No. 25-___

IN THE

Supreme Court of the United States

HERBERT HIRSCH, BONITA HIRSCH,
HARVEY BIRDMAN, AND DIANE BIRDMAN,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Internal Revenue Code authorizes the Internal Revenue Service to assess monetary penalties for "fraud" when a taxpayer fraudulently underpays federal income taxes or fraudulently fails to file a tax return. 26 U.S.C. §§ 6651(f), 6663. The only way for a taxpayer to challenge the government's fraud claims without first paying the penalties in full is to file a petition with the Tax Court, which adjudicates fraud penalties without a jury. *Id.* § 6213(a).

In this case, the IRS imposed fraud penalties against four taxpayers through administrative proceedings, and the Tax Court denied their request for a jury trial. After this Court decided *SEC v. Jarkesy*, 603 U.S. 109 (2024), the taxpayers petitioned for a writ of mandamus to the court of appeals. The court held that the writ was not available because, even if the taxpayers were wrongly denied a jury trial, they had not shown that their jury-trial right was "clear and indisputable" or that they had "no other avenue of relief." App. 2a. The questions presented are:

1. Whether the court of appeals must issue a writ of mandamus when a petitioner is erroneously denied a jury trial, without considering whether the right is clear or unambiguous or the petitioner has other potential avenues of relief.

2. Whether the Internal Revenue Code violates the Seventh Amendment and Article III by authorizing the IRS to order the payment of monetary penalties for fraud without providing the taxpayer a jury trial.

RELATED PROCEEDINGS

United States Court of Appeals (11th Cir.):

In re Hirsch, Nos. 25-10420, 25-10426 (May 30, 2025) (denying consolidated petitions for writ of mandamus).

In re Hirsch, Nos. 25-10420, 25-10426 (Aug. 20, 2025) (denying petition for rehearing).

United States Tax Court:

Hirsch v. Commissioner of Internal Revenue, Nos. 28898-10, 5819-11, 5821-11, 6034-11 (Oct. 11, 2022) (denying motion for jury trial).

Hirsch v. Commissioner of Internal Revenue, Nos. 28898-10, 5819-11, 5821-11, 6034-11 (Dec. 20, 2024) (denying motion for reconsideration).

Birdman v. Commissioner of Internal Revenue, Nos. 28897-10, 5816-11, 5817-11 (Oct. 11, 2022) (denying motion for jury trial).

Birdman v. Commissioner of Internal Revenue, Nos. 28897-10, 5816-11, 5817-11 (Dec. 20, 2024) (denying motion for reconsideration).

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INTRODUCTION

This case presents critically important questions regarding the right to a jury trial in civil proceedings following this Court's decision in *SEC v. Jarkesy*, 603 U.S. 109 (2024). Recognizing this right's unique "place in our history and jurisprudence," *id.* at 121, *Jarkesy* held that the SEC could not impose monetary penalties for fraud without a jury trial. In conflict with that holding, the IRS in this case seeks to force four taxpayers to pay millions of dollars in fraud penalties without affording them a jury. To vindicate their right to a jury trial, these taxpayers petitioned for a writ of mandamus to the court of appeals. But the court of appeals defied *Jarkesy* by denying the writ—and, in the

process, deepened a longstanding circuit split about the availability of mandamus relief when the right to a jury trial is at stake. Both issues warrant this Court's review.

This Court has long made clear that mandamus is warranted when a party will be wrongly denied a jury trial. *See Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 510-11 (1959). Drawing on that precedent, at least six circuits hold that a writ of mandamus must issue to prevent a wrongful denial of a jury trial, without applying considerations that govern mandamus outside the context of the jury-trial right—such as whether a party's right to relief is clear and indisputable, or whether the party has other means of obtaining relief. This majority rule ensures that a party may secure its right to a jury *before* being forced to proceed without one in violation of the Seventh Amendment.

In sharp contrast, the Eleventh Circuit here joined three other circuits that deny mandamus relief even when a party's case will be unlawfully tried without a jury. In these circuits, it is not enough to establish a violation under a *de novo* standard of review; instead, these circuits deny relief if the right is not clear and indisputable or if the party may obtain a remedy after final judgment. These circuits thus force parties to have their rights adjudicated without a jury in violation of the Seventh Amendment whenever the jury-trial right might be deemed a close call or whenever a party could press the jury-trial argument in a later appeal. That approach gives short shrift to the Seventh Amendment, and the 6-4 split it has created warrants this Court's review.

On the merits of the Seventh Amendment question, *Jarkesy* dictates the outcome: the IRS may not impose monetary penalties for fraud absent a jury trial. These fraud penalties are plainly punitive and thus legal in nature. And the imposition of such penalties closely parallels common-law actions to recover tax penalties and actions for fraud—in fact, the Framers viewed the right to a jury as a crucial means of preventing the oppressive exercise of taxation authority. Neither the decisions below nor any of the government's theories justifies denying a jury when the government imposes fraud penalties.

Viewed together, these questions are more important than ever. Absent this Court's intervention, parties will be denied their fundamental jury-trial rights whenever *Jarkesy*'s reach is not "clear" or "indisputable"—even if, as here, the case belongs before a jury. Because that approach violates this Court's Seventh Amendment precedents and amplifies a longstanding circuit split, the petition should be granted.

OPINIONS BELOW

The order of the court of appeals denying the consolidated petitions for writs of mandamus (App. 1a-2a) is not reported. The order of the court of appeals denying rehearing (App. 11a) is not reported. The Tax Court's orders denying petitioners' motions for jury trials (App. 3a-5a, 7a-9a) are not reported.

JURISDICITION

The court of appeals denied the consolidated petitions for a writ of mandamus on May 30, 2025. App. 1a-2a. The court denied petitioners' rehearing

petition, which it characterized as a motion for reconsideration, on August 20, 2025. App. 11a. On November 13, 2025, Justice Thomas extended petitioners' time to petition for a writ of certiorari to December 18, 2025.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are reproduced in the appendix to this petition. App. 12a-43a.

STATEMENT OF THE CASE

A. Legal Background

1. The Internal Revenue Code authorizes the IRS to assess "all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title." 26 U.S.C. § 6201(a). The assessment process generally begins when each taxpayer files a tax return, which the IRS has the right to examine. *See id.* § 7601(a). If the IRS identifies a deficiency in the taxpayer's payment or a failure to file a return, the IRS sends the taxpayer a "Notice of Deficiency," setting forth the additional taxes that the IRS has assessed. *See id.* § 6212(a).

The IRS may also impose significant penalties on top of the additional taxes assessed. As relevant here, the IRS can impose a "fraud penalty" if it determines that any portion of a taxpayer's underpayment is "due to fraud." 26 U.S.C. § 6663(a). In determining whether underpayment is due to fraud, the IRS evaluates whether the taxpayer "knowingly and with the intent to evade" his taxes underreported the amount of tax due. *Mohamed v. Comm'r*, 106 T.C.M. (CCH)

537, 2013 WL 5988943, at *8 (2013). The IRS looks for common "indicators (or badges) of fraud," including, for example, "[u]nderstatement of income" or "[a]ccounting irregularities." IRS, Internal Revenue Manual: Evidence of Fraud § 25.1.6.4(2). The IRS may not impose such a fraud penalty if it is shown that "there was a reasonable cause for such portion [of underpayment] and that the taxpayer acted in good faith with respect to such portion." 26 U.S.C. § 6664(c)(1).

The IRS can also impose a fraud penalty if it determines that a taxpayer has "fraudulent[ly]" failed to file a return. 26 U.S.C. § 6651(f). A failure-to-file fraud penalty requires that the taxpayer knew that he was concealing that he had income subject to tax. *See Mohamed*, 2013 WL 5988943, at *8. The penalty may not be imposed if it is shown that the failure to file is "due to reasonable cause and not due to willful neglect." 26 U.S.C. § 6651(a)(1).

2. If a taxpayer disagrees with any penalties imposed, he may challenge the penalties in one of two ways.

First, a taxpayer may file a petition with the Tax Court. *See* 26 U.S.C. § 6213(a). The Tax Court is an Article I court, *see id.* § 7441, and it is authorized to redetermine the taxes and penalties that the IRS has assessed, *see id.* § 6214. While the Tax Court proceeding is pending, the IRS cannot collect the penalties. *See id.* (authorizing Tax Court to enjoin collection attempts). When the Tax Court adjudicates tax fraud penalties, there are no juries.

Alternatively, the taxpayer can sue for a refund in an Article III court and present triable issues to a jury. *See* 26 U.S.C. § 7422. To pursue this course, however,

taxpayers must first pay any penalties in full (with some exceptions not relevant here). *See Flora v. United States*, 362 U.S. 145, 177 (1960). After paying, the taxpayer may file an administrative claim for a refund with the IRS. *See* 26 U.S.C. § 7422(a). If the IRS denies the refund claim, or fails to act within six months, only then can the taxpayer sue in an Article III court. *See id.* § 6532(a).

Under either alternative, if the proceeding "involv[es] the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the [IRS]." 26 U.S.C. § 7454(a); *see id.* § 7422(e).

B. Factual Background

1. Petitioners are two sets of taxpayers—Herbert and Bonita Hirsch, and Harvey and Diane Birdman—who lived in the U.S. Virgin Islands from 2003 to 2005. Under the Code, bona fide residents of the U.S. Virgin Islands satisfy their tax obligations by filing returns with the U.S. Virgin Islands Bureau of Internal Revenue (BIR) and need not make an additional filing with the IRS. *See* 26 U.S.C. § 932(c)(2). Petitioners thus filed income tax returns for the 2003 through 2005 tax years with the BIR, not the IRS. In 2006, petitioners moved to Florida and accordingly filed their income tax returns for the 2006 tax year with the IRS.

Four years later, the IRS sent petitioners notices of deficiency for the 2003 through 2006 tax years. *Hirsch* C.A. Doc. 3, at Appx99-220; *Birdman* C.A. Doc. 1-2, at Appx98-211. The IRS claimed that petitioners were not bona fide U.S. Virgin Islands residents and had fraudulently failed to file their income tax returns with the IRS under Section 6651 from 2003 through

2005. The IRS further claimed that petitioners' 2006 tax returns fraudulently underreported their income under Section 6663. All told, the IRS imposed more than $15 million in fraud penalties on each set of petitioners. *Hirsch* C.A. Doc. 3, at Appx102, 169; *Birdman* C.A. Doc. 1-2, at Appx100, 171.

C. Proceedings Below

1. Facing significant penalties they believed to be unjustified, both sets of petitioners filed petitions for redetermination with the Tax Court. While those proceedings were pending, the Fifth Circuit decided *Jarkesy v. SEC*, 34 F.4th 446 (5th Cir. 2022), *aff'd*, 603 U.S. 109, which held that defendants are entitled to jury trials when the SEC seeks civil penalties for securities fraud. Seeking to protect their own rights to a jury trial, petitioners requested that the Tax Court grant them jury trials on the IRS's claims for fraud penalties. *Hirsch* C.A. Doc. 3, at Appx21, 54, 86; *Birdman* C.A. Doc. 1-2, at Appx19, 52, 84.

