No. 25-178

In the Supreme Court of the United States

FITZGERALD TRUCK PARTS AND SALES, LLC,
PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
MICHAEL J. HAUNGS
DOUGLAS C. RENNIE
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

The Internal Revenue Code imposes an excise tax on the "first retail sale" of a heavy truck or tractor. 26 U.S.C. 4051(a)(1). The Code provides a safe harbor from that tax for a repaired or modified vehicle "if the cost of such repairs and modifications does not exceed 75 percent of the retail price of a comparable new article." 26 U.S.C. 4052(f)(1). The safe harbor does not apply, however, "if the article (as repaired or modified) would, if new, be taxable under section 4051 and"—critically here—"the article when new was not taxable under such section or the corresponding provision of prior law." 26 U.S.C. 4052(f)(2). The question presented is:

Whether, to claim the Section 4052(f) safe harbor, a taxpayer must show that each vehicle when new was in fact subject to taxation on its first retail sale.

RELATED PROCEEDINGS

United States District Court (M.D. Tenn.):

Fitzgerald Truck Parts & Sales, LLC v. *United States,* No. 20-cv-26 (July 21, 2023)

Fitzgerald Truck Parts & Sales, LLC v. *United States,* No. 19-cv-8 (Mar. 16, 2021)

United States Court of Appeals (6th Cir.):

Fitzgerald Truck Parts & Sales, LLC v. *United States,* No. 24-5078 (Mar. 31, 2025)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Constitution, statutes, and regulations:

In the Supreme Court of the United States

No. 25-178

FITZGERALD TRUCK PARTS AND SALES, LLC,
PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-28a) is reported at 132 F.4th 937. The memorandum opinion of the district court (Pet. App. 29a-62a) is available at 2023 WL 8100540. A previous memorandum opinion of the district court (Pet. App. 64a-85a) is reported at 671 F. Supp. 3d 839.

JURISDICTION

The judgment of the court of appeals was entered on March 31, 2025. A petition for rehearing was denied on May 21, 2025 (Pet. App. 63a). The petition for a writ of certiorari was filed on August 12, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 26 U.S.C. 4051(a)(1), Congress imposed a 12% excise tax on the "first retail sale" of certain "articles,"

including heavy trucks and tractors used for highway transportation (*i.e.*, the tractors in tractor-trailers). That tax finances the Highway Trust Fund, 26 U.S.C. 9503(b)(1)(B) (Supp. III 2021), and requires "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," *Hostar Marine Transp. Sys., Inc.* v. *United States*, 592 F.3d 202, 203 (1st Cir. 2010) (citation omitted).

The Internal Revenue Code defines "'first retail sale'" as "the first sale, for a purpose other than for resale or leasing in a long-term lease, after production, manufacture, or importation." 26 U.S.C. 4052(a)(1). A regulation first promulgated by the Department of the Treasury in 1988 elaborates that "'first retail sale' means a taxable sale," which does not occur if "[t]he sale is a tax-free sale under section 4221." 26 C.F.R. 145.4052-1(a)(1) and (2)(i); see 53 Fed. Reg. 16,867, 16,869 (May 12, 1988). Section 4221, in turn, identifies various sales for which "no tax shall be imposed," such as sales for export or those to a state or local government for its exclusive use. 26 U.S.C. 4221(a).

In 1997, Congress added a safe harbor to the heavy-truck excise tax. Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1434(a), 111 Stat. 1052. Under Section 4052(f)(1), "[a]n article described in section 4051(a)(1) shall not be treated as manufactured or produced" (and thus does not trigger taxation on its next retail sale) "solely by reason of repairs or modifications to the article * * * if the cost of such repairs and modifications does not exceed 75 percent of the retail price of a comparable new article." 26 U.S.C. 4052(f)(1). But under Section 4052(f)(2), that safe harbor "shall not apply if the article (as repaired or modified) would, if new, be

taxable under section 4051 and the article when new was not taxable under such section or the corresponding provision of prior law." 26 U.S.C. 4052(f)(2).

