No. 25-178

IN THE
Supreme Court of the United States

FITZGERALD TRUCK PARTS AND SALES, LLC,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

REPLY BRIEF FOR THE PETITIONER

Kendall C. Jones
Counsel of Record
Zachariah W. Lindsey
Eversheds Sutherland (US) LLP
700 Sixth Street, NW, Suite 700
Washington, DC 20001-3980
(202) 383-0100
kendalljones@eversheds-sutherland.com
zacklindsey@eversheds-sutherland.com

Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

REPLY BRIEF FOR PETITIONER 1

I. Careful, Critical Examination Identifies Textual Differences And Dissimilar Purposes Between The Statutes That The Sixth Circuit Read Together 2

II. Consistent Use of Taxable Article And Equivalent Phrases Distinguishes Between Articles That Are Subject to Tax and Those That Are Not 6

III. Reasons for Granting The Petition 10

CONCLUSION 13

TABLE OF AUTHORITIES

Page(s)

Cases

Biden v. Nebraska,
600 U.S. 477 (2023).....9

Boise Nat'l Leasing, Inc., v. United States,
389 F. 2d 633 (9th Cir. 1968).....5

Bragdon v. Abbot,
524 U.S. 624 (1998).....4

Commissioner v. Zuch,
605 U.S. 422 (2025).....5

Feliciano v. Dep't of Transp.,
605 U.S. 38 (2025).....6

Fischer v. United States,
603 U.S. 480 (2024).....9

Gross v. FBL Fin. Servs., Inc.,
557 U.S. 167 (2009).....2

Hardt v. Reliance Standard Life Ins. Co.,
560 U.S. 242 (2010).....2

Martin v. United States,
605 U.S. 395 (2025).....11

Monsalvo *v. Bondi*,
604 U.S. 712 (2025).....8

Ruan Fin. Corp. v. United States,
976 F.2d 452 (8th Cir. 1992).....5

Pulsifer v. United States,
601 U.S. 124 (2024)..... 6-7, 9

Weyerhaeuser Co. v. U.S. Fish and Wildlife Serv., 586 U.S. 9 (2018) 6

Statutes

26 U.S.C. § 4051 ..... 3, 7

26 U.S.C. § 4052 6-8

26 U.S.C. § 4052(f) 1-3, 6, 8

26 U.S.C. § 4052(f)(1) 3, 7

26 U.S.C. § 4052(f)(2) 3, 7-9

26 U.S.C. § 4221 ..... 1-5, 7-9

Regulations

26 C.F.R. § 48.0-2(a)(4) 8

26 C.F.R. § 48.4221-1 ..... 4, 8

Legislative History

H.R. Rep. No. 100-1104 (1988) (Conf. Rep.) 5

S. Rep. No. 105-33 (1997) 5

Other Authorities

A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts (2012) 4, 8, 9

Connor D. Wolf, *Class 8 Truck Orders Slide 44% As Tariffs Strain*, Transport Topics, Oct. 9, 2025 11

Rev. Rul. 71-584, 1971-2 C.B. 358 5

Rev. Rul. 91-27, 1991-1 C.B. 192 5

REPLY BRIEF FOR PETITIONER

Respondent's arguments reinforce the need for this Court's guidance on the essential question raised by Petitioner—whether the Sixth Circuit erroneously interpreted section 4052(f)'s manufacturing safe harbor by reading tax-exemption rules from section 4221 into the requirement that a repaired article was a taxable article when new. Both the government and the Sixth Circuit misapply statutory interpretation conventions and speculate about the statute's purpose. The plain words address whether an article is treated as manufactured, not whether it was first sold to a tax-exempt buyer.

The appellate court improperly improvised its interpretation, injecting into the safe harbor different terms from an unrelated statute exempting certain buyers (e.g., state and local governments) from tax imposed upon sale of a taxable article. The decision is at odds with every other circuit court's, this Court's, and the IRS's consistent use of taxable article and equivalent phrases to distinguish between taxable and nontaxable goods.

This litigation follows a lengthy history of IRS overreach. Ignoring congressional mandates and statutory plain language, the IRS has long sought to restrict application of the safe harbor beyond its plain language. Now the government argues that the issue lacks sufficient importance to merit review. Yet even under the government's view, this case plainly warrants the Court's attention: it represents one of the largest blows in a "death by a thousand cuts" approach to a law that small businesses have relied

on for generations. Trucking companies rely on the safe harbor every single day to repair their fleets without incurring tax. And in its fervor to restrict the application of the statute, the government threatens the application of all statutes and regulations where taxable modifies article.

The Sixth Circuit's error has severe consequences for tax administration. Under the court's misguided view, every time a statute refers to a taxable article, the article must have been taxed upon a sale—not merely be the type of article subject to tax. This expansive reading disrupts the proper understanding of the term taxable article and requires this Court's adjudication.

