No. 25-739

IN THE

Supreme Court of the United States

HERBERT HIRSCH, BONITA HIRSCH, HARVEY BIRDMAN, AND DIANA BIRDMAN,

Petitioners,

v.

UNITED STATES TAX COURT,

Respondent.

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

BRIEF OF THE CENTER FOR TAXPAYER RIGHTS AND NATIONAL TAXPAYERS UNION AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

MICHAEL TODD WELTY
GRAY PROCTOR
Kostelanetz LLP
4279 Roswell Road NE
Suite 208, #352
Atlanta, GA 30342
(404) 301-4791

ANDREW WEINER
Counsel of Record
Kostelanetz LLP
601 New Jersey Avenue
Suite 260
Washington, DC 20001
(202) 875-8000
aweiner@kostelanetz.com

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

U.S. CONSTITUTION AND STATUTES

MISCELLANEOUS

INTEREST OF THE *AMICI*

The Center for Taxpayer Rights ("the Center") submits this brief pursuant to Rule 37 of the Rules of the Supreme Court of the United States.[1] The Center is a non-profit organization under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code dedicated to furthering taxpayers' awareness of and access to taxpayer rights. The Center accomplishes its mission, in part, by educating the public and government officials about the role taxpayer rights play in promoting compliance and trust in systems of taxation and by engaging in litigation regarding taxpayer rights, as in this case. The Executive Director of the Center, and source of its authority to file this brief, is Nina E. Olson, who from 2001 through 2019, served as the IRS National Taxpayer Advocate, appointed under 26 U.S.C. § 7803(c)(1)(B).

National Taxpayers Union ("NTU"), a 26 U.S.C. § 501(c)(4) organization, joins this brief. Since 1969, NTU works for a simple and fair tax system that enables prosperity for all and respects taxpayers' rights. NTU shows Americans how taxes, government spending, and regulations affect everyday life, and advocates for taxpayers at all levels of government including in regulatory proceedings and litigation.

---

[1] Pursuant to Rule 37 of the Rules of the Supreme Court of the United States, this is to affirm that counsel of record were provided timely notice of intention to file this brief, that no party's counsel authored this brief in whole or in part, and that no party or party's counsel contributed money that was intended to fund preparing or submitting this brief. Counsel for the Center is also counsel for Ornstein-Schuler Investments, LLC, which did contribute money intended to fund the preparation of this brief.

In *Securities and Exchange Commission v. Jarkesy*, 603 U.S. 109 (2024), the Supreme Court struck down the portions of the Dodd-Frank Act that gave the SEC jurisdiction to recover its own fraud penalties in proceedings before an administrative law judge without a jury. *Id.* at 109-10. Respondent's assertion of fraud and accuracy-related penalties in deficiency proceedings is equivalent because deficiency cases in the Tax Court are decided by a Tax Court judge without a jury in contravention of the Seventh Amendment and without an independent judge as guaranteed by Article III of the Constitution.

The Center for Taxpayer Rights and the National Taxpayers Union submit this brief as *amici curiae* in support of protecting the constitutional right to a jury trial and an independent judge in the context of significant and potentially life-changing penalties. These are two of many cases raising the Seventh Amendment regarding claims of tax penalties following *Jarkesy*. At issue is access to fundamental procedural protections before taxpayers are required to pay tax penalties and interest. Both the Center and NTU have institutional interests in this case.

SUMMARY OF THE ARGUMENT

Jarkesy is a reminder and an affirmance that the Seventh Amendment right to a jury trial is "'of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right' has always been and 'should be scrutinized with the utmost care.'" *Jarkesy*, 603 U.S. at 121 (quoting *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935)). No other area of the law is more deserving of scrutiny in this respect than the tax law, as taxes are the one way in which every citizen and resident interacts with the federal government. Over 150 years ago, the Court in *Murray's Lessee v. Hoboken Land & Improvement Company*, 59 U.S. 272 (1855), established that assessment and collection of tax fit with the public rights exception to the Seventh Amendment. This Court has never addressed whether the same holds for tax *penalties* rooted in the common law including negligence-based, accuracy-related penalties under 26 U.S.C. § 6662 or the fraud penalty under 26 U.S.C. § 6663. Whether the public rights exception extends to these tax penalties is uncertain following *Jarkesy* and enormously consequential for taxpayers and the government.

