

U.S. TAX COURT
RECEIVED

MAY 19 2026

HAND DELIVERED

UNITED STATES TAX COURT

SITE SOLAR (FEDOK) FUND II, LLC)
TOM RITCHIE, PARTNERSHIP)
REPRESENTATIVE,)

Petitioner,)

v.)

COMMISSIONER OF INTERNAL)
REVENUE,)

Respondent.)

Docket No. 24603-22

Judge Cary Douglas Pugh

**BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS AS
AMICUS CURIAE IN SUPPORT OF NEITHER PARTY**

George M. Clarke III
Baker & McKenzie LLP
815 Connecticut Avenue, N.W.
Washington, DC 20006
Telephone: (202) 452-7000

Joy A. Williamson
Baker & McKenzie LLP
1900 North Pearl St., Suite 1500
Dallas, TX 75201
Telephone: (214) 978-3000

Carlton A. Tarpley
Yuyao Leng
Baker & McKenzie LLP
452 Fifth Avenue
New York, NY 10018
Telephone: (212) 626-4100
*Counsel for the National Association of
Manufacturers*

TABLE OF CONTENTS

INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION	2
BACKGROUND	4
I. Under the BBA, Adjustments to a Reviewed Year Are Implemented at the Partnership Level Through Imputed Underpayments	4
II. Treasury by Regulation Expands the Base for Calculating an Imputed Underpayment	5
III. Treasury’s Regulations Are Constrained by the Code and the Administrative Procedure Act	7
DISCUSSION	8
I. Under the Plain Language of the Code, the Base for an Imputed Underpayment Is Restricted to Items or Amounts that Are Relevant in Determining a Person’s Chapter 1 Tax Liability for the Reviewed Year	8
II. The Constitutional Avoidance Doctrine Requires the Base of an Imputed Underpayment Be Restricted to Items that Are Relevant in Determining a Person’s Federal Income Tax Liability for the Reviewed Year	16
III. Treas. Reg. § 301.6241-1(a)(6)(iv) Is Invalid Because It Is Contrary to Statute and Exceeds Statutory Authority	18
CONCLUSION	21

TABLE OF AUTHORITIES

Constitution	Page(s)
U.S. Const. Amendment XVI	16
U.S. Const. Article I, § 2, cl. 3	16
U.S. Const. Article I, § 9, cl. 4	16
Federal Cases	
<i>Animal Legal Def. Fund, Inc. v. Perdue</i> , 872 F.3d 602 (D.C. Cir. 2017)	14
<i>Butte Cnty., Cal. v. Hogen</i> , 613 F.3d 190 (D.C. Cir. 2010)	15
<i>Cent. United Life Ins. Co. v. Burwell</i> , 827 F.3d 70 (D.C. Cir. 2016)	20
<i>Clark v. Suarez Martinez</i> , 543 U.S. 371 (2005)	16
<i>Comm’r v. Acker</i> , 361 U.S. 87 (1959)	21
<i>Comm’r v. Sunnen</i> , 333 U.S. 591 (1948)	11
<i>Conn. Nat’l Bank v. Germain</i> , 503 U.S. 249 (1992)	8
<i>Deutsche Bank AG v. United States</i> , 742 F.3d 1378 (Fed. Cir. 2014)	13
<i>Doyle v. Mitchell Bros. Co.</i> , 247 U.S. 179 (1918)	17
<i>Duncan v. Walker</i> , 533 U.S. 167 (2001)	20
<i>JM Assets, LP v. Comm’r</i> , 165 T.C. No. 1 (2025)	<i>passim</i>
<i>King v. Burwell</i> , 576 U.S. 473 (2015)	11, 20
<i>Koshland v. Helvering</i> , 298 U.S. 441 (1936)	7, 21
<i>Lamie v. United States Tr.</i> , 540 U.S. 526 (2004)	8
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024)	4, 7
<i>Manhattan Gen. Equip. Co. v. Comm’r</i> , 297 U.S. 129 (1936)	20
<i>Moore v. United States</i> , 602 U.S. 572 (2024)	3, 16, 17
<i>Ross v. Blake</i> , 578 U.S. 632 (2016)	8
<i>Sandifer v. U.S. Steel Corp.</i> , 571 U.S. 220 (2014)	12
<i>Summa Holdings, Inc. v. Comm’r</i> , 848 F.3d 779 (6th Cir. 2017)	8
<i>United States v. Calamaro</i> , 354 U.S. 351 (1957)	21
<i>United States v. Mead Corp.</i> , 533 U.S. 218 (2001)	7

<i>United States v. Standard Brewery</i> , 251 U.S. 210 (1920)	7, 21
<i>West Virginia v. EPA</i> , 597 U.S. 697 (2022)	20
<i>Yates v. United States</i> , 574 U.S. 528 (2015).....	12
<i>Young v. United Parcel Serv., Inc.</i> , 575 U.S. 206 (2015).....	20