I. Careful, Critical Examination Identifies Textual Differences And Dissimilar Purposes Between The Statutes That The Sixth Circuit Read Together

The appellate court and the government disregard this Court's repeated warnings that courts should not apply one statute's terms to another statute without "careful and critical examination." *Gross v. FBL Fin. Servs., Inc.,* 557 U.S. 167, 174 (2009); *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 253-54 (2010). The Sixth Circuit applied section 4221 to section 4052(f) based on an erroneous understanding that taxable article means an article subject to a taxable sale. Careful scrutiny would have identified obvious textual differences and dissimilar legislative objectives.

The government dismisses statutory headings that point to distinct purposes. (Resp. 12-13.) Section 4052(f) deals with "Certain repairs and modifications

not treated as *manufacture*" while section 4221 deals with "Certain tax-free *sales*." (Emphasis added.) The argument that the statute's heading only applies to section 4052(f)(1) is nonsensical. The words obviously pertain to the entire statute and do not say "Not treated as manufacture if tax was previously paid." Both sections 4052(f)(1) and 4052(f)(2) refer to repairs or modifications related to manufacturing. And the government offers no explanation as to how a tax-exemption sales provision bears on whether manufacturing has occurred—the words of the two statutes are not remotely similar.

Beyond the headings, the ordinary meanings of the texts express unrelated purposes. Section 4221 exempts certain buyers from paying tax on otherwise taxable articles while section 4052(f)(2) provides a definitional framework to prevent the IRS from arguing significant repairs constitute manufacturing. Further, the 1958 exemption statute, section 4221, was enacted long before the 1997 enactment of the manufacturing safe harbor, section 4052(f). Congress was aware of possible sales exemptions when it enacted a manufacturing safe harbor that on its face does not refer to sale exemptions.

Section 4221 refers to "taxes imposed by section 4051" and "the sale by the manufacturer"—words that by their ordinary meanings refer to a sale where tax otherwise would be imposed. That in turn requires a threshold determination that a taxable article exists at the time of sale (if the article is a nontaxable article, then the exemption is not needed). In contrast, the safe harbor plainly deals with

whether repairs are considered manufacturing with no reference to prior sales.

Both the government and the court ignore the Treasury regulation providing that section 4221 serves to exempt certain buyers of taxable article by supplying "rules under which the manufacturer . . . of *an article subject to tax* . . . may *sell the article tax free* . . . ." 26 C.F.R. § 48.4221-1 (emphasis added). The regulation provides that there first must be a taxable article before determining that a buyer is exempt.

Analysis of the regulation for the very statute the Sixth Circuit relies on is necessary when conducting "critical examination." The court should have assumed Congress was aware of the section 4221 regulation referring to "an article subject to tax." *See Bragdon v. Abbot*, 524 U.S. 624, 645 (1998); *see also* A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 322-26 (2012). The argument that section 4221 and the safe harbor should be read together collapses under close scrutiny of the ordinary meaning of the statutory and related regulatory words.

The government strangely argues that one needs to consider the statutory backdrop to the safe harbor when there is no statutory backdrop to consider because there were no prior statutes defining manufacturing. (Resp. 7.) But there certainly was a long history of tax controversy litigation that must be considered in determining the purpose of a statute enacted to temper the IRS position that significant repairs constitute manufacturing.

For many years before the statute's enactment, the IRS argued that significant repairs constituted manufacturing of a new taxable article. *Boise Nat'l Leasing, Inc., v. United States*, 389 F. 2d 633 (9th Cir. 1968); *Ruan Fin. Corp. v. United States*, 976 F.2d 452 (8th Cir. 1992); Rev. Rul. 71-584, 1971-2 C.B. 358. That argument never considered or depended on whether tax was imposed or paid previously in a taxable event. Rather, the IRS argued repairs constituted manufacturing of a new tractor in situations where taxes originally were paid or may not have been paid. The IRS focused only on the extent of repairs and that too is the focus of the safe harbor instructing that significant repairs are not treated as manufacturing.

Even if one perceived statutory ambiguity, nothing suggests Congress was concerned about whether the first buyer was tax exempt. Legislative history confirms rejection of the IRS position that significant repairs constitute manufacturing; Congress said they do not. H.R. Rep. No. 100-1104, at 178 (1988); S. Rep. No. 105-33, at 297 (1997). Presumably if Congress was concerned about prior tax-exempt sales, then it would have said so.

Similarly, no IRS guidance requires proof the repaired tractor when new was not sold to a tax-exempt buyer. Rev. Rul. 91-27, 1991-1 C.B. 192. Only during this litigation did the IRS decide that section 4221 exemptions should be injected into the safe harbor; that suggests a switching of position on statutory construction demanding close scrutiny. *See Commissioner v. Zuch*, 605 U.S. 422, 437 (2025).

