in 2000). Thus, chassis and bodies that are not component parts of a "highway vehicle" are not subject to the excise tax. The next question is what is a "highway vehicle" for purposes of this regulatory scheme. That question can be answered by examining Congress's clarification of what a "highway vehicle" *is not*. *See* 26 U.S.C. § 7701(a)(48). Some courts, when interpreting § 7701(a)(48)(A)'s past iterations as a regulation, refer to this definitional narrowing of the term as an "exemption" or "exception." The applicable statutory language is as follows:

> (48) Off-highway vehicles.--
>
> (A) Off-highway transportation vehicles.--
>
> (i) In general.--A vehicle shall not be treated as a highway vehicle if such vehicle is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design such vehicle's capability to transport a load over the public highway is substantially limited or impaired.
>
> (ii) Determination of vehicle's design.--For purposes of clause (i), a vehicle's design is determined solely on the basis of its physical characteristics.
>
> (iii) Determination of substantial limitation or impairment.--For purposes of clause (i), in determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether such vehicle

> is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether such vehicle can transport a load at a sustained speed of at least 25 miles per hour. It is immaterial that a vehicle can transport a greater load off the public highway than such vehicle is permitted to transport over the public highway.

Id. § 7701(a)(48)(A)(i)–(iii).

Based on the foregoing, the Rockwater drying trailers are not subject to the excise tax if (1) the drying trailers were specially designed, as determined solely on the basis of their physical characteristics, for the primary function of transporting peanuts other than over the public highway; and (2) because of this special design the drying trailers capability to transport a load of peanuts over the public highway is substantially limited or impaired. The undisputed evidence is clear that the drying trailers were specially designed to transport peanuts for drying purposes in a manner other than over the public highways. While the drying trailers could certainly function at a minimum capacity on the public highway, the special design features are focused primarily on allowing the vehicle to operate efficiently and effectively to accomplish the drying of the peanuts. Almost none of the special design features reflect a primary purpose of hauling peanuts as cargo on the public highway. The modifications to the chassis, with the accompanying extra weight, are focused on the drying function. The special design features allow for the vehicle to maneuver in the fields, on the private roads, and at the stationary drying sites in a manner that

achieves its primary purpose—effective and efficient drying of peanuts. The Court finds that no reasonable juror could conclude otherwise, and therefore, this prong of the "special rule" has been satisfied as a matter of law.

***4** Rockwater also makes a convincing argument that this special design substantially limits or impairs the drying trailers' capability to transport a load over the public highway. The added weight reduces the economic feasibility of using the vehicle on the highway. And the nature of the modifications that raise the center of gravity affects the vehicle's safety on the public roadway. Although the drying trailers require no special permits, the limitations substantially limit its transporting capabilities on the public roadway. In essence, the design allows the vehicle to meet minimum highway standards while focusing on the drying function of the trailer. The fact that these drying trailers are only used eight to ten weeks out of the year and, even during their periods of heaviest use, sit stationary for over 90% of the time, confirms this common-sense conclusion. The Court acknowledges that some evidence exists to the contrary. For example, the drying trailers can maintain a sustained speed in excess of 25 miles per hour, satisfy regulatory height and weight requirements, and are not subject to special licensing or safety requirements. *See id.* § 7701(a)(48)(A)(iii). But the fact that the vehicle *can* operate safely and legally on the highway is not dispositive. The statute recognizes that other factors may be considered. *See id.* ("account may be taken of factors *such as*" (emphasis added)). The question is whether the

special design *substantially* impairs or limits the vehicle's capability to transport a load over the public highway. "Substantially" means to a "considerable," "significant," or noticeable degree. *Substantially*, Merriam-Webster Dictionary Online, https://www.merriam-webster.com/dictionary/substantially; *see Substantial*, Black's Law Dictionary (11th ed. 2019). "Impair" means to make less effective, *Impair*, Merriam-Webster Dictionary Online, https://www.merriam-webster.com/dictionary/impair, and "limit" means to restrict, encumber, or constrain, *Limit*, Merriam-Webster Dictionary Online, https://www.merriam-webster.com/dictionary/limit. Clearly, the drying trailer design restricts or encumbers or makes less effective to a considerable or noticeable degree the drying trailer's capability to transport a load over the public highway. Because the undisputed facts upon which this conclusion is based lead only to this one reasonable conclusion, Rockwater has satisfied this second prong of the "special rule" as a matter of law. Having found that both prongs of the "special rule" have been satisfied, Rockwater's motion for summary judgment is granted.[1]