Federal Statutes

5 U.S. Code § 706(2)(C)	7
5 U.S. Code § 706(2)(A).....	7
26 U.S. Code § 38(c)(1).....	13
26 U.S. Code § 701	2
26 U.S. Code § 704(b)	6
26 U.S. Code § 995(f)(2)(C).....	13
26 U.S. Code § 6225	<i>passim</i>
26 U.S. Code § 6225(a).....	2, 3, 9, 12
26 U.S. Code § 6225(b)	2, 3, 9, 12
26 U.S. Code § 6225(b)(1).....	5, 9, 10, 17
26 U.S. Code § 6225(c).....	2, 3, 15
26 U.S. Code § 6225(d)	12
26 U.S. Code § 6225(d)(1).....	3, 9, 10
26 U.S. Code § 6226(a)(2).....	10
26 U.S. Code § 6231	10
26 U.S. Code § 6232(a).....	2
26 U.S. Code § 6233(a).....	10
26 U.S. Code § 6235	10
26 U.S. Code § 6241	14, 18, 19, 21
26 U.S. Code § 6241(2)	<i>passim</i>
26 U.S. Code § 6241(2)(A).....	5, 9
26 U.S. Code § 6241(2)(B).....	<i>passim</i>
26 U.S. Code § 6241(9)	10

26 U.S. Code § 6425(c)(1).....	13
26 U.S. Code § 7602	12
Pub. L. No. 114-74, §§ 1101(a), (c)(1), 129 Stat. 584, 625-38 (2015)	2

Regulations

Treas. Reg. § 301.6225-1(h)(7).....	6
Treas. Reg. § 301.6225-1(h)(15).....	6
Treas. Reg. § 301.6225-3(d)(3).....	6
Treas. Reg. § 301.6241-1(a)(6)(iv).....	<i>passim</i>

Other Authorities

Centralized Partnership Audit Regime, 84 Fed. Reg. 6468 (Feb. 27, 2019)	11
IRS Chief Couns. Advice No. 202148006 (Dec. 3, 2021)	18
Treatment of Special Enforcement Matters, 87 Fed. Reg. 75,473, 75,477 (Dec. 9, 2022).....	18

Dictionaries

<i>Relevant</i> , Black’s Law Dictionary (12th ed. 2024)	12
<i>Relevant</i> , Dictionary.com.....	3, 12

INTEREST OF *AMICUS CURIAE*¹

The National Association of Manufacturers (“NAM”) is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes \$2.9 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for policies that promote economic growth and innovation in the manufacturing sector.

The NAM is concerned that the interpretation of “imputed underpayment” in section 6225² may have far-reaching implications, as the broad interpretation set forth by Treas. Reg. § 301.6241-1(a)(6)(iv) would impermissibly allow the imposition of a tax unconnected from income in contravention of the plain language of the Code and Constitution. Such an expansive interpretation would have broad,

¹ While Petitioner does not object to the filing of this brief, Respondent indicates they intend to object. No counsel for a party authored this brief in whole or in part. No party or a party’s counsel contributed money intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

² Unless otherwise noted, all “section” references are to the Internal Revenue Code of 1986, as amended (“I.R.C.” or “Code”), and all “regulations” references are to the Treasury Regulations issued thereunder (“Treas. Reg.”).

negative repercussions on the nationwide economy across industries. The NAM submits this brief to help inform this Court’s analysis of the imputed underpayment rules in order to bring clarity to a new area of law and to address points of law that are sometimes overlooked.

INTRODUCTION

Congress enacted the Bipartisan Budget Act of 2015 (“BBA”) to reform auditing and collection *procedures* in the partnership context by consolidating and centralizing procedures at the partnership level. *See* Pub. L. No. 114-74, §§ 1101(a), (c)(1), 129 Stat. 584, 625-38. Because partnerships are not taxpayers (partners are), the BBA attributes any underpayments owed by partners to the partnership for assessment and collection “as if it were” income tax directly owed by the partnership under the “imputed underpayment” rules. *See* I.R.C. §§ 701, 6232(a), 6225(a)-(c), 6241(2). The BBA does not, however, change what may be *subject* to income tax. It simply *imputes* the partners’ income tax liability to the partnership for ease of audit and collection.

The plain language of the Code makes this clear by tethering the imputed underpayment calculation to a base amount comprised only of items or amounts with respect to the partnership which are “relevant . . . in determining the tax liability of

any person under chapter 1” with respect to the reviewed year.³ See I.R.C. §§ 6225(a)-(c), 6241(2). An item is relevant if it has a bearing on the matter in hand,⁴ which is—in the case of an imputed underpayment—the determination of a person’s federal income tax liability with respect to the partnership year under audit. See I.R.C. §§ 6225(a)-(c), 6241(2). By anchoring the imputed underpayment on two things: (1) “the tax liability of any person under chapter 1” (section 6241(2)(B))—a person’s actual income tax liability calculation; and (2) the “reviewed year” (section 6225(d)(1))—the partnership year subject to the adjustment, Congress avoided the constitutional issues that might have arisen had it failed to tie the imputed underpayment to activities or transactions relevant to the determination of federal income tax. See *Moore v. United States*, 602 U.S. 572, 582 (2024) (“[T]he Constitution requires that direct taxes be apportioned among the States” but because “income taxes are indirect taxes, they are permitted . . . without apportionment.”).

