APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED AUGUST 21, 2026

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 25-30542

NORCAVE PROPERTIES, L.L.C.,

Plaintiff—Appellant,

versus

INTERNAL REVENUE SERVICE,

Defendant—Appellee.

Appeal from the United States District Court for the Western District of Louisiana
USDC No. 2:25-CV-398

Filed August 21, 2026

Before SMITH, WILLETT, and RAMIREZ, *Circuit Judges*.

JERRY E. SMITH, *Circuit Judge*:

The IRS asserted fraud and valuation tax penalties against appellant for overclaiming charitable deductions. The district court dismissed for want of subject matter jurisdiction under the Anti-Injunction Act ("AIA"), which withdraws jurisdiction over pre-payment tax challenges, and the Declaratory Judgment Act ("DJA"), which withdraws jurisdiction over federal tax matters.

Appellant insists it is entitled by the Seventh Amendment to a pre-payment jury trial on its tax penalties. During the pendency of this case, the IRS stopped pursuing its civil fraud penalty, limiting our review to the valuation penalties under 26 U.S.C. § 6662. Identifying a lack of subject matter jurisdiction in light of the AIA's and DJA's jurisdiction stripping, we affirm.

I.

In 2018, the partnership Norcave Properties, L.L.C. ("Norcave"), claimed a tax deduction after donating a conservation servitude on 321.13 acres of property. The IRS audited Norcave's filing and in 2025 issued a Notice of Final Partnership Adjustment ("FPA"), disallowing the noncash charitable deduction and imposing a civil fraud penalty, under 26 U.S.C. § 6663, as well as valuation penalties for negligence, substantial understatement of income tax, and gross-valuation misstatements under § 6662.[1]

Norcave sued in federal district court, demanding a pre-payment jury trial to contest the assessed penalties and requesting declaratory and injunctive relief. Norcave filed a parallel petition with the U.S. Tax Court for a downward readjustment of the FPA.

In district court, Norcave and the IRS cross-moved under Federal Rule of Civil Procedure 12(c) for judgment on the pleadings, the IRS seeking

[1] The civil fraud penalties have since been abandoned by the United States in this suit and in the underlying tax assessment, although it continues to pursue the accuracy-related penalties.

dismissal with prejudice for lack of jurisdiction. The district court granted the IRS's motion and dismissed for want of subject matter jurisdiction under the AIA, 26 U.S.C. § 7421, and the DJA, 28 U.S.C. § 2201.

The district court reasoned that both civil fraud penalties and accuracy-related penalties are located in Title 26, Chapter 68 of the Internal Revenue Code ("IRC") and that 26 U.S.C. § 6665(a)(2) serves as a coordinating provision, stating that "any reference in this title to 'tax' imposed by this title shall be deemed also to refer to the additions to the tax, additional amounts, and penalties provided" in Chapter 68. The court therefore concluded that civil fraud and accuracy-related penalties counted as a "tax" under the cross-referenced AIA.[2]

II.

Regarding jurisdiction, the central question is whether, under the IRC's enforcement provisions related to accuracy and reporting requirements, the assessment of an accuracy-related tax penalty under

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[2] The district court also observed that the following language from *National Federation of Independent Businesses v. Sebelius*, 567 U.S. 519, 544–45 (2012) ("*NFIB v. Sebelius*"), confirms the theory that "penalty" can properly refer to a "tax":

> Congress can, of course, describe something as a penalty but direct that it nonetheless be treated as a tax for purposes of the [AIA]. For example, 26 U.S.C. § 6671(a) provides that "any reference in this title to 'tax' imposed by this title shall be deemed also to refer to the penalties and liabilities provided by" Subchapter 68B of the [IRC]. Penalties in Subchapter 68B are thus treated as taxes under Title 26, which includes the [AIA].

§ 6662 counts as part of tax liability, thereby falling within the jurisdiction stripping of the AIA and DJA. The short answer is yes.

The AIA, housed within the IRC at 26 U.S.C. § 7421(a), provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." The DJA, 28 U.S.C. § 2201, says that

> [i]n a case of actual controversy within its jurisdiction, except with respect to Federal taxes . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration.

Both provisions deny the subject matter jurisdiction of federal courts over the appellant's claim, which we hold is a pre-payment challenge to an assessment of tax liability.