For fiscal years 2019-2023, reflecting the most current and reliable tax penalty data, the federal government imposed an average of 599,316 accuracy-related penalties exceeding $1.4 billion and 1,369 fraud penalties exceeding $195 million each year. *See* IRS Data Book, Table 28, 2019-2023, at https://www.irs.gov/statistics/soi-tax-stats-civil-penalties-assessed-and-abated-by-type-of-tax-and-type-of-penalty-irs-data-book-table-28. These penalties affect all taxpayers, including low-income

taxpayers. Still other penalties rooted in the common law apply only to low-income taxpayers, including 26 U.S.C. §§ 32(k), 24(g) and 25A(b)(4), which ban taxpayers from claiming the Earned Income Tax Credit, the Child Tax Credit, and the American Opportunity Tax Credit (designed to help low-income students get an education), respectively, for 10 years when taxpayers improperly claim a credit due the fraud and for 2 years when they improperly claim a credit due to reckless or intentional disregard of rules and regulations. The IRS imposed a two-year ban against 2,724 taxpayers in fiscal year 2023, and a study of a representative sample by Taxpayer Advocate Services found that the IRS did not provide an adequate explanation 81% of the time. IRS Pub. 2104-B, National Taxpayer Advocate Annual Report to Congress: 2023 Research Reports, at 33, 35 (Rev. 1-2024). The taxpayers studied had a median adjusted gross income of $18,501 and a median Earned Income Tax Credit of $3,619 equal to 20% of their income. *Id.* at 28, 33. Thus, just the two-year ban is as punitive as traditional monetary penalties, if not more so. The right to a jury trial before such penalties are enforced is a critical taxpayer protection.

In response to a litany of Seventh Amendment arguments by taxpayers following *Jarkesy*, the Tax Court issued reviewed opinions applicable throughout the country in *Silver Moss Properties, LLC v. Commissioner*, 165 T.C. No. 3, 2025 WL 2416867 (T.C. Aug. 21, 2025), and *Riddle Aggregates, LLC v. Commissioner*, 165 T.C. No. 12, 2025 WL 3626952 (T.C. Dec. 15, 2025), holding that the Seventh Amendment does not apply to accuracy-related and fraud penalties based on sovereign immunity and the

public rights exception. As detailed below, the Tax Court's reasoning is highly questionable and leaves tax penalties hanging in the balance.

The Court should not wait years for this contentious issue to percolate up through the courts of appeals. Taxpayers and the government face irreparable harm in the interim. Many taxpayers subject to penalties would be deprived of their constitutional right to a jury trial and, upon judicial recognition, the government would be deprived of the ability to reimpose penalties by limitations periods and procedures that do not accommodate jury trials. Further, addressing whether tax penalties fall within public rights exception would supply needed guidance of administrative enforcement far beyond tax. The Court recently granted certiorari in two such cases, *FCC v. AT&T*, No. 25-406, and *Verizon Communications Inc. v. FCC*, No. 25-567, but notably, the government did not seek review of its argument that the public rights exception applies. Petition for a Writ of Certiorari of the Federal Communications Commission at 7, *FCC v. AT&T*, No. 25-406 (Oct. 2, 2025). The Court should take up the issue of the public rights exception in this case.

ARGUMENT

I. THE SEVENTH AMENDMENT RIGHT TO A JURY TRIAL APPLIES TO THE GOVERNMENT'S CLAIMS OF TAX FRAUD AND NEGLIGENCE

Following the Supreme Court's analysis in *Jarkesy*, 603 U.S. at 120-21, the imposition of tax penalties based on fraud and negligence by the IRS

are "suits at common law" because the monetary recovery is not solely equitable in nature, and because the penalties are analogous to suits at common law recognized in the founding era. Second, the public rights exception does not apply to such penalties because the tradition dating back to the founding was that tax penalties were enforced in Article III courts.