The Tax Court denied petitioners' request. App. 5a.[1] Noting that "there was no right of action at common law against a sovereign," the court concluded that there is "no constitutional right to a jury trial in a suit against the United States," including in fraud-penalty proceedings in Tax Court. App. 4a (quotation omitted). "Tax Court proceedings," the court claimed, "occupy wholly different ground than the enforcement action in *Jarkesy*." *Id.*

[1] The Tax Court's orders denying a jury trial in both cases were materially identical. *Compare* App. 3a-5a (*Hirsch*), *with* App. 7a-9a (*Birdman*). For convenience, petitioners cite only the court's order in the *Hirsch* case.

Nor, in the Tax Court's view, did the fraud penalties at issue require a different result. App. 4a-5a. The court observed that the redetermination proceeding is "provided for by statute to test the validity of a penalty assessed pursuant to that statute." App. 5a (quotation omitted). According to the court, "[n]o such action existed at common law, and therefore, no jury trial is required by the Seventh Amendment." *Id.* Finally, the court concluded that "[a]ny deprivation of the jury-trial right 'was due to [petitioners'] own act'" because they had the option to pay the penalties and sue for a refund in district court. *Id.* n.3 (quotation omitted).

This Court subsequently affirmed the Fifth Circuit in *Jarkesy*. Petitioners then moved for reconsideration, but the Tax Court denied petitioners' motion without reasoning. App. 6a.

2. Facing the prospect of a juryless fraud-penalty trial in Tax Court, petitioners next sought mandamus in the Eleventh Circuit. The court denied their petitions, reasoning that a writ of mandamus is an "extraordinary remedy reserved for really extraordinary causes amounting to a judicial usurpation of power or a clear abuse of discretion." App. 2a (quotation omitted). On the relevant standard, the court stated that "[a] petitioner is entitled to the writ only if: (1) he has 'no other adequate means to attain the relief he desires'; (2) he has a 'clear and indisputable right to issuance of the writ'; and (3) the issuing court determines, in the exercise of its discretion, that the writ is appropriate under the circumstances." *Id.* (quotation omitted). Without engaging with the merits of petitioners' Seventh Amendment claim, the court concluded that petitioners had not established that they

"ha[d] no other avenue of relief" and that "the right to relief is clear and indisputable." *Id.*

REASONS FOR GRANTING THE PETITION

The Seventh Amendment right to a civil jury trial holds a uniquely "firm . . . place in our history and jurisprudence." *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935). The right "was recognized as the glory of the English law," and was "prized by the American colonists." *Jarkesy*, 603 U.S. at 121 (first quotation omitted). Since the Founding, "every encroachment upon it has been watched with great jealousy." *Id.* (quoting *Parsons v. Bedford, Breedlove & Robeson*, 28 U.S. (3 Pet.) 433, 434 (1830)).

The decision below undermined that critical right in two ways that warrant this Court's review. First, the court of appeals deepened a longstanding circuit split by holding that mandamus is available to vindicate the jury-trial right only if the right is "clear and indisputable" and the party has no other path to relief—factors that the majority of circuits do not consider when adjudicating mandamus requests for jury trials. App. 2a. Second, the denial of petitioners' request for a jury flouts *Jarkesy* and the precedents that support it. A monetary penalty for tax fraud, like an SEC fraud penalty, is a legal remedy, and the adjudication of such fraud penalties is closely akin to actions that have long been heard in courts of law.

Left uncorrected, the decision below risks allowing fundamental constitutional errors to go unchecked. Following *Jarkesy*, parties will increasingly seek mandamus to secure their jury-trial rights, but that relief may nonetheless be denied based solely on the fact that *Jarkesy*'s scope is not yet "clear and indisputable."

That end-run around *Jarkesy* is not faithful to the Seventh Amendment or this Court's precedents, and this Court should grant review and reverse.

I. The Decision Below Deepens a Circuit Split on the Mandamus Standard When a Petitioner Seeks a Jury Trial.

Because of the importance of the jury-trial right, this Court has repeatedly recognized that a writ of mandamus is available where a court will improperly subject the petitioner to a non-jury trial. The courts of appeals, however, have long divided over the appropriate standard to apply in evaluating these petitions, as Justices of this Court and the government have acknowledged. *See Kamen v. Nordberg*, 485 U.S. 939, 939-40 (1988) (White, J., dissenting from denial of certiorari) (discussing the conflict); Br. for United States in Opp'n at 8, *In re Joseph M. Arpaio*, No. 16-1422 (U.S. June 29, 2017) (same). At least six circuits grant mandamus if the lower court has wrongly denied the petitioner's request for a jury trial, without applying additional factors that govern mandamus petitions in other contexts. By contrast, four circuits hold that mandamus is unavailable if the right to a jury trial is not "clear and indisputable" or if there is another avenue for relief, such as an appeal after the case is heard without a jury. The decision of the court below deepens this conflict, and this Court should intervene to resolve it.

A. Most Circuits Hold That Mandamus Relief Is Appropriate When a Court Erroneously Denies a Request for a Jury Trial.

1. The "right to a trial by jury . . . has occupied an exceptional place in the history of the law of federal

mandamus." *Wilmington Tr. v. U.S. Dist. Ct. for Dist. of Haw.*, 934 F.2d 1026, 1028 (9th Cir. 1991). This Court has long recognized the availability of the writ to protect a petitioner's right to trial by jury. *See Beacon Theatres*, 359 U.S. at 510-11. And at least six courts of appeals have held that mandamus is warranted where the petitioner will be erroneously deprived of a jury trial, granting relief without considering whether the right was clear and indisputable or whether the petitioner had other avenues to vindicate the right.

The Ninth Circuit's analysis in *In re County of Orange*, 784 F.3d 520 (9th Cir. 2015), exemplifies the majority approach. There, a district court sitting in diversity struck the petitioner's jury trial demand because the petitioner had entered into a contract with a jury-trial waiver. *See id.* at 525. Granting a writ of mandamus, the court of appeals recognized that a petitioner ordinarily must establish that its "right to issuance of the writ is clear and indisputable" and that it has "no other adequate means, such as direct appeal, to attain the relief." *Id.* at 526 (quotations omitted). But the court held that the traditional mandamus standard "does not apply in the extraordinary case where the petitioner claims erroneous deprivation of a jury trial." *Id.* Instead, "[t]he only question presented" in these cases "is whether the district court erred in denying petitioner's request for a jury trial." *Id.* "If the plaintiffs are entitled to a jury trial, their right to the writ is clear." *Id.* (quoting *Tushner v. U.S. Dist. Ct.*, 829 F.2d 853, 855 (9th Cir. 1987) (Kennedy, J.)).

Applying those principles, the Ninth Circuit acknowledged that the case presented issues "of first

impression" regarding the petitioner's right to a jury trial, including questions about the validity of the petitioner's contractual waiver, which were not "easy" to resolve. *In re County of Orange*, 784 F.3d at 528-29. But the Ninth Circuit proceeded to resolve those issues anyway, holding that "the district court erroneously deprived [the petitioner] of a jury trial," and therefore "[m]andamus relief [was] . . . warranted." *Id.* at 532.

Five other circuits have adopted similar approaches. The First Circuit, for example, has explained that "[i]n a civil case, there is no doubt that mandamus is appropriate if a jury trial is being wrongfully denied, even, it would appear, when the decision whether such right exists is a close or complicated one." *In re Union Nacional De Trabajadores*, 502 F.2d 113, 115-16 (1st Cir. 1974) (per curiam), *vacated on other grounds*, 527 F.2d 602 (1st Cir. 1975). Recognizing "some relaxation" in the ordinary mandamus analysis when the jury-trial right is at issue, the First Circuit held that "any denial of mandamus should be made only if either the case has not been adequately presented or there is no such right to a jury trial." *Id.*

The Second Circuit has similarly recognized that the "power to preserve the important right to trial by jury . . . by mandamus is clear." *Higgins v. Boeing Co.*, 526 F.2d 1004, 1006 (2d Cir. 1975) (per curiam). In *Higgins*, a district court denied a jury trial to plaintiffs who had removed the case from state court because they had not complied with a state-law requirement to demand a jury trial first. *Id.* at 1005-06. The Second Circuit granted a mandamus petition, holding that the district court's error warranted relief, even though the plaintiffs' right to a jury trial hinged on state-law

issues that were neither "clear" nor "fixed." *Id.* at 1006-07.

The Fourth Circuit has followed suit, granting the writ in cases likewise involving issues of first impression. *See In re Lockheed Martin Corp.*, 503 F.3d 351 (4th Cir. 2007) (considering the right to jury trial in an insurance coverage dispute arising out of admiralty). The court also rejected the argument that mandamus is inappropriate where the petitioner "could raise the jury trial issue on appeal from a final judgment" and obtain a new trial if necessary. *Id.* at 353. "In this circuit," the Fourth Circuit made clear, "a writ of mandamus is the proper way to challenge the denial of a jury trial" *before* trial occurs. *Id.*

The Federal Circuit also follows the majority rule, granting the writ when a request for a jury trial is wrongly denied, even if the existence of the right is not clear-cut. For example, in *In re Lockwood*, 50 F.3d 966 (Fed. Cir. 1995), *vacated on other grounds Am. Airlines, Inc. v. Lockwood*, 515 U.S. 1182 (1995), the court confronted a novel question about the availability of jury trials in patent disputes. After canvassing 18th-century patent cases, *see id.* at 971-81, the Federal Circuit granted the writ, declining to "defer resolution of [the petitioner's] Seventh Amendment claim," *id.* at 971. As the Federal Circuit held, "the teachings . . . regarding the propriety of mandamus to cure a wrongful denial of the right to trial by jury are beyond cavil." *Id.* at 970.

Finally, the D.C. Circuit has also rejected the suggestion that courts of appeals "may deny the writ without . . . deciding that there is no right of trial by jury" if "the question is at least debatable." *Filmon Process*

Corp. v. Sirica, 379 F.2d 449, 450 (D.C. Cir. 1967). "[O]n an application for an extraordinary writ for pretrial relief," the D.C. Circuit explained, "the Supreme Court expects the courts of appeals to make a determination whether or not there is a right of trial by jury, regardless of whether the question is a close or complicated one." *Id.* at 450-51. "The Court would not welcome a doctrine whereby a party's constitutional right to jury trial was trammeled in fact because a court of appeals determined that the issue was doubtful and that it need not and would not decide whether or not the party had the right of trial by jury." *Id.* at 451; *see also In re Zweibon*, 565 F.2d 742, 745-48 (D.C. Cir. 1977).[2]

2. Contrasting with the majority approach, four circuits deny mandamus petitions even when a party will be erroneously deprived of a jury trial, based on factors considered in the context of mandamus petitions that do not involve the deprivation of a jury trial.