2. Petitioner is a business that manufactured heavy tractors using "glider kits." Pet. App. 3a. Petitioner would purchase a kit with new tractor parts like the cab, axle, and wheels from a major tractor manufacturer, and would combine those parts with a refurbished engine and transmission from a used tractor. *Id.* at 3a, 64a. Petitioner originally bought used tractors and extracted the engines and transmissions itself but shifted to buying stand-alone engines and transmissions from salvage yards. *Id.* at 3a; contra Pet. 3 (asserting that petitioner's "business practice remain[ed] unchanged" from previous audits). Petitioner paid about $4000 for each salvaged engine and sold each of its refurbished tractors for over $120,000 without collecting excise tax. Pet. App. 5a.

The Internal Revenue Service assessed petitioner for failing to pay excise tax on 12,830 tractors between 2012 and 2017. Pet. App. 29a. Petitioner paid the tax on one tractor per quarter and sued for a refund in the United States District Court for the Middle District of Tennessee. *Id.* at 5a. In its refund requests, petitioner represented that it had purchased the used tractors from which it acquired engines and transmissions and that those tractors had been "previously taxed." *E.g.*, D. Ct. Doc. 129-10, at 1-3 (Mar. 10, 2023); see D. Ct. Doc. 1, at 2 (May 7, 2020) ("[T]he gliders that [petitioner] sold during the relevant tax periods were previously taxed."); D. Ct. Doc. 129-26, at 2 (Mar. 10, 2023) (Petitioner "has ensured that the section 4051(a) excise tax was previously paid on all of the donor tractors when they originally were sold in retail transactions.").

The district court denied summary judgment to the government in pertinent part, Pet. App. 64a-85a, and the case proceeded to trial where a jury found for petitioner, *id.* at 6a. The government filed a motion for judgment as a matter of law or a new trial, which the district court denied. *Id.* at 29a-62a.

As relevant here, the district court rejected the government's contention that petitioner had failed to establish that the Section 4052(f) safe harbor applied. Pet. App. 45a-47a. The evidence at trial suggested that at least some tractors from which petitioner acquired engines and transmissions would not have been subject to tax on first retail sale because they were sold outside the United States or to state or local governments. *Id.* at 20a, 45a. The government therefore argued that petitioner's tractors "when new [were] not taxable under [Section 4051]" and fell outside the safe harbor. 26 U.S.C. 4052(f)(2); see D. Ct. Doc. 198-1, at 6-7 (Aug. 11, 2023). The court disagreed, holding that the used tractors were "subject to taxation when new" whether or not they would have been exempt from taxation based on the buyer's identity or location. Pet. App. 47a.

3. The court of appeals reversed and remanded for further fact-finding. Pet. App. 1a-28a. The court agreed with petitioner that it had made "repairs or modifications" to tractors as required by Section 4052(f)(1), even though its tractors were made entirely from new parts except for the engines and transmissions. *Id.* at 7a (quoting 26 U.S.C. 4052(f)(1)); see *id.* at 7a-20a. But the court held that petitioner had failed to establish that the used tractors from which it acquired engines and transmissions "when new [were] not taxable under [Section 4051]" as required by Section 4052(f)(2). *Id.* at 20a (quoting 26 U.S.C. 4052(f)(2)); see *id.* at 20a-28a.

The court of appeals explained that, "to escape § 4052(f)(2), a taxpayer must prove that the respective tractor was capable of being taxed when new." Pet. App. 22a. That standard, the court noted, did not require a taxpayer to "show that money was remitted to the Treasury in satisfaction of the excise tax." *Ibid.* But "the taxpayer must show that every tractor was 'subject to' and caused the imposition of § 4051 when new." *Ibid.* (quoting 17 *The Oxford English Dictionary* 678 (2d ed. 1989)).

The court of appeals held that petitioner had not carried that burden here. Pet. App. 22a-23a. The record demonstrated that "at least some of the salvaged tractors acquired by [petitioner] were likely sold in foreign countries or to state and local governments" and thus were not subject to tax on first retail sale. *Ibid.* The court therefore remanded for "further factfinding" on how many of petitioner's 12,830 tractors were taxable when new. *Id.* at 23a.