A. Tax Penalties Based on Fraud and Negligence Are Suits at Common Law

The Seventh Amendment guarantees a jury in all "Suits at common law, where the value in controversy shall exceed twenty dollars." U.S. CONST., amend. VII. Deciding suits at common law requires an exercise of the judicial power of the United States under Article III. *See Stern v. Marshall*, 564 U.S. 462, 484 (2011) ("When a suit is made of 'the stuff of the traditional actions at common law tried by the courts at Westminster in 1789,' and is brought within the bounds of federal jurisdiction, the responsibility for deciding that suit rests with Article III judges in Article III courts.") (quoting *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 90 (1982) (Rehnquist, J., concurring)).

The suit-at-common-law inquiry turns on whether an action would have been heard at law or in equity when the Seventh Amendment was ratified. *See Jarkesy*, 603 U.S. at 122 ("[T]he Framers used the term 'common law' in the Amendment 'in contradistinction to equity, and admiralty, and maritime jurisprudence.'") (quoting *Parsons v. Bedford, Breedlove & Robeson*, 28 U.S. (3 Pet.) 433, 446 (1830)). This depends on both the nature of the remedy and the degree of similarity to a recognized

suit at common law, with the remedy being "the 'more important' consideration" because "money damages are the prototypical common law remedy." *Id.* at 123 (quoting *Tull v. United States*, 481 U.S. 412, 422 (1987)).

As petitioners explain, the fraud penalty comfortably satisfies both measures of a suit at common law. The Tax Court in this case and in *Silver Moss* disagree on the view that "'the Seventh Amendment right to trial by jury does not apply in actions against the Federal Government.'" *Silver Moss*, 2025 WL 2416867, at *3 (quoting *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981)). The Court in *Lehman* was referencing a line of cases that address claims against the United States for monetary or equitable relief. As petitioners point out, this case is different. At issue are the government's claims of fraud penalties against petitioners, which are suits at common law within the meaning of the Seventh Amendment.

This matter is comparable to *Jarkesy*, which demonstrates the applicability of the Seventh Amendment. In *Jarkesy*, the SEC asserted securities fraud penalties and adjudicated the matter within the agency before an administrative law judge. *See Jarkesy*, 603 U.S. at 109. Here, the IRS asserts penalties that, had petitioners not filed petitions for redetermination in the Tax Court, would have become enforceable. *See Old Colony Trust Co. v. Commissioner*, 279 U.S. 716, 721 (1929) ("[The Tax Court] was created by Congress to provide taxpayers an opportunity to secure an independent review of the Commissioner of Internal Revenue's determination of additional income and estate taxes . . . in advance of

their paying the tax found by the Commissioner to be due."). In this regard, the IRS's enforcement authority exceeds that of the SEC because the IRS is not required to adjudicate penalty determinations before they take effect, absent the taxpayer filing a valid petition in the Tax Court. These cases that petitioners brought by filing of valid petitions, like the proceeding in *Jarkesy*, will determine penalties asserted by the agency outside of an Article III court and without the right to a jury trial. But as this Court concluded, "[t]he Constitution prohibits Congress from 'withdraw[ing] from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law.'" *Jarkesy*, 603 U.S. at 127 (quoting *Murray's Lessee*, 59 U.S. at 284).

The Tax Court's suggestion to the contrary would make a mockery of Seventh Amendment jurisprudence by insulating tax penalties from scrutiny. *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 61 (1989) ("Congress cannot eliminate a party's Seventh Amendment right to a jury trial merely by relabeling the cause of action to which it attaches and placing exclusive jurisdiction in an administrative agency or a specialized court of equity."). To make matters worse, the Government appears to concede in *FCC v. AT&T*, No. 25-406, to be heard by the Court this term, that the right to a jury trial must precede collectability of the legal claim triggering the right. *See* Petition for a Writ of Certiorari of FCC, *supra*, at 7 (arguing there is no violation of the Seventh Amendment because the statutory scheme "entitled respondent to a de novo jury trial in district court before the monetary penalty could be collected"). Thus, it is no answer to the

requirements of the Seventh Amendment that taxpayers may pay penalties and sue for refunds in an Article III court that includes a right to jury trial. Still further, Congress would be capable of circumventing the Seventh Amendment beyond the tax context merely by enacting procedures that require targets of administrative enforcement actions to initiate suit.