II. Consistent Use of Taxable Article And Equivalent Phrases Distinguishes Between Articles That Are Subject to Tax and Those That Are Not

The government wrongly argues that the term of art "taxable article" does not appear in the safe harbor, apparently based on a misunderstanding of how adjectives work. (Despite the government's assertion, this argument was raised in Fitzgerald's brief and motion for reconsideration before the Sixth Circuit.) (Resp. 8-10.) The word "taxable" is an adjective referring to "article," a noun. "Adjectives modify nouns—they pick out a subset of a category that possesses a certain quality." *Weyerhaeuser Co. v. U.S. Fish and Wildlife Serv.,* 586 U.S. 9, 19 (2018); *see Feliciano v. Dep't of Transp.,* 605 U.S. 38, 61 (2025) (Thomas, J. dissenting). The court illogically concluded the word "taxable" requires tax was imposed and "payable" upon the article's first sale (Pet. App. 22a) despite the fact that as an adjective, the ordinary meaning of "taxable" throughout entire section 4052 identifies a subset of the word "article"—i.e., taxable articles as distinguished from nontaxable articles. Congress did not describe the articles in the safe harbor as "*taxed* articles."

"Taxable" modifies "article" four times in section 4052. Each use describes the type of article, not a type of sale or tax event where tax might or might not be imposed. (Pet. 18-19.) Consistent with the term of art's use throughout section 4052, section 4052(f)'s use of the word "taxable" is as an adjective to describe "article." The consistent usage canon recognizes that terms of art used repeatedly in the same statute usually have the same meaning. *Pulsifer v. United*

States, 601 U.S. 124, 149 (2024). When the word "taxable" is repeatedly used throughout section 4052 (and other excise tax rules—see Pet. 26-29) as an adjective, there can only be one clear meaning. Congress knew how to say tax must have been imposed and payable when the tractor was sold new, but it didn't say that.

Section 4052(f)(1) refers to articles "*described* in section 4051(a)(1)" (emphasis added) and section 4052(f)(2) then refers to "the article" that subsection (f)(1) described. The use of "described" reinforces that, as an adjective, the word "taxable" serves to identify the type of article, not the type of sale.

Additionally, section 4052(f)(2) provides the repaired article when new must have been taxable under section 4051 and corresponding provisions of prior law. A complete discussion of prior law is beyond the scope of this brief, but suffice it to say, prior statues imposed the excise tax on different truck weights than today are reflected in section 4051. The safe harbor can apply to repaired section 4051 articles and articles described in predecessor statutes, again confirming that the adjective "taxable" serves to define types of articles, not whether tax was paid. That is, one cannot take a lighter article that was not taxable and modify it into a heavier taxable article and have the safe harbor apply. The government's argument that the exempt sale language applies to language in a completely different chapter of the Code makes no sense.

In contrast, section 4221 does not define types of articles that may be the subject of tax-exempt sales, rather it defines types of buyers that may be exempt

when the taxable article is sold. The holding that "tax must have been payable" and each sale "caused the imposition of [tax]" is at odds with the fact that Congress did not describe the article as an "article with tax previously imposed or paid" or "a previously taxed article." (Pet. App. 22a.) Again, this Court's mandate for careful and critical examination of supposedly related statutes confirms distinct purposes—section 4221 deals with certain sales of taxable articles while section 4052(f) deals with manufacturing of taxable articles.

The government fails in its attempt to avoid the fact that the safe harbor uses taxable article as a long-defined term of art describing types of goods subject to tax. For well over a century (Pet. 22-24), in hundreds of opinions and rulings, courts and the IRS repeatedly refer to taxable articles (and equivalent phrases) as a well-established term of art, and one should presume the use of that term in the safe harbor is consistent with "what has come before." *Monsalvo v. Bondi*, 604 U.S. 712, 725 (2025); *see* A. Scalia & B. Garner, *supra,* at 73-77. As discussed, the government's own regulation under section 4221 instructs that you determine if the article is taxable before turning to possible sale exemptions. 26 C.F.R. § 48.4221-1. And 26 C.F.R. § 48.0-2(4)(i) has long defined "manufacturer" as one who produces a taxable article. Judicial and IRS authorities consistently refer to taxable articles to distinguish them from non-taxable articles.

The government avoids the essential use of the word "new" in section 4052(f)(2)'s two references to taxable articles. (Resp. 12.) The statute first requires

the repaired article "if new" must be taxable and secondly requires the repaired tractor must have been a taxable article "when new." Fitzgerald's gliders may have been sold to buyers exempt under section 4221, but nonetheless, the repaired tractors, viewed as if *new,* were taxable articles whose sales may be tax exempt. Tax-exempt sales of repaired tractors are irrelevant to the statute's first requirement because the repaired tractors are deemed to be new. The requirement that the repaired tractor be treated as new looks only to see if the article is the type that could be subject to tax.