The court of appeals rejected petitioner's contrary argument that Section 4052(f)(2) focuses on whether tractors "are taxable as a class under § 4051" regardless of whether each tractor's "original sale was in fact a taxable event." Pet. App. 24a. As the court explained, Section 4052(f)(2) incorporates Section 4051 by cross-reference, asking whether a sale is "taxable under section 4051." *Id.* at 25a (quoting 26 U.S.C. 4052(f)(2)). And Section 4051(a)(1) imposes a tax only "on the 'first retail sale' of certain articles"—a tax that does not apply to tax-exempt sales like exports and those to governments. *Id.* at 24a-25a (quoting 26 U.S.C. 4051(a)(1)). Petitioner's focus on an article's taxability in the abstract "fails to consider [the statute's] cross-references," contradicts the "plain meaning" of "'taxable,'" and raises

serious "administrability" concerns. *Id.* at 24a-26a. Petitioner's reading also undermines Congress's "rational legislative purpose" of "ensur[ing] that each truck triggers the excise tax at least once." *Id.* at 26a.

ARGUMENT

Petitioner contends (Pet. 9-31) that the court of appeals erred in requiring it to prove that the used tractors from which it acquired engines and transmissions were subject to taxation on first retail sale. That contention does not warrant further review. The court of appeals' decision is correct and does not conflict with the decision of any other court. Indeed, this case appears to be the first ever to address the meaning of 26 U.S.C. 4052(f)(2). And this case's interlocutory posture makes further review particularly unwarranted.

1. The court of appeals correctly held that petitioner failed to establish the applicability of Section 4052(f)'s safe harbor from excise tax.

a. Under Section 4052(f)(2), the safe harbor does not apply if "the article when new was not taxable under [Section 4051]." 26 U.S.C. 4052(f)(2). "[T]axable" means "capable of being taxed," *Webster's Third New International Dictionary of the English Language* 2345 (1993), or "subject to a tax," 17 *The Oxford English Dictionary* 678 (2d ed. 1989); accord *Black's Law Dictionary* 1459 (6th ed. 1990) ("Subject to taxation[.]"). And under Section 4051, a tax is "imposed on the first retail sale" of various "articles," not on the "articles" themselves. 26 U.S.C. 4051(a)(1). Therefore, to determine whether an article "was not taxable under [Section 4051]," 26 U.S.C. 4052(f)(2), the court must ask whether the new article was subject to taxation *on its first retail sale*, not whether the article might have been taxed in some other hypothetical sale. That analysis tracks this Court's typ-

ical understanding of excise taxes as being "laid on the sale, and on that alone." *Indian Motocycle Co.* v. *United States*, 283 U.S. 570, 574 (1931).

Likewise, the Treasury Department has long defined a "'first retail sale'" under Section 4051 to exclude a "tax-free sale under section 4221," 26 C.F.R. 145.4052-1(a)(1) and (2)(i), such as a sale for export or one to a state or local government for its exclusive use, 26 U.S.C. 4221(a)(2) and (4). That regulation originated in 1988 and predates Congress's enactment of Section 4052(f) in 1997. See 53 Fed. Reg. at 16,869; Taxpayer Relief Act § 1434(a), 111 Stat. 1052. "When Congress adopts a new law against the backdrop of a 'longstanding administrative construction,' this Court generally presumes the new provision should be understood to work in harmony with what has come before." *Monsalvo Velázquez* v. *Bondi*, 604 U.S. 712, 725 (2025) (citation omitted). Here, that rule counsels in favor of reading Section 4052(f)(2) to incorporate the agency's settled understanding that Section 4051 turns on the taxability of the sale, not on the nature of the article in the abstract. Petitioner invokes regulatory examples describing a manufacturer as "manufactur[ing] trucks that are taxable under section 4051." Pet. 12-13 (citation omitted). But those examples make clear that it is the "sale of the truck" that is taxable—not the manufacturing alone. 26 C.F.R. 145.4052-1(e).

Applying that legal rule, the court of appeals correctly rejected petitioner's claim to the safe harbor. In a tax-refund suit, "the taxpayer bears the burden of proving the amount he is entitled to recover." *United States* v. *Janis*, 428 U.S. 433, 440 (1976). But petitioner did not prove that its tractors "when new" were taxable under Section 4051. 26 U.S.C. 4052(f)(2). To the con-

trary, the trial evidence demonstrated that "at least some" of petitioner's tractors came from sales that were "likely" for export or to a state or local government. Pet. App. 22a-23a.