Whether Norcave's pre-collection challenge to the IRS's negligence, understatement, and gross valuation penalties under § 6662 falls within the scope of the AIA turns on whether those penalties fit into "assessment or collection" or instead into "tax" liability within the meaning of the IRC § 6665(a)(2). But first, it is worth briefly sketching the structure of partnership taxes, including with respect to additional assessments such as penalties, and the structure for lodging challenges against such taxes.

A.

Partnerships, for tax reporting, are generally pass-through entities, meaning that partners pay their income tax at the individual level.[3] Adjustments, generally meaning the identification of underpayments or deficiencies on partnership-related tax items, were historically assessed at the individual level.[4] This system "led to duplicative proceedings and the potential for inconsistent treatment of partners in the same partnership" because "the IRS had no way of correcting errors on a partnership's return in a single, unified proceeding." *United States v. Woods*, 571 U.S. 31, 38 (2013). Subsequently, Congress provided for adjustments at the entity level, including through the Bipartisan Budget Act of 2015,[5] which provides for partnership-level audits under 26 U.S.C. § 6221 and for FPAs' concluding an audit and formally assessing those adjustments under § 6233. Partnerships enjoy a push-out election to transfer the liability and penalties of an adjustment onto individual partners under § 6226.

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[3] *See, e.g., Moore v. United States*, 602 U.S. 572, 585 (2024) ("Congress sometimes elects to treat an entity as a pass-through—attributing the entity's undistributed income to the shareholders or partners and then taxing the shareholders or partners on that income.").

[4] *See, e.g.,* IRS, *BBA partnership audit process*, IRS.GOV (Jan 2, 2026) (https://www.irs.gov/businesses/partnerships/bba-partnership-audit-process)

[5] Pub L. No. 114-74

(https://www.congress.gov/114/plaws/publ74/PLAW-114publ74.pdf).

As above, the IRS pursues penalties against individuals and entities such as partnerships for negligence and valuation misstatements under § 6662, which defines negligence as follows:

> (b) This section shall apply to the portion of any underpayment which is attributable to 1 or more of the following:
>
> (1) Negligence or disregard of rules or regulations . . . .
>
> (c) For purposes of this section, the term 'negligence' includes any failure to make a reasonable attempt to comply with the provisions of this title, and the term 'disregard' includes any careless, reckless, or intentional disregard.

Assessing penalties under this provision naturally provokes challenges, and under 26 U.S.C. § 6234, such FPA challenges are directed to the Tax Court, Court of Federal Claims ("CFC"), or the U.S. district court where the partnership's principal place of business is located.

Congress structures federal courts' jurisdiction over such challenges. It waives sovereign immunity with respect to many post-payment tax challenges or refund suits through 28 U.S.C. § 1346.[6]

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[6] In relevant part,

> (a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of: (1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or

Per 28 U.S.C. § 2402,[7] Congress generally mandates bench trials for tax refund suits, except with respect to individual refund suits brought under 28 U.S.C. § 1346(a). Partnership adjustment disputes, brought under 26 U.S.C. § 6234, are channeled only to bench trials in the district courts, CFC, and before the Tax Court. If the partnership opts for either the relevant district court or CFC, it is required to deposit the imputed underpayment and penalties with the IRS—but if it opts for the Tax Court, it can mount a pre-payment challenge. *See* 26 U.S.C. § 6234(b)(1).

To "'protect[] the Government's ability to collect a consistent stream of revenue' and require[] taxes to be challenged 'only after they are paid,'"[8] Congress has also enacted the AIA and carved out claims and controversies with respect to federal taxes from the DJA, *supra*. The result is to direct tax claims to post-

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> collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.

Following the repeal of TEFRA in 2015 by the BBA, individual partners generally need to bring suits under the centralized regime for partnership items. *See Baxter v. United States*, 48 F.4th 358, 364 n.6 (5th Cir. 2022).

[7] In relevant part, "[A]ny action against the United States under section 1346 shall be tried by the court without a jury, except that any action against the United States under section 1346(a)(1) shall, at the request of either party to such action, be tried by the court with a jury." For background, other headings of § 1346 provide jurisdiction for the Tucker Act and TCA.

[8] *Holland v. Westmoreland Coal Co. (In re Westmoreland Coal Co.)*, 968 F.3d 526, 533 (5th Cir. 2020) (quoting *NFIB v. Sebelius*, 567 U.S. 519, 543 (2012)).

payment refund suits, available in the CFC or district courts, or *pre-payment* suits in the Tax Court, where a taxpayer need not deposit the disputed funds before bringing his or her complaint.