Through its 2019 regulations, however, Treasury impermissibly seeks to undo the safeguards Congress put in place by substantially expanding the items for the imputed underpayment base to include non-income items—items with no effect on

³ Chapter 1 includes sections 1 through 1400Z-2—over 1,400 statutes that meticulously direct taxpayers with respect to the calculation of their tax liability each year.

⁴ *Relevant*, Dictionary.com, <https://www.dictionary.com/browse/relevant> (last accessed May 13, 2026).

any person’s tax liability. There is simply no way to reconcile section 6241(2)’s requirement to include only items or amounts that are “relevant . . . in determining the tax liability of any person under chapter 1” with Treas. Reg. § 301.6241-1(a)(6)(iv)’s directive to include items or amounts “*without regard to whether such item or amount, or an adjustment to such item or amount, has an effect on the tax liability of any particular person under chapter 1.*” (Emphasis added). Accordingly, because the regulation stands in direct conflict with section 6241(2), Treas. Reg. § 301.6241-1(a)(6)(iv) “must give way to the statute.” See *JM Assets, LP v. Comm’r*, 165 T.C. No. 1, at *13 (2025); see also *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (finding agency interpretations that fall short of a statute’s “single, best” meaning made plain by statutory text must be rejected).

BACKGROUND

I. Under the BBA, Adjustments to a Reviewed Year Are Implemented at the Partnership Level through Imputed Underpayments

Under the BBA, Congress imputes partners’ tax liability to their partnership and imposes a partnership-level liability called an imputed underpayment.⁵ Since partnerships do not pay federal income tax at the entity level, the imputed underpayment is designed to approximate the collective tax liability at partner level and then “impute” that amount to the partnership.

⁵ When Congress enacted the BBA, it replaced the prior audit regime established by the Tax Equity and Fiscal Responsibility Act of 1982 (former sections 6221-6241).

The imputed underpayment with respect to any reviewed year is calculated by multiplying a base amount, which is the net of “all partnership adjustments with respect to such reviewed year,” by the highest rate of tax in effect for the reviewed year. I.R.C. § 6225(b)(1). Partnership adjustment is a defined term that means “any adjustment to a partnership-related item.” I.R.C. § 6241(2)(A). And a “partnership-related item” is defined as “(i) any item or amount with respect to the partnership . . . which is relevant (determined without regard to this subchapter) . . . in determining the tax liability of any person under chapter 1, and (ii) any partner’s distributive share of any item or amount described in clause (i).” I.R.C. § 6241(2)(B). Read together, the base for calculating the “imputed underpayment with respect to any reviewed year” is determined by netting all adjustments to “any item or amount with respect to the partnership . . . which *is relevant* . . . in determining *the tax liability of any person* under chapter 1,” and any partner’s distributive share of such item or amount, “*with respect to such reviewed year.*” I.R.C. §§ 6225(b)(1) (emphasis added), 6241(2)(B) (emphasis added).

II. Treasury by Regulation Expands the Base for Calculating an Imputed Underpayment

Despite the requirement in section 6241(2)(B) that an item or amount must be “relevant (determined without regard to [the BBA]) in determining the tax liability of any person under chapter 1,” Treas. Reg. § 301.6241-1(a)(6)(iv) expands on this by providing:

For purposes of this section, an item or amount with respect to the partnership is relevant in determining the tax liability of any person under chapter 1 without regard to the application of [the BBA] *and without regard to whether such item or amount, or an adjustment to such item or amount, has an effect on the tax liability of any particular person under chapter 1.*

(Emphasis added). This deems an item to be “*relevant*” in determining tax liability even when such item has *no effect* on tax liability. The expansive nature of this definition is illustrated in the examples in the regulations, which show Treasury assessing imputed underpayments on non-income items where no tax liability would have been owed under chapter 1 had the partnership and partners correctly calculated their original chapter 1 tax liability. *See* Treas. Reg. § 301.6225-3(d)(3), Example 3 (increasing the imputed underpayment base by the amount of basis being disallowed despite the asset being non-depreciable and not disposed of during the reviewed year); Treas. Reg. § 301.6225-1(h)(7), Example 7 (recharacterizing a \$100 recourse liability as nonrecourse and including the \$100 in the imputed underpayment calculation base even though the adjustment to the character of the liability is an adjustment to an item that cannot be allocated under section 704(b), merely because it “could” result in up to \$100 in taxable income “if” taken into account by any person); Treas. Reg. § 301.6225-1(h)(15), Example 15 (including adjustments to basis in the imputed underpayment base without determining whether such amounts related to depreciable, amortizable, or disposed of property).