The Seventh Circuit took this approach first. In the Seventh Circuit's view, the "[j]ury trial is not the most essential of rights," *First Nat'l Bank of Waukesha v. Warren*, 796 F.2d 999, 1002 (1986), and the incorrect

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[2] Other circuits—while not holding that the erroneous deprivation of a jury trial *per se* warrants issuance of mandamus—recognize that the mandamus standard in this context is relaxed. The Fifth Circuit contemplates "some level of solicitude for the jury trial right." *In re Abbott*, 117 F.4th 729, 734 (5th Cir. 2024). The Sixth Circuit has evaluated whether a petitioner was entitled to a jury trial, even in a complex case. *See Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 658-63 (6th Cir. 1996). And the Tenth Circuit appears to hold that certain of the traditional mandamus factors are automatically satisfied when a petitioner alleges a deprivation of his jury-trial right. *See In re Kaiser Steel Corp.*, 911 F.2d 380, 388 (10th Cir. 1990).

denial of a request for a jury trial warrants mandamus only when the petitioner has "no other adequate means to attain the relief he desires" and the petitioner's right to the writ is "clear and indisputable," *id.* at 1006 (second quotation omitted). Thus, the court denied a mandamus petition challenging the denial of a jury trial on a claim for unjust enrichment, citing disagreement as to whether an unjust enrichment claim is "legal" for purposes of the Seventh Amendment, *see id.* at 1001-03, and noting the possibility of seeking relief after trial in an appeal from final judgment, *see id.* at 1006; *see also Caldwell-Baker Co. v. Parsons*, 392 F.3d 886, 888-90 (7th Cir. 2004) (denying the writ for similar reasons).

Since then, the Third Circuit, too, has "applied th[e] stringent" mandamus standard in the jury-trial context. *In re Pasquariello*, 16 F.3d 525, 529 (3d Cir. 1994). Under that standard, the Third Circuit has denied mandamus petitions simply because the right to a jury trial turned on resolution of statutory ambiguities—exactly the opposite of the approach most circuits take. *See id.* at 531. In the Third Circuit's view, mandamus is unwarranted—and the case must go forward without a jury—"[r]egardless of the ultimate merits of [the petitioner's] position." *Id.*

The Eighth Circuit has taken a similar tack, holding that the writ will issue only if the petitioner's rights are "clear and indisputable." *In re Don Hamilton Oil Co.*, 783 F.2d 151, 151 (8th Cir. 1986) (per curiam) (quotation omitted). Applying that standard, the Eighth Circuit has denied mandamus when, for example, a jury-trial right for a particular statutory action was "questionable" in view of decisions of other courts. *Id.* at 151-52.

The Eleventh Circuit followed this minority approach here. Petitioners sought mandamus, arguing that they were entitled to jury adjudication of the tax fraud penalties assessed against them. The court of appeals denied the writ because—even if petitioners had indeed been deprived of their Seventh Amendment right—the court believed they "ha[d] not met th[eir] burden" of demonstrating "that the right to relief is clear and indisputable" or that they had "no other avenue of relief." App. 2a. The court failed to acknowledge the exceptional nature of the jury-trial right and declined to engage with the merits of petitioners' Seventh Amendment and Article III arguments. *Id.* This reasoning cannot be reconciled with the majority approach.

B. The Court of Appeals' Mandamus Holding Is Wrong.

Most circuits grant mandamus in these circumstances for good reason: as this Court's precedents reflect, the writ should issue—and a jury trial should be afforded—when a party is wrongly denied a jury, without imposing an additional burden to show that the right is clear and indisputable or the party lacks other avenues for relief.

Consider *In re Simons*, 247 U.S. 231 (1918). There, the Court issued the writ to compel a district court to provide a jury trial on the petitioner's damages claim against an estate based on a contract with the decedent. *See id.* at 238. Writing for the Court, Justice Holmes emphasized that the wrongful denial of the jury-trial right "should be dealt with . . . *before* the plaintiff is put to the difficulties and the courts to the inconvenience" of holding a trial that ultimately would

prove to be a mistake. *Id.* at 239 (emphasis added). This Court thus held that "mandamus may be adopted to require the District Court to proceed and to give the plaintiff her right to a trial at common law." *Id.* at 240.

The Court reaffirmed these principles in *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959). There, the petitioner sought a jury trial on factual issues related to its antitrust damages claims. *See id.* at 501-04. The district court, however, decided to first hold a bench trial on overlapping equitable issues. *See id.* at 503. The court of appeals recognized that this order of operations could "limit the petitioner's opportunity fully to try to a jury every issue" bearing on its damages suit insofar as the petitioner would be precluded from relitigating the issues decided in the bench trial. *See id.* at 504. The court of appeals nevertheless denied the mandamus petition, holding that the district court had not abused its discretion in deciding to try the equitable cause ahead of the jury trial. *See id.* at 505.

This Court granted certiorari and reversed. *Beacon Theatres*, 359 U.S. at 511. Certiorari was appropriate, the Court explained, because "[m]aintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *Id.* at 501 (quoting *Dimick*, 293 U.S. at 486). And on the merits, the Court held that the district court was wrong in ordering a trial on the equitable issues first, rejecting the argument that mandamus was unavailable to correct that error. *See id.* at 506-11. "[W]hatever differences of opinion there may be in other types of cases," the Court reasoned, "we think

the right to grant mandamus to require jury trial where it has been improperly denied is settled." *Id.* at 511.

This Court reiterated the importance of mandamus as a tool to vindicate the right to trial by jury in *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962). The district court there held that the petitioner was not entitled to a jury trial because the action was "purely equitable," and to the extent there were legal issues, those issues were "incidental to equitable issues." *Id.* at 470 (internal quotation marks omitted). The petitioner sought mandamus in the court of appeals, which denied the request without an opinion. *See id.* This Court granted certiorari and reversed, explaining that the claims in the case were legal, regardless of how they were characterized, *see id.* at 473-79, and emphasizing "the responsibility of the Federal Courts of Appeals to grant mandamus where necessary to protect the constitutional right to trial by jury," *id.* at 472.

These precedents demonstrate the flaws in the approach of the court of appeals here. In none of these cases did this Court's conclusion that mandamus was appropriate hinge on a finding that the right to a jury trial was "clear and indisputable"—it was enough, as it should be here, that the right was wrongly denied. Indeed, in each case, the inquiry involved novel questions—about the availability of jury trials in cases involving contracts to make provisions by will, *see In re Simons*, 247 U.S. at 239; about the ordering of trials in cases involving both legal and equitable claims, *see Beacon Theatres*, 359 U.S. at 506-10; and about the characterization of certain claims as legal or equitable, *see Dairy Queen*, 369 U.S. at 473-79. Yet whether or not these questions were easy to answer, the petitioner

had a right to a jury, and mandamus therefore was warranted.

Nor did the Court determine in these cases that mandamus was the *only* avenue for relief or that the petitioners could not have pursued an appeal in the ordinary course. While the Court in *Beacon Theatres* noted that a bench trial might preclude the petitioner from relitigating issues in a subsequent jury trial, *see* 359 U.S. at 504, the Court never suggested that the petitioner would be unable to raise those issues in a direct appeal from final judgment. An appeal from final judgment—after a trial without a jury—was presumably an option for the petitioners in *Simons* and *Dairy Queen*, too. The Court nonetheless held that mandamus was warranted and that it was appropriate to address the jury-trial question "before the plaintiff [was] put to the difficulties and the courts to the inconvenience" of holding a trial that ultimately would "have been required under a mistake." *Simons*, 247 U.S. at 239; *see Dairy Queen*, 369 U.S. at 472.

This Court's precedents are clear: it is "the responsibility" of courts of appeals "to grant mandamus where necessary to protect" the right to a jury trial. *Dairy Queen*, 369 U.S. at 472. This responsibility is abdicated when courts of appeals deny relief because a legal question seems close or an appeal from final judgment is available. The court below was on the wrong side of a split that has existed for too long, and this Court should grant review to resolve it.

II. The Denial of a Jury Trial for Tax Fraud Penalties Flouts This Court's Precedents.

Under the correct mandamus standard, *Jarkesy* all but decides this case. Monetary penalties for fraud are

textbook legal remedies, and they were imposed in common-law courts at the Founding. None of the government's attempts to evade *Jarkesy* succeed, and petitioners are entitled to a jury trial before paying millions in fraud penalties.

A. Petitioners Are Entitled to a Jury Trial When the IRS Seeks Fraud Penalties.

The Seventh Amendment guarantees that in "[s]uits at common law . . . the right of trial by jury shall be preserved." U.S. Const., amend. VII. "Suits at common law" refers to "suits in which *legal* rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered." *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41 (1989) (quoting *Parsons*, 28 U.S. at 447). The Seventh Amendment "also applies to actions brought to enforce statutory rights that are analogous to common-law causes of action ordinarily decided in English law courts in the late 18th century," *id.* at 41-42, so long as those claims are "legal in nature," *Jarkesy*, 603 U.S. at 122 (quoting *Granfinanciera*, 492 U.S. at 53).

Whether a claim is "legal in nature" turns on both "the cause of action and the remedy it provides." *Jarkesy*, 603 U.S. at 122-23. Courts must accordingly "compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity" and "examine the remedy sought and determine whether it is legal or equitable in nature." *Granfinanciera*, 492 U.S. at 42 (quotation omitted). Here, both considerations confirm that the IRS's fraud penalties are legal in nature.

1. Tax fraud penalties are a legal remedy.

This Court may begin with the "more important" consideration of whether "the cause[] of action . . . provide[s] a type of remedy available only in law courts." *Jarkesy*, 603 U.S. at 123, 136 (first quotation omitted). As in *Jarkesy*, tax fraud penalties impose the "prototypical common law remedy" of "money damages," and the nature of this remedy is "all but dispositive" of the Seventh Amendment issue in this case. *Id.* at 123.

The IRS's fraud penalties are plainly designed to "punish or deter the wrongdoer," not "solely to 'restore the status quo.'" *Jarkesy*, 603 U.S. at 123 (quoting *Tull v. United States*, 481 U.S. 412, 422 (1987)). Like the SEC penalty in *Jarkesy*, the IRS's ability to impose fraud penalties is conditioned on the taxpayer's culpability. Before imposing a penalty for fraudulent underpayment, the IRS must determine that a portion of an underpayment was "attributable to fraud," 26 U.S.C. § 6663(b), and it may not impose such a penalty if it is shown that "there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion," *id.* § 6664(c)(1). Likewise, before imposing a penalty for fraudulent failure to file a tax return, the IRS must determine that the failure to file is "fraudulent," *id.* § 6651(f), and it may not impose such a penalty if the failure to file is "due to reasonable cause and not due to willful neglect," *id.* § 6651(a)(1).