B. The Tax Penalties Do Not Fall Within the Public Rights Exception

The public rights exception applies to matters that "'historically could have been determined exclusively by the executive and political branches.'" *Jarkesy*, 603 U.S. at 128 (quoting *Stern*, 564 U.S. at 493). Tax collection is a quintessential public right by virtue of Congress's power under the Taxing and Spending Clause of the Constitution "to lay and collect taxes" and a well-established tradition of non-judicial tax collection at the time of the founding. U.S. CONST. art. I, § 8, cl. 1; *see Murray's Lessee*, 59 U.S. at 277-80 ("[T]he means provided by the act of 1820 [a warrant of distress] does not differ in principle from those employed in England from remote antiquity—and in many of the States, so far as we know without objection—for this purpose, at the time the constitution was formed."). Tax penalties, however, have a different history. During the colonial age and the founding era (and until the Civil War), tax penalties were imposed through suits at common law with an Article III judge and jury.

The Crown initially imposed duties and tariffs on the American colonies, eschewing taxes on internal economic activity. Navigation Acts were integral to the enforcement of customs duties by requiring all

trade with England and the colonies to be carried on in English or colonial vessels and authorizing penalties for violations sued for and recovered by the Crown or its agents. *See* Navigation Act of 1660, 12 Car. 2 c. 18, § I (Eng. and Wales) (providing a "penalty of the forfeiture and loss of all the goods and commodities" paid in part "to him or them who shall seize, inform, or sue for the same in any court of record, by bill, information, plaint, or other action, wherein no essoin, protection, or wager of law shall be allowed"); *see also* Navigation Act of 1663, 15 Car. 2 c. 7, § V (Eng. and Wales). Common-law courts adjudicated these suits. *See C.J. Hendry Co. v. Moore*, 318 U.S. 133, 138-40 (1943) ("[T]he jurisdiction of common law courts to condemn ships and cargoes for violation of the Navigation Acts had been firmly established, apparently without question, and was regularly exercised throughout the colonies."). Thus, the first national tax penalties on American soil were collected in suits at common law.

For later taxes imposed on the Colonies, English law deprived colonists of the right to a jury trial in actions for monetary tax penalties while maintaining that right for those on English soil. The Sugar Act of 1764 and the Stamp Act of 1765 provided for the imposition of penalties by suit but requiring that such suits in the Colonies (not in England) be brought in vice-admiralty courts, which did not allow juries. Sugar Act of 1764, 4 Geo. 3 c. 15 §§ XL & XLI (Gr. Brit.); Stamp Act of 1765, 5 Geo. 3 c. 12 § LVII (Gr. Brit.); *see also* Navigation Act of 1696, 7 & 8 Will. 3 c. 22 § VII (Eng. and Wales). That move would backfire. The rallying cry of the revolution, "no taxation without representation," extended to impaneling juries in tax

penalty proceedings. *See* Roger Kirst, *Administrative Penalties and the Civil Jury: The Supreme Court's Assault on the Seventh Amendment*, 126 U. PA. L. REV. 1281, 1296 (1978) ("The absence of a jury [for cases heard in courts of vice-admiralty] was one of the major complaints voiced by the colonists.").

After achieving independence, a condition of the relationship between the sovereign and the governed was that monetary tax penalties would be recovered in suits at common law. Notably, just before the Bill of Rights was ratified in 1791, the Whiskey Tax of March 3, 1791, ch. 15, 1 Stat. 199, provided for penalties to be "recoverable with costs of suit, by action of debt." *Id.* § 44, 1 Stat. at 209 . The American tradition was established. *See, e.g.,* Stamp Act of 1797, ch. 11, § 20, 1 Stat. 527, 532; Carriage Tax of 1794, ch. 45, § 10, 1 Stat. 373, 375.

The Tax Court in *Silver Moss* concludes that tax penalties nonetheless satisfy the public rights exception because "Congress's choice to channel these early tax penalties through traditional actions at common law (thereby triggering the Seventh Amendment) does not establish that all tax penalties must be collected in that manner." 2025 WL 2416867, at *7. The Tax Court offers two reasons for pushing back on this history of imposing tax penalties through judicial actions, neither of which withstands scrutiny.