III. Treasury's Regulations Are Constrained by the Code and the Administrative Procedure Act

Treasury's regulations are constrained by both the Code and the Administrative Procedure Act ("APA"). *See* 5 U.S.C. § 706(2)(A), (C). In *Loper Bright*, the U.S. Supreme Court made clear that courts must exercise their independent judgment to discern a statute's "single, best meaning" using the traditional tools of statutory construction. *Loper Bright*, 603 U.S. at 400. Courts must exercise their independent judgment to ascertain the best reading of a statute rather than defer to an agency regulation that is inconsistent with the statute's best meaning. *See id.* at 385 ("[I]t is emphatically the province and duty of the judicial department to say what the law is.").

Under the APA, courts hold unlawful and set aside a regulation that exceeds statutory authority or that is arbitrary, capricious, or contrary to statute. *See* 5 U.S.C. § 706(2)(A), (C); *see also United States v. Mead Corp.*, 533 U.S. 218, 227 (2001) (an agency's regulation may not be "arbitrary or capricious in substance, or manifestly contrary to the statute"). An agency's regulation exceeds statutory authority when such regulation amends, enlarges, or conflicts with the statute it interprets. *See Koshland v. Helvering*, 298 U.S. 441, 447 (1936) (agency has "no power to amend [a statute] by regulation"); *see also United States v. Standard Brewery*, 251 U.S. 210, 220 (1920) ("Administrative rulings cannot add to the terms of an act of Congress.").

DISCUSSION

I. Under the Plain Language of the Code, the Base for an Imputed Underpayment Is Restricted to Items or Amounts that Are Relevant in Determining a Person’s Chapter 1 Tax Liability for the Reviewed Year

“Statutory interpretation . . . always . . . begins with the text.” *Ross v. Blake*, 578 U.S. 632, 638 (2016). Courts “presume that a legislature says in a statute what it means and means in a statute what it says there.” *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992); *see also Lamie v. United States Tr.*, 540 U.S. 526, 536 (2004) (“We should prefer the plain meaning since that approach respects the words of Congress.”). This is especially true for the Internal Revenue Code, as Congress writes the “highly reticulated Internal Revenue Code . . . us[ing] language, lots of language, with nearly mathematic precision.” *Summa Holdings, Inc. v. Comm’r*, 848 F.3d 779, 789 (6th Cir. 2017).

Here, the text of the Code tethers the imputed underpayment to the partners’ (or other person’s) chapter 1 tax liability for the reviewed year—the partnership year in which the adjustment was made. This is apparent when the “partnership adjustment” and “partnership-related item” definitions incorporated in the imputed underpayment calculation are inserted in place of the term “partnership adjustments” as reflected below:

[A]ny imputed underpayment with respect to any reviewed year shall be determined by the Secretary by – (A) appropriately netting all [adjustments to “any item or amount with respect to the partnership . . . which is relevant . . . in determining the tax liability of any person under

chapter 1, and any partner’s distributive share of any” such item or amount,] with respect to such reviewed year.”⁶

Under these express terms, if an item or amount *is* relevant in determining the tax liability of a person under chapter 1 for the reviewed year, it is included in the imputed underpayment base; if it is *not* relevant in determining such tax liability, it cannot be included in the base for the imputed underpayment calculation.⁷

By anchoring the imputed underpayment on two things: (1) “the tax liability of any person under chapter 1” (section 6241(2)(B))—a person’s actual income tax liability calculation; and (2) the “reviewed year” (section 6225(d)(1))—the partnership taxable year subject to the audit adjustment, Congress approximates the collective tax liability at the partner level and imposes it on the partnership for administrative convenience.⁸ This ensures the imputed underpayment liability does not exceed the amounts that would have otherwise been subject to tax under chapter

⁶ I.R.C. §§ 6225(b)(1), 6241(2)(A)-(B) (emphasis added).

⁷ Section 6234(c) grants courts jurisdiction over “all partnership-related items” for the taxable year at issue, and section 6241(2) defines that term to include an imputed underpayment and other items only to the extent they are relevant in determining tax liability. Because the imputed underpayment is itself a partnership-related item computed under section 6225(b), its components—including the tax rate and underlying base—are likewise subject to judicial determination.

⁸ *See* I.R.C. § 6225(a) (requiring the partnership to pay an imputed underpayment in the adjustment year if adjustments to partnership-related items with respect to any reviewed year result in an imputed underpayment).

1 had the partnership and partners correctly calculated their original chapter 1 tax liability.