B.

The district court rejected Norcave's request for injunctive and declaratory relief for lack of subject matter jurisdiction under the AIA. Now challenging that decision, Norcave advances the theory that its suit is not "for the purpose of restraining the collection or assessment of any tax." It musters a flock of dictionary definitions for the constituent terms of the AIA, which, when substituted into the statutory language, read, "no suit for the [objective, goal or end] of [prohibiting acts of] the [official recording of a taxpayer's liability] or [obtaining payment of taxes due] shall be maintained in any court by any person[.]" 26 U.S.C. § 7421(a) (alterations supplying Norcave's definitions). On Norcave's preferred set of definitions, the reading of the statute becomes, if anything, more all-encompassing: Norcave's plain-language definitions would potentially sweep in any act with merely a goal or end related to the upstream recording of liability or the downstream collection process. As we show, this court and the Supreme Court have rejected such complaints.

Instead, the best reading of the AIA is to interpret its language in context and reflecting the terms of art of the IRC, whereunder "assessment" refers to the multi-step statutory framework of identifying a payor's tax liability and "collection" refers to the regulatorily-defined steps for the IRS to

impose that liability on, and recover money from, taxpayers.[9]

As for the AIA's term "restrain," the Supreme Court has offered comparatively wider definitions, stating that the AIA "protects the Government's ability to collect a consistent stream of revenue, by barring litigation to enjoin *or otherwise obstruct* the collection of taxes." *NFIB v. Sebelius*, 567 U.S. at 543 (emphasis added). And the Court has offered comparatively narrower definitions. In *Direct Marketing*, it reversed an injunction against a state's reporting requirement under the closely parallel state-oriented Tax Injunction Act ("TIA"),[10] along the way defining restrain as "[t]o prohibit from

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[9] *See Direct Mktg. Ass'n v. Brohl,* 575 U.S. 1, 9–11 (2015) ("'Assessment' . . . refers to the official recording of a taxpayer's liability . . . . It might also be understood more broadly to encompass the process by which that amount is calculated . . . . '[C]ollection is the act of obtaining payment of taxes due . . . . It might be understood narrowly as a step in the taxation process that occurs after a formal assessment [or widely to include withholding].") (cleaned up).

[10] The TIA provides that federal district courts "shall not enjoin, suspend or *restrain the assessment*, levy *or collection of any tax* under State law." 28 U.S.C. § 1341 (emphasis added). We consider this formulation to be materially equivalent to the AIA, which in relevant part provides that "no suit for the purpose of *restraining the assessment or collection of any tax* shall be maintained in any court by any person…." 26 U.S.C. § 7421(a) (emphasis added). *See* ANTONIN SCALIA & BRYAN A. GARNER, READING THE LAW: THE INTERPRETATION OF LEGAL TEXTS 204, 252 (2012) (on the Related Statutes Canon). Indeed, the Court has said that the TIA was modeled on the AIA and that it "assume[s] that words used in both Acts are generally used in the same way." *Direct Mktg.*, 575 U.S. at 8 (2015); *see also Hibbs v. Winn*, 542 U.S. 88, 100–05 (2004).

action; to put compulsion upon . . . to enjoin" and adding that "a suit cannot be understood to 'restrain' the 'assessment, levy or collection' of a state tax if it merely inhibits those activities." 575 U.S. at 13, 15.

Most recently, in *CIC Services, LLC v. IRS*, 593 U.S. 209, 217 (2021), the Court interpreted the AIA as barring suits for "the purpose of restraining the assessment or collection of any tax," where courts, "inquire not into a taxpayer's subjective motive, but into the action's objective aim—essentially, the relief the suit requests." The IRS points out that the relief requested by Norcave amounts to barring the assessment and collection of taxes, including enjoining the IRS's current assertion and pursuit of valuation penalties against Norcave, bringing its objective aim within the language of *CIC Services* and the AIA.

Another point of distinction with *CIC Services* is that there, the Court confronted a notice and reporting requirement that carried a regulatory penalty, which the Court interpreted as distinct from a tax assessment, stating that "the Notice's reporting rule and the statutory tax penalty are several steps removed from each other," and ultimately held that a challenge to it did not trigger the AIA. *Id.* at 220.