For the second section 4052(f)(2) requirement, the jury found all repaired tractors when they first were *new* were taxable articles. The second use of the word new should be read consistently with the first use of the word. Furthermore, the *noscitur a sociis* canon teaches that a word is "given more precise content by the neighboring words with which it is associated." The rule applies given the use of the words "new" in direct association with "taxable article." *Fischer v. United States*, 603 U.S. 480, 487 (2024).

The government bypasses the context of the words "new" as important clues about the purpose and meaning of "taxable article," and ignores consideration of the entire text, not just the word "taxable" in isolation. *Pulsifer, supra,* at 182; A. Scalia & B. Garner, *supra,* at 167. Indeed, "context is everything" because "the meaning of a word depends on the circumstances in which it is used." *Biden v. Nebraska*, 600 U.S. 477, 511 (2023) (Barrett, J. concurring).

In attempting to ignore the impact of the word new, the government argues that there must be a sale, a tax event, in order for an article to be taxable. (Resp. 7.) That argument ignores the fact that if a manufacturer produces a tractor of the type where tax may be imposed upon sale or first use, then that tractor is a taxable article, regardless of when/if a sale or first use occurs. The taxable article might sit unsold for many months but is still a taxable article. Again, the use of "taxable" as an adjective serves to categorize articles that are taxable and those that are not. Before you can decide if a sale is tax-exempt or the buyer is immune from tax, logically you first must determine if the article is taxable. Stated differently, immunity or exemption presupposes that the article is a taxable article in the first place.

III. Reasons for Granting The Petition

The Sixth Circuit's decision departed from well-established principles of statutory interpretation and misconstrued the meaning of "taxable article"—a term of art whose misinterpretation threatens the application of the safe harbor and numerous other statutes. The court's reliance on an unrelated exemption statute lacks any reasoned basis within the safe harbor manufacturing provision.

Again, the statute only refers to taxable articles and never states that the article had to be subject to a taxable sale. As the safe harbor is geared toward repairs of worn or wrecked tractors, sales to unknown first purchasers likely occurred many years or decades earlier after the highway tractor was passed on to other owners. The court's holding—that Congress must have intended to ensure tax payment

when a repaired tractor was new—was pure guesswork. The Circuit's flawed reasoning reflects the court's desire to rewrite tax laws to fit its own understanding and failure to critically analyze the statutes it attempted to link.

Guesswork has no place in statutory interpretation. *Martin v. United States*, 605 U.S. 395, 408 (2025). Absent words requiring imposition of tax when the repaired article was new, the safe harbor's plain meaning compels the conclusion that Congress only focused on what constitutes manufacturing.

By breaking with all other circuits and this Court's consistent use of taxable article and equivalent phrases as a term of art, the Sixth Circuit thrust the safe harbor provision into uncertainty at a time when trucking businesses struggle to deal with significant financial uncertainty; new tractor sales have plummeted. *See* Connor D. Wolf, *Class 8 Truck Orders Slide 44% as Tariffs Strain*, Transport Topics, Oct. 9, 2025.

The government argues that there are no broad reaching implications because gliders are not used as frequently for repairs. That ignores the obvious—the safe harbor applies to repairs of all heavy trucks, heavy trailers and other defined articles on the road today. Heavy trucks and trailers in use today number in the many millions. Now the government says a taxpayer must have proof of the first sale transaction in order to repair a tractor without incurring tax. The impact of that argument is quite broad and warrants review.

Truck operators who repair tractors and other taxable articles rather than buy new ones now have to deal with an opinion that throws the historical meaning of taxable article into question. Moreover, the government ignores the broader use of taxable article in the tax code and presupposes that Congress will never again enact tax provisions that depend on determining whether articles or goods are taxable by their very nature.

The implications of marrying two distinct statutes are of profound importance, impacting multiple statutes, regulations and IRS rulings referring to taxable articles. The Sixth Circuit's opinion is a conspicuous outlier presenting the opportunity for the Court to further frame the mandate that courts must carefully and critically examine perceived related statutes before reading them together.

Review of the opinion will correct the Sixth Circuit's reinterpretation of taxable article that is contrary to over a hundred years of precedent and is a recurring question of importance for thousands of small businesses.[1]

* * *

[1] The government argues granting the petition is "unwarranted" because of the case's "interlocutory posture." (Resp. 6.) But the opinion is final, not provisional.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kendall C. Jones
Counsel of Record
Zachariah W. Lindsey
Eversheds Sutherland (US) LLP
700 Sixth Street, NW, Suite 700
Washington, DC 20001-3980
(202) 383-0100
kendalljones@eversheds-sutherland.com
zacklindsey@eversheds-sutherland.com

Counsel for Petitioner

December 2025