Starting with the “reviewed year,” section 6225(d)(1) defines it as “the partnership taxable year to which the item being adjusted relates.” This partnership taxable year is the one for which the BBA audit notice was mailed under section 6231 and for which a notice of final partnership adjustment was timely mailed (i.e., before the statute of limitations for the partnership taxable year ran under section 6235).⁹

That the “reviewed year” is a single year is confirmed by that term’s usage throughout the BBA statutory framework. *See, e.g.*, I.R.C. § 6225(b)(1)(B) (“applying the highest rate of tax in effect for the reviewed year”); I.R.C. § 6226(a)(2) (permitting partnerships to push out imputed underpayment to “each partner of the partnership for the reviewed year”); I.R.C. § 6233(a) (starting interest calculations “on the day after the return due date for the reviewed year”), I.R.C. § 6241(9) (requiring tax imposed under chapter 3 or 4, if relating to a partnership adjustment, “be so determined with respect to the reviewed year”). The usage of the term “reviewed year” throughout the BBA rules is relevant because courts interpret

⁹ *See also JM Assets*, 165 T.C. No. 1, at *12-13 (explaining BBA audit adjustments must be made before the last of five possible dates, including three years after the date the partnership return was filed and three years after the due date of the return).

statutory text in light of the entire statutory scheme and structure, not in isolation. *See King v. Burwell*, 576 U.S. 473, 486 (2015) (“[W]e must read the words ‘in their context and with a view to their place in the overall statutory scheme Our duty, after all, is ‘to construe statutes, not isolated provisions.’”) (internal citations omitted). Even the Joint Committee on Taxation’s description of the BBA rules reflects that the reviewed year is the year under audit, as it notes that “in the examination by the Secretary of a partnership’s taxable year 2018, 2018 is the reviewed year.” *See* Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 2015, 62 (JCS–1–16) (Mar. 14, 2016) (hereinafter, the “JCT Report”).

Moreover, because a fundamental principle of federal income tax is that each taxable year stands alone, *see Comm’r v. Sunnen*, 333 U.S. 591, 598 (1948) (“Income taxes are levied on an annual basis. Each year is the origin of a new liability”), Treasury rejected commentators’ requests that the regulations provide for the netting of adjustments across tax years. *See* Centralized Partnership Audit Regime, 84 Fed. Reg. 6468, 6479 (Feb. 27, 2019). Treasury further explained that netting across tax years is not supported by the plain language of section 6225 because the “statute does not reference adjustments with respect to any year other than the reviewed year.” *Id.* at 6478.

The second item Congress tethered the imputed underpayment calculation to is the tax liability of any person under chapter 1. And it didn't leave this open to interpretation. Congress was clear that this tax liability must be with respect to the partnership taxable year under BBA audit. I.R.C. §§ 6225(a), (b), (d). Moreover, by requiring the item or amount be “relevant” to “determining the tax liability” of a person under chapter 1 with respect to the reviewed year, Congress made clear that the item had to actually factor into the calculation of such tax liability. An item or amount cannot be relevant to such a determination if it does not flow into and have an effect on such calculation.

Congress' use of the phrase “is relevant . . . in determining” in section 6241(2) stands in stark contrast to other sections of the Code, like section 7602, which allows the IRS to examine data that “*may be* relevant” to “determining the [tax] liability of any person.” (Emphasis added). As the term “relevant” in section 6241(2)(B) is not defined, it is presumed to have its “ordinary, contemporary, common meaning.” *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 227 (2014). The ordinary meaning of “relevant” is “having direct bearing on the matter in hand.”¹⁰ *Yates v. United States*,

¹⁰ *Relevant*, Dictionary.com, <https://www.dictionary.com/browse/relevant> (last accessed May 13, 2026). Black's Law Dictionary (12th ed. 2024) defines “relevant” as “logically connected and tending to prove or disprove a matter in issue.” Having the tendency to *prove or disprove* a matter requires a strong connection to the matter, more than a remote, unclear link.

574 U.S. 528, 537 (2015) (“Ordinarily, a word’s usage accords with its dictionary definition.”).

For an item to have a direct bearing on a person’s chapter 1 tax liability for the reviewed year, it must at least be a component of the calculation of such tax liability. *See Deutsche Bank AG v. United States*, 742 F.3d 1378, 1384 (Fed. Cir. 2014) (explaining that the term “tax liability” in section 6611(g)(2)(B)(ii) means underpayment or overpayment and that information on individual withholding credits is “relevant and necessary” to permit the mathematical verification of tax liability).¹¹

The reason for this direct tie is to ensure the imputed underpayment approximates what the partners’ tax liability in the reviewed year would have been had the item been properly reported originally. This is also why an important feature of the BBA regime is the modification process, which provides a process for reducing the imputed underpayment to account for the partners’ particular tax attributes. This process alleviates the IRS’s administrative burden, while also

¹¹ Such an interpretation comports with how Congress uses the term “tax liability” in the Code, which often involves certain calculation processes. *See, e.g.*, I.R.C. § 995(f)(2)(C) (“The term ‘tax liability’ means the amount of the tax imposed by this chapter for the taxable year reduced by credits allowable against such tax”); I.R.C. § 6425(c)(1) (“The term ‘income tax liability’ means the excess of . . . the tax imposed by . . . chapter 1” plus certain other taxes over certain credits.); I.R.C. § 38(c)(1) (“[T]he term ‘net regular tax liability’ means the regular tax liability reduced by the sum of the credits allowable under subparts A and B of this part.”).

ensuring that the imputed underpayment is tied to the partners' actual tax liability. *See* JCT Report at 68 (explaining the modification rules “allow partnerships to demonstrate tax attributes or information with respect to the reviewed year and with respect to reviewed year partners that could permit modification of the imputed underpayment to *more closely approximate the amount of tax due with respect to the reviewed year* if the partnership and partners had correctly reported and paid the tax due”) (emphasis added).