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[1] The Court has not located any binding precedent on these issues. The closest Eleventh Circuit precedent it found is consistent with today's ruling but admittedly involved the interpretation of slightly different regulatory language. See Big Three Indus. Gas & Equip. Co. v. United States, 329 F. Supp. 1273 (S.D. Tex. 1971), aff'd, 459 F.2d 1042 (5th Cir. 1972) (per curiam).

II. The Mobile Machinery Exemption

Rockwater also argues that its drying trailers meet the mobile machinery exemption to the excise tax. 26 U.S.C. § 4053(8). In light of the Court's ruling that Rockwater is entitled to summary judgment under the special "off highway vehicle rule," it is not necessary for the Court to address this alternative argument. But for the sake of completeness and to avoid an unnecessary remand should the Court of Appeals disagree with the Court's previous rulings, the Court finds it appropriate to do so. The mobile machinery exemption is available for certain vehicles which have as their sole function carrying machinery or equipment and which could not transport any other load "without substantial structural modification." *Id.* As the Court explained previously, the drying trailers' design accommodates the transport of peanuts to carry out the drying process. Their *sole* function is not to carry machinery or equipment; nor are they unable to transport loads other than machinery or equipment. Accordingly, Rockwater's drying trailers would not be exempt under the mobile machinery exemption.

III. Penalties

As noted previously, the IRS imposed penalties and interest based upon Rockwater's delay in paying the disputed tax. To avoid a penalty due to a delay in filing, the Code requires taxpayers to show (1) reasonable cause for the delay and (2) that the delay did not result from willful neglect.[2] *Id.* § 6651(a). As

[2] The Government does not contend that Rockwater's delay in filing the excise tax was the product of willful neglect.

the Court has explained, Rockwater certainly had reasonable cause for the delay. It had a good faith basis for believing that it did not owe the tax. The Court's findings in today's Order vindicate Rockwater's delay in paying the tax and establish as a matter of law that the penalties and interest are not owed. Even if it were determined that Rockwater owed the tax, it still had reasonable cause not to pay it initially. The evidence is undisputed that its belief that it did not owe the tax was supported by advice from tax professionals. Good faith reliance on professional tax advice may constitute reasonable cause in some circumstances. *United States v. Boyle*, 469 U.S. 241, 250-51 (1985). The record establishes that Rockwater made substantial efforts to get competent advice from qualified tax professionals to assess its potential tax liability for the drying trailers on multiple occasions. *See Gustashaw v. Commissioner*, 696 F.3d 1124, 1139 (11th Cir. 2012) (stating, in the context of a different penalty provision, "The most important factor ... is the 'extent of the taxpayer's effort to assess [its] proper tax liability." (quoting Treas. Reg. § 1.6664-4(b)(1))). The advice that Rockwater received, which came from its longstanding accounting firm after detailed discussions about the drying trailers, was both factually particularized and legally informed. *Stovall v. Commissioner*, 762 F.2d 891, 895 (11th Cir. 1985) (explaining that a tax professional's advice must be informed for a taxpayer to reasonably rely on it). Under these circumstances, Rockwater had reasonable cause for any delay in paying the tax. Because Rockwater does not owe the tax, and alternatively because it otherwise had reasonable cause for its delay in paying it, neither

penalties nor interest are appropriate. Accordingly, summary judgment is granted in favor of Rockwater on this issue.

CONCLUSION

***5** For the foregoing reasons, Rockwater's motion for summary judgment (ECF No. 15) is granted, and the Government's motion (ECF No. 16) is denied. Judgment shall be entered in favor of Rockwater in the amount of $37,031.76.[3]

IT IS SO ORDERED, this 10th day of April, 2023.