Here, by contrast, the negligence and misstatement accuracy-related penalties fit into the assessed tax itself, as clearly set out by the language of 26 U.S.C. § 6665:

> Applicable Rules . . .
>
> (1) the additions to the tax, additional amounts, and penalties provided by this

> chapter shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes; and
>
> (2) any reference in this title to "tax" imposed by this title shall be deemed also to refer to the additions to the tax, additional amounts, and penalties provided by this chapter.

Directly reading this statutory provision, one can see that except as otherwise provided, penalties and affirmative taxes as debt or liability claims on income merge into the IRC's term of art: tax. Indeed, this court has said as much: "The reference in the [AIA] to 'tax' is deemed also to refer to certain penalties, including the penalty provided for frivolous returns under § 6702." *Warren v. United States*, 874 F.2d 280, 282 (5th Cir. 1989). And so did the Supreme Court in *NFIB v. Sebelius*.

Recently, in *Harward v. City of Austin*, 84 F.4th 319 (5th Cir. 2023) (per curiam), this court applied *CIC Services* in a case seeking injunctive relief against state taxes despite the federal TIA. We carefully delineated between (1) impermissible relief restraining acts of collection and assessment and (2) permissible relief targeting the preliminary procedural step of identifying the geographic location of a piece of real estate. *See id.* at 323–34. We described the distinction as permitting relief against "the ordinance's authorization," which "itself is therefore not an act of assessment, levy, or collection" but "is no more than a prerequisite to assessment." *Id.*

Importantly, in *Harward*, this court struck two requested remedies seeking pre-payment relief against assessments asserted by the City of Austin, including "a declaration that the City's notices to [appellant] that the shoreline properties are within their taxing-unit boundaries are invalid" and a mandamus to the same effect. *Id.* at 325. We thereby have taken *CIC Services*'s "objective purpose of relief" test to bar suits against assessments and notices of assessments already in motion. For the State of Texas, this court has strictly upheld the pay-now sue-later tax structure. *Harward* applies analogously to the federal FPA.

Applying *CIC Services* and *Harward*, as to which Norcave claims that its suit "targets its constitutional right to defend against the assertion of penalties, not the IRS's right to assess taxes themselves," and insists that it targets "a separate legal mandate," it draws upon an unavailable distinction. *Cf. CIC Servs.*, 593 U.S. at 223. The objective target of Norcave's relief is a tax assessment already in motion, which we identify by "look[ing] to the face of the taxpayer's complaint." *Id.* at 218 (citing *Bob Jones Univ. v. Simon*, 416 U.S. 725, 738 (1974)).[11]

Indeed, another avenue for identifying the 'objective aim of relief' as 'restraining' the imposition of the tax penalty—part of the tax—is to recognize that Norcave's requested injunction would potentially eliminate the entire tax assessment

[11] Some assessment is obviously taking place. The question throughout has been whether that assessment counts as a *tax* assessment.

through a jury trial, in violation of Congress's jurisdictional plan.[12] By contrast, attacking the standalone duty to report in *CIC Services* did not involve a jury trial that could ultimately declare the target of a tax non-liable and thereby frustrate the revenue-collection process.[13] We are reassured of this view by the IRC's coordinating provisions,[14] which not only illuminate that a direct effect on penalties amounts to a direct effect on taxes, but

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[12] *CIC Servs.*, 593 U.S. at 218 ("[W]e have looked to the "relief requested"—the thing sought to be enjoined . . . . The [AIA] kicks in when the target of a requested injunction is a tax obligation.") (citing *Alexander v. "Americans United" Inc.*, 416 U.S. 752, 761 (1974)) (further citation omitted); *see also Bob Jones*, 416 U.S. at 736 ("The Court has interpreted the principal purpose of this [AIA] language to be the protection of the Government's need to assess and collect taxes *as expeditiously as possible* with a minimum of preenforcement judicial interference") (emphasis added) (citation omitted).