"[T]he *size* of the available remedy" similarly turns on culpability and deterrence. *Jarkesy*, 503 U.S. at 124 (emphasis added). While the IRS imposes a penalty equal to twenty percent of an underpayment resulting from "[n]egligence or disregard of rules or

regulations," 26 U.S.C. § 6662(a); *id.* § 6662(b)(1), it increases the penalty to seventy-five percent if the portion of the underpayment is "attributable to fraud," *id.* § 6663(a). The IRS also enhances the penalty for failing to file a return if the taxpayer's conduct was fraudulent, as opposed to merely negligent. *Compare id.* § 6651(a)(1), *with id.* § 6651(f). These penalties are plainly "intended to punish culpable individuals," not "to extract compensation or restore the status quo," and therefore qualify as a legal remedy. *Tull*, 481 U.S. at 422.

2. Actions to recover tax fraud penalties are closely analogous to actions at law in the Founding era.

The "close relationship" between actions for civil tax fraud penalties and actions at law in the Founding era further confirms that petitioners' rights are legal in nature. 603 U.S. at 125. The IRS's imposition of fraud penalties is analogous to both common-law actions to recover tax penalties and common-law actions for fraud.

a. Well before independence, "English courts had held that a civil penalty suit was a particular species of an action in debt that was within the jurisdiction of the courts of law." *Tull*, 481 U.S. at 418. And "where a penalty is given by a statute, and no remedy . . . is expressly given, debt lies." *Jacob v. United States*, 13 F. Cas. 267, 268 (C.C.E.D. Va. 1821) (Marshall, J.); *see also Matthews v. Offley*, 16 F. Cas. 1128, 1130 (C.C.D. Mass. 1837) (Story, J.) (explaining that "the usual remedy in cases of a pecuniary penalty is an action or information of debt by the government itself").

At common law, an action for debt was therefore a mechanism to impose statutory penalties, and English law embraced that method when it came to taxes. The Hearth Tax of 1662 and the House Tax of 1696, for example, directed that tax penalties be pursued by "any Suite or Proceeding by Action of Debt Bill Plaint or Information or otherwise for Recovery of all or any of the Paines Penalties or Forfeitures." House Tax of 1696, ch. XVIII (Eng.), https://perma.cc/Q2WF-2PTC; *see* Hearth Tax of 1662, ch. VI, XII, XX (Eng.), https://perma.cc/RAP4-PQK8. This treatment of tax penalties stood in contrast to the Crown's approach to assessing and collecting taxes through administrative proceedings.

During the colonial era, the Crown continued to impose a wide swath of tax penalties by suit at common law—in which the right to a jury trial was maintained in England but denied in the colonies. Under the Sugar Act of 1764, for example, penalties on trade taxes for molasses and other goods were recovered through suits at law. *See* Sugar Act of 1764, ch. 40 (Eng.), https://perma.cc/FSW5-GG7B. So too were penalties for violations of the Stamp Act of 1765, which taxed the use of printed paper and ultimately contributed to the Revolution. *See* Stamp Act of 1765, ch. LVII (Eng.), https://perma.cc/5HGP-NVSJ. Similarly, penalties for violations of the Navigation Acts of 1660, 1663, and 1669, which generally required all trade with England or the colonies to be carried out on English or colonial vessels, were adjudicated in common-law courts. *See, e.g.*, Navigation Act of 1696 (Eng.), https://perma.cc/67ES-T54W; *see C.J. Hendry Co. v. Moore*, 318 U.S. 133, 140 (1943) (discussing adjudication under the Navigation Acts).

Immediately after the Founding, Congress ensured that tax penalties would continue to be recoverable in suits at law—this time before juries, rather than in the juryless vice-admiralty courts the British had created. The same year the Bill of Rights was ratified, Congress enacted the Whiskey Tax of March 3, 1791, which provided that penalties would be "recoverable with costs of suit, by action of debt." Whiskey Tax of Mar. 3, 1791, ch. 15, § 44, 1 Stat. 199, 209. Similarly, the Carriage Tax of 1794 provided for tax penalties that "shall and may be sued for." Ch. 45, § 10, 1 Stat. 373, 375 (1794). Tax penalties enacted as part of the Stamp Act of 1797 also had to be "sued for," Ch. 11, § 20, 1 Stat. 527, 532 (1797), as did other post-ratification penalties, *see, e.g.*, Act of August 4, 1790, ch. 35, § 67, 1 Stat. 145, 176.

It was no accident that the Founding-era Congress sought to ensure that juries would assess whether to impose tax penalties through common-law suits. "[T]he denial of the right to a jury in tax cases became a chief complaint animating the American Revolution." *United States v. Stein*, 881 F.3d 853, 859 (11th Cir. 2018) (en banc) (Pryor, J., concurring). It was in reaction to the juryless imposition of Stamp Act penalties, for instance, that the "colonies formed a Congress to protest 'the tyrannical acts of the British Parliament.'" Philip Hamburger, *Is Administrative Law Unlawful?* 150 (2014) (quoting Resolutions of the Stamp Act Congress (Oct. 19, 1765)). Federalists like Alexander Hamilton acknowledged that "the want of a constitutional provision for trial by jury in civil cases" was a primary concern at ratification—including to "safeguard against an oppressive exercise of the power of taxation." The Federalist No. 83, at 558, 563

(Alexander Hamilton) (Jacob E. Cooke, ed., 1961). The Seventh Amendment ensured an end to this oppression.

b. The IRS's imposition of tax fraud penalties is also analogous to actions for fraud in common-law courts. Indeed, well before *Jarkesy*, this Court's cases established "beyond peradventure" that "[i]n cases of fraud or mistake . . . a court of the United States will not sustain a bill in equity to obtain only a decree for the payment of money by way of damages, when the like amount can be recovered at law in an action sounding in tort or for money had and received." *Granfinanciera*, 492 U.S. at 47-48 (quoting *Buzard v. Houston*, 119 U.S. 347, 352 (1886)); *see also* 3 William Blackstone, *Commentaries on the Laws of England* *42 (explaining common-law courts' jurisdiction over "actions on the case which allege any falsity or fraud; all of which favour of a criminal nature, although the action is brought for a civil remedy; and make the defendant liable in strictness to pay a fine to the king, as well as damages to the injured party").

Tax fraud and common-law fraud "[b]oth target the same basic conduct: misrepresenting or concealing material facts." *Jarkesy*, 603 U.S. at 125. "Congress deliberately used 'fraud' and other common law terms of art" as a means of "incorporat[ing] prohibitions from common law fraud" into federal law. *Id.* And "[w]he[n] Congress uses terms that have accumulated settled meaning under . . . the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms." *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322 (1992); *see also George v. McDonough*, 596 U.S. 740, 746 (2022) ("Where Congress employs a

term of art obviously transplanted from another legal source, it brings the old soil with it." (internal quotation marks omitted)).

As in *Jarkesy*, Congress deployed the term "fraud" in Sections 6651 and 6663 to incorporate the standards that courts have applied for centuries in common-law fraud actions. Section 6651(f) imposes penalties when a taxpayer fails to file a return in order to "*conceal*[] a material fact (that he has income subject to tax)" and "only if he does so *knowing* that he is concealing that material fact" while Section 6663(a) imposes a fraud penalty only if the taxpayer "knowingly and with the intent to evade tax . . . shows less than (misrepresents) the amount of the tax due." *Mohamed*, 2013 WL 5988943, at *8; *see also Recklitis v. Comm'r*, 91 T.C. 874, 909 (1988) ("Fraud is established by proving that the taxpayer intended to evade tax believed to be owing by conduct intended to conceal, mislead, or otherwise prevent the collection of such tax."). Indeed, the IRS's own manual explains that fraudulent intent is typically shown by "badges of fraud," Internal Revenue Manual § 25.1.6.4—a conceptual framework English courts developed centuries ago, *see BFP v. Resol. Tr. Corp.*, 511 U.S. 531, 540-41 (1994). Viewed from the Framers' perspective, the fraud the IRS targets for penalty was plainly a matter for common-law courts.

In short, the IRS's imposition of fraud penalties is undeniably a "suit[] in which legal rights [are] to be ascertained and determined." *Parsons*, 28 U.S. at 447. The Seventh Amendment therefore guarantees a taxpayer the right to a jury before fraud penalties are collected.

B. The Courts Below Provided No Plausible Basis to Disregard This Court's Precedent

Despite this Court's clear guidance in *Jarkesy*, the government and the Tax Court have refused to allow a jury when the IRS imposes fraud penalties. App. 3a-5a; *see Silver Moss Props., LLC v. Comm'r*, 165 T.C. No. 3, 2025 WL 2416867 (Aug. 21, 2025). None of their rationales for denying a jury has merit.

1. The Tax Court claimed that the Seventh Amendment is entirely inapplicable because "there was no right of action at common law against a sovereign." App. 4a (quotation omitted). In the court's view, the fact that the taxpayer must sue the government to challenge a tax penalty is essentially dispositive. But for purposes of the Seventh Amendment, "what matters is the substance of the suit, not where it is brought, who brings it, or how it is labeled." *Jarkesy*, 603 U.S. at 135. "[T]he right to a jury should not turn on how the parties happen to be brought into court," and the right instead "depends on the nature of the issue to be tried rather than the character of the overall action." *Ross v. Bernhard*, 396 U.S. 531, 538, 542 n.15 (1970). And in substance, this is an action in which the *government* is seeking to impose a penalty, not one in which a taxpayer has voluntarily initiated suit against a sovereign—even if the government happens to be captioned as respondent. Since the government's imposition of fraud penalties "involves rights and remedies of the sort traditionally enforced in an action at law," *Pernell v. Southall Realty*, 416 U.S. 363, 375 (1974), the Seventh Amendment secures the right to a jury trial, *supra* § II.A.2.

There also is a long history of taxpayers bringing common-law actions to dispute unlawful taxes. In particular, taxpayers have sought to recover taxes unlawfully imposed through "sue the collector" actions of assumpsit. *Flora*, 362 U.S. at 152-53; *see, e.g.*, *City of Philadelphia v. Collector*, 72 U.S. 720, 730-33 (1866) (recognizing sue-the-collector remedy in tax cases). Actions for assumpsit have long been recognized as actions at law, which confirms the Seventh Amendment's application here. *Georgia v. Brailsford*, 2 U.S. (2 Dall.) 415, 417 (1793) (referring to assumpsit as "the legal panacea of modern times").

2. The Tax Court also claimed that the Seventh Amendment does not apply since fraud penalties are "assessed pursuant to . . . statute." App. 5a (quotation omitted). That is clearly wrong: the Seventh Amendment "applies to actions brought to enforce statutory rights" analogous to common-law causes of action, *Granfinanciera*, 492 U.S. at 42, and Congress may not "conjure away the Seventh Amendment by mandating that traditional legal claims be brought [in a court of equity] or taken to an administrative tribunal," *id.* at 52.

3. Nor is there any basis to apply the so-called "public rights exception" to deny jury trials. *Contra Silver Moss*, 2025 WL 2416867, at *4-10. That exception applies only to matters that "historically could have been determined exclusively by the executive and legislative branches." *Jarkesy*, 603 U.S. at 128 (alterations omitted) (quoting *Stern v. Marshall*, 564 U.S. 462, 493 (2011)). It has no application where, as here, the penalties at issue were—from independence through the Civil War—imposed through suits at common law, with an Article III judge and jury. *Supra* § II.A.2.