These modification rules do not, however, give the IRS carte blanche to ignore the actual facts of the partnership and basic federal income tax principles when calculating the imputed underpayment. Indeed, because partnerships prepare information returns showing partnership income, deduction, and distributive shares, if an item or amount does not impact those calculations, then it would not be relevant to the determination of any person's tax liability for such year and thus outside of the scope of sections 6225 and 6241. Moreover, once the IRS is made aware that an item or amount does not impact tax liability for the reviewed year, it has no discretion to keep it in the base of the imputed underpayment calculation as the statutes require it be excluded. I.R.C. §§ 6225 and 6241. This makes sense. Congress never would have assumed that the IRS would knowingly get an assessment wrong and wouldn't have given it discretion to do so. *See Animal Legal Def. Fund, Inc. v. Perdue*, 872 F.3d 602, 619 (D.C. Cir. 2017) (“Reliance on facts that an agency

knows are false at the time it relies on them is the essence of arbitrary and capricious decisionmaking.”); *Butte Cnty., Cal. v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010) (“[A]n agency cannot ignore evidence contradicting its position,” such a “refusal to consider evidence bearing on the issue before it constitutes arbitrary agency action . . .”).

That Congress expected such an approach is reflected in the items it described as needing a modification procedure to correct, namely: partner already took the adjustment into account; partner is a tax-exempt entity; partner is a C corporation; partner is an individual (in the case of capital gain or qualified dividends as that would impact tax rate); partner is a specified partner that has an allocable specified passive activity loss. *See* I.R.C. § 6225(c). These attributes are unique to the partner and thus need to be separately identified. Basis and similar items that the IRS knows never generated any deductions based on the partnership return itself are nowhere to be found among the items Congress knew needed modification procedures because such items by statute *cannot* be included in the imputed underpayment.

In sum, the statutory text, structure, and purpose of the BBA audit regime all require “imputed underpayment” be determined based on items or amounts that are relevant in determining a person’s tax liability under chapter 1 for the reviewed year—items that actually flow into the mathematical calculation of tax liability for

such year. If an item or amount is not relevant to such determination, it must be excluded from the base for the imputed underpayment calculation.

II. The Constitutional Avoidance Doctrine Requires the Base of an Imputed Underpayment Be Restricted to Items that Are Relevant in Determining a Person’s Federal Income Tax Liability for the Reviewed Year

Under the constitutional avoidance doctrine, courts should interpret statutes in a manner that avoids creating constitutional issues. *See Clark v. Suarez Martinez*, 543 U.S. 371, 381-82 (2005) (the constitutional avoidance doctrine “is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts. The canon is thus a means of giving effect to congressional intent, not of subverting it.”) (internal citations omitted). Here, “imputed underpayment” must be interpreted as requiring its calculation base be items or amounts that are relevant in determining a person’s tax liability under chapter 1 for the reviewed year.

The Constitution permits the Federal government to impose and collect a tax on income from activities or transactions, but it does not permit Federal taxes directly on persons or properties without apportionment among the States based on population. *See* U.S. Const. art. I, § 2, cl. 3; § 9, cl. 4; U.S. Const. amend. XVI (“The Congress shall have power to lay and collect taxes on *incomes*, from whatever source derived, without apportionment”) (emphasis added); *see also Moore*, 602 U.S.

at 582-83 (“[T]he Constitution requires that direct taxes be apportioned among the States” but because “income taxes are indirect taxes, they are permitted . . . without apportionment.”).

If imputed underpayment is interpreted to include items or amounts “without regard to whether such item or amount, or an adjustment to such item or amount, has an effect on the tax liability of any particular person under chapter 1” as Treas. Reg. § 301.6241-1(a)(6)(iv) defines it, the imputed underpayment rules, including section 6225(b)(1), would be unconstitutional. This is because including items that are not relevant in calculating a person’s federal income tax liability for the reviewed year (i.e., non-income items) converts the imputed underpayment into a tax on property or, at best, unused tax attributes, neither of which may be taxed without apportionment. And a tax on property or tax attributes is a direct tax on “the potency of fruition” (i.e., a tax on assets capable of generating income just because such assets exist), rather than an income tax on “the fruit that is born of capital” (i.e., a tax on the activities or transactions that sever and realize income from the income-generating assets). *See Doyle v. Mitchell Bros. Co.*, 247 U.S. 179, 185 (1918) (income is “something entirely distinct from principal or capital” as it conveys “the idea of gain or increase arising from corporate activities”); *Moore*, 602 U.S. at 612 (Barrett, J., concurring) (“The common thread is that to realize income, one must

receive something new and valuable *beyond the property she already owns.*”) (emphasis added).