Congress, however, may not tax exports from any State, U.S. Const. Art. I, § 9, Cl. 5, and sales to governments are generally tax-exempt as a matter of intergovernmental immunity, *Indian Motocycle*, 283 U.S. at 575. And Congress has codified those exemptions in Section 4221, which provides that "no tax shall be imposed * * * on the first retail sale[] of an article * * * for export" or "to a State or local government for the exclusive use of a State or local government." 26 U.S.C. 4221(a)(2) and (4). Given those likely applicable exemptions, petitioner failed to carry its burden to establish that each of its tractors was "taxable under [Section 4051]" "when new." 26 U.S.C. 4052(f)(2).

b. In this Court, petitioner contends, for the first time, that "taxable article" is a "term of art" that turns on "the nature of the article itself" rather than the "facts about a prior sale" of that article. Pet. 9; see Pet. 14, 22-31; but cf. Pet. C.A. Br. 48-49 (urging the court of appeals to apply the "ordinary meaning" of "'taxable'" as "capable of being taxed or subject to tax"). That matters, petitioner contends (Pet. 10), because the used tractors from which it acquired engines and transmissions *could* have been taxable when new if they had been sold to a different buyer, even if they were never in fact subject to taxation.

Petitioner's term-of-art argument fails because "[t]he first precondition of any term-of-art reading is that the term be present in the disputed statute." *Borden* v. *United States*, 593 U.S. 420, 435 (2021) (plurality opinion); accord *Medical Marijuana, Inc.* v. *Horn*, 604 U.S.

593, 603 (2025) ("It is hard to make a term-of-art argument without the term of art."). And Section 4052(f)(2) never actually uses the phrase "taxable article." Instead, that provision asks whether "the article when new was not taxable *under* [*Section 4051*]." 26 U.S.C. 4052(f)(2) (emphasis added). As explained, Section 4051 does not tax a heavy tractor in the abstract but only on its "first retail sale." 26 U.S.C. 4051(a)(1). Whatever the phrase "taxable article" might mean in other contexts, the text of Section 4052(f)(2) does not support petitioner's proposed inquiry into the taxability of a tractor in some hypothetical retail sale that did not occur.

In any event, petitioner's contention that "taxable article" is a term of art appears significantly overstated. Petitioner does not cite any authority describing "taxable article" as a "term of art." Instead, petitioner collects (Pet. 22-24, 26-31) miscellaneous sources that have little in common except their use of the word "taxable" near "article" in some context. For example, in *White* v. *Aronson*, 302 U.S. 16 (1937), this Court construed a statute that "imposed * * * a tax" on certain specified "articles," including "games and parts of games." *Id.* at 17 n.1. The Court referred to various statements about whether jigsaw puzzles were "taxable" or "not taxable" (depending on whether they were considered games), *id.* at 19-20, but it never distinguished between abstract taxability and the taxability of a specific sale. In *Colonnade Catering Corp.* v. *United States*, 397 U.S. 72 (1970), this Court held that federal agents lacked authority to make forcible, warrantless entries to inspect the premises of retail dealers in liquors. *Id.* at 77. Its only reference to "taxable articles" came in quoting a statutory provision that paraphrased another statutory provision as "relating to entry of premises for examina-

tion of taxable articles." *Id.* at 74 (quoting 26 U.S.C. 7342). But the cross-referenced provision gave no indication that it was intended to cover dealers who engaged in tax-exempt liquor sales. See *id.* at 73 n.2 (quoting 26 U.S.C. 7606 (1964)). And in *City of Philadelphia* v. *Collector*, 72 U.S. 720 (1867), the City's counsel (not the Court) implicitly described the City as "engaged in the manufacture of taxable articles" in urging, unsuccessfully, that natural gas used by the City was not taxable because the City appointed the trustees of the gas works. *Id.* at 726. None of those authorities suggests that "taxable article"—much less the actual wording of Section 4052(f)(2)—can refer only to the abstract taxability of an article independent of any actual sale.