That tax penalties were imposed administratively beginning during the Civil War[3] does not change the fact that there is simply no "unbroken tradition" of judicial non-enforcement "long predating the founding" that could support the application of the public rights exception. *Jarkesy*, 603 U.S. at 128 (citing *Murray's Lessee v. Hoboken Land & Improvement Co.*, 18 U.S. (How.) 272, 278 (1856)); *see McGirt v. Oklahoma*, 591 U.S. 894, 937-38 (2020) ("Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law.").

It is similarly irrelevant that tax *revenue* has historically been collected through "summary administrative proceedings," in light of the "need of the government promptly to secure its revenues." *Phillips v. Comm'r*, 283 U.S. 589, 595-96 (1931); *cf. Jarkesy*, 603 U.S. at 128-31; *Murray's Lessee*, 18 U.S. at 281. That history simply does not apply to the imposition of tax fraud penalties, which are not part of the tax base and need not be collected as taxes to be effective.

4. Finally, the Tax Court claimed that petitioners "have the option to pay the deficiency asserted by the IRS and sue for a refund in federal district court, which would have entitled them to elect trial by jury." App. 5a n.3. But that does not solve the Seventh Amendment problem. There is no history to support a scheme requiring the payment of an unlawfully imposed fraud penalty *before* a jury can assess the government's fraud claim.

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[3] *See, e.g.*, Internal Revenue Act of June 30, 1864, ch. 173, §§ 14, 41, 13 Stat. 223, 226, 239; Revenue Act of March 2, 1867, ch. 169, §§ 3, 8, 13, 15 Stat. 471, 471-73, 477-81.

Nor do this Court's precedents support that penalty-now-trial-later approach. To the contrary, *Jarkesy* made clear that the Seventh Amendment and Article III guarantees attach to the "initial adjudication" of a suit at common law. 603 U.S. at 127-28. Thus, a taxpayer is entitled to a jury trial *before* the IRS assesses and collects fraud penalties, not *after* those penalties have been imposed and the taxpayer required to pay them. *See AT&T, Inc. v. FCC*, 149 F.4th 491, 503 (5th Cir. 2025) (observing that the constitutional right to a jury trial is not "honored by a trial occurring after an agency has already found the facts, interpreted the law, adjudged guilt, and levied punishment"), *petition pending*, No. 25-406. Congress may not circumvent that right—in this context or any other—by creating a system where the individual can avoid payment only if he relinquishes his jury-trial right and submits to administrative proceedings. *Cf. Jarkesy*, 603 U.S. 52 (recognizing that Congress cannot "conjure away" the jury-trial right). That conclusion is further reinforced by the fact that the IRS bears the burden of proving fraud when it imposes fraud penalties, *see* 26 U.S.C. § 7454(a); a taxpayer should be able to hold the IRS to that burden without first forfeiting his jury-trial right.

There also are real-world reasons why paying an IRS-mandated penalty then bringing a lawsuit to seek a refund is not a realistic means of vindicating the essential jury-trial guarantee. As the IRS's Taxpayer Advocate Service recognized, the IRS's "'assess first, ask questions later' culture and approach to many penalties are unfair and serve to deter compliance." IRS, National Taxpayer Advocate, *Annual Report to Congress* 119 (2024), https://perma.cc/M89D-8JJU.

And many taxpayers simply cannot afford to pay huge sums in penalties up front in the hope that they will one day have a chance to present their case to a jury. The refund suit option, in other words, amounts to an "empty promise" of a jury trial that "is largely illusory in practice." *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146, 167 (2025).

III. The Questions Presented Are Exceptionally Important.

This Court has repeatedly emphasized that " [t]he right to trial by jury is 'of such importance . . . that any seeming curtailment of the right' . . . 'should be scrutinized with the utmost care.'" *Jarkesy*, 603 U.S. at 121 (quoting *Dimick*, 293 U.S. at 486). For that reason, this Court routinely grants certiorari in cases implicating the right to a jury trial—recognizing the imperative of "[m]ain[taining] . . . the jury as a fact-finding body." *Beacon Theatres*, 359 U.S. at 501 (quoting *Dimick*, 293 U.S. at 501). The importance of the issues here should compel this Court's review.

1. To start, the mandamus standard the court of appeals embraced in this case will seriously undermine a party's ability to protect his right to a jury trial—and, by virtue of the circuit split, exacerbate regional variation where there should be none. Under the minority approach the Eleventh Circuit embraced here, mandamus relief for the unlawful denial of a request for a jury trial is out of reach simply because, for example, the court deems a Seventh Amendment question a close call. In circuits following the majority approach, by contrast, parties asserting the exact same denial of the jury-trial right would receive the writ and a jury, without the "difficulties" and

"inconvenience" of a non-jury trial that "ultimately must be held to have been required under a mistake." *In re Simons*, 247 U.S. at 238. Whether and when a party can vindicate this right to a jury trial should not depend on the happenstance of geography.

This disharmony among the circuits is more important than ever, and the time is ripe for this Court to resolve it. This Court has decided a number of Seventh Amendment cases in recent years, but as the legal landscape evolves with decisions like *Jarkesy*, the courts of appeals may, as here, deny the jury trials required by new precedent on the theory that a precedent is simply too recently decided to make the jury-trial right "clear" or "indisputable." Resolving the mandamus split is therefore critical to give effect to this Court's Seventh Amendment jurisprudence.

2. The questions presented also have substantial real-world consequences for individual taxpayers accused of fraud. When the IRS claims that a taxpayer fraudulently failed to file a tax return, for example, it can impose fraud penalties up to seventy-five percent of the assessed tax liability—nearly doubling the total amount a taxpayer owes the government in any given period. 26 U.S.C. § 6651(a)(1), (f). Indeed, both sets of petitioners here are facing more than $15 million each in fraud penalties. And yet, under the decisions below, they have no ability to obtain a jury trial testing the government's fraud allegations before paying those immense penalties.

Despite the profound financial and reputational harm to taxpayers subject to tax penalties, nothing about protecting the right to a jury trial in this case would seriously impair the work of the IRS or the tax

system more generally. As noted, the tax base consists of tax *revenue*, and petitioners do not dispute that revenue may be collected administratively.

3. Finally, this case is an appropriate vehicle for resolving these important questions. Justices of this Court have long recognized the need to resolve the longstanding circuit split on the mandamus standard. *See Kamen*, 485 U.S. at 939-40 (1988) (White, J., dissenting from denial of certiorari). And allowing the denial of mandamus to remain in place here will only force more taxpayers facing such penalties to proceed without the jury to which they are entitled.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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December 18, 2025

APPENDIX

APPENDIX TABLE OF CONTENTS

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[Filed May 30, 2025]

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No. 25-10420

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In re: HERBERT HIRSCH, BONITA HIRSCH,

Petitioners.

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On Petition for Writ of Mandamus to the
United States District Court for the
Northern District of Georgia
D.C. Docket No.

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No. 25-10426

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In re: HARVEY BIRDMAN,

Petitioners.

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On Petition for Writ of Mandamus to the
United States District Court for the
Northern District of Georgia
D.C. Docket No.

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Before BRANCH, GRANT, and BRASHER, Circuit Judges.

BY THE COURT:

Before this Court are two consolidated petitions for writs of mandamus filed by Petitioners Herbert and Bonita Hirsch and Petitioners Harvey and Diane Birdman. Petitioners ask this Court to issue writs of mandamus compelling the Tax Court to grant them jury trials on their respective petitions for redetermination of tax fraud penalties assessed against them by the Internal Revenue Service. Petitioners' motion for leave to file a joint reply brief is GRANTED.

A writ of mandamus is "a drastic and extraordinary remedy reserved for really extraordinary causes amounting to a judicial usurpation of power or a clear abuse of discretion." *In re Wellcare Health Plans, Inc.*, 754 F.3d 1234, 1238 (11th Cir. 2014) (quotation marks omitted). A petitioner is entitled to the writ only if: (1) he has "no other adequate means to attain the relief he desires"; (2) he has a "clear and indisputable . . . right to issuance of the writ"; and (3) the issuing court determines, in the exercise of its discretion, that the writ is appropriate under the circumstances. *Rohe v. Wells Fargo Bank, N.A.*, 988 F.3d 1256, 1265 (11th Cir. 2021). The petitioner has the burden of showing that the petitioner has no other avenue of relief and that the right to relief is clear and indisputable. *Mallard v. United States District Court*, 490 U.S. 296, 309 (1989). Petitioners have not met that burden here.

Accordingly, the consolidated petitions for writs of mandamus are DENIED.

APPENDIX B

UNITED STATES TAX COURT
Washington, DC 20217

Docket Nos. 28898-10,
5819-11,
5821-11,
6034-11.

HERBERT HIRSCH & BONITA HIRSCH, *et al.*,

Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

ORDER

Before the Court are a motion for jury trial [Doc. 111[1]] and a motion for oral argument [Doc. 122], filed by petitioners Herbert and Bonita Hirsch. We will deny the relief requested in each.

In their motion for jury trial, the Hirsches argue that the jury-trial right enshrined in the Seventh Amendment to the Constitution extends to Tax Court proceedings that involve fraud penalties, as here. [Doc. 111 at 7-16.] In support of this position, the Hirsches point to *Jarkesy v. SEC*, 34 FAth 446, 453-57 (5th Cir. 2022), in which the U.S. Court of Appeals for the Fifth Circuit concluded that the jury-trial right applied to

[1] "Doc." references are to the filings in the lead case, Docket No. 28898-10, as numbered by the Clerk of this Court.

an SEC civil enforcement proceeding as such actions were analogous to traditional suits at common law to which the jury-trial right attached. [*Id.* at 2-8.]

As the Fifth Circuit previously explained, however, "[s]ince there was no right of action at common law against a sovereign, enforceable by jury trial or otherwise, there is no constitutional right to a jury trial in a suit against the United States." *Mathes v. Commissioner*, 576 F.2d 70, 71 (5th Cir. 1978), *aff'g* T.C. Memo. 1977-220.[2] Thus, a "[p]etitioner has no right under the seventh amendment to the Constitution ... to a trial by jury in the Tax Court." *Swanson v. Commissioner*, 65 T.C. 1180, 1185 (1976); *see also*, *e.g.*, *Stephens v. Commissioner*, 565 F. App'x 795, 797 (11th Cir. 2014); *Coleman v. Commissioner*, 791 F.2d 68, 71 (7th Cir. 1986); *Martin v. Commissioner*, 756 F.2d 38, 40 (6th Cir. 1985); *Funk v. Commissioner*, 687 F.2d 264, 266 (8th Cir.1982), *aff'g* T.C. Memo. 1981-506; *Olshausen v. Commissioner*, 273 F.2d 23, 27-28 (9th Cir. 1959), *aff'g* T.C. Memo. 1958-85. In short, Tax Court proceedings occupy wholly different ground than the enforcement action in *Jarkesy*, and that decision provides no support to revisit our consistent refrain (joined by the Courts of Appeals) that there is no right to a jury trial in the Tax Court.