[13] *See CIC Servs.*, 593 U.S. at 218 ("CIC's complaint asks for injunctive relief from the Notice's reporting rules, not from any impending or eventual tax obligation"); *id.* at 226 ("CIC's suit aims to enjoin a standalone reporting requirement, whose violation may result in both tax penalties and criminal punishment. That is not a suit 'for the purpose of restraining the [IRS's] assessment or collection' of a tax, and so does not trigger the [AIA].). Here, the penalty is not standalone but merges into tax liability. *Cf. id.* at 225 ("Had Congress, or the IRS acting through a delegation, imposed a tax on micro-captive transactions themselves—and had CIC then brought a pre-enforcement suit to prevent the IRS from applying that tax—the [AIA] would have kicked in. Then, CIC would have had to pay the tax and seek a refund."). We see this hypothetical at play here, where the appellant is ultimately trying to contest the tax, *pre-payment*, in front of a jury.

[14] *See* 26 U.S.C. § 6665 *ante* for accuracy-related penalties and § 6671 (equivalent).

potentially reach further than our holding. That would occur by sweeping in tax penalties writ broad, opening the door to the AIA's immunization of procedural steps upstream or downstream of the tax penalty provided that they are not attenuated down to the incidental status of the reporting or property-identification rules in *CIC Services* and *Harward*.

Another point of distinction with *CIC Services* is that the reporting requirement there involved a criminal overlay, which contributed to the Supreme Court's construction of it as serving a purpose removed from the assessment or collection of a tax, as well as the Court's implicit concern for a plaintiff to be required to violate the law before raising a challenge.[15] Here, by contrast, none of the avenues available to challenge an assessed tax accuracy or negligence reporting penalty requires the taxpayer to violate any criminal law, as these penalties are purely civil, and criminal tax matters are separately prosecuted by the Department of Justice, with defendants entitled to a jury trial.[16]

As for Norcave's argument that it has no alternative forum to vindicate its alleged right: The Tax Court has already entertained a virtually

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[15] *See CIC Servs.*, 593 U.S. at 221–22 ("[V]iolation of the Notice is punishable not only by a tax, but by separate criminal penalties . . . . That fact clinches the case for treating a suit brought to set aside the Notice as different from one brought to restrain its back-up tax.").

[16] *See, e.g., Cheek v. United States*, 498 U.S. 192 (1991) (analyzing the burden of proof for a good-faith defense in a criminal tax evasion jury trial); *see generally* U.S. CONST. amend. VI.

identical case challenging the IRS's denial of charitable deductions for land conservation easements, where that court rejected equivalent constitutional arguments on the merits. *See Silver Moss*, 165 T.C. No. 3. The Tax Court is an alternative forum. It is not this court's fault if an independent tribunal has reached a conclusion that Norcave finds unfavorable—there is no "escape valve" for a lack of subject matter jurisdiction.[17] Additionally, because the partnership tax is assessed at the entity level but then ultimately "passed through" and levied upon individuals, there is no reason to assume that these taxpayers will never have individual access to a forum in which to challenge the FPA, provided that they use the push-out election in 26 U.S.C. § 6226.

As one final observation on the DJA, the IRS suggests that the DJA's jurisdiction stripping is, if anything, more sweeping than the AIA's. This court has held as much,[18] so we are reassured that both

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[17] *But see South Carolina v. Regan*, 465 U.S. 367 (1984) (offering a state plaintiff a federal forum within original jurisdiction as a last resort and adding that "the Act's purpose and the circumstances of its enactment indicate that Congress did not intend the Act to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy."). Subsequent courts have stated, "'Because of the strong policy animating the [AIA], and the sympathetic, almost unique facts in *South Carolina*, courts have construed the *South Carolina* exception very narrowly.'" *RYO Mach., LLC v. U.S. Dep't of Treasury*, 696 F.3d 467, 472 (6th Cir. 2012) (quoting *Judicial Watch v. Rossotti*, 317 F.3d 401, 408 n.3 (4th Cir. 2003)). Here, there is emphatically another avenue for relief.

[18] *Rivero v. Fid. Invs. Inc.*, 1 F.4th 340, 345 (5th Cir. 2021) ("[T]here is no dispute . . . that the federal tax exception to the

the DJA and AIA bar this action because its objective purpose relevant to the DJA analysis is to restrain or enjoin an assessed penalty, which counts as a tax.

III.

Norcave's complaint and requested relief target a tax within the statutory meaning of the AIA and DJA, given Congress's clear jurisdiction strip and plain command that this accuracy and reporting penalty merges into tax liability. Thus we lack jurisdiction to entertain Norcave's constitutional claim against the jurisdictional scheme assigning FPA disputes to bench trials. The judgment of dismissal is AFFIRMED.