First, the Tax Court points to the Land Tax Act 1692, 4 W. & M. c. 1, § XIII (Eng. and Wales), and Excise (No. 3) Act 1660, 12 Car. 2 c. 23 §§ XI, XVIII (Eng. and Wales), English laws that long predated the ratification of the Seventh Amendment and provided for the administrative assessment of penalties

regarding taxes on property and liquors. Whether these laws demonstrate that "the Framers expected that Congress would be free to commit such matters completely to nonjudicial executive determinations" is questionable. *Northern Pipeline*, 458 U.S. at 68. They were old, English, and as the Tax Court recognizes, *Silver Moss*, 2025 WL 2416867, at *6, contrary to other penalties from the era imposed by suit. As such, they are not reliable indicators of the Framers' thinking about where authority to impose tax penalties within our system of government lies. Further, Americans had just fought a war of independence from English oppression and swiftly replaced vice-admiralty courts with Article III courts as the proper forum for suits regarding tax penalties. This pivot to Article III courts and juries is historically significant and speaks far louder of the Framers' thinking than century-old English law. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 34-35 (2022) (refusing "to rely on an ancient practice that had become obsolete in England at the time of the adoption of the Constitution and never was acted upon or accepted in the colonies") (internal quotation marks and citation omitted).

At most, the English law cited by the Tax Court renders the historical record inconclusive. But "[e]ven with respect to matters that arguably fall within the scope of the 'public rights' doctrine, the presumption is in favor of Article III courts." *Jarkesy*, 603 U.S. at 112 (quoting *Northern Pipeline*, 458 at 69 n.23).

Second, the Tax Court explains that "[t]he creation of the first federal income tax system ushered in a new era of tax penalties." *Silver Moss*, 2025 WL 2416867, at *7. Specifically, during the Civil War, Congress

imposed the first federal income tax and administrative penalties. *See, e.g.,* Act of July 1, 1862, ch. 119, §§ 11, 92, 12 Stat. 432, 435, 474 (imposing "additional tax" for failure to make a return and for belated payment); *see also, e.g.,* Revenue Act of March 2, 1867, ch. 169, §§ 3, 8, 13, 15 Stat. 471, 471–72, 473, 477-80 (authorizing a fraud penalty and assessment and collection of the penalty without suit). This post-Seventh Amendment practice of imposing civil tax penalties without a right to jury trial "cannot justify contemporary violations of constitutional guarantees." *Marsh v. Chambers*, 463 U.S. 783, 790 (1983); *see Jarkesy*, 603 U.S. at 131 n.2 ("It is . . . unclear how practice could transmute a private right into a public one, or how the absence of legal challenges brought by one generation could waive the individual rights of the next."); *Walz v. Tax Comm'n of New York*, 397 U.S. 664, 678 (1970) ("[N]o one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence and indeed predates it.").

Next, the Tax Court finds support for its conclusion that tax penalties satisfy the public rights exception in *Oceanic Steam Navigation Co. v. Stranahan*, 214 U.S. 320 (1909). The issue, however, is much closer to *Granfinanciera* and *Jarkesy*, which came to the opposite conclusion that government suits fall outside the public rights exception.

In *Oceanic Steam*, the Court affirmed the administrative enforcement of a penalty against a steamship company for the importation of aliens afflicted "'with a loathsome or with a dangerous contagious disease.'" 214 U.S. at 330, 340 (quoting An

Act to Regulate the Immigration of Aliens into the United States, ch. 1012, § 2, 32 Stat. 1213, 1214 (Mar. 3, 1903)). The Court explained that "it was within the competency of Congress, when legislating as to matters exclusively within its control, to impose appropriate obligations, and sanction their enforcement by reasonable monetary penalties, giving to executive officers the power to enforce such penalties without the necessity of invoking the judicial power." *Id.* at 339. But that does not mean every penalty within Congress's exclusive authority is exempt from the Seventh Amendment. *See Jarkesy*, 603 U.S. at 129 n.1 (rejecting that "*Oceanic Steam* stands for the proposition that the public rights exception applies to any exercise of power granted to Congress").