All Citations

Not Reported in Fed. Supp., 2023 WL 2868931, 131 A.F.T.R.2d 2023-1345

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[3] The only remaining issue is Plaintiff's claim for attorneys' fees. Because the current record is adequate for making a determination of this issue and additional briefing is unnecessary to assist the Court, the Court finds it appropriate to decide this issue in this Order. Although the Court found the Government's arguments in support of its imposition of the tax unpersuasive, they are not substantially unjustified. 26 U.S.C. § 7430(c)(4)(B). Decisions by the Courts of Appeals support this conclusion. Id. § 7430(c)(4)(B)(iii). Therefore, Rockwater is not entitled to recover its attorneys' fees.

Appendix C

26 U.S.C.A. § 4051, I.R.C. § 4051

§ 4051. Imposition of tax on heavy trucks and trailers sold at retail

(a) Imposition of tax.--

(1) In general.--There is hereby imposed on the first retail sale of the following articles (including in each case parts or accessories sold on or in connection therewith or with the sale thereof) a tax of 12 percent of the amount for which the article is so sold:

(A) Automobile truck chassis.

(B) Automobile truck bodies.

(C) Truck trailer and semitrailer chassis.

(D) Truck trailer and semitrailer bodies.

(E) Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

(2) Exclusion for trucks weighing 33,000 pounds or less.--The tax imposed by paragraph (1) shall not apply to automobile truck chassis and automobile truck bodies, suitable for use with a vehicle which has a gross vehicle weight of 33,000

pounds or less (as determined under regulations prescribed by the Secretary).

(3) Exclusion for trailers weighing 26,000 pounds or less.--The tax imposed by paragraph (1) shall not apply to truck trailer and semitrailer chassis and bodies, suitable for use with a trailer or semitrailer which has a gross vehicle weight of 26,000 pounds or less (as determined under regulations prescribed by the Secretary).

(4) Exclusion for tractors weighing 19,500 pounds or less.--The tax imposed by paragraph (1) shall not apply to tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer if--

(A) such tractor has a gross vehicle weight of 19,500 pounds or less (as determined by the Secretary), and

(B) such tractor, in combination with a trailer or semitrailer, has a gross combined weight of 33,000 pounds or less (as determined by the Secretary).

(5) Sale of trucks, etc., treated as sale of chassis and body.--For purposes of this subsection, a sale of an automobile truck or truck trailer or semitrailer shall be considered to be a sale of a chassis and of a body described in paragraph (1).

26 U.S.C.A. § 7701(a)(48)(A). Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof--

(48) Off-highway vehicles.--

(A) Off-highway transportation vehicles.--

(i) In general.--A vehicle shall not be treated as a highway vehicle if such vehicle is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design such vehicle's capability to transport a load over the public highway is substantially limited or impaired.

(ii) Determination of vehicle's design.--For purposes of clause (i), a vehicle's design is determined solely on the basis of its physical characteristics.

(iii) Determination of substantial limitation or impairment.--For purposes of clause (i), in determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether such vehicle is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether such vehicle can transport a load at a sustained speed of at least 25 miles per hour. It is immaterial that a

vehicle can transport a greater load off the public highway than such vehicle is permitted to transport over the public highway.

26 C.F.R. § 48.4061(a)–1(d) Imposition of tax; exclusion for light-duty trucks, etc.

(d) Highway vehicle—(1) Definition. For purposes of this subchapter, the term "highway vehicle" means any self-propelled vehicle, or any trailer or semitrailer, designed to perform a function of transporting a load over public highways, whether or not also designed to perform other functions, but does not include a vehicle described in paragraph (d)(2) of this section. For purposes of this definition, a vehicle consists of a chassis, or a chassis and a body if the vehicle has a body, but does not include the vehicle's load. Therefore, in determining whether a vehicle is a "highway vehicle", it is immaterial that the vehicle is designed to perform a highway transportation function for only a particular kind of load, such as passengers, furnishings and personal effects (as in a house, office, or utility trailer), a special type of cargo, goods, supplies, or materials, or, except to the extent otherwise provided in paragraph (d)(2)(i) of this section, machinery or equipment specially designed to perform some off-highway task unrelated to highway transportation. In the case of specially designed machinery or equipment, it is also immaterial, except as provided in paragraph (d)(2)(i) of this section, that such machinery or equipment is permanently mounted on the vehicle. For purposes of paragraph (d) of this section, the term "transport" includes the term "tow", and the term "public highway" includes any road (whether a Federal highway, State highway, city street, or otherwise) in the United States which is not a private roadway. A

vehicle which is not a highway vehicle within the meaning of this paragraph shall be treated as a nonhighway vehicle for purposes of this subchapter. Examples of vehicles that are designed to perform a function of transporting a load over the public highways are passenger automobiles, motorcycles, buses, and highway-type trucks, truck tractors, trailers, and semi-trailers.