That this would occur is evident in the examples in the regulations discussed above and Treasury’s statement in the preamble to the BBA regulations that:

[T]he imputed underpayment . . . is not designed to be the exact amount of the tax liability that would have been paid by the partners, nor is it a substitute for partner tax liability. Rather, it is . . . computed by reference to any adjustments made to partnership-related items, regardless of whether those adjustments would have actually resulted in a tax liability to any particular partner.¹²

This Court must thus reject any interpretation of sections 6225 and 6241 that would expand the scope of imputed underpayment beyond the constitutional boundary. This is easily done. Congress provided a clear path for requiring imputed underpayments be based on items or amounts that are relevant in determining tax liability under chapter 1 for the reviewed year—items or amounts that permissibly factor into a constitutional calculation of federal income tax.

III. Treas. Reg. § 301.6241-1(a)(6)(iv) Is Invalid Because It Is Contrary to Statute and Exceeds Statutory Authority

“A regulation to be valid must be reasonable and must be consistent with law.” *JM Assets*, 165 T.C. No. 1, at *13 (quoting *Int’l Ry. Co. v. Davidson*, 257 U.S.

¹² Treatment of Special Enforcement Matters, 87 Fed. Reg. 75,473, 75,477 (Dec. 9, 2022); *see also* IRS Chief Couns. Advice No. 202148006 (Dec. 3, 2021) (asserting that “whether an adjustment is included in the IU [imputed underpayment] calculation does not at all depend on whether/how/if the item would be taxed at the partner level”).

506, 514 (1922)). Treas. Reg. § 301.6241-1(a)(6)(iv) is invalid because it conflicts with the statutes it purports to interpret: sections 6225 and 6241. *See JM Assets*, 165 T.C. No. 1, at *13 (finding Treas. Reg. § 301.6235-1(b)(2)(i)(A) under the BBA rules “must give way to the statute” because it directly conflicted with section 6235(a)). Sections 6225 and 6241 authorize the IRS to impose partnership-level liability—the imputed underpayment—by adjusting any item or amount with respect to the “reviewed year of a partnership” that “is relevant (determined without regard to this subchapter) in determining the tax liability of any person under chapter 1” with respect to the reviewed year. As reflected above, the statutory framework only allows an item or amount to be treated as a partnership-related item if such an item or amount *is relevant* in determining tax liability for the reviewed year (i.e., is factored into the calculation of a person’s tax liability for the reviewed year).

Treas. Reg. § 301.6241-1(a)(6)(iv), however, rewrites the relevancy test in section 6241(2)(B) to add that an item “is relevant . . . without regard to whether such item or amount, or an adjustment to such item or amount, has an effect on the tax liability of any particular person under chapter 1.” Including items that are not relevant to a person’s tax liability twists the definition of “relevant”—and hence the definition of partnership-related item—to a breaking point.

An item cannot have a direct bearing on tax liability (as contemplated by section 6241(2)(B)) and at the same time have no actual effect on such tax liability

(as contemplated by Treas. Reg. § 301.6241-1(a)(6)(iv)). By stretching the definition of “relevant” to the extreme, such that an item or amount with no tax impact is treated as relevant to determining tax liability, Treas. Reg. § 301.6241-1(a)(6)(iv) impermissibly reads the relevancy requirement out of section 6241(2)(B) and renders it superfluous and meaningless. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) (declining to “adopt respondent’s construction of the statute” because it would render a word in the statute “insignificant, if not wholly superfluous”); *Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 226 (2015) (a statute should be construed in a way that no clause is rendered “superfluous, void, or insignificant”).

Treasury’s power to prescribe regulations “is not the power to make law . . . but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute.” *Manhattan Gen. Equip. Co. v. Comm’r*, 297 U.S. 129, 134 (1936). “Disagreeing with Congress’s expressly codified policy choices isn’t a luxury administrative agencies enjoy.” *Cent. United Life Ins. Co. v. Burwell*, 827 F.3d 70, 73 (D.C. Cir. 2016).¹³ When the IRS attempts to re-draft a Code section by

¹³ By including items that have no tax effect in the reviewed year as part of the imputed underpayment, the IRS bypasses Congress to impose a tax on non-income items, creating severe compliance burdens and litigation costs for taxpayers, with corresponding economic consequences, including the diversion of capital and other business resources from job creation, investment, and growth. It is implausible that Congress intended this result, let alone delegated such “a question of deep economic and political significance” to the IRS without clear and explicit statutory delegation. *See King*, 576 U.S. at 486; *West Virginia v. EPA*, 597 U.S. 697, 714 (2022) (a

adopting a regulation contrary to statute, courts routinely invalidate or refuse to follow the regulation. *See, e.g., JM Assets*, 165 T.C. No. 1, at *13 (finding Treas. Reg. § 301.6235-1(b)(2)(i)(A) under the BBA rules “must give way to the statute” because it directly conflicted with section 6235(a)); *Comm’r v. Acker*, 361 U.S. 87, 93-94 (1959) (invalidating Treasury regulations that added provisions not included in the statute). The Court should do the same here.