"'Traditional legal claims' must be decided by courts." *Jarkesy*, 603 U.S. at 133 (quoting *Granfinanciera*, 492 U.S. at 52); *see Murray's Lessee*, 59 U.S. at 284 ("[W]e do not consider congress can . . . withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty."). In *Granfinanciera*, notwithstanding Congress's authority under the Bankruptcy Clause to establish uniform bankruptcy law, *see* U.S. CONST. art. I, § 8, cl. 4, the Court concluded that the Seventh Amendment applies to fraudulent conveyance actions because they "are quintessentially suits at common law" and "'constitute no part of the proceedings in bankruptcy but concern controversies arising out of it.'" *Granfinanciera*, 492 U.S. at 56 (quoting *Schoenthal v. Irving Trust Co.*, 287 U.S. 92, 94-95 (1932)). Similarly, the Court concluded in *Jarkesy* that the fraud penalties imposed by the

SEC involve a "'matter of private rather than public right'" because they "target the same basic conduct as common law fraud, employ the same basic terms of art, and operate pursuant to similar legal principles." 603 U.S. at 112 (quoting *Granfinanciera*, 492 U.S. at 56).

The same reasoning applied in *Granfinanciera* and *Jarkesy* supports the Seventh Amendment right to a jury trial when the IRS seeks to impose tax penalties for fraudulent or negligent conduct by taxpayers. *Oceanic Steam* is distinguishable because that case involved a penalty imposed for violating immigration law and not a traditional legal claim. The reasoning in that case might apply to failure-to-file or failure-to-pay penalties under 26 U.S.C. § 6651(a), which appear to lack common law underpinnings. But those are not the types of claims at issue in this case.

The Tax Court considers that the public rights exception turns not on the nature of the claim but whether a government right is vindicated. Accordingly, the Tax Court reads *Jarkesy* as resting on the point that "[t]he civil action in *Jarkesy* involved purported fraud upon private individuals, not the federal government." *Silver Moss*, 2025 WL 2416867, at *10. That view cannot be squared with *Jarkesy* or other precedent of this Court. The Court has long recognized that the public rights exception extends "only to matters 'between the Government and a person subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments,' and only to matters that historically could have been determined exclusively by those departments." *Northern Pipeline*, 458 U.S. at 67-68 (quoting *Crowell v. Benson*, 285 U.S.

22, 50 (1932)); *see also Jarkesy*, 603 U.S. at 135 ("[W]e have never held that 'the presence of the United States as a proper party to a proceeding is . . . sufficient' by itself to trigger the exception.") (quoting *Northern Pipeline*, 458 U.S. at 69 n.23). Traditional legal claims do not become public rights when the government asserts such a claim on its own behalf. Rather, public rights are marked by the performance of constitutional functions and history.

The collection of taxes unquestionably satisfies both elements of public rights. *See Murray's Lessee*, 59 U.S. at 281-82. In contrast, the collection of tax penalties satisfies neither. The fraud penalty is not an exercise of Congress's constitutional power "to lay and collect taxes," U.S. CONST. art. I, § 8, cl. 1, but instead is an exercise of the traditional legal right to remedy fraud arising out of the collection of taxes. And as discussed, tax penalties historically were imposed through the exercise of judicial authority.

Finally, the Tax Court misreads *Helvering v. Mitchell*, 303 U.S. 391 (1938), as holding that "the public rights exception applies to the predecessor of the modern section 6663(a) fraud penalty." *Silver Moss*, 2025 WL 2416867, at *8. The issue in *Helvering v. Mitchell* was whether, following an acquittal in a criminal tax fraud case, the fraud penalty was barred by the double-jeopardy clause of the Fifth Amendment, which turned on whether the fraud penalty "imposes a criminal sanction." 303 U.S. at 399. The Supreme Court's analysis, concluding that the fraud penalty was not criminal in nature, did not address whether the penalty was a public right or may be imposed administratively.

CONCLUSION

The Center for Taxpayer Rights and the National Taxpayers Union respectfully request that the Court grant the Petition.

Respectfully submitted,

Andrew Weiner
Counsel of Record
Kostelanetz LLP
601 New Jersey Avenue
Suite 260
Washington, DC 20001
(202) 875-8000
aweiner@kostelanetz.com

Michael Todd Welty
Gray Proctor
Kostelanetz LLP
4279 Roswell Road NE
Suite 208, #352
Atlanta, GA 30342
(404) 301-4791

Counsel for Amici Curiae

January 21, 2026