[DJA] is at least as broad as the [AIA].") (internal citations omitted).

APPENDIX B — MEMORANDUM RULING OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, LAKE CHARLES DIVISION, FILED AUGUST 25, 2025

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

NORCAVE PROPERTIES L L C
VERSUS
INTERNAL REVENUE SERVICE

CASE NO. 2:25-CV-00398
JUDGE JAMES D. CAIN, JR.
MAGISTRATE JUDGE LEBLANC

MEMORANDUM RULING

Before the Court is a "Plaintiff's Motion for Judgment on the Pleadings" (Doc. 13) wherein Norcave Properties, LLC, ("Norcave") moves for judgment on the pleadings to allow a jury trial to determine whether Defendants, the United States of America and the Internal Revenue Service, may assess certain civil penalties against them. Also before the Court is the "United States' Opposition to Plaintiff's Rule 12(c) Motion for Judgment on the Pleadings and Cross-Motion for Judgment on the Pleadings" (Doc. 17) wherein the United States maintains that Norcave's claims are jurisdictionally barred by the Anti-Injunction Act, 26 U.S.C. § 7421(a) and the Declaratory Judgment Act, 28 U.S.C. § 2201(a).

BACKGROUND

This suit arises from a Seventh Amendment claim that Plaintiff filed after Defendants levied unpaid taxes and civil penalties for alleged acts of civil fraud, misevaluation of donations, and underpayment of taxes. Plaintiff donated a conservation servitude on their property in Jefferson Davis Parish, Louisiana, and cash to a charitable organization in 2018.[1] These donations prompted Plaintiff to report a deduction on its tax returns.[2] The IRS, however, issued a Notice of Final Partnership Adjustment ("FPA") to Plaintiff on January 17, 2025, disallowing the donations.[3] Accordingly, the IRS then imposed civil fraud penalties under 26 U.S.C § 6663 for the 2018 tax year, and in the alternative, asserted gross valuation penalties, negligence penalties, and substantial understatement of income tax penalties.[4]

On April 14, 2025, Norcave, through its Partnership Representative, filed a Petition with the United States Tax Court under 26 U.S.C. § 6234(a) for a readjustment of the January 17, 2025, FPA including the penalties at issue in this Complaint.[5] At this juncture, Norcave could have filed the petition for readjustment with the Tax Court, the district court of the United States for the district in

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[1] Complaint, ¶ 9.

[2] *Id.* ¶ 10.

[3] *Id.* ¶ 11.

[4] *Id.* ¶¶ 14, 15, 16.

[5] *Norcave Properties, LLC v. Commissioner*, U.S.Tax Court Docket No. 4753-25; Fed. R. Evid. 201.

which the partnership's principal place of business is located, or the Court of Federal Claims. 26 U.S.C. § 6234(a).[6]

Plaintiff is asserting its right to a jury trial to determine whether the taxes and penalties may be imposed and seeks a declaratory judgment to that end. In its opposition and Cross-Motion for Judgment on the Pleadings, the United States seeks dismissal with prejudice for this Court's lack of jurisdiction.

LAW AND ANALYSIS

Under Federal Rule of Civil Procedure 12(c), "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). "The standard for Rule 12(c) motions for judgment on the pleadings is identical to the standard for Rule 12(b)(6) motions to dismiss for failure to state a claim." *Waller v. Hanlon*, 922 F.3d 590, 599 (5th Cir. 2019). "[T]he central issue is whether, in the light most favorable to the plaintiff, the complaint states a valid claim for relief." *Doe v. MySpace Inc.*, 528 F.3d 413, 418 (5th Cir. 2008) (quoting *Hughes v. Tobacco Inst., Inc.*, 278 F.3d 417, 420 (5th Cir. 2001)). The United States maintains that even taking the facts in the complaint as true, Norcave cannot show that this Court has subject matter jurisdiction—and even

[6] If filed with either the district court or the Court of Federal Claims, Norcave is required to deposit with the Secretary of the Treasury the imputed underpayment, penalties, additions to tax, and additional amount with respect to the imputed underpayment. 26 U.S.C. § 6234(b)(1). The Tax Court option does not require such a deposit.

if the Court does, Norcave would not be entitled to relief.