(2) Exceptions—(i) Certain specially designed mobile machinery for nontransportation functions. A self-propelled vehicle, or trailer or semi-trailer, is not a highway vehicle if it (A) consists of a chassis to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or operation similar to any one of the foregoing enumerated operations if the operation of the machinery or equipment or equipment is unrelated to transportation on or off the public highways, (B) the chassis has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and (C) by reason of such special design, such chassis could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or

equipment or similar machinery or equipment requiring such a specially designed chassis.

(ii) Certain vehicles specially designed for offhighway transportation. A self-propelled vehicle, or a trailer or semitrailer, is not a highway vehicle if it is (A) specially designed for the primary function of transporting a particular type of load other than over the public highway in connection with a construction, manufacturing, processing, farming, mining, drilling, timbering, or operation similar to any one of the foregoing enumerated operations, and (B) if by reason of such special design, the use of such vehicle to transport such load over the public highways is substantially limited or substantially impaired. For purposes of applying the rule of (B) of this subdivision, account may be taken of whether the vehicle may travel at regular highway speeds, requires a special permit for highway use, is overweight, overheight or overwidth for regular use, and any other relevant considerations. Solely for purposes of determinations under this paragraph (d)(2)(ii), where there is affixed to the vehicle equipment used for loading, unloading, storing, vending, handling, processing, preserving, or otherwise caring for a load transported by the vehicle over the public highways, the functions are related to the transportation of a load over the public highways even though such functions may be performed off the public highways.

(iii) Certain trailers and semi-trailers specially designed to perform non-

transportation functions off the public highways. A trailer or semi-trailer is not a highway vehicle if it is specially designed to serve no purpose other than providing an enclosed stationary shelter for the carrying on of a function which is directly connected with and necessary to, and at the off-highway site of, a construction, manufacturing, processing, mining, drilling, farming, timbering, or operation similar to any one of the foregoing enumerated operations such as a trailer specially designed to serve as an office for such an operation.

(3) Optional application. For purposes of this subchapter, if any rules existing immediately prior to January 13, 1977 would, if applicable, unequivocally resolve an issue involving the definition of a highway vehicle with respect to a period prior to such date, at the option of the taxpayer, such rules existing prior to such date shall be applied to resolve the issue for all periods prior to such date, and the rules of paragraphs (d)(1) and (2) of this section, which define the term "highway vehicle", shall not apply with respect to such issue for all periods prior to such date.

(4) Highway vehicles not subject to section 4061 tax. Although for purposes of this paragraph (d) passenger automobiles, automobile trailers and semitrailers, motor homes, motorcycles, light-duty trucks, etc., will be considered to be highway vehicles because they are designed to perform a function of transporting a load over public highways, the tax imposed

under section 4061(a) does not apply to the sale of such vehicles because they either are not articles subject to tax under such section or are excluded from tax under section 4061(a)(2). See also paragraphs (a)(4) and (f) of this section. Despite the fact that passenger automobiles, passenger automobile trailers and semi-trailers, motor homes, motorcycles, light-duty trucks, etc., are not subject to the manufacturers excise tax on highway vehicles imposed by section 4061(a), the fact that they are nevertheless considered highway vehicles for purposes of this subchapter can be of material significance in determining the applicability of such excise taxes as the tax imposed by section 4041 (relating to diesel and special motor fuels), the tax imposed by section 4071(a)(1) (relating to tires of the type used on highway vehicles), or the tax imposed by section 4481 (relating to highway use tax on highway motor vehicles). In addition, the definition of the term "highway vehicle" is material in determining the credits or refunds provided by section 6416(b)(2)(I) (relating to diesel fuel used in certain highway vehicles), section 6421(a) (relating to gasoline used for a nonhighway purpose), section 6424 (relating to lubricating oil used otherwise than in a highway motor vehicle), and section 6427(a) (relating to diesel or special motor fuel not used for a taxable purpose).