Other provisions of the Code contradict petitioner's proposed term-of-art reading. For purposes of the government's authority to forfeit property in tax-fraud cases, Congress described a "[t]axable article" as one on which "tax is *imposed*." 26 U.S.C. 7301(a) (emphasis added). And under Section 4501, tax is undisputedly imposed on the sale of the article, not its mere existence. Cf. Pet. 13 (faulting the court of appeals for focusing on when "tax is actually *imposed*").

Some of petitioner's sources likewise refute his view that "taxable article" is to be applied without reference to any sale of the article. One case describes an article as "taxable" because it had been "sold by the manufacturer." *Jacobs Equip. Co.* v. *United States*, 574 F.2d 1040, 1041 (10th Cir. 1978). Another describes "taxable articles" that had undergone a "taxable sale." *Perfect Form Mfg. LLC* v. *United States*, 160 Fed. Cl. 149, 165 (2022). And a third describes the "sale," not "the act of manufacture," as "the touchstone of liability." *Sarkes Tarzian, Inc.* v. *United States*, 412 F.2d 1203, 1210 (Ct. Cl. 1969)

(per curiam). Even if Section 4052(f)(2) had used the phrase "taxable article," Pet. 9, petitioner has not demonstrated that the phrase has such a "well-settled meaning" as to qualify as a term of art, *Sekhar* v. *United States*, 570 U.S. 729, 732 (2013) (citation omitted).

c. Petitioner's other criticisms of the court of appeals' reasoning are equally unpersuasive. Petitioner emphasizes (Pet. 10, 12) that Section 4051 does not "cross-reference" Section 4221, from which petitioner infers that Section 4221's limitations on what sales are taxable do not limit the meaning of "taxable under [Section 4051]." 26 U.S.C. 4052(f)(2). But the cross-reference runs in the other direction: Section 4221 references Section 4051 and limits when tax may "be imposed," in line with constitutional limits on intergovernmental and export taxation that would exist regardless. 26 U.S.C. 4221(a). In any event, this Court ordinarily analyzes the Internal Revenue Code "as a whole." *United States* v. *Rodgers*, 461 U.S. 677, 699 (1983). Section 4221 is not an "entirely different statute[]" that "has no bearing" on Section 4051, Pet. 16, but an integral part of Congress's coherent revenue scheme that expressly cross-references Section 4051.

Petitioner notes (Pet. 17) that Section 4052(f)(2) applies to a tractor that "was not taxable under [Section 4051] *or the corresponding provision of prior law*" and prior law did not include a first-retail-sale provision. 26 U.S.C. 4052(f)(2) (emphasis added). But the predecessor statute imposed tax on "articles * * * *sold* by the manufacturer, producer, or importer." 26 U.S.C. 4061(a)(1) (1982) (emphasis added). This Court has interpreted materially identical language to impose tax "on the sale," not the manufacture, of an article. *Indian Motocycle*, 283 U.S. at 574. For both the current and

prior statutes, Section 4052(f)(2) therefore has the same focus: the sale.

Petitioner cites (Pet. 17-18) other uses of the word "taxable" in Section 4052. To the extent those provisions could be read to ask whether a truck or tractor would be taxable in a hypothetical sale, any difference would be explained by context. Section 4052(a)(3), for example, provides that if a "person uses an article taxable under section 4051 before the first retail sale of such article, then such person shall be liable for tax under section 4051 in the same manner *as if* such article were sold at retail by him." 26 U.S.C. 4052(a)(3) (emphasis added). And a different portion of Section 4052(f)(2) asks whether a truck or tractor "*would, if new*, be taxable under section 4051." 26 U.S.C. 4052(f)(2) (emphasis added). That conditional language might be read to call for a hypothetical inquiry into whether a truck or tractor *could* be taxed in a future retail sale. But the relevant language here focuses on what actually happened in the real world, asking if the truck or tractor "when new *was* not taxable." *Ibid.* (emphasis added).

Petitioner's appeal (Pet. 20-21) to the word "new" in Section 4052(f)(2) fails for similar reasons. Even if asking whether a tractor "would, *if new*, be taxable under section 4051" might ask about the taxability of a hypothetical sale, asking whether a tractor "*when new* was not taxable" asks what happened in the real world at an earlier point in time. 26 U.S.C. 4052(f)(2) (emphasis added).