Nor are we persuaded that a different result obtains because of the fraud penalty at issue. The Ninth Circuit has reflected on this point, determining that the existence of penalties in a Tax Court proceeding does not implicate the jury-trial right. *See Olshausen v. Commissioner*, 273 F.3d at 28.

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[2] We note that the Fifth Circuit did not mention *Mathes* in its decision in J*arkesy*, which strongly suggests that it did not intend to disturb its long-established holding that the jury-trial right does not apply to Tax Court proceedings.

> We have under consideration in the instant case a proceeding provided for by statute to test the validity of a penalty assessed pursuant to that statute. No such action existed at common law, and, therefore, no jury trial is required by the Seventh Amendment.

Id. We will accordingly deny the Hirsches motion for jury trial.[3] Finding the law settled on this point, we see no need for oral argument and will deny that motion as well. It is therefore

ORDERED that petitioners' motion for jury trial, filed May 27, 2022, is denied. It is further

ORDERED that petitioners' motion for oral argument, filed August 18, 2022, is denied.

(Signed) Patrick J. Urda
Judge

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[3] Of course, the Hirsches have the option to pay the deficiency asserted by the IRS and sue for a refund in federal district court, which would have entitled them to elect trial by jury. *See* 28 U.S.C. §§ 1346(a)(1) and 2402. Any deprivation of the jury-trial right "was due to his own act." *Swanson*, 65 T.C. at 1181; *Mathes v. Commissioner*, 576 F.2d at 71.

APPENDIX C

UNITED STATES TAX COURT

Electronically Filed

Docket No. 28898-10 Document No. 175
Docket No. 5819-11 Document No. 174
Docket No. 5821-11 Document No. 176
Docket No. 6034-11 Document No. 155

HERBERT HIRSCH & BONITA HIRSCH, *et al.*,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Motion for Reconsideration of Order

It is ORDERED as follows:

This motion is DENIED

(Signed) Patrick J. Urda
Judge

APPENDIX D

UNITED STATES TAX COURT
Washington, DC 20217

Docket Nos. 28897-10,
5816-11,
5817-11.

HARVEY BIRDMAN & DIANE BIRDMAN, *et al.*,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

ORDER

Before the Court are a motion for jury trial [Doc. 100[1]] and a motion for oral argument [Doc. 112], filed by petitioners Harvey Birdman and Diane Birdman. We will deny the relief requested in each.

In their motion for jury trial, the Birdmans argue that the jury-trial right enshrined in the Seventh Amendment to the Constitution extends to Tax Court proceedings that involve fraud penalties, as here. [Doc. 100 at 7–16.] In support of this position, the Birdmans point to *Jarkesy v. SEC*, 34 F.4th 446, 453–57 (5th Cir. 2022), in which the U.S. Court of Appeals for the Fifth Circuit concluded that the jury-trial right applied to

[1] "Doc." references are to the filings in the lead case, Docket No. 28897-10, as numbered by the Clerk of this Court.

an SEC civil enforcement proceeding as such actions were analogous to traditional suits at common law to which the jury-trial right attached. [*Id.* at 2–8.]

As the Fifth Circuit previously explained, however, "[s]ince there was no right of action at common law against a sovereign, enforceable by jury trial or otherwise, there is no constitutional right to a jury trial in a suit against the United States." *Mathes v. Commissioner*, 576 F.2d 70, 71 (5th Cir. 1978), *aff'g* T.C. Memo. 1977-220.[2] Thus, a "[p]etitioner has no right under the seventh amendment to the Constitution . . . to a trial by jury in the Tax Court." *Swanson v. Commissioner*, 65 T.C. 1180, 1185 (1976); *see also*, *e.g.*, *Stephens v. Commissioner*, 565 F. App'x 795, 797 (11th Cir. 2014); *Coleman v. Commissioner*, 791 F.2d 68, 71 (7th Cir. 1986); *Martin v. Commissioner*, 756 F.2d 38, 40 (6th Cir. 1985); *Funk v. Commissioner*, 687 F.2d 264, 266 (8th Cir.1982), *aff'g* T.C. Memo. 1981-506; *Olshausen v. Commissioner*, 273 F.2d 23, 27–28 (9th Cir. 1959), *aff'g* T.C. Memo. 1958-85. In short, Tax Court proceedings occupy wholly different ground than the enforcement action in *Jarkesy*, and that decision provides no support to revisit our consistent refrain (joined by the Courts of Appeals) that there is no right to a jury trial in the Tax Court.

Nor are we persuaded that a different result obtains because of the fraud penalty at issue. The Ninth Circuit has reflected on this point, determining that the existence of penalties in a Tax Court proceeding

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[2] We note that the Fifth Circuit did not mention *Mathes* in its decision in *Jarkesy*, which strongly suggests that it did not intend to disturb its long-established holding that the jury-trial right does not apply to Tax Court proceedings.

does not implicate the jury-trial right. *See Olshausen v. Commissioner*, 273 F.3d at 28.

> We have under consideration in the instant case a proceeding provided for by statute to test the validity of a penalty assessed pursuant to that statute. No such action existed at common law, and, therefore, no jury trial is required by the Seventh Amendment.

Id. We will accordingly deny the Birdmans' motion for jury trial.[3] Finding the law settled on this point, we see no need for oral argument and will deny that motion as well. It is therefore

ORDERED that petitioners' motion for jury trial, filed May 27, 2022, is denied. It is further

ORDERED that petitioners' motion for oral argument, filed August 18, 2022, is denied.

(Signed) Patrick J. Urda
Judge

[3] Of course, the Birdmans have the option to pay the deficiency asserted by the IRS and sue for a refund in federal district court, which would have entitled them to elect trial by jury. See 28 U.S.C. §§ 1346(a)(1) and 2402. Any deprivation of the jury-trial right "was due to his own act." *Swanson*, 65 T.C. at 1181; *Mathes v. Commissioner*, 576 F.2d at 71.

APPENDIX E

UNITED STATES TAX COURT

Electronically Filed

Docket No. 28897-10 Document No. 168
Docket No. 5816-11 Document No. 164
Docket No. 5817-11 Document No. 164

HARVEY BIRDMAN & DIANE BIRDMAN, *et al.*,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Motion for Reconsideration of Order

It is ORDERED as follows:

This motion is DENIED

(Signed)
Patrick J. Urda Judge

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 25-10420

In re: HERBERT HIRSCH, BONITA HIRSCH,

Petitioners.

On Petition for Writ of Mandamus to the
United States District Court for the
Northern District of Georgia
D.C. Docket No.

No. 25-10426

In re: HARVEY BIRDMAN,

Petitioners.

On Petition for Writ of Mandamus to the
United States District Court for the
Northern District of Georgia
D.C. Docket No.

Before BRANCH, GRANT, and BRASHER, Circuit Judges.

BY THE COURT:

Petitioners' "Petition for Panel Rehearing or Rehearing En Banc," which the Court construes as a motion for reconsideration of the order denying Petitioners' petitions for writs of mandamus, is DENIED.

APPENDIX G

U.S. Const., amend VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

26 U.S. Code § 6213 – Restrictions applicable to deficiencies; petition to Tax Court

(a) TIME FOR FILING PETITION AND RESTRICTION ON ASSESSMENT

Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6851, 6852, or 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A, or B, chapter 41, 42, 43, or 44 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court, including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection. The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition. Any petition filed with the Tax Court on or before the last date specified

for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.

(b) EXCEPTIONS TO RESTRICTIONS ON ASSESSMENT

(1) ASSESSMENTS ARISING OUT OF MATHEMATICAL OR CLERICAL ERRORS

If the taxpayer is notified that, on account of a mathematical or clerical error appearing on the return, an amount of tax in excess of that shown on the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical or clerical error, such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), or of section 6212(c) (1) restricting further deficiency letters), or of section 6512(a) (prohibiting credits or refunds after petition to the Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section. Each notice under this paragraph shall set forth the error alleged and an explanation thereof.

(2) ABATEMENT OF ASSESSMENT OF MATHEMATICAL OR CLERICAL ERRORS

(A) Request for abatement

Notwithstanding section 6404(b), a taxpayer may file with the Secretary within 60 days after notice is sent under paragraph (1) a request for an abatement of any assessment specified in such notice, and upon receipt of such request, the Secretary shall abate the assessment. Any

reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by this subchapter.

(B) STAY OF COLLECTION

In the case of any assessment referred to in paragraph (1), notwithstanding paragraph (1), no levy or proceeding in court for the collection of such assessment shall be made, begun, or prosecuted during the period in which such assessment may be abated under this paragraph.

(3) ASSESSMENTS ARISING OUT OF TENTATIVE CARRYBACK OR REFUND ADJUSTMENTS

If the Secretary determines that the amount applied, credited, or refunded under section 6411 is in excess of the overassessment attributable to the carryback or the amount described in section 1341(b)(1) with respect to which such amount was applied, credited, or refunded, he may assess without regard to the provisions of paragraph (2) the amount of the excess as a deficiency as if it were due to a mathematical or clerical error appearing on the return.

(4) ASSESSMENT OF AMOUNT PAID

Any amount paid as a tax or in respect of a tax may be assessed upon the receipt of such payment notwithstanding the provisions of subsection (a). In any case where such amount is paid after the mailing of a notice of deficiency under section 6212, such payment shall not deprive the Tax Court of jurisdiction over such deficiency determined under section 6211 without regard to such assessment.

(5) CERTAIN ORDERS OF CRIMINAL RESTITUTION

If the taxpayer is notified that an assessment has been or will be made pursuant to section 6201(a)(4)¬

(A) such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), section 6212(c)(1) (restricting further deficiency letters), or section 6512(a) (prohibiting credits or refunds after petition to the Tax Court), and

(B) subsection (a) shall not apply with respect to the amount of such assessment.

(c) FAILURE TO FILE PETITION

If the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (a), the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the Secretary.

(d) WAIVER OF RESTRICTIONS

The taxpayer shall at anytime (whether or not a notice of deficiency has been issued) have the right, by a signed notice in writing filed with the Secretary, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) SUSPENSION OF FILING PERIOD FOR CERTAIN EXISE TAXES

The running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to the taxes imposed by section 4941 (relating to taxes on self-dealing), 4942 (relating to taxes on failure to distribute income), 4943 (relating to taxes on excess business holdings), 4944 (relating to investments which jeopardize charitable purpose), 4945 (relating to

taxes on taxable expenditures), 4951 (relating to taxes on self-dealing), or 4952 (relating to taxes on taxable expenditures), 4955 (relating to taxes on political expenditures), 4958 (relating to private excess benefit), 4971 (relating to excise taxes on failure to meet minimum funding standard), 4975 (relating to excise taxes on prohibited transactions) shall be suspended for any period during which the Secretary has extended the time allowed for making correction under section 4963(e).