Jurisdiction

The Anti-Injunction Act ("AIA"), 26 U.S.C. § 7421(a), specifically bars any "suit for the purpose of restraining the assessment or collection of any tax." The AIA is strictly enforced. *See Bob Jones University v. Simon*, 416 U.S. 725 (1974). And "[w]hen the AIA applies, it divests courts of subject-matter jurisdiction." *In re Westmoreland Coal Co.*, 968 F.3d 526, 533 (5th Cir. 2020). The purpose of the Act is to protect the Government's "need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement judicial interference and 'to require that the legal right to the disputed sums be determined in a suit for a refund.'" *Bob Jones,* 416 U.S. at 736 (quoting *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962)).

Norcave maintains that the AIA does not apply because it is challenging the assessment of a penalty, not a tax.[7] The United States argues that for purposes of the AIA, the penalties assessing Norcave's FPA are treated just like any tax.

The United States explains that valuation misstatement penalties and understatement of tax penalties are located in 26 U.S.C. § 6662. Civil fraud penalties are located in 26 U.S.C. § 6663. Both are in Chapter 68 of the Internal Revenue Code. 26 U.S.C. § 6665 coordinates rules for tax penalties found in Chapter 68. It provides that "any reference in this

[7] Memorandum, p. 6, Doc. 14.

title to 'tax' imposed by this title shall be deemed also to refer to the additions to the tax, additional amounts, and penalties provided by" Chapter 68. § 6665(a)(2). Because the AIA is in "this title" (i.e., Title 26), its reference to "tax" thus also refers to penalties in Chapter 68. *See* 26 U.S.C. § 7421(a). And because the AIA bars suits to restrain the assessment of a "tax," it also bars suits to restrain the assessment of civil fraud penalties.

The United States remarks that the Supreme Court has addressed Congress's freedom to label something a "penalty" while requiring it to be treated as a "tax" under the AIA. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 544-45 (2012) with the following from that opinion:

> Congress can, of course, describe something as a penalty but direct that it nonetheless be treated as a tax for purposes of the Anti-Injunction Act. For example, 26 U.S.C. § 6671(a) provides that "any reference in this title to 'tax' imposed by this title shall be deemed also to refer to the penalties and liabilities provided by" Subchapter 68B of the Internal Revenue Code. Penalties in Subchapter 68B are thus treated as taxes under Title 26, which includes the Anti-Injunction Act.

Id. In 2021, the Supreme Court reiterated that because of § 6671(a) (the counterpart to our § 6665(a)(2)), the penalties at issue "[were] 'deemed' to be 'tax[es]' for purposes of the Code—including the Anti-Injunction Act. §6671(a). *CIC Servs., LLC v. IRs*, 593 U.S. 209, 214 (2021).

The United States further notes that Norcave has availed itself of its rights and filed its petition for readjustment for its 2018 tax year with the United States Tax Court.

Next, the United States maintains that the Declaratory Judgment Act, 28 U.S.C. § 2201(a) prohibits a federal court from entertaining such action involving taxpayers' federal tax assessments. Section 2201(a) provides:

> In a case of actual controversy within its jurisdiction, *except with respect to Federal taxes* other than actions brought under section 7428 of the Internal Revenue Code of 1986 … any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

§ 2201(a) (emphasis added). As such the United States contends that this Court has no jurisdiction to provide declaratory relief with respect to federal taxes. *Rivero v. Fid. Invs.*, 1 F.4th 340, 346 (5th Cir. 2021) ("[t]he DJA prohibits courts from providing declaratory relief with respect to federal taxes; that prohibition is jurisdictional." The Supreme Court noted that "[t]here is no dispute . . . that the federal tax exception to the Declaratory Judgment Act is at least as broad as the Anti-Injunction Act." *McCabe v. Alexander*, 526 F.2d 963, 965 (5th Cir. 1976) (quoting *Bob Jones Univ.*, 416 U.S. at 732 n.7 (internal quotation marks omitted)).

The Court agrees with the United States, that the AIA bars this Court from providing declaratory relief, and as such this Court lack jurisdiction.

CONCLUSION

For the reasons explained herein, the Court will grant the United States' Cross-Motion for Judgment on the Pleadings (Doc. 17), deny Plaintiff's Motion for Judgment on the Pleadings (Doc. 13), and dismiss this action.

THUS DONE AND SIGNED in chambers on this 25th day of August, 2025.

/s/ James D. Cain, Jr.
JAMES D. CAIN, JR.
UNITED STATES DISTRICT JUDGE