Petitioner notes (Pet. 17) that the heading of Section 4052(f) is "Certain repairs and modifications not treated as manufacture." But that language encapsulates Section 4052(f)(1), which describes when a truck or tractor "shall not be treated as manufactured or produced."

The heading does not suggest that Section 4052(f)(2) looks to the taxability of trucks or tractors in the abstract as divorced from real-world sales.

Petitioner raises (Pet. 15) concerns over "double taxation." But the government's reading simply "ensure[s] that each truck triggers the excise tax at least once." Pet. App. 26a. Petitioner's reading, by contrast, risks its tractors avoiding *any* excise tax. The tractors, when new, could have been sold tax-free abroad or to a domestic-government buyer. And petitioner could then, under the safe harbor, sell its refurbished tractors tax-free to buyers who are *not* tax-exempt. That result would skirt Congress's object of taxing the heaviest commercial vehicles as the price of using the Nation's highways.

Finally, petitioner asserts (Pet. 21) that "any doubt about the construction of a tax statute" should be resolved in the taxpayer's favor. But that substantive canon was "discarded" in the 1930s. Sam Heavenrich, *Decanonization*, 57 Ariz. St. L.J. 513, 526 (2025) (citation omitted). The modern approach, when any thumb has been placed on the scale, has been the opposite—that "exemptions from taxation are to be construed narrowly," *i.e.*, against the taxpayer. *Mayo Found. for Med. Educ. & Research* v. *United States*, 562 U.S. 44, 59-60 (2011) (citation omitted). In any event, Section 4052(f)(2) has no ambiguity that would require resort to any tiebreaker canon.

2. This case does not satisfy the traditional criteria for certiorari. Petitioner does not identify any conflict over the proper interpretation of Section 4052(f)(2). In fact, this case appears to be the first in the safe harbor's 28 years of existence to involve that provision.

It is also uncertain whether the question presented will recur. As petitioner observed below, "[t]he glider[-truck] industry was eliminated in 2020" by EPA regulations, and petitioner's own "business is winding down." Pet. C.A. Br. 5 & n.4; see Pet. App. 30a. While petitioner now gestures (Pet. 33) at potential consequences for "electric vehicles and other emerging technologies," petitioner does not explain or substantiate why the question presented might arise in those contexts. In the court of appeals, the government suggested that a tax credit for "qualified commercial clean vehicles" might "prompt similar questions." Gov't C.A. Reply Br. 33. But Congress recently phased out that tax credit, see Act of July 4, 2025, Pub. L. No. 119-21, § 70503, 139 Stat. 251 (amending 26 U.S.C. 45W(g)), and petitioner does not identify any other basis for anticipating an effect on electric vehicles.

Given this case's narrow parameters, petitioner's principal argument about the importance of the question presented (Pet. 25) is that the court of appeals' decision will purportedly affect "every statute and Treasury regulation that refer[s] to taxable articles." But "[s]tatutory language has meaning only in context." *Graham County Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, 545 U.S. 409, 415 (2005). And, as discussed, Section 4052(f)(2) does not use the "taxable articles" locution on which petitioner focuses. Petitioner's speculation about how the court of appeals' analysis might affect other, differently worded provisions does not justify this Court's review.

Moreover, this case's interlocutory posture "alone furnishe[s] sufficient ground" for denying the petition. *Hamilton-Brown Shoe Co.* v. *Wolf Bros.*, 240 U.S. 251, 258 (1916). The court of appeals did not determine that

petitioner is subject to the heavy-tractor excise tax. Instead, it remanded the case for "further factfinding" about the origin of petitioner's tractors and whether they were subject to taxation on first retail sale. Pet. App. 23a. Petitioner has long promised that it could prove that its tractors were not only subject to taxation, but in fact "previously taxed." See p. 3, *supra*. While the trial record suggests that petitioner may have overpromised in that respect, Pet. App. 20a, a full or partial showing would obviate or reduce petitioner's excise-tax liability along with any reason for this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
MICHAEL J. HAUNGS
DOUGLAS C. RENNIE
Attorneys

NOVEMBER 2025