(f) COORDINATION WITH TITLE 11

(1) SUSPENSION OF RUNNING OF PERIOD FOR FILING IN TITLE 11 CASES

In any case under title 11 of the United States Code, the running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to any deficiency shall be suspended for the period during which the debtor is prohibited by reason of such case from filing a petition in the Tax Court with respect to such deficiency, and for 60 days thereafter.

(2) CERTAIN ACTION NOT TAKEN INTO ACCOUNT

For purposes of the second and third sentences of subsection (a), the filing of a proof of claim or request for payment (or the taking of any other action) in a case under title 11 of the United States Code shall not be treated as action prohibited by such second sentence.

(g) DEFINITIONS

For purposes of this section—

(1) RETURN

The term "return" includes any return, statement, schedule, or list, and any amendment or supplement

thereto, filed with respect to any tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44.

(2) MATHEMATICAL OR CLERICAL ERROR

The term "mathematical or clerical error" means¬

(A) an error in addition, subtraction, multiplication, or division shown on any return,

(B) an incorrect use of any table provided by the Internal Revenue Service with respect to any return if such incorrect use is apparent from the existence of other information on the return,

(C) an entry on a return of an item which is inconsistent with another entry of the same or another item on such return,

(D) an omission of information which is required to be supplied on the return to substantiate an entry on the return,

(E) an entry on a return of a deduction or credit in an amount which exceeds a statutory limit imposed by subtitle A or B, or chapter 41, 42, 43, or 44, if such limit is expressed—

(i) as a specified monetary amount, or

(ii) as a percentage, ratio, or fraction,

and if the items entering into the application of such limit appear on such return,

(F) an omission of a correct taxpayer identification number required under section 32 (relating to the earned income credit) to be included on a return,

(G) an entry on a return claiming the credit under section 32 with respect to net earnings from self-employment described in section 32(c)(2)(A) to the extent the tax imposed by section 1401 (relating

to self-employment tax) on such net earnings has not been paid,

(H) an omission of a correct TIN required under section 21 (relating to expenses for household and dependent care services necessary for gainful employment) or section 151 (relating to allowance of deductions for personal exemptions),

(I) an omission of a correct TIN required under section 24 (relating to child tax credit) to be included on a return,

(J) an omission of a correct social security number or employer identification number required under section 25A(g)(1) (relating to higher education tuition and related expenses) to be included on a return,

(K) an omission of information required by section 32(k)(2) (relating to taxpayers making improper prior claims of earned income credit) or an entry on the return claiming the credit under section 32 for a taxable year for which the credit is disallowed under subsection (k)(1) thereof,

(L) the inclusion on a return of a TIN required to be included on the return under section 21, 24, 32, 6428, or 6428A if—

(i) such TIN is of an individual whose age affects the amount of the credit under such section, and

(ii) the computation of the credit on the return reflects the treatment of such individual as being of an age different from the individual's age based on such TIN,

(M) the entry on the return claiming the credit under section 32 with respect to a child if, according to the Federal Case Registry of Child

Support Orders established under section 453(h) of the Social Security Act, the taxpayer is a noncustodial parent of such child,

(N) an omission of any increase required under section 36(f) with respect to the recapture of a credit allowed under section 36,

(O) the inclusion on a return of an individual taxpayer identification number issued under section 6109(i) which has expired, been revoked by the Secretary, or is otherwise invalid,

(P) an omission of information required by section 24(g)(2) or an entry on the return claiming the credit under section 24 for a taxable year for which the credit is disallowed under subsection (g)(1) thereof,

(Q) an omission of information required by section 25A(b)(4)(B) or an entry on the return claiming the American Opportunity Tax Credit for a taxable year for which such credit is disallowed under section 25A(b)(4)(A),

(R) an omission of information or documentation required under section 25C(b)(6)(B) (relating to home energy audits) to be included on a return,

(S) an omission of a correct product identification number required under section 25C(h) (relating to credit for nonbusiness energy property) to be included on a return,

(T) an omission of a correct vehicle identification number required under section 30D(f)(9) (relating to credit for new clean vehicles) to be included on a return,

(U) an omission of a correct vehicle identification number required under section 25E(d) (relating to

credit for previously-owned clean vehicles) to be included on a return,

(V) an omission of a correct vehicle identification number required under section 45W(e) (relating to commercial clean vehicle credit) to be included on a return,

(W) an omission of a correct social security number required under section 151(d)(5)(C) (relating to deduction for seniors),

(X) an omission of a correct social security number required under section 108(f)(5)(C) (relating to discharges on account of death or disability),

(Y) an omission of a correct social security number required under section 224(e) (relating to deduction for qualified tips),

(Z) an omission of a correct social security number required under section 225(d) (relating to deduction for qualified overtime), and

(AA) an omission of a correct social security number required under section 6434(e)(1) (relating to the Trump accounts contribution pilot program).

A taxpayer shall be treated as having omitted a correct TIN for purposes of the preceding sentence if information provided by the taxpayer on the return with respect to the individual whose TIN was provided differs from the information the Secretary obtains from the person issuing the TIN.

(h) CROSS REFERENCES

(1) For assessment as if a mathematical error on the return, in the case of erroneous claims for income tax prepayment credits, see section 6201(a)(3).

(2) For assessments without regard to restrictions imposed by this section in the case of¬

(A) Recovery of foreign income taxes, see section 905(c).

(B) Recovery of foreign estate tax, see section 2016.

(3) For provisions relating to application of this subchapter in the case of certain partnership items, etc., see section 6230(a).

26 U.S. Code § 6214 – Determinations by Tax Court

(a) JURISDICTION AS TO INCREASE DEFICIENCY, ADDITIONAL AMOUNTS, OR ADDITIONS TO THE TAX

Except as provided by section 7463, the Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any additional amount, or any addition to the tax should be assessed, if claim therefor is asserted by the Secretary at or before the hearing or a rehearing.

(b) JURISDICTION OVER OTHER YEARS AND QUARTERS

The Tax Court in redetermining a deficiency of income tax for any taxable year or of gift tax for any calendar year or calendar quarter shall consider such facts with relation to the taxes for other years or calendar quarters as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year or calendar quarter has been overpaid or underpaid. Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims.

(c) TAXES IMPOSED BY SECTION 507 OR CHAPTER 41, 42, 43, OR 44

The Tax Court, in redetermining a deficiency of any tax imposed by section 507 or chapter 41, 42, 43, or 44 for any period, act, or failure to act, shall consider such facts with relation to the taxes under chapter 41, 42,

43, or 44 for other periods, acts, or failures to act as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the taxes under chapter 41, 42, 43, or 44 for any other period, act, or failure to act have been overpaid or underpaid. The Tax Court, in redetermining a deficiency of any second tier tax (as defined in section 4963(b)), shall make a determination with respect to whether the taxable event has been corrected.

(d) FINAL DECISIONS OF TAX COURT

For purposes of this chapter, chapter 41, 42, 43, or 44, and subtitles A or B the date on which a decision of the Tax Court becomes final shall be determined according to the provisions of section 7481.

(e) CROSS REFERENCE

For provision giving Tax Court jurisdiction to order a refund of an overpayment and to award sanctions, see section 6512(b)(2).

26 U.S. Code § 6651 - Failure to file tax return or to pay tax

(a) ADDITION TO THE TAX

In case of failure—

(1) to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;

(2) to pay the amount shown as tax on any return specified in paragraph (1) on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate; or

(3) to pay any amount in respect of any tax required to be shown on a return specified in paragraph (1) which is not so shown (including an assessment made pursuant to section 6213(b)) within 21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

In the case of a failure to file a return of tax imposed by chapter 1 within 60 days of the date prescribed for filing of such return (determined with regard to any extensions of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under paragraph (1) shall not be less than the lesser of $435 or 100 percent of the amount required to be shown as tax on such return.

(b) PENALTY IMPOSED ON NET AMOUNT DUE

For purposes of—

(1) subsection (a)(1), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return,

(2) subsection (a)(2), the amount of tax shown on the return shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed on the return, and

(3) subsection (a)(3), the amount of tax stated in the notice and demand shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(c) LIMITATIONS AND SPECIAL RULE

(1) ADDITIONS UNDER MORE THAN ONE PARAGRAPH

With respect to any return, the amount of the addition under paragraph (1) of subsection (a) shall be reduced by the amount of the addition under paragraph (2) of subsection (a) for any month (or fraction thereof) to which an addition to tax applies under both paragraphs (1) and (2). In any case described in the last sentence of subsection (a), the amount of the addition under paragraph (1) of subsection (a) shall not be reduced under the preceding sentence below the amount provided in such last sentence.

(2) AMOUNT OF TAX SHOWN MORE THAN AMOUNT REQUIRED TO BE SHOWN

If the amount required to be shown as tax on a return is less than the amount shown as tax on such return, subsections (a)(2) and (b)(2) shall be applied by substituting such lower amount.

(d) INCREASE IN PENALTY FOR FAILURE TO PAY TAX IN CERTAIN CASES

(1) IN GENERAL

In the case of each month (or fraction thereof) beginning after the day described in paragraph (2) of this subsection, paragraphs (2) and (3) of subsection (a) shall be applied by substituting "1 percent" for "0.5 percent" each place it appears.

(2) DESCRIPTION

For purposes of paragraph (1), the day described in this paragraph is the earlier of—

(A) the day 10 days after the date on which notice is given under section 6331(d), or

(B) the day on which notice and demand for immediate payment is given under the last sentence of section 6331(a).

(e) EXCEPTION FOR ESTIMATED TAX

This section shall not apply to any failure to pay any estimated tax required to be paid by section 6654 or 6655.

(f) INCREASE IN PENALTY FOR FRAUDULENT FAILURE TO FILE

If any failure to file any return is fraudulent, paragraph (1) of subsection (a) shall be applied—

(1) by substituting" 15 percent" for "5 percent" each place it appears, and

(2) by substituting "75 percent" for "25 percent".

(g) TREATMENT OF RETURNS PREPARED BY SECRETARY UNDER SECTION 6020(B)

In the case of any return made by the Secretary under section 6020(b)—

(1) such return shall be disregarded for purposes of determining the amount of the addition under paragraph (1) of subsection (a), but

(2) such return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition under paragraphs (2) and

(3) of subsection (a).

(h) LIMITATION ON PENALTY ON INDIVIDUAL'S FAILURE TO PAY FOR MONTHS DURING PERIOD OF INSTALLMENT AGREEMENT

In the case of an individual who files a return of tax on or before the due date for the return (including extensions), paragraphs (2) and (3) of subsection (a) shall each be applied by substituting "0.25" for "0.5" each place it appears for purposes of determining the addition to tax for any month during which an installment agreement under section 6159 is in effect for the payment of such tax.

(i) APPLICATION TO IMPUTED UNDERPAYMENT

For purposes of this section, any failure to comply with section 6226(b)(4)(A)(ii) shall be treated as a failure to pay the amount described in subclause (II) thereof and such amount shall be treated for purposes of this section as an amount shown as tax on a return specified in subsection (a)(1).