CONCLUSION

The best reading of sections 6225 and 6241 is that the base for an imputed underpayment calculation is limited to partnership-related items that are relevant in determining a partner’s (or other person’s) tax liability in the partnership year under audit. Treas. Reg. § 301.6241-1(a)(6)(iv) is invalid because it conflicts with sections 6225 and 6241 and “add[s] to [section 6241(2)(B)] . . . something which is not there.” *See United States v. Calamaro*, 354 U.S. 351, 359 (1957); *Koshland*, 298 U.S. at 446-47 (“[W]here . . . the provisions of the act are unambiguous, and its directions specific, there is no power to amend it by regulation.”); *Standard Brewery*, 251 U.S. at 220 (agency “cannot enlarge the meaning of a statute enacted by Congress”).

regulation that “would entail billions of dollars in compliance costs” steps on a major question Congress would not have implicitly delegated).

Dated: May 19, 2026


Respectfully submitted,



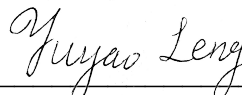
GEORGE M. CLARKE III
Tax Court Bar No. CG0419
Baker & McKenzie LLP
815 Connecticut Avenue, N.W.
Washington, DC 20006
Telephone: (202) 452-7000
George.Clarke@bakermckenzie.com
*Counsel for the National Association
of Manufacturers*



JOY A. WILLIAMSON
Tax Court Bar No. WJ1293
Baker & McKenzie LLP
1900 North Pearl St., Suite 1500
Dallas, TX 75201
Telephone: (214) 978-3000
Joy.Williamson@bakermckenzie.com
*Counsel for the National Association of
Manufacturers*



CARLTON A. TARPLEY
Tax Court Bar No. TC23712
Baker & McKenzie LLP
452 Fifth Avenue
New York, NY 10018
Telephone: (212) 626-4100
Carlton.Tarpley@bakermckenzie.com
*Counsel for the National Association
of Manufacturers*



YUYAO LENG
Tax Court Bar No. LY26160
Baker & McKenzie LLP
452 Fifth Avenue
New York, NY 10018
Telephone: (212) 626-4100
Yuyao.Leng@bakermckenzie.com
*Counsel for the National Association of
Manufacturers*

CORPORATE DISCLOSURE STATEMENT
(See Rule 20(c).)

The undersigned counsel for the National Association of Manufacturers certifies that the filer does not have a parent corporation, nor is there any publicly held corporation that owns 10% or more of the filer's stock.

Dated: May 19, 2026

Respectfully submitted,



GEORGE M. CLARKE III
Tax Court Bar No. CG0419
Baker & McKenzie LLP
815 Connecticut Avenue, N.W.
Washington, DC 20006
Telephone: (202) 452-7000
George.Clarke@bakermckenzie.com
*Counsel for the National Association of
Manufacturers*

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing brief was served on the parties' counsel on May 19, 2026 by sending to the following email addresses.¹⁴

Tim Alan Tarter tim@woolston-tarter.com	Attorney for Petitioner
Kacie N.C. Dillon kacie@silverlawplc.com	Attorney for Petitioner
Jacob I. Silver jacob@silverlawllp.com	Attorney for Petitioner
Jason M. Silver jsilver@silverlawplc.com	Attorney for Petitioner
Michael R. Harrel michael.r.harrel@irscounsel.treas.gov	Attorney for Respondent
Alicia E. Elliott alicia.e.elliott@irscounsel.treas.gov	Attorney for Respondent
Bryan T. Jensen bryan.t.jensen@irscounsel.treas.gov	Attorney for Respondent
Andre T. Andoyan andre.t.andoyan2@irscounsel.treas.gov	Attorney for Respondent
Katelynn M. Sponseller katelynn.m.winkler@irscounsel.treas.gov	Attorney for Respondent
David Sohn david.sohn@irscounsel.treas.gov	Attorney for Respondent
Inga C. Plucinski-Holbrook inga.c.plucinski-holbrook@irscounsel.treas.gov	Attorney for Respondent

¹⁴ Counsel for Petitioner and counsel for Respondent consented in writing to service by email.

Dated: May 19, 2026

Respectfully submitted,



GEORGE M. CLARKE III
Tax Court Bar No. CG0419
Baker & McKenzie LLP
815 Connecticut Avenue, N.W.
Washington, DC 20006
Telephone: (202) 452-7000
George.Clarke@bakermckenzie.com
*Counsel for the National Association of
Manufacturers*