(j) ADJUSTMENT FOR INFLATION

(1) IN GENERAL

In the case of any return required to be filed in a calendar year beginning after 2020, the $435 dollar amount under subsection (a) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under

section 1(f)(3) for the calendar year determined by substituting "calendar year 2019" for "calendar year 2016" in subparagraph (A) (ii) thereof.

(2) ROUNDING

If any amount adjusted under paragraph (1) is not a multiple of $5, such amount shall be rounded to the next lowest multiple of $5.

26 U.S. Code § 6663 - Imposition of fraud penalty

(a) IMPOSITION OF PENALTY

If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud.

(b) DETERMINATION OF PORTION ATTRIBUTABLE TO FRAUD

If the Secretary establishes that any portion of an underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes (by a preponderance of the evidence) is not attributable to fraud.

(c) SPECIAL RULE FOR JOINT RETURNS

In the case of a joint return, this section shall not apply with respect to a spouse unless some part of the underpayment is due to the fraud of such spouse.

26 U.S. Code § 6664 - Definitions and special rules

(a) UNDERPAYMENT

For purposes of this part, the term "underpayment" means the amount by which any tax imposed by this title exceeds the excess of—

(1) the sum of—

(A) the amount shown as the tax by the taxpayer on his return, plus

(B) amounts not so shown previously assessed (or collected without assessment), over

(2) the amount of rebates made.

For purposes of paragraph (2), the term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed was less than the excess of the amount specified in paragraph (1) over the rebates previously made. A rule similar to the rule of section 6211(b)(4) shall apply for purposes of this subsection.

(b) PENALTIES APPLICABLE ONLY WHERE RETURN FILED

The penalties provided in this part shall apply only in cases where a return of tax is filed (other than a return prepared by the Secretary under the authority of section 6020(b)).

(c) REASONABLE CAUSE EXCEPTION FOR UNDERPAYMENTS

(1) IN GENERAL

No penalty shall be imposed under section 6662 or 6663 with respect to any portion of an underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

(2) EXCEPTION

Paragraph (1) shall not apply to any portion of an underpayment which is attributable to one or more transactions described in section 6662(b)(6) or to any disallowance of a deduction described in section 6662(b)(10).

(3) SPECIAL RULE FOR CERTAIN VALUATION OVERSTATMENTS

In the case of any underpayment attributable to a substantial or gross valuation overstatement under chapter 1 with respect to charitable deduction property, paragraph (1) shall not apply. The preceding sentence shall not apply to a substantial valuation overstatement under chapter 1 if—

(A) the claimed value of the property was based on a qualified appraisal made by a qualified appraiser, and

(B) in addition to obtaining such appraisal, the taxpayer made a good faith investigation of the value of the contributed property.

(4) DEFINITIONS

For purposes of this subsection—

(A) Charitable deduction property

The term "charitable deduction property" means any property contributed by the taxpayer in a contribution for which a deduction was claimed under section 170. For purposes of paragraph (3), such term shall not include any securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

(B) Qualified appraisal

The term "qualified appraisal" has the meaning given such term by section 170(f)(11)(E)(i).

(C) Qualified appraiser

The term "qualified appraiser" has the meaning given such term by section 170(f)(11)(E)(ii).

(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS

(1) IN GENERAL

No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

(2) EXCEPTION

Paragraph (1) shall not apply to any portion of a reportable transaction understatement which is attributable to one or more transactions described in section 6662(b)(6).

(3) SPECIAL RULES

Paragraph (1) shall not apply to any reportable transaction understatement unless—

(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

(B) there is or was substantial authority for such treatment, and

(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

(4) RULES RELATING TO REASONABLE BELIEF

For purposes of paragraph (3)(C)—

(A) In general

A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

(B) Certain opinions may not be relied upon

(i) In general

An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

(I) the tax advisor is described in clause (ii), or

(II) the opinion is described in clause (iii).

(ii) Disqualified tax advisors

A tax advisor is described in this clause if the tax advisor—

(I) is a material advisor (within the meaning of section 6111(b)(1)) and participates in the organization, management, promotion, or sale of the transaction or is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

(iii) Disqualified opinions

For purposes of clause (i), an opinion is disqualified if the opinion—

(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

(III) does not identify and consider all relevant facts, or

(IV) fails to meet any other requirement as the Secretary may prescribe.

26 U.S. Code § 7422 - Civil actions for refund

(a) NO SUIT PRIOR TO FILING CLAIM FOR REFUND

No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

(b) PROTEST OR DURESS

Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

(c) SUITS AGAINST COLLECTION OFFICER A BAR

A suit against any officer or employee of the United States (or former officer or employee) or his personal representative for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected shall be treated as if the United States had been a party to such suit in applying the doctrine of res judicata in all suits in respect of any internal revenue tax, and in all proceedings in the Tax Court and on review of decisions of the Tax Court.

(d) CREDIT TREATED AS PAYMENT

The credit of an overpayment of any tax in satisfaction of any tax liability shall, for the purpose of any suit for refund of such tax liability so satisfied, be deemed to

be a payment in respect of such tax liability at the time such credit is allowed.

(e) STAY OF PROCEEDINGS

If the Secretary prior to the hearing of a suit brought by a taxpayer in a district court or the United States Court of Federal Claims for the recovery of any income tax, estate tax, gift tax, or tax imposed by chapter 41, 42, 43, or 44 (or any penalty relating to such taxes) mails to the taxpayer a notice that a deficiency has been determined in respect of the tax which is the subject matter of taxpayer's suit, the proceedings in taxpayer's suit shall be stayed during the period of time in which the taxpayer may file a petition with the Tax Court for a redetermination of the asserted deficiency, and for 60 days thereafter. If the taxpayer files a petition with the Tax Court, the district court or the United States Court of Federal Claims, as the case may be, shall lose jurisdiction of taxpayer's suit to whatever extent jurisdiction is acquired by the Tax Court of the subject matter of taxpayer's suit for refund. If the taxpayer does not file a petition with the Tax Court for a redetermination of the asserted deficiency, the United States may counterclaim in the taxpayer's suit, or intervene in the event of a suit as described in subsection (c) (relating to suits against officers or employees of the United States), within the period of the stay of proceedings notwithstanding that the time for such pleading may have otherwise expired. The taxpayer shall have the burden of proof with respect to the issues raised by such counterclaim or intervention of the United States except as to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax. This subsection shall not apply to a suit by a taxpayer which, prior to the date of enactment of this title, is commenced, instituted, or

pending in a district court or the United States Court of Federal Claims for the recovery of any income tax, estate tax, or gift tax (or any penalty relating to such taxes).

(f) LIMITATION ON RIGHT OF ACTION FOR REFUND

(1) GENERAL RULE

A suit or proceeding referred to in subsection (a) may be maintained only against the United States and not against any officer or employee of the United States (or former officer or employee) or his personal representative. Such suit or proceeding may be maintained against the United States notwithstanding the provisions of section 2502 of title 28 of the United States Code (relating to aliens' privilege to sue) and notwithstanding the provisions of section 1502 of such title 28 (relating to certain treaty cases).

(2) MISJOINDER AND CHANGE OF VENUE

If a suit or proceeding brought in a United States district court against an officer or employee of the United States (or former officer or employee) or his personal representative is improperly brought solely by virtue of paragraph (1), the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action commenced, upon proper service of process on the United States. Such suit or proceeding shall upon request by the United States be transferred to the district or division where it should have been brought if such action initially had been brought against the United States.

(g) SPECIAL RULES FOR CERTAIN EXISE TAXES IMPOSED BY CHAPTER 42 OR 43

(1) RIGHT TO BRING ACTIONS

(A) In general

With respect to any taxable event, payment of the full amount of the first tier tax shall constitute sufficient payment in order to maintain an action under this section with respect to the second tier tax.

(B) Definitions

For purposes of subparagraph (A), the terms "taxable event", "first tier tax", and "second tier tax" have the respective meanings given to such terms by section 4963.

(2) LIMITATION ON SUIT FOR REFUND

No suit may be maintained under this section for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975 with respect to any act (or failure to act) giving rise to liability for tax under such sections, unless no other suit has been maintained for credit or refund of, and no petition has been filed in the Tax Court with respect to a deficiency in, any other tax imposed by such sections with respect to such act (or failure to act).

(3) FINAL DETERMINATION OF ISSUES

For purposes of this section, any suit for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975 with respect to any act (or failure to act) giving rise to liability for tax under such sections, shall constitute a suit to determine all questions

with respect to any other tax imposed with respect to such act (or failure to act) under such sections, and failure by the parties to such suit to bring any such question before the Court shall constitute a bar to such question.

[(h) REPEALED. PUB. L. 114-74, TITLE XI § 1101(F)(11), NOV. 2, 2015, 129 STAT. 638]

(i) SPECIAL RULE FOR ACTIONS WITH RESPECT TO TAX SHELTER PROMOTER AND UNDERSTATEMENT PENALTIES

No action or proceeding may be brought in the United States Court of Federal Claims for any refund or credit of a penalty imposed by section 6700 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 (relating to penalties for aiding and abetting understatement of tax liability).

(j) SPECIAL RULE FOR ACTIONS WITH RESPECT TO ESTATES FOR WHICH AN ELECTION UNDER SECTION 6166 IS MADE

(1) IN GENERAL

The district courts of the United States and the United States Court of Federal Claims shall not fail to have jurisdiction over any action brought by the representative of an estate to which this subsection applies to determine the correct amount of the estate tax liability of such estate (or for any refund with respect thereto) solely because the full amount of such liability has not been paid by reason of an election under section 6166 with respect to such estate.

(2) ESTATES TO WHICH SUBSECTION APPLIES

This subsection shall apply to any estate if, as of the date the action is filed—

(A) no portion of the installments payable under section 6166 have been accelerated;

(B) all such installments the due date for which is on or before the date the action is filed have been paid;

(C) there is no case pending in the Tax Court with respect to the tax imposed by section 2001 on the estate and, if a notice of deficiency under section 6212 with respect to such tax has been issued, the time for filing a petition with the Tax Court with respect to such notice has expired; and

(D) no proceeding for declaratory judgment under section 7479 is pending.

(3) PROHIBITION ON COLLECTION ON DISALLOWED LIABILITY

If the court redetermines under paragraph (1) the estate tax liability of an estate, no part of such liability which is disallowed by a decision of such court which has become final may be collected by the Secretary, and amounts paid in excess of the installments determined by the court as currently due and payable shall be refunded.

(k) CROSS REFERENCES

(1) For provisions relating generally to claims for refund or credit, see chapter 65 (relating to abatements, credit, and refund) and chapter 66 (relating to limitations).

(2) For duty of United States attorneys to defend suits, see section 507 of Title 28 of the United States Code.

(3) For jurisdiction of United States district courts, see section 1346 of Title 28 of the United States Code.

(4) For payment by the Treasury of judgments against internal revenue officers or employees, upon certificate of probable cause, see section 2006 of Title 28 of